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## Examining the Provision of Arrest and Detention in The Execution Proceedings of a Decree

Atreyee Dey<sup>a</sup>

<sup>a</sup>St. Xavier's University, Kolkata, India

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*“I object to violence because when it appears to do good, the good is only temporary, the evil it does is permanent.”*

- Mahatma Gandhi<sup>1</sup>

*Personal freedom and liberty to life and property are the epitome of the social structure in a country like India, where the right to life is a fundamental right, guaranteed under Article 21 of our Constitution. The constitutions of all the common law countries, including India, and the international covenants and conventions follow a liberal democratic ideology where the liberty of the individual is the paramount consideration of the State. Every action of the State is measured against the foundational touchstone of liberty and democracy to ensure that the goal of achieving a welfare state is fulfilled. The term arrest is usually associated with the commission of a criminal offence, wherein certain restraints are placed on the freedom and liberty of an individual. Therefore, the individual's autonomy is interdicted. Nonetheless, arrest as a mechanism can also be opted for the execution of a money decree passed by a civil court. In these circumstances, the provisions relating to the arrest and detention of the judgment debtor and the rights of the decree holder must be constructed harmoniously to strike a balance between the two.*

**Keywords:** *execution, civil suits, litigation, arrest, detention, article 21.*

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<sup>1</sup> Louis Fischer, *The Essential Gandhi: An Anthology of His Writings on His Life, Work, and Ideas* (1st edn, Vintage 2002)

## INTRODUCTION

*“In India, difficulties of a litigant begin once he obtains a decree.”*

It is widely known that the word execution has nowhere been defined in the Civil Procedure Code, 1908<sup>2</sup>. Nonetheless, in the most extensive sense and after interpreting the same, the word execution signifies the enforcement or making effective the judgment or order of the Court. Simply stating, execution is a process for enforcing or giving effect to the judgement of the court<sup>3</sup> and aids the judgement creditor or the decree holder to realise the fruits of his labour against that of the judgement debtor<sup>4</sup>.

*“The remedies under the Code are of superior judicial quality than what is generally available under the other statutes and the judge, being entrusted exclusively with the administration of justice, is expected to do the needful”*- the aforementioned statement from the landmark case of *Ghan Shyam Das Gupta v Anant Kumar Sinha*<sup>5</sup> rightfully paints a picture of the various encyclopedic provisions available for the executability of a decree.

## FILING OF THE EXECUTION APPLICATION

The filing of an application for the execution of a decree is the first and foremost step for all execution proceedings. Such application should be filed in the prescribed proforma (Form No. 6 of Appendix E to the 1 Schedule of CPC) either – (i) before the Court which has passed the decree or, (ii) where the decree has been transferred to another court by the transferor court, then before that transferee court. A plain reading of S. 37<sup>6</sup> reveals that the court which has passed the decree or the order is the executing Court. The jurisdiction of the Court to execute the decree passed by the court shall not cease to exist simply because the same has been transferred to another Court due to the transfer of the territorial area. Rules 10-25<sup>7</sup> and 105-106<sup>8</sup> of Order 21 deal with the applications for execution of a decree.

<sup>2</sup> Civil Procedure Code 1908

<sup>3</sup> *In re: Overseas Aviation Engineering* (1962) 3 All ER 12

<sup>4</sup> *Sreenath Roy v Radhanath Mookerjee* (1882) 9 Cal 773

<sup>5</sup> *Ghan Shyam Das Gupta v Anant Kumar Sinha* (1991) 4 SCC 379

<sup>6</sup> Code of Civil Procedure 1908, s 37

<sup>7</sup> Code of Civil Procedure 1908, Or XXI rs 10-25

<sup>8</sup> Code of Civil Procedure 1908, Or XXI rs 105-106

## **FOLLOWING ARE THE PEOPLE WHO CAN FILE AN APPLICATION**

Rule 10 of Order 21<sup>9</sup> lays down the following persons who can apply for execution-

- (i) The decree holder themselves;
- (ii) legal representative of the decree holder, if the decree holder is dead;
- (iii) representative of the decree holder;
- (iv) any other persons who are claiming under the decree holder;
- (v) transferee of the decree holder, provided that certain aforementioned conditions are met;
- (vi) one or more of the joint decree holders, provided that certain conditions are satisfied;
- (vii) and any person having a special interest. The contents of the application should be in compliance with Rule 11(2) of Order 21 CPC<sup>10</sup>.

## **PROCEDURE TO BE FOLLOWED AFTER RECEIVING APPLICATION**

After the Court receives an application of a decree, it is the duty of the court under Rule 17 of Order 21 CPC<sup>11</sup> to ascertain whether the application complies with the requirements of Rules 11<sup>12</sup> to 14<sup>13</sup>. If they are complied with, the court shall admit the same, and if they are not, then adequate time must be provided by the Court to allow the applicant to remediate their mistake(s). Provided that the defect is not corrected within the specified timeframe, the Court shall reject the application<sup>14</sup>.

Rules 105 and 106 of Order 21 CPC,<sup>15</sup> which have been inserted via the 1976 amendment, provide that the Court before which an application is pending shall fix a date for hearing of such application. Upon the date of hearing, if found that the applicant is not present, then the Court may dismiss the application. Furthermore, if found that the applicant is present but the opposite party is not, the court may hear the application ex parte and pass such order

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<sup>9</sup> Code of Civil Procedure 1908, Or XXI r 10

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<sup>11</sup> Code of Civil Procedure 1908, Or XXI r 17

<sup>12</sup> *Ibid* Code of Civil Procedure 1908, Or XXI r 11(2)

<sup>13</sup> Code of Civil Procedure 1908, Or XXI rs 11-14

<sup>14</sup> *Jiwani v Rajmata Basantika Devi* (1993) 3 Supp SCC 217

<sup>15</sup> Code of Civil Procedure 1908, Or XXI rs 105-106

as it may deem fit and proper. Rule 106 of Order 21<sup>16</sup> entails that if the application is dismissed due to the want of appearance or if an ex parte order is passed, the aggrieved party may apply to the Court to set aside such an order, provided that sufficient cause is shown<sup>17</sup>.

## NOTICE OF EXECUTION

Issuance of notice for execution under Rule 22 of Order 21 of CPC<sup>18</sup> is held to be mandatory. The fundamental rationale behind the issuance of a notice is to follow the judgment debtor to show cause and to put forward objections, if any. Therefore, this provision is held to be intra vires and by Article 14 of the Constitution<sup>19</sup>. Additionally, this will save the judgment debtor from the bombshell of such a revelation and will afford him the opportunity to satisfy the decree before the execution is issued against him<sup>20</sup>.

That being so, this provision is used to safeguard the interests of the judgment debtor. It is based upon the principle of natural justice, touching upon the executing court's jurisdiction to take further necessary steps in execution. Omitting to provide such a notice will go to the root of the proceedings and shall render it null and void and without jurisdiction, the saving clause being, the judgment debtor himself waives off such notice<sup>21</sup>. Nonetheless, sub-R.(2) of Rule 22 of Order 21 CPC empowers the Court to dispense with such a notice if it defeats the ends of justice or unreasonable delay is caused due to the issuance of such a notice. Moreover, where such notice is dispensed with, the Court has to record reasons for the same<sup>22</sup>.

## GENERAL INTRODUCTION TO SECTION 51 OF CPC

Section 51 of CPC<sup>23</sup> is very wide and lays down various modes of execution of a decree. The provisions of this section are not ultra vires or unconstitutional to Articles 14<sup>24</sup>, 19<sup>25</sup> or 21<sup>26</sup> of the Constitution. The decree holder has an option to choose a particular method for the

<sup>16</sup> Code of Civil Procedure 1908, Or XXI r 16

<sup>17</sup> *Damodaran Pillai v South Indian Bank Ltd.* (2005) 7 SCC 300

<sup>18</sup> Code of Civil Procedure 1908, Or XXI r 22

<sup>19</sup> Constitution of India 1950, at 14

<sup>20</sup> *Erava v Sidramappa Pasare* (1897) 21 Bom 424

<sup>21</sup> *Raghunath Das v Sundar Das Khetri* (1914) 41 IA 251

<sup>22</sup> *Desh Bandhu Gupta v N.L. Anand* (1994) 1 SCC 131

<sup>23</sup> Code of Civil Procedure 1908, s 51

<sup>24</sup> Constitution of India 1950, art 14

<sup>25</sup> Constitution of India 1950, art 19

<sup>26</sup> Constitution of India 1950, art 21

execution of a decree against the judgment debtor. Therefore, as a general rule, the Court should not ordinarily place a limitation as to the mode in which the decree is to be executed.

Nonetheless, the court, by exercising its discretionary powers, can exercise the option of simultaneous execution of a decree, but that power has to be exercised judicially and by the principles of law and natural justice. This power of the Court has been recognised in several landmark cases, including *Padrauna Rajkrishna Sugar Works Ltd. v Land Reforms*<sup>27</sup> Commissioner, where the Supreme Court held that the Code imposes no obligation to recover the dues by sale of movables or by arrest and detention of the defaulter before immovable property may be attached.

This point of law has been further reiterated in the case of *P.R. Sugar Works*, where the SC observed that the remedies laid down in clauses (a) to (e) of Section 51 of the Code gives an option to the creditor, of enforcing the decree either against the person or the property of the person. In addition to this, it has been nowhere mentioned in the Code that the Creditor shall not be allowed to proceed against the person of the debtor unless he has exhausted all the remedies against the property of the debtor. Therefore, it is entirely upon the discretion of the Court to allow or reject the same.

### **Different Types of Decrees to be Executed:**

1. Money decree;
2. Decree for specific movable property,<sup>28</sup>
3. Decree for specific immovable property,<sup>29</sup>
4. A decree was passed against a firm,<sup>30</sup>
5. Decree for specific performance,<sup>31</sup>
6. Decree for injunction,<sup>32</sup>
7. Decree for the execution of a document or endorsement of a negotiable instrument,<sup>33</sup>
8. Decree for the uncertain amount or mesne profit, or any other amount,<sup>34</sup>

<sup>27</sup> *Padrauna Rajkrishna Sugar Works Ltd. v Land Reforms* (1969) 1 SCC 485

<sup>28</sup> Code of Civil Procedure 1908, Or XXI r 31

<sup>29</sup> Code of Civil Procedure 1908, Or XXI rs 35-36

<sup>30</sup> Code of Civil Procedure 1908, Or XXI r 50

<sup>31</sup> Code of Civil Procedure 1908, Or XXI r 32

<sup>32</sup> *Ibid*

<sup>33</sup> Code of Civil Procedure 1908, Or XXI r 34

<sup>34</sup> Code of Civil Procedure 1908, Or XXI r 42

9. Execution of cross decrees,<sup>35</sup>
10. Execution of cross claims,<sup>36</sup>
11. Decree for restitution of conjugal rights.<sup>37</sup>

### **Various Modes of Executing Decrees:**

1. By arresting and detaining the judgment debtor in civil prison,<sup>38</sup>
2. By attaching and disposing off movable properties,<sup>39</sup>
3. By attaching and disposing off immovable property,<sup>40</sup>
4. By attaching a negotiable instrument,<sup>41</sup>
5. By attaching a decree obtained by the judgment debtor in a separate civil suit,<sup>42</sup>
6. By attaching the debtor's share in a partnership firm,<sup>43</sup>
7. By attaching and selling of standing crop and agricultural produce,<sup>44</sup>
8. By attaching such debt, share, or any other movable property which is not in the possession of the judgment debtor (otherwise known as garnishee proceedings),<sup>45</sup>
9. By attaching the salaries of government servants,<sup>46</sup>
10. By attaching the salaries of private employees.<sup>47</sup>

### **NATURE AND SCOPE OF ARREST AND DETENTION UNDER CPC**

A money decree or a decree for the payment of money may be executed either by attaching and selling the property of the judgment debtor, or by detaining him in civil prison or by both. In the leading case of *Subrata Roy Sahara v Union of India*<sup>48</sup>, the SC held that a person who has been arrested or detained shall not be considered discharged from his debt in the course of executing the money decree. Likewise, in case of a decree against a corporation, or

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<sup>35</sup> Code of Civil Procedure 1908, Or XXI r 18

<sup>36</sup> Code of Civil Procedure 1908, Or XXI r 19

<sup>37</sup> Code of Civil Procedure 1908, Or XXI r 33

<sup>38</sup> Code of Civil Procedure 1908, ss 51, 55-69, 135 & 135A; Code of Civil Procedure 1908, Or XXI rs 37-40 & 241

<sup>39</sup> Code of Civil Procedure 1908, Or XXI r 43

<sup>40</sup> Code of Civil Procedure 1908, Or XXI rs 54-69

<sup>41</sup> Code of Civil Procedure 1908, Or XXI r 51

<sup>42</sup> Code of Civil Procedure 1908, Or XXI r 53

<sup>43</sup> Code of Civil Procedure 1908, Or XXI rs 49-50

<sup>44</sup> Code of Civil Procedure 1908, Or XXI rs 44-45

<sup>45</sup> Code of Civil Procedure 1908, Or XXI r 46

<sup>46</sup> Code of Civil Procedure 1908, Or XXI r 48

<sup>47</sup> Code of Civil Procedure 1908, Or XXI r 48A

<sup>48</sup> *Subrata Roy Sahara v Union of India* (2014) 8 SCC 470

for specific performance of a contract or for injunction, the judgment debtor too can be arrested and detained<sup>49</sup>.

Sections 55 to 59<sup>50</sup> and Rules 30 to 41 of Order XXI<sup>51</sup> deal with the arrest and detention of the judgment debtor in civil prison. The substantive provisions lay down the rights and liabilities of the judgment debtor and the decree holder, while the procedural provisions lay down the conditions thereof. They are penal and must be strictly complied with<sup>52</sup>.

Detention of a judgement debtor in a civil prison serves a two-fold purpose, that is, on one hand the decree holder can realise the fruits of the decree passed in his favour, and on the other hand, protects the judgment debtor who is not in a position to pay his dues because of reasons beyond his power and control<sup>53</sup> therefore, mere omission to pay, cannot result in the arrest and detention of judgement debtor. This principle was laid down in the landmark case of Jolly George Varghese v Bank of Cochin<sup>54</sup>, where Justice Krishna Iyer rightfully pointed out that the attitude of refusal of the debtor has to be taken into consideration. If the Judgement Debtor satisfies the Court by showing ample and adequate reason as to why he is unable to pay the decretal amount, then the Court may reject the application for arrest.

The central objective of the Code is to protect the impoverished and indigent judgment debtors who have little to no means of paying the decretal amount. The Law Commission of India while examining this issue of arrest and detention in light of Article 11 of International Covenant on Civil and political rights, observed that this provision can be ordered only when the judgement debtor refuses or neglects to pay and additionally recommended the abolition of the execution of decree by arresting and detaining the judgement debtor in civil prison<sup>55</sup>.

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<sup>49</sup> *Mahadeo Prasad Singh v Ram Lochan* (1980) 4 SCC 354

<sup>50</sup> Code of Civil Procedure 1908, ss 55-59

<sup>51</sup> Code of Civil Procedure 1908, Or XXI rs 30-41

<sup>52</sup> Hirissi Shivani et al., 'Analytical Study on Arrest and Detention Under Civil Procedure Code' (2022) 10(5) International Journal of Research in Engineering and Science <<https://www.ijres.org/papers/Volume-10/Issue-5/Ser-4/G10056073.pdf>> accessed 15 February 2025

<sup>53</sup> Devansh Agarwal, 'Procedural Safeguards in Executing a Decree by Arrest and Detention in the Context of Art. 21 of the Constitution of India' (2020) 3(3) International Journal of Legal Science and Innovation <<https://www.ijlsi.com/wp-content/uploads/Procedural-Safeguards-in-Executing-a-Decree-by-Arrest-and-Detention-in-the-Context-of-Art.21-of-the-Constitution-of-India.pdf>> accessed 15 February 2025

<sup>54</sup> *Jolly George Varghese v Bank of Cochin* (1980) 2 SCC 360

<sup>55</sup> Law Commission of India, 54th Report (Law Com No 150, 1973)

### **Following are the people who cannot be arrested?**

**Section 56:**<sup>56</sup> A woman cannot be arrested or detained in civil prison for the execution of a money decree. This provision is attuned to Articles 14 and 15,<sup>57</sup> and is not arbitrary or authoritative.

**Section 135(1):**<sup>58</sup> Judicial officers or officers of the court who are going to, presiding in or returning from courts;

**Section 135(2):**<sup>59</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;

**Section 135A:**<sup>60</sup> Members of Legislative bodies;

**Section 55(2):**<sup>61</sup> Any person or class of persons, whose arrest, in the opinion of the State Government, might be attended with danger or inconvenience to the public;

**Section 58(I-A):**<sup>62</sup> A judgment debtor, where the decretal amount does not exceed rupees two thousand.

### **PROCEDURE FOR ARREST**

For the execution of a decree, the Judgement debtor may be arrested at any time of the day, and on any day, and shall be brought before the Court within 24 hours of his arrest. In the celebrated case of *Khatri (II) v The State of Bihar*<sup>63</sup>, the SC emphasised the same point and additionally laid down that if a police officer fails to produce the person before the Magistrate within 24 hours of arrest, he shall be held liable for wrongful detention. His detention shall be in the civil prison of the district in which the court ordering the detention is situated, or if

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<sup>56</sup> Code of Civil Procedure 1908, s 56

<sup>57</sup> Constitution of India 1950, arts 14-15

<sup>58</sup> Code of Civil Procedure 1908, s 135(1)

<sup>59</sup> Code of Civil Procedure 1908, s 135(2)

<sup>60</sup> Code of Civil Procedure 1908, s 135A

<sup>61</sup> Code of Civil Procedure 1908, s 55(2)

<sup>62</sup> Code of Civil Procedure 1908, s 58(I-A)

<sup>63</sup> *Khatri (II) v The State of Bihar* (1981) 2 SCC 493



the civil prison does not provide for suitable accommodation, in any other place which the State Government shall determine from time to time.

As far as the procedure of arrest is concerned, provided, firstly, that no permission has been granted to enter the residence of the judgment debtor before sunrise or after sunset. Secondly, it has been mentioned that no outer door of a dwelling place can be broken into unless the judgment debtor is resisting arrest. Thirdly, if along with the judgment debtor, there is a pardanashin woman on the property, who is not the judgment debtor, a reasonable time must be accorded to her to withdraw herself<sup>64</sup>.

Fourthly, if the debtor willfully pays the decretal amount and the costs incurred during the arrest procedure, then he should no longer be detained and will be released at once. Additionally, the judgment debtor will not be arrested and detained unless the Court-fixed subsistence allowance is paid by the decree holder.<sup>65</sup> The application for the arrest and apprehension has to be filed by the decree holder, and he must file an affidavit stating reasonable grounds for the said arrest. Therefore, the burden of proof is on the decree holder to satisfy the court that Section 51(c)<sup>66</sup> exists for the apprehension of the judgment debtor.

## ISSUANCE OF NOTICE

Order 21, Rules 37 and 40<sup>67</sup> prescribe that instead of a warrant, a notice should be issued calling upon the judgment debtor to show cause as to why he should not be committed to civil prison. The court should recognise this as a part and parcel of the principle of natural justice and should not issue a mechanical notice. Instead, they should keep in mind the postulates of Article 14<sup>68</sup>, read with Articles 19 and 21<sup>69</sup>, while issuing such a notice. In *Kasi Subbaiah Mudali v Kasi Veeraswamy Mudali*<sup>70</sup>, the honourable High Court held that once the Judgment debtor appears in compliance with the issued notice, the Court shall hear all the evidence adduced by the judgment debtor and shall provide him with a fair opportunity to hear out his cause.

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<sup>64</sup> *Ibid*

<sup>65</sup> Code of Civil Procedure 1908

<sup>66</sup> Code of Civil Procedure 1908, s 51(c)

<sup>67</sup> Code of Civil Procedure 1908, Or XXI rs 37-40

<sup>68</sup> Constitution of India, 1950, art 14

<sup>69</sup> Constitution of India, 1950, arts 19 and 21

<sup>70</sup> *Kasi Subbaiah Mudali v Kasi Veeraswamy Mudali* (2002) 3 ALT, 240

Nonetheless, where the judgment debtor does not make an appearance after the issuance of such a notice, considering the necessity of the decree holder, the Court can issue an arrest warrant for the arrest of the judgment debtor. A similar view was reiterated by the Andhra Pradesh High Court in the case of *Badrachalam Satyanarayana v Lotla Varalaxmi*<sup>71</sup> where it was held that the opportunity of hearing of the Judgment-debtor is vital before ordering the arrest.

After the judgment debtor has been apprehended and done away with in detention, the Court has to record its reasons in writing. This provision is mandatory, with an undertone of “*a verbis legis non est recedendum*”, which translates to the importance of adhering strictly to the language of the Legislature. An omission of the same will lead to non-compliance with a statutory obligation<sup>72</sup>.

## CHANGING JURISPRUDENCE IN THE CONTEXT OF A LIBERAL WORLD

The courts are now taking a more liberal view when it comes to the interpretation of Section 51 of CPC. This principle and the changing jurisprudence have been recognised in the case of *Ramasamy v Pushpa*<sup>73</sup>, where there was cogent evidence on record to show that the judgment debtor had sufficient means to pay his dues. Nonetheless, he was still not paying up. Therefore, the Court, by applying its judicial mind and abiding by the principle of law and natural justice, held that his current financial position has to be ascertained, whether he had any other impending liabilities that required payment. The court in its landmark judgement held that just because the person has the means to pay doesn't mean that he is in a situation to pay the decretal amount.<sup>74</sup>

This case is a primordial case of significant importance since it recognises the fact that arrest and detention shall be awarded to the judgment debtor only in exceptional cases, and therefore, the decree holder must establish by cogent means and evidence that will showcase

<sup>71</sup> *Badrachalam Satyanarayana v Lotla Varalaxmi* (2004) 1 Andhra Weekly Reports 565

<sup>72</sup> *S.K. Kuttalalingam v S.V.N. Chinnkannu Pillai* (1952) 28 COM CAS 168

<sup>73</sup> *Ramasamy v Pushpa* (2017) SCC Online Mad 14445

<sup>74</sup> Akshat Kabrat, 'The Use of Arrest in Civil Execution Proceedings — A Last Resort in Exceptional Cases' (SCC Online, 04 March 2023) <<https://www.scconline.com/blog/post/2023/03/04/the-use-of-arrest-in-civil-execution-proceedings-a-last-resort-in-exceptional-cases/#fn30>> accessed 15 February 2025

the ability of the judgment debtor to pay the debt. Additionally, the Court executing the decree must record its reasons for the same<sup>75</sup>.

## LEGAL SAFEGUARDS AGAINST ARBITRARY ARREST AND DETENTION

Article 21, Cinderella of lovers of Civil liberties, is more than what the American Bill of Rights and the British Magna Carta could ever offer. Every person is guaranteed the right to life and personal liberty under Article 21<sup>76</sup>. It means that, except according to the process established by law, no person shall be deprived of their life or personal liberty. Therefore, arbitrariness is precluded from the ambit of the Constitution itself. It is part and parcel of the basic structure of the Constitution; it cannot be tampered with by the Executive<sup>77</sup>. The use of the words fair, just and reasonable was used as a benchmark for the interpretation of life and liberty of an individual in the case of *Maneka Gandhi v Union of India*<sup>78</sup>. An arrest involves a consequential encroachment on someone's life and personal liberty. Article 22<sup>79</sup> safeguards the individual against capricious arrests, which are unmotivated, made to detain a person, in an attempt to deprive of his life and personal liberty.

The Apex Court in the case of *State of Maharashtra v Shoba Ram*<sup>80</sup>, held that after an arrest is made, Article 22 comes into play and the person may take immediate action to remediate himself under this Article. The landmark case of *Jolly George Varghese and Another v The Bank of Cochin*<sup>81</sup>, contemplated that Article 21 and its umbrella of protection shall not only include the persons who are arrested in criminal cases but shall also extend to the persons who are arrested about the execution of a money decree under Order 21 Rule 37 of CPC.

Article 9(1) of the International Covenant on Civil and Political Rights entails that every individual shall have the right to liberty and security of person. No person shall be subjected to arbitrary arrest and/or detention except via the process established by law.

The European Convention on Human Rights is the first and the only existing treaty that has given an exhaustive list of grounds which legally and lawfully justify the deprivation of life

<sup>75</sup> *MM Saleem v R. Praveen Kumar Reddy* (2010) 5 CTC 469

<sup>76</sup> Constitution of India 1950, art 21

<sup>77</sup> *Kesavananda Barathi v State of Kerala* (1973) 4 SCC 225

<sup>78</sup> *Maneka Gandhi v Union of India* (1978) SC 597

<sup>79</sup> Constitution of India 1950, art 22

<sup>80</sup> *State of Maharashtra v Shoba Ram* (1966) SC 1910

<sup>81</sup> *Jolly George Varghese and Another v The Bank of Cochin* (1980) 2 SCC 360

and liberty of an individual. This list is advised to be interpreted strictly. Article 5<sup>82</sup> enumerates the said list –

- (i) that the detention must be lawful and must be done by an appropriate court of competent jurisdiction;
- (ii) that the arrest is conducted to bring in and detain a person for noncompliance with the appropriate procedure or an order passed by the Court of law;
- (iii) that the arrest is made to bring the person before a competent judicial authority on a reasonable suspicion of him committing an offence or to prevent him from committing that very offence.

Article 7 of the American Convention on Human Rights<sup>83</sup> provides the same, that every person shall have the right to life and liberty and that no person shall be subjected to arbitrary arrest and detention except according to the procedure established by law.

These rights guaranteed under the aforementioned articles highlight several instances where the rights of the judgment debtor have been liberally construed with the rights of the decree holder and how the Courts have struck a balance between the two, by bringing in line the provisions of the Constitution and the various international covenants on human rights.

## REAL LIFE CASE STUDIES

Where the judgment debtor was arrested and detained in lieu of transferring his property to a third person to defeat the decree and the award passed, in the landmark case of *Official Liquidator, High Court of Calcutta v M/s. Kesoram Industries Limited*<sup>84</sup>, the SC held that if the judgment debtor transfers his property in lieu of defeating the purpose of the decree passed, the Court can arrest and detain the judgment debtor on account of such fraud caused.

The facts of the case were as follows: the defendant company had transferred its property to a third party to avoid the execution of the decree by the plaintiff. As a result, the directors of the company were arrested and detained on the grounds of fraud. Where the judgment debtor was arrested and detained in lieu of trying to hide their assets to defeat the purpose

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<sup>82</sup> European Convention on Human Rights 1953, art 5

<sup>83</sup> American Convention on Human Rights 1969, art 7

<sup>84</sup> *Official Liquidator, High Court of Calcutta v M/s. Kesoram Industries Limited* (2013) 11 SCC 527

of the decree. In the case of *Saraswatiben v Pravinchandra Mohanbhai Shah and Ors*<sup>85</sup>, the defendant or the judgment debtor had tried to hide his assets in the hope of not paying the decretal amount. The Apex Court held that this would amount to fraud and the defendant could be arrested and detained for the same.

## CONCLUSION

The most critical aspect of civil litigation is the execution of decrees, especially money decrees. One of how the decree holder can bring fruition to such a decree is through the arrest and detention of the judgment debtor. Nonetheless, the Courts, while awarding such an execution method, should take into account the rights of the judgment debtor together with the decree holder and should try to strike a balance between the two.

Given the far-reaching impact that this provision has, courts must adhere to a high standard of proof before ordering the arrest or detention of the judgment debtor in civil prison. The legal framework should be guided by the principles laid down in the Constitution. Therefore, the procedure must be fair, reasonable and non-arbitrary and must be clothed with the principles of natural justice.

One can construe from the combined reading of all sections that a judgment debtor cannot be detained for a period beyond three months, and anything beyond the same would be arbitrary and unjust. Additionally, the provisions of the international covenants and the conventions should be followed to clearly outline the broad contours of law, assuring that both the substantive and the procedural provisions are adhered to.

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<sup>85</sup> *Saraswatiben v Pravinchandra Mohanbhai Shah and Ors* (2007) 6 SCC 380