

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 2

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Constitutionality of Provisions related to Arrest and Detention in case of Enforcement of Money Decree: Legal Discourse

VAIBHAV KARTIKEYA AGRAWAL¹

ABSTRACT

The Code of Civil Procedure provides procedure for determination of civil rights and liabilities of the litigants to a dispute of civil nature. The civil Courts adjudicate the lis in the form of decree and/ or order. However, the decree and/ or order come into operation only on commencement of the proceedings for execution. The party in whose favor the case is decided is known as the decree holder and the opposite party is the judgment-debtor. A judgment debtor could be confined in the civil prison for proper enforcement of decree. This paper endeavors to review the constitutionality of provisions related to arrest and detention in the civil prison of the judgment debtor in the light of legal jurisprudence and the construction of statutes in the line of law and morality and the principle for constitution of State. The paper uses doctrinal method and the rules of interpretation in order to solicit its observations. It seeks to ensure revision of the statutory provisions of CPC related to arrest and detention in accordance with the provisions of the Constitution of India.

I. INTRODUCTION

The Code of Civil Procedure 1908 (hereinafter 'CPC') provides procedure for suits of civil nature² in the territory of India. It consists of one hundred and fifty eight sections, and fifty one Orders with its rules. Also, there is an appendix to the First Schedule of CPC. A civil cases initiates by filing of a plaint³ and proceeds with the filing of written statement⁴, evidence (oral⁵ and/ or documentary⁶) and are followed by arguments on behalf of both the parties. Then the suit reaches the stage of adjudication of dispute⁷ by the Court. The decree⁸ or order⁹ or both,

¹ Author is an Advocate in India.

² Section 9 of CPC provides 'Courts to try all civil suits unless barred' and uses the term 'suits of civil nature'.

³ Order VII of CPC provides provisions related to filing of plaint and its other ancillary matters and connotes the term 'Plaint' in its main head.

⁴ Order VIII of CPC provides provisions on 'Written statement, set-off and counter claim'.

⁵ Section 59 of the Indian Evidence Act 1872 (hereinafter 'Evidence Act') provides for 'Proof of facts by oral evidence'.

⁶ Section 61 of the Evidence Act provides provisions on 'Proof of contents of document'.

⁷ Order XX of CPC provides provisions on 'Judgment and Decree'.

⁸ Section 2(2) of CPC provides definition of the term 'decree'.

⁹ Section 2(14) of CPC provides definition of the term 'order'. Order XLIII of CPC provides provisions on

as the case may be, is rendered by the respective Court of law and the parties are provided remedy of review¹⁰, appeal¹¹, or revision¹², as per the provisions of the CPC.

When the decree or order of the Court of first instance becomes final, either on confirmation of it by the appellate Court or the revisional Court or otherwise, either party to the civil suit proceeds for execution of that decree and order in the Execution Court¹³. CPC confers various remedies for execution of decree or order, one of which is, the detention in the civil prison of the person against whom the decree is adjudicated, i.e. the judgment-debtor. This paper endeavours to review the constitutionality of provisions related to arrest and detention in the civil prison of the judgment debtor in the light of moral considerations and the authority of State to enforce justice.

II. EXECUTION OF DECREE FOR PAYMENT OF MONEY

Order XXI of CPC provides for execution of decrees and orders. In case of enforcement of decree for restitution of conjugal rights, the attachment of property of the judgment-debtor is the only option.¹⁴ But the decree for specific performance of a contract or for an injunction may be enforced by detention of the judgment-debtor in the civil prison or by the attachment of his property or by both.¹⁵ The decree for payment of money provides more options for its enforcement. Order XXI, rule 30 of CPC provides provisions for decree for payment of money. It states that:

'Every decree for the payment of money, including a decree for the payment of money as an alternative to some other 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'. In *Raman Tech and Process Engineering Company v. Solanki Traders*¹⁶, Court held that the object underlying these provisions is to enable the plaintiff to realise the amount of decree if one is eventually passed in his favour and to prevent any attempt on the part of the defendant to defeat the execution of such decree passed against him.

Order XXI, rules 37 to 40 of CPC provides procedure related to arrest and detention in the civil

'Appeals from Orders'.

¹⁰ Section 114 of CPC read with Order XLVII of it provides provisions on 'Review'.

¹¹ Sections 96 to 112 of CPC read with Order XLI to XLV of it provides provisions on 'appeals'.

¹² Section 115 of CPC provides provisions on 'Revision'.

¹³ Order XXI of CPC provides provisions on 'Execution of Decrees and Orders'.

¹⁴ Order XXI, rule 32, sub-rule (1) of CPC. Order XXI, rule 33, sub-rule (4) of CPC provides that the decree for enforcement of restitution of conjugal rights under Order XXI, rule 33, sub-rule (1) of CPC can be enforced in the same manner as the decree for payment of money.

¹⁵ Order XXI, rule 32, sub-rule (1) of CPC.

¹⁶ (2008) 2 SCC 302, referred in Justice C. K. Takwani, CIVIL PROCEDURE WITH LIMITATION ACT 1963, 333 (7th edn. 2013 reprinted 2015).

prison. Order XXI, rule 37 of CPC comes into operation on the satisfaction of following requisites:

1. an application by the decree-holder for the execution of a decree for the payment of money by arrest and detention in the civil prison of judgment-debtor;
2. the issuance of notice by the Court to appear before the Court on a day specified in the notice and show-cause why he should not be committed to the civil prison.

However, the issuance of notice shall not be necessary if the Court is satisfied that the judgment-debtor is likely to abscond or leave the local limits of the jurisdiction of the Court, with the object of delaying the execution of the decree.

Order XXI, rule 37, sub-rule (2) of CPC further provides that:

Where appearance is not made in obedience to the notice, the Court shall, if the decree-holder so requires, issue a warrant for the arrest of the judgment-debtor. Therefore, the provisions related to arrest and detention of the judgment-debtor commences only on filing of an application by the decree holder.

III. CONSTITUTIONALITY OF ORDER XXI, RULE 39, OF CPC:

This section emphasizes on the obligation of the decree holder to pay the subsistence allowance for subsistence of the judgment-debtor in the civil prison. Order XXI, rule 39, sub-rule (1) of CPC provides that:

'No judgment-debtor shall be arrested in execution of a decree unless and until the decree-holder pays into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of arrest until he can be brought before the Court.' This point may be construed as:

1. This shows that the proceedings for arrest of the judgment-debtor form the moment of disobedience of issue of notice by it, for appearance before the Court, commences on the expenditure of decree-holder;
2. The decree-holder is bound to deposit into Court such sum as the Judge thinks sufficient for the subsistence of the judgment-debtor from the time of his arrest until he can be brought before the Court.

Order XXI, rule 39, sub-rule (2) of CPC provides that:

'Where a judgment-debtor is committed to the civil prison in execution of a decree, the Court shall fix for his subsistence such monthly allowance as he may be entitled to

according to the scales fixed under section 57, or where no such scales have been fixed, as it considers sufficient with reference to the class to which he belongs.'

The constitutionality of Order XXI, rule 39, sub-rule (2) of CPC may be contemplated on following grounds:

1. The subsistence allowance is fixed by the Court but it is responsibility of the decree-holder¹⁷ to deposit such (fixed) sum into the Court in order to ensure continuance of the term of civil prison of the judgment-debtor;
2. the judgment-debtor is arrested and continues to be confined on the whim and fancy of decree-holder, *i.e.*, payment of subsistence allowance into the Court;
3. the arrest and continuation of arrest for an indefinite period of the judgment-debtor is dependent upon financial capacity of the decree holder to deposit the subsistence allowance into the Court;
4. the subsistence allowance¹⁸ is fixed by the Court according to the scales fixed by the State Government and thus the Court is indirectly 'dependent' upon the decree-holder for proper execution of its orders related to arrest, continuation of arrest and the period of arrest of the judgment-debtor. It is imperative to note that the maintenance of law and order, public order and security of the State¹⁹ are functions of State. It can be regarded as a principle of administrative law that State may delegate²⁰ its functions but

¹⁷ Order XXI, rule 39, sub-rule (3) of CPC states: 'The monthly allowance fixed by the Court shall be supplied by the party on whose application the judgment-debtor has been arrested by monthly payments in advance before the first day of each month'. It is the decree holder who certainly applies for execution of decree in its favour and therefore, it is its responsibility to pay the subsistence allowance. The efficacy of this provision is fortified by proviso to clause (1) of Section 58 of CPC which states: 'Provided that he shall be released from such detention before the expiration of the said period of detention- on the omission by the person, on whose application he has been detained to pay subsistence allowance'. Also, the significance of responsibility of decree holder is further notifiable by virtue of specific exclusion of the term 'order of the Court' from second proviso to clause (1) of Section 58 of CPC. This shows that on omission by the decree holder, there would not be any requirement of order of the court for release of judgment debtor.

¹⁸ 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://www.prsindia.org/theprsblog/how-poverty-line-measured> (last visited 13.04.2021).

¹⁹ In *Ram Manohar Lohiya v. State of Bihar*, (1996) 1 SCR 709 at 746 (referred in *Shreya Singhal v. Union of India*, (2015) 5 SCC 1), Court held: 'It will thus appear that just as "public order" in the rulings of this Court (earlier cited) was said to comprehend disorders of less gravity than those affecting "security of State", "law and order" also comprehends disorders of less gravity than those affecting "public order". One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of State. It is then easy to see that an act may affect law and order but not public order just as an act may affect public order but not security of the State.'

²⁰ On delegation of powers, Wade and Bradley writes: 'An authority to which the exercise of discretion has been entrusted by statute cannot delegate that exercise to another unless upon the construction of the relevant statute it is clear that responsibility remains with the delegating authority acting through a subordinate in exercising the discretion'. see E.C.S. Wade and A.W. Bradley, WADE AND PHILLIPS CONSTITUTIONAL LAW 650 (7th edn. 1965; ELBS 1st edn. 1965).

cannot relegate itself from the discharge of it for these are the essential elements responsible for constitution of the State²¹.

In case of dispute regarding payment of money by one party to another, it may be a private dispute but State cannot absolve itself from execution of any civil or penal liability of the litigants due to the following reasons:

- (a) the authority to maintain law and order is the supreme function of the State and part and parcel of the existence of the term 'State'²²;
- (b) the institution for adjudication of such a civil dispute is the creation of State;
- (c) it is the state which is responsible and possesses sole authority²³ to execute the orders and directions of judiciary or any quasi-judicial authority²⁴ for the welfare of its subjects;
- (d) the functions of State are discharged by its citizens on the touchstone of its legality according to the provisions of the *lex loci*²⁵, i.e., the Constitution of India but none of these citizens could confer statutory authority within themselves to exercise discretion

²¹ The elements of State are: population, territory, government and sovereignty. These are explained in: [http://www.ijesi.org/papers/Vol\(5\)3/D053024028.pdf](http://www.ijesi.org/papers/Vol(5)3/D053024028.pdf) (last visited (13.04.2021)).

²² Article 12 of the Constitution of India defines State in following terms: 'In this Part, unless the context otherwise requires, "the State" includes the Government and Parliament of India and the Government and the Legislature of each of the States and all local or other authorities within the territory of India or under the control of the Government of India'.

²³ State is known as a political 'sovereign'. 'The state is the political institution in which sovereignty is embodied. Sovereignty, though its meanings have varied across history, also has a core meaning, *supreme authority within a territory*', <https://plato.stanford.edu/entries/sovereignty/> (last visited 13.04.2021); Sir R. J. Rummel wrote: 'A state is a formal group (Section 23.2 of Chapter 23) that is sovereign over its members and occupies a well defined territory. It is the formal apparatus of authoritative roles and law norms through which that sovereignty is exercised', <https://www.hawaii.edu/powerkills/TCH.CHAP31.HTM> (last visited 13.04.2021); Sovereignty is a necessary and inalienable political and legal property of any state, its constant attribute, http://www.yasu.am/files/Karen_Gevorgyan.pdf (last visited (13.04.2021); Preamble to the Constitution declares India to be a SOVEREIGN, SOCIALIST SECULAR DEMOCRATIC REPUBLIC. Though Preamble to the Constitution of India endows the Constitution to the people of India but the authority to govern or governance lies with the State. This assertion on authority of State is signified by article 77(1) to the Constitution of India which states that all executive action of the Government of India shall be expressed to be taken in the name of the President. But this provision does not, *per se*, impose liability for consequences of acts or omissions upon the President. Article 361 to the Constitution of India specifically states that no civil or criminal action shall be instituted against the President or the Governor during their term of office. It is worth remarkable to note that, 'if the ultimate sovereign in a democratic country is the people, the legislative sovereign is the government', see *Supra* note 25 at 62.

²⁴ Merriam-Webster dictionary defines quasi-judicial authority as:

1. having a partly judicial character by possession of the right to hold hearings on and conduct investigations into disputed claims and alleged infractions of rules and regulations and to make decisions in the general manner of courts
2. essentially judicial in character but not within the judicial power or function especially as constitutionally defined

²⁵ law of the land.

which is vested on the authorities established by or under the provisions of the Constitution.²⁶

5. the subsistence allowance is fixed by the Court according to the scales specified by the State Government²⁷ under Section 57 of CPC or where no such scales are fixed, the Court may fix it with reference to the class of the judgment-debtor. This shows that the Court is not specifically directed to determine the subsistence allowance on the basis of minimum standard of living which is decisive as a part of right to life under Article 21 of the Constitution of India²⁸. It is imperative to note that India is bound to ensure such subsistence allowance by virtue of being signatory to UDHR²⁹, ICCPR³⁰, ICESCR³¹, etc. which are part of statutory law by section 2(f)³² of the Protection of Human Rights Act 1993.

Similarly, section 57 of CPC confers discretion on the State Government to fix such scales according to rank³³, race and nationality³⁴ of the judgment-debtor/s. In this line of discussion, it would be pertinent to refer clause (1) to article 15 of the Constitution of India which states:

The State shall not discriminate against any citizen on grounds only of religion, race, caste, sex, place of birth or any of them.³⁵ The expression 'discriminate against',

²⁶ The State exercises authority through laws enacted and enforced by Government. The State is the only instrument which can legitimately use force. Society, on the other hand, can use only moral persuasion or influence and social ostracism or expulsion. It cannot imprison a man for the violation of its requirements.', see Dr. Eddy Asirvatham & K. K. Misra, *POLITICAL THEORY* 53 (13th edn. 2011, reprint 2012).

²⁷ For reference, the scale of daily wages for District Durg in Chhattisgarh are provided in <https://cdn.s3waas.gov.in/s3851ddf5058cf22df63d3344ad89919cf/uploads/2019/06/2019062449.pdf> (last visited (15.04.2021)).

²⁸ Article 21 of the Constitution of India is a part of the basic structure of the Constitution so it reflects the principles of Constitutionalism which no other statutory law could violate. On Constitutionalism see <https://plato.stanford.edu/entries/constitutionalism/> (last visited (15.04.2021)).

²⁹ <https://www.un.org/en/about-us/universal-declaration-of-human-rights> (last visited (15.04.2021)).

³⁰ <https://www.ohchr.org/en/professionalinterest/pages/ccpr.aspx> (last visited (15.04.2021)).

³¹ <https://www.ohchr.org/en/professionalinterest/pages/cescr.aspx> (last visited (15.04.2021)).

³² Section 2(f)³² of the Protection of Human Rights Act 1993 states: "International Covenants" means the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights adopted by the General Assembly of the United Nations on the 16th December, 1966 and such other Covenant or Convention adopted by the General Assembly of the United Nations as the Central Government may, by notification, specify.

³³ Article 18 of the Constitution of India provides for abolition of titles and therefore, the determination of subsistence allowance according to the 'rank' of judgment-debtor would be unconstitutional.

³⁴ The Citizenship (Amendment) Act 2019 confers citizenship to people of certain communities on the basis of their persecution, see <https://www.firstpost.com/india/misunderstood-citizenship-amendment-act-seeks-to-give-millions-of-persecuted-minorities-dignity-of-indian-citizenship-7777591.html> (last visited 15.04.2021). So, the discrimination on the basis of nationality for determination of subsistence allowance is invalid according to the Citizenship Amendment Act 2019.

³⁵ However, this clause is subject to its exceptions in clauses (3), (4) and (5) of article 15 to the Constitution of India.

according to the *Concise Oxford Dictionary*, means 'select for unfavorable treatment'.³⁶ Discrimination in this sense involves an element of prejudice.³⁷ If prejudice is disclosed and is based on any of the grounds mentioned in Article 15, the law must be struck down as violative of the constitutional prohibition.³⁸ In Saurashtra, a law which restricted the movement of certain communities by insisting on their daily reporting to the police, was invalidated because it was a discrimination based on race.³⁹

Thus, such discretionary power of the Court on one side and of the State Government on the other side is a direct violation of clause (1) of article 15 of the Constitution of India read with equality clause as a whole.

6. The provisions related to arrest and detention in civil prison which confer discretion on the decree holder for enforcement of the orders of the Court of law form part of the law on civil procedure of the twentieth century. It marks the circumstances of the British era where the dominant motive of the State was to perpetuate their reign over its subjects.
7. The other side of the issue purports that if the decree-holder fails to deposit money of subsistence allowance in any month, then the state would be bound to maintain the judgment-debtor because right to subsistence allowance is a part of right to life under Article 21 of the Constitution of India.

Therefore, the requirement of payment of subsistence allowance upon the decree holder would be imposition of reverse liability on the decree holder for no fault of its own.

Order 40 of CPC provides provision related to proceedings of arrest of the judgment debtor after due hearing on appearance after service of notice to it. However, there are no separate provisions related to arrest of judgment debtor after hearing on its appearance, therefore, the provisions related to pre notice arrest of judgment debtor for appearance before the Court would *ipso facto* apply to it post arrest.

IV. CONFLUENCE OF LAW AND MORALITY AND ORDER XXI, RULE 39 OF CPC:

The legal framework in India is a cluster of law and morality.⁴⁰ The confinement of judgment-

³⁶ Mahendra Pal Singh, V. N. SHUKLA'S CONSTITUTION OF INDIA 87-88 (12th edn. 2013).

³⁷ *ibid.*

³⁸ *Id* at 88.

³⁹ *Sanghar Umar Ranmal v. State*, AIR 1952 Sau 124; referred to in *Supra* note 35 at 88.

⁴⁰ On law and morality by H. L. A. Hart and the positivist separation of it, see <https://users.umiacs.umd.edu/~horty/courses/readings/hart-1958-positivism-separation.pdf> (last visited 15.04.2021).

debtor in civil prison on the basis of 'financial capacity' of decree holder is morally abhorrent. It is worth consideration that the provisions on enforcement, of money decree particularly, just confers the sole power of manner of execution of decisions on the decree holder or the litigant who approaches the Court to seek justice.

Further, the proviso to sub-rule (5) of rule 39 to Order XXI of CPC provides that the judgment debtor shall not be detained in the civil prison on account of any subsistence allowance deposited by the judgment debtor. This provision is also apathy on the rich constitutional and cultural philosophy which confers significance to the moral values of mankind.

Also, proviso (iii) to clause (1) of Section 58⁴¹ of CPC states for release from civil prison on request of the decree-holder. This provision may be reviewed in the light of article 38⁴² read with article 37⁴³ to the Constitution of India which provides State's duty of economic justice to be fundamental to the governance of the country.

V. SECTION 58 OF CPC AND THE PRINCIPLE OF PROPORTIONALITY

Section 58 of CPC provides the period of detention of the judgment-debtor with reference to its liability of payment of a specified sum of money. Clause (1) to Section 58 of CPC reads: Every person detained in the civil prison in execution of a decree shall be so detained:

- (a) where the decree is for the payment of a sum of money exceeding five thousand rupees, for a period not exceeding three months, and,
- (b) where the decree is for the payment of a sum of money exceeding two thousand rupees, but not exceeding five thousand rupees, for a period not exceeding six weeks.⁴⁴

This provision authorizes detention in the civil prison for a period of six weeks, in cases where the decretal sum exceeds two thousand rupees but do not exceed five thousand rupees whereas it provides limitation of the maximum period of detention to be three months where the decree is for the payment of a sum of money exceeding five thousand rupees. Here, it would be

⁴¹ Proviso (iii) to clause (1) of Section 58 of CPC states:

'Provided that he shall be released from such detention before the expiration of the said period of detention: on the request of the person on whose application he has been so detained', or ...

⁴² Article 38 to the Constitution of India states:

(1) The State shall strive to promote the welfare of the people by securing and protecting as effectively as it may a social order in which justice, social, economic and political, shall inform all the institutions of the national life. (2) The State shall, in particular, strive to minimise the inequalities in income, and endeavour to eliminate inequalities in status, facilities and opportunities, not only amongst individuals but also amongst groups of people residing in different areas or engaged in different vocations.

⁴³ Article 37 to the Constitution of India states:

The provisions contained in this Part shall not be enforceable by any court, but the principles therein laid down are nevertheless fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

⁴⁴ Clause (1) to section 58 of CPC is followed by proviso.

necessary to note that if the judgment debtor is under a greater liability, *i.e.*, where the decree for payment of money exceeds rupees five thousand up to infinity, the maximum period of detention cannot exceed three months. But, for a comparatively lesser monetary liability, *i.e.* payment of a sum of money which exceeds rupees two thousand but does not exceed rupees five thousand, the period of detention shall not exceed six weeks. Thus, the person under lesser monetary liability may sometimes suffer greater penal consequences than the one who is under higher liability. Therefore, the range of sum of money for liability under the decree seems to be inconsistent with the consequent period of detention for it. It would be imperative to refer first proviso to clause (1) of section 143 of Negotiable Instruments Act 1881 (hereinafter 'N. I. Act') which prescribes maximum period of detention to be one year or an amount of fine exceeding rupees five thousand for any sum of money defaulted under the Act. However, the Court of law have discretion to detain for more than one year if the nature of the case so requires.⁴⁵ The N. I. Act is an Act to deal exclusively with the matters related to monetary liability of negotiable instruments.⁴⁶ These provisions are therefore significant in order to review the penal liability under section 58 of CPC. Section 58 of CPC may be reviewed in order to ensure that:

1. the term of civil prison is proportional to the monetary liability;
2. there is no inconsistency between the range of monetary liability and the penal sentence.

It is imperative to mention that the sum of money for which the monetary liability could be imposed was revised in the year 2002 but there is considerable change in the value of money in comparison to one US dollar by the present time. Therefore, in my view, a minimum period of detention shall be coined for its proportionate monetary liability (in a particular financial year). This is essential due to the fact that the value of money fluctuates over the time so, such proportion may be determined with reference to the rates of inflation or devaluation of money, the rates decided by Collector for daily wages for Below Poverty Line classes in rural and urban areas from the year 1947 to 2021⁴⁷, etc. Such determination of period of detention with reference to its respective monetary liability would be of great significance for CPC and other penal statutes.

⁴⁵ Second proviso to clause (1) of section 143 of the Negotiable Instruments Act 1881.

⁴⁶ The Preamble to the N. I. Act states: An Act to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques.

⁴⁷ *Supra* note 17; <https://www.macrotrends.net/countries/IND/india/inflation-rate-cpi> (last visited 14.04.2021); <https://www.statista.com/statistics/271322/inflation-rate-in-india/> (last visited 14.04.2021); An economic scientist Mr. Palekar provides an index of number of employment, money wages and real wages in various States of India from 1939-50 in its *Real wages in India 1939-50*, available at: https://www.epw.in/system/files/pdf/1957_9/3-4-5/real_wages_in_india_193950.pdf (last visited 14.04.2021).

VI. CONCLUSION

The state exists for the sake of a good life, and not for the sake of life only.⁴⁸

Order XXI, rule 39 of CPC confer discretion to the decree holder for payment of subsistence allowance for the judgment debtor. This paper reviews the constitutionality of Order XXI, rule 39 of CPC on two grounds, firstly, it imposes financial liability upon the decree holder and therefore, the Court is bound to obey the discretion of decree holder for enforcement of its orders; secondly, such a provision is clearly against the concept of State as an institution.⁴⁹ Therefore, this provision may be reviewed stating that the subsistence allowance shall be charged from the Consolidated Fund of State.⁵⁰ Also, the determination of subsistence allowance must be done strictly in accordance to the provisions of clause (1) to article 15 of Constitution of India. Further, section 58 of CPC may be reviewed firstly, in order to ensure that the period of detention is consistent with the monetary liability, and secondly, in pursuance of the first point, the monetary liability be reviewed in reference to the value of 'rupee' in the respective financial year. These provisions require review because 'Law is the product of human reason and is intimately related to the notion of purpose_...'⁵¹ An analysis of the judicial method shows that law is not a body of rules, but an organic body of principles with an inherent power of growth.⁵² Therefore, the amendments would make the provision in consonance with the notion of welfare State and the goals enshrined in the Preamble to the Constitution of India.

⁴⁸ This statement is of Aristotle in its Political Theory, 4th century, B.C., <http://infomotions.com/etexts/philosophy/400BC-301BC/aristotle-politics-89.htm> (last visited 15.04.2021).

⁴⁹ Laws reflect the will of the State but they are lifeless if there is no government to enforce them. The State is defined as a power-system. see *Supra* note 25 at 68.

⁵⁰ The Consolidated Fund of India and Consolidated Fund of State are constituted under article 267 of the Constitution of India.

⁵¹ G.W. Paton, A TEXT-BOOK OF JURISPRUDENCE 4 (3rd ed. 1964).

⁵² *Id* at 9. Sir Henry Maine stated '...the sign of a progressive human society is whether law keeps on growing after its codification'. see M.P. Jain, M.P. JAIN OUTLINES OF INDIAN LEGAL AND CONSTITUTIONAL HISTORY 501 (6th edn. 2006, reprint 2009).