



PAPER PRESENTATION

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ON THE TOPIC

**“EXECUTION OF DECREE BY ARREST AND DETENTION
IN THE CIVIL PRISION AND ATTACHMENT OF
PROPERTY. STRATEGIES FOR TIMELY AND EFFICIENT
ENFORCEMENT.”**

IN THE GUIDANCE OF: -

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Introduction

The principle of ‘Justice delayed is justice denied’ resonates profoundly in the context of decree enforcement in India. In this very backdrop Hon’ble Supreme Court of India in the matter of **Rahul S. Shah Vs. Jinendra Kumar Gandhi and others 2021 SCC OnLine SC 341** has directed the courts to conclude the execution proceedings within six months. While the Indian judiciary strives for expeditious disposal of cases, the execution stage often presents significant hurdles, leading to prolonged delays and rendering judgments ineffective. This report examines the specific challenges faced by judicial officers in India during the enforcement of decrees, analyzes the existing legal framework under the Code of Civil Procedure, 1908 (CPC), and proposes context-specific, practical strategies for timely execution. The analysis is substantiated by key Indian judicial pronouncements that shape the understanding and application of execution procedures.

The term “execution” is not defined in the CPC. The term “execution” denotes the enforcing of decree passed by the courts. Once a decree is passed by the court, it is the obligation of the judgement debtor to obey the decree so as to enable the decree holder to enjoy the fruits of the decree. Execution is the final stage of litigation.

Governing Legal Framework

The execution of decree is primarily governed by the Code of Civil Procedure 1908. Part II of Code of Civil Procedure (Sections 36-74) and Order 21 (Rules 1 to 106) deal with the detailed procedural aspects of Execution of decree . Out of various modes of execution of decree, in today's discussion we are highlighting two modes which are :

- (1) Execution by Arrest and Detention in Civil Prison and,
- (2) Execution by Attachment and Sale of Property.

01. Execution of Decree by Arrest and Detention in Civil Prison

Decrees which can be Executed by Arrest and Detention

Following types of Decrees can be executed by Arrest and Detention in Civil Prison:-

- (1) Under Order 21 Rule 30 Decree for payment of money,
- (2) Under Order 21 Rule 31 Decree for specific movable property and

- (3) Under Order 21 Rule 32 Decree for specific performance of contract and decree for injunction.

Statutory Provisions

Proviso to Section 51 : According to proviso to Section 51 CPC , Where the decree is for the payment of money , execution by detention in civil prison shall not be ordered unless after giving the judgement debtor an opportunity by showing cause why he should not be committed to prison , the court, for reasons recorded in writing is satisfied-

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

(i) is likely to abscond or leave the local limits of the jurisdiction of the court .

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

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

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

In the case of **Jolly George Varghese vs. The Bank of Cochin, 1980 SCC OnLine SC 39**

1. Constitutional bench judgment interpreting Section 51.
2. Arrest and detention must comply with Article 21 requirements.
3. Established that "means to pay" is essential for arrest under Section 51.
4. Detention is permissible only for wilful disobedience, not mere inability to pay.

Thus as per proviso to Section 51 court cannot order arrest and detention unless the judgement debtor is given an opportunity to show cause as to why he should not be committed to prison. This ensures fairness in the process.

Section 55 : Procedure for arrest and detention

Section 55 of the CPC deals with the process of arrest and detention. It states that a judgement debtor may be arrested at any time and on any day. Once arrested, the debtor must be brought before the court as soon as possible. The detention is to take place in the civil prison of the district where the court ordering detention is located, or any alternative location designated by the state government.

Proviso to section 55 :

- 1. No arrest after sunset or before sunrise :** No arrest is allowed before sunrise or after sunset unless the debtor refuses to open the door or resists the arrest.
- 2. Breaking open doors:** The outer door of a dwelling house cannot be broken unless the director refuses entry. However ,if the officer gains access, they can break open any room where the debtor is believed to be hiding.
- 3. Protection of women:** If a woman who is not the judgement debtor, occupies the room, the officer must allow her reasonable time to withdraw before arresting the debtor.
- 4. Payment during arrest :** If the debtor pays the amount on the spot, the officer is required to release the debtor immediately.
- 5.** This section ensures that arrest is carried out with a degree of sensitivity and respects the debtor's right while enforcing the court's decree.

Section 56 : Exemption for women

Section 56 of the CPC provides an absolute exemption for women. It clearly states that a woman shall not be arrested or detained in civil prison for the execution of a decree for the payment of money. This provision aims to prevent any undue hardship or violation of a woman's dignity during the enforcement process .

Section 58: Period of detention

Section 58 of the CPC specifies the duration for which a judgement debtor can be detained in civil prison. If the decree amount exceeds 5000 rupees, the judgment debtor may be detained for a maximum period of 3 months. If the decree amount is between 2000 to 5000 rupees, the maximum detention period is 6 weeks. If the amount of decree is less than 2000 rupees, no order for the detention can be made.

Re - arrest of a judgement debtor

The immunity has been given to judgement debtor from re arrest depending upon his earlier period of arrest being already served, he may not be arrested if the judgement debtor leads to the court that he is exempted from arrest under section 135 then he is liable of re arrest at a later stage whenever the court may deem fit to arrest him. Additionally, if the judgement debtor was arrested but was later released by the court then he can be re arrested .

02. Execution of Decree by Attachment and Sale of Property

Attachment is provided in the Civil Procedure Code at Two Stages:

- (i) One is before passing of Judgment which is provided under [Order-38 of CPC from Rules (5 to 13)];
- (ii) Second is after passing of judgement (Section -60 and Order-21 of CPC).

Attachment of Property in Execution of Decree

Section 60 and Order 21 Rule 41 to 59 Civil Procedure Code deals with the various aspects of attachment of property in execution of decree. On an application for attachment under Order 21 Rule 41, according to Section 60 and Rules 43 to 54 following items can be attached:-

- 1) Movable Property other than Agricultural Produce (R. 43 and 43-A)
- 2) Agricultural produce (R.44 and 45)
- (3) Debt, Shares and movable property not in the possession of the Judgment debtor (R.46).
- 4) Attachment of share in the movables (R.47)
- 5) Attachment of Salary of Govt. Employees, Railway Company or Local Authority (R.48).
- 6) Attachment of salary or allowances of private employees (R.48.A)
- 7) Attachment of partnership property - (R.49)
- 8) Attachment of Negotiable Instruments (R.51)
- 9) Attachment of property in the custody of Court or Public Officer (R.52)
- 10) Attachment of Decree (R.53)
- 11) Attachment of Immovable property (R.54)

Section 60 also says which property is not liable for attachment and the extent of attachment and the manner of such attachment etc. The particulars laid down in clauses (a) to (k) ka kb kc (l) to (p) are not liable to be attached. These aspects are selfexplanatory. Explanations I to VI can also be looked into.

Precept

A decree holder may apply to the court which passed a decree for issuing a precept to any other court which would be competent to execute such decree to attach any property belonging to the Judgment Debtor and specify in the precept. That court to which precept is sent shall proceed to attach the property in the manner prescribed in regard to attachment of property in execution of a decree. However, attachment under precept shall not continue for more than two months, unless the period of attachment is extended by an order of the Court which passed the decree or unless before determination of such attachment, the decree has been transferred to the Court by which attachment has been made and the decree holder has applied for an order for sale of such property. The issue of a precept U/s.46 of CPC will not have the effect of transfer of decree for execution to the court to which precept is issued. A precept U/s.46 of CPC becomes necessary when the Judgment Debtor's property is situated within the limits of another Court and when it is necessary to prevent the Judgment debtor from alienating or otherwise dealing with the property to the detriment of decree holder till proper proceedings for the sale of the property in pursuance of an application can be taken.

Effect of Attachment

We have to see what is the effect of attachment. According to Section 64 where attachment has been made any private transfer or delivery of the property attached or transfer of interest in such property is prohibited. When shares or Negotiable Instruments are attached any payment made to the Judgment debtor. of any debt or payment of dividends or other monies contrary to attachment is void as against all claims of enforcement under the attachment. If there is a contract entered into and registered before attachment, this will not come in the way of making private transfer of property or delivering the property which is attached or transfer of interest of the property.

Section 94 (b) provides that in order to prevent the ends of justice from being defeated the court may if it is so prescribed, direct the defendant to furnish the security or order attachment of any property.

Section 95 says that where in any suit in which attachment has been affected and it appears to the court that such attachment was applied for on insufficient grounds, on the application made by the defendant, the court may order reasonable compensation not exceeding Rs.50,000/- to the defendant.

Adjudication of Claims and Objections

On attachment of property any person aggrieved or interested in the property may raise objections under Rule 58 on the ground that such property is not liable to attachment. On such an objection being raised Court shall proceed to adjudicate upon the claim or objection. According to proviso to Rule 58(1) no claim or objection shall be entertained if the property is already been sold or where the court considers that the claim or objection was designedly or unnecessarily delayed. All questions related to right, title or interest relevant to the claim or objection has to be determined by the Court dealing with the claim or objection and not by a separate suit. The adjudication will have the same effect as if it were a decree.

Sale of Property Attached in Execution of Decree

Proclamation of sale by Public Auction

Under Rule 64, the Court executing a decree may order that the property attached by it and liable to sale shall be sold and the proceeds thereof shall be paid to the party entitled. Rule 65 mandates that the sale has to be made by the public auction. After the attached property is ordered to be sold by public auction in execution of a decree the Court shall cause proclamation of intended sale under Order 21 Rule 66 to be made in the language of the court giving the following details:-

- (i) time and place of sale;
- (ii) property or a part thereof to be sold;
- (iii) revenue, if any assessed from the property;
- (iv) encumbrance if any to which the property is liable;
- (v) amount to be recovered
- (vi) such other particulars which the court considers material for the purchaser.

The proclamation of sale shall be drawn and prepared by the Execution Clerk in form No.29 of Appendix-E of CPC after notice to the decree holder and the judgment debtor. No fresh notice is necessary where the notice has already been given while issuing order of attachment under Order 21, Rule 54 CPC for this purpose. One thing has to be kept in mind that the entire property mentioned in the decree in the list provided by decree holder or the property which has been attached is not required to be sold. Only so much of the property is to be sold which is sufficient to satisfy the decree. This fact has specifically to be mentioned in the proclamation of sale.

All these facts must be stated by the decree holder in the application submitted by him seeking an order for sale. The application shall be verified under his signatures and these facts as to whether the whole of the property is required to be sold or a portion of it would be sufficient to satisfy the decree. The encumbrances on the property and the amount for the recovery of which the sale is to be effected shall be mentioned in the said application. A notice of that application should be issued to the JD to settle the terms of sale upon which it will be determined as to how much property should be sold and only that portion is to be mentioned in the sale warrant which is to be sold

Mode of Proclamation

According to Rule 67 every proclamation has to be made and published in the manner prescribed by Rule 54(2). The court can also direct that the proclamation should be published in the official gazette or in a local newspaper or in both. The costs of publication shall be recovered from the JD as costs. According to Rule 68 the proclamation at the spot or the court house should be affixed at least more than 15 days before the actual date of sale in case of immovable property and 7 days in case of moveable property. The period of 7 or 15 days shall be counted from the date on which the copy of the proclamation is affixed on the court house.

Adjournment or stoppage of Sale

If the sale is adjourned or stopped under Rule 69 for a period of more than 30 days then a fresh proclamation shall have to be issued unless the JD consents to waive it. The fresh proclamation shall be issued by Executing Court in the same manner as mentioned earlier.

Sale of Movable Property

According to Rule 77 In case of sale of moveable property by public auction the price of each lot shall be paid at the time of 38 sale and in default of payment the property shall be re-sold forthwith.

The possession of the property shall be delivered to the purchaser and a direction shall be given in the sale warrant to this effect.

Sale of Immovable Property

Under Rule 84 if the sale is of immovable property, the purchaser shall pay at the spot 25% amount of the purchase money to the officer or the person conducting the sale and in default thereof, the property shall be resold. However, if the decree holder purchases the property and is entitled to set off the purchase money, the requirement of deposit of 25% of the purchase money shall be dispensed with and a note in this respect is required to be given in the direction issued to the person conducting sale through the permission given to the decree holder.

According to Rule 85 and 86 if the remaining amount being 75% of the purchase money is not deposited in the court within 15 days of the sale, the purchaser shall not be entitled to any refund and the entire amount can be forfeited to the Govt. In that eventuality the property shall be re-sold.

Setting aside sale

Rule 89 to 92 deal with setting aside of sale. When a property is sold in execution of a decree, an application for setting aside sale may be made under these provisions by the persons affected and the grounds mentioned therein. Such an application has to be made within the prescribed period of limitation. But an application to set-aside sale of immovable property cannot be made on any other ground not covered by Rules 89 to 92.

In case of manifest illegality in conducting the sale, the court can take proceedings suo moto and set aside the sale even after the period of limitation prescribed therefore

Confirmation of sale

No sale of immovable property shall become absolute unless the Court confirms it. Where no application to set aside the sale is made under rules 88, 90 or 91 or where such an application is made and it is disallowed by the Court, the court shall make an order confirming the sale and thereupon the sale shall become absolute.

Certificate of sale

After the sale has become absolute the court shall grant a certificate in favour of the purchaser. It shall bear the date on which the sale became absolute and specify the property sold and the name of the purchaser. Such certificate is conclusive in nature. The certificate shall be issued in form; No.38 of Appendix E CPC. And will be stamped, at the expenses of the purchaser, in conformity with the provisions of Chapter II, Part B, and Article 18 of Schedule 1A of the Indian Stamp Act II of 1899 as amended by Punjab Act, VIII of 1922. When the terms of the certificate have been finally settled, the draft shall be signed by the Judge and placed with the record of the execution proceedings and the certificate granted to the purchaser (which should be in exact conformity with such draft) shall be engrossed on the stamp paper, free of copying charge. No draft certificate should in any case be drawn up until the stamp duty required by law has been paid.

It should be noted that the title to the purchaser accrues from the date of the sale, though a certificate can only be granted after its confirmation. A copy of the certificate, whether the property sold be land or other immovable property, and without regard to the amount of the purchase-money, shall be sent to the Registering Officer, within the local limits of whose jurisdiction the whole or any part of the property is situated, to be filed in his supplementary Book No.1.

Delivery of possession

The purchaser can obtain possession of the property only if he has obtained a sale certificate under Rule 94. On the application for possession the court would issue an order to put the purchaser in possession of the property by removing any person who refuses to vacate the same. This order for possession shall be in form No.39, Appendix E of CPC. A note to this effect has to be given on the warrant of possession (Rule 39 95). However ,if the property is in possession of a tenant who cannot be ejected, the symbolic possession alone would be given to the purchaser by affixing a copy of the certificate of sale at some conspicuous place on the property and by beat of drum or other customary mode that the interest in the property which was held by the judgment debtor has been transferred to the purchaser. In such cases a specific note has to be given on the warrant of possession that actual possession shall not be delivered and only symbolic possession is to be delivered (Rule 96).

In the case of **Gas Point Petroleum India Limited Vs Rajendra Marothi, 2023 SCC OnLine SC 135**, Hon'ble Supreme Court has held that Auction sale of property without compliance of mandatory provisions of Order 21, rules 64, 84, 85,90 CPC vitiates sale.

03. Identifying Challenges in Execution of Decree

A. Procedural Complexities

(i) Lengthy Notice Periods: Order XXI, Rule 22 mandates notice, which can cause delays, if service is problematic.

(ii) Adjournments: Frequent adjournments are a major cause of delay, often attributed to:

- Non-service of processes.
- Lawyer's strikes or non-appearance.
- Requirement of reports from local commissioners or police.
- Heavy dockets of executing courts.

B. Obstacles from Non-Compliance by Judgment Debtors

(i) Fraudulent Transfers: Judgment debtors often transfer property to relatives (benamidars) or create sham encumbrances to defeat execution.

(ii) Concealment of Assets: To avoid execution assets are fraudulently moved to deceive or prevent them from being legally distributed, seized, or claimed. This can include hiding money during a divorce, transferring assets to avoid creditors, or other actions intended to defraud.

(iii) Evasion of Service: Judgment debtors employ various tactics to evade the service of process with the goal to delay or entirely avoid execution of decree. The most direct method is physically hiding or moving to a new, undisclosed location, leaving no forwarding address and changing phone numbers to become untraceable.

(iv) Vexatious Objections: Filing objections under Section 47 CPC or Order XXI Rule 68, primarily to delay execution.

C. Resource Limitations

(i) Difficulties of Process Servers: Process servers often face challenges. Such as difficulty in accessing secure locations, uncooperative recipients, and the

need for meticulous documentation and adherence to specific local and state laws.

(ii) Shortage of staff: Inadequate staffing and procedural inefficiencies in the broader justice system contribute to case backlogs and delays, documents and moving cases forward can be slow. It affects timely service of notices, warrants, and delivery of possession.

D. Inter-Agency Coordination Issues

Agencies may need to conduct joint inspections, seizures, or other enforcement actions. This requires a shared understanding of roles, responsibilities, and operational procedures to avoid duplication of effort or conflicting actions.

(i) Police Assistance: Delays in police reports for attachment or assistance in taking possession.

(ii) Revenue/Registration Departments: Slow verification of property details or completion of sale deeds post-auction. Land registration departments should attach and sell immovable property speedily with the order of court.

(iii) Banking Sector: Challenges in obtaining prompt details of bank accounts and executing garnishee orders (attachment of debt).

E. Impact of Legal Challenges and Appeals

(i) Appeals against Execution Orders: The most common approach is to appeal the original judgment that led to the execution order. This must be done before the execution order is enforced. The appellate court to issue a temporary halt to the execution process until the appeal is decided. Orders passed by executing courts are appealable (Section 96 CPC), which can lead to prolonged litigation.

(ii) Revisionary Powers: The revisional power of the High Court under Section 115 of the Civil Procedure Code (CPC) allows it to call for the record of a subordinate court case where no appeal lies to correct errors in jurisdiction, such as when the lower court has exercised a jurisdiction not vested in it, failed to exercise a vested jurisdiction, or acted illegally or with material irregularity.

(iii) Stay Order: Obtaining stay orders from appellate courts or High Courts is a common delaying tactic. A stay order under the Code of Civil Procedure (CPC) is a court directive that temporarily suspends legal proceedings or the enforcement of a judgment to prevent irreparable harm and maintain the status quo. It is obtained by filing an application with the court, supported by evidence, and is often granted under provisions like Order XXXIX (for temporary injunctions) or Section 151 (for inherent powers).

04. Suggestion and Strategies For Timely Execution of Decree

A. True Ascertainment of Property

In many execution cases proceedings are delayed due to third party objections. In order to minimize the occasion for such objections, true and complete ascertainment of property must be undergone during the trial itself. In this regard Hon'ble Supreme Court in the matter of **Rahul S. Shah Vs. Jinendra Kumar Gandhi and others 2021 SCC OnLine SC 341** has directed that -

“42.1. In suits relating to delivery of possession, the court must examine the parties to the suit under Order 10 in relation to third-party interest and further exercise the power under Order 11 Rule 14 asking parties to disclose and produce documents upon oath, which are in possession of the parties to disclose and produce documents upon oath, which are in possession of the parties including declaration pertaining to third-party interest in such properties

42.2. In appropriate cases, where the possession is not in dispute and not a question of fact for adjudication before the court, the court may appoint Commissioner to assess the accurate description and status of the property.

42.3. After examination of parties under Order 10 or production of documents under Order 11 or receipt of Commission report, the court must add all necessary or proper parties to the suit, so as to avoid multiplicity of proceedings and also make such joinder of cause of action in the same suit.

42.4. Under Order 40 Rule 1 CPC, a Court Receiver can be appointed to monitor the status of the property in question as custodial legis for proper adjudication of the matter.

42.5. The court must, before passing the decree, pertaining to delivery of possession of a property ensure that the decree is unambiguous so as to not only contain clear description of the property but also having regard to the status of the property.

42.6. In a money suit, the court must invariably resort to Order 21 Rule 11, ensuring immediate execution of decree for payment of money on oral application.

42.7. In suit for payment of money, before settlement of issues, the defendant may be required to disclose his assets on oath, to the extent that he is being made liable in a suit. The court may further, at any stage, in appropriate cases during the pendency of suit, using powers under Section 151 CPC, demand security to ensure satisfaction of any decree.

B. Time Bound Actions

(i) Strict Adjournment Policies: Stricter adjournments in execution proceedings mean courts are now expected to avoid lengthy delays, aiming to resolve cases within a six-month timeframe as mandated by the Honourable Supreme Court's ruling in Rahul S. Shah's case. This involves a less tolerant approach to repeated postponements, which are increasingly viewed as contempt of court, and emphasizes a mindset of disposing of applications on the same or next day without unnecessary delays.

Judicial officers should meticulously record reasons for granting adjournments, especially in execution matters. Adjournments should be rare and for short, specific durations.

(ii) Time-Bound Disposal of Objections (Section 47): Strictly adhere to the principle that objections under Section 47 must go to the root of the decree's execution and not merely re-agitate the merits of the suit. Set a maximum number of adjournments (e.g., three) for hearing Section 47 objections.

- Limit the scope of objections to concerning the execution, discharge, or satisfaction of the decree itself preventing the relitigation of issues already decided in the original suit.

In relation to objections Hon'ble Supreme Court in the case of **Rahul S. Shah Vs. Jinendra Kumar Gandhi and others 2021 SCC OnLine SC 341** has directed that -

“42.8. The court exercising jurisdiction under Section 47 or under Order 21 CPC, must not issue notice on an application of third party claiming rights in a mechanical manner. Further, the court should refrain from entertaining any such application(s) that has already been considered by the court while adjudicating the suit or which raises any such issue which otherwise could

have been raised and determined during adjudication of suit if due diligence was exercised by the applicant.

42.9. The court should allow taking of evidence during the execution proceedings only in exceptional and rare cases where the question of fact could not be decided by resorting to any other expeditious method like appointment of Commissioner or calling for electronic materials including photographs or video with affidavits.

42.10. The court must in appropriate cases where it finds the objection or resistance or claim to be frivolous or mala fide, resort to sub-rule (2) of Rule 98 of order 21 as well as grant compensatory costs in accordance with Section 35-A.”

(iii) Simplified Asset Disclosure Mechanisms

- Encourage courts to utilize powers under Order XXI, Rule 41 (examination as to assets) more effectively.
- Require judgment debtors appearing in court to provide a sworn affidavit detailing their assets and liabilities promptly.

C. Technological Integration

(i) Leveraging the National Judicial Data Grid (NJDG)

- Use NJDG for monitoring execution caseloads, identifying bottlenecks, and tracking disposal rates.

(ii) E-Registration and Property Search

- Enhance integration between courts and the e-Registration system for faster verification of property ownership and encumbrances.

(iii) Digital Banking Integration

- Streamline processes for issuing garnishee orders and attachment notices to banks, possibly through standardized digital formats.

(iv) E-Auction Mandate

- Make e-auctions the default mode for sale of immovable property under Order XXI, Rule 64 onwards, utilizing platforms like court-specific portals.

- In modern age, use of technology may be very helpful in execution works. If proceedings of delivery of possession as well as attachment are video-graphed, then violent person shall not come on the spot for causing illegal hindrance during execution works. Thus, video-graphs and photographs may be helpful not only in execution but may be helpful for executing court also.

D. Enhanced Judicial Powers and Discretionary Tools

(i) Effective Use of Arrest and Detention (Order XXI, Rules 37-40)

- When a judgment debtor has the means but refuses to pay, issue notice under Rule 37, requiring them to appear personally. If the court remains unsatisfied, proceed to detention as per Rule 40.
- Decree holder and Advocates should file the execution petition as soon as possible with all the relevant documents.
- Ensure detailed recording of evidence regarding the debtor's means before ordering detention to withstand legal scrutiny.

(ii) Attachment of Property (Order XXI, Rules 54-66)

- Immediately issue prohibitory orders upon application.
- Encourage decree holders to provide specific information about the judgment debtor's assets.
- Ensure property is adequately valued before auction. Utilize court-appointed valuers if necessary.

(iii) Appointment of Receivers (Section 51(d))

- The appointment of a receiver under the Civil Procedure Code (CPC) is governed by Order XL, which allows the court to appoint an impartial person to manage and preserve disputed property during litigation. This is a discretionary power of the court, typically exercised to prevent manifest injury, waste, or damage to the property until the suit is decided.
- Appoint receivers for properties that are yielding income (e.g., rental properties, businesses) to collect rent/profits towards decree satisfaction, especially when immediate sale is not feasible or desirable.

E. Inter-Agency Coordination Strategies in India

(i) Enhance inter-agency cooperation

- Courts can specifically order the assistance of various enforcing agencies (like police or revenue officials) if an imminent threat of violation exists or for smooth, timely completion of the execution.
- If there is a apprehension of resistance or obstruction, request police assistance in the execution application to ensure smooth enforcement of order.

With regard to seeking police assistance Hon'ble Supreme Court in the matter of **Rahul S. Shah Vs. Jinendra Kumar Gandhi and others 2021 SCC OnLine SC 341** has directed that -

42.13. The executing court may on satisfaction of the fact that it is not possible to execute the decree without police assistance, direct the police station concerned to provide police assistance to such officials who are working towards execution of the decree. Further, in case an offence against the public servant while discharging his duties is brought to the knowledge of the court, the same must be dealt with stringently in accordance with law.

(ii) Defining Roles and Responsibilities

- Clear delineation of roles ensures each agency understands its specific tasks within the execution process. This prevents duplication of effort or key tasks being neglected.

(iii) Information Sharing

- Effective coordination relies on the seamless and secure exchange of relevant information between agencies. This might involve shared platforms or regular communication channels, within legal and privacy guidelines, to keep all parties on the same page.

(iv) Joint Planning and Strategy

- For complex execution proceedings (e.g. large-scale asset recovery or property transfers), joint planning meetings and strategy development ensure a cohesive approach. This involves input from all involved agencies early in the process.

(v) Designated Coordination Mechanisms

- Establishing specific inter-agency groups or a ‘coordinating agency’ can provide a formal platform for regular meetings, dispute resolution, and overall management of the execution process.

(vi) Resource Pooling

- Agencies may share resources, expertise, and support to ensure adequate capacity for the execution, especially in cases where a single agency may have limitations.

(vii) Standard Operating Procedures

- Develop and implement SOPs for coordination between executing courts, District Police, Revenue authorities, and Registration offices. This should detail timelines for reports, assistance, and document filing.

(viii) Empowered Liaison Officers

- Assign specific officers within courts and respective agencies to act as nodal points for execution-related communication.

(ix) Utilizing Technology for Information Exchange

- Explore secure portals for agencies to share information relevant to execution proceedings, such as property ownership records, FIR details (if relevant), or solvency certificates.

F. Incentives and Deterrents

(i) Robust Application of Contempt Powers

- For wilful disobedience of injunctions (Order XXXIX, Rule 2A) or obstruction of execution, promptly initiate contempt proceedings under the Contempt of Courts Act, 1971.

(ii) Imposition of Costs

- Consistently impose compensatory costs on parties filing frivolous objections or causing inordinate delays.

(iii) Disincentivizing Benami Transactions

- While specific laws address benami transactions, courts should be vigilant in piercing such veils during execution proceedings.

G. Capacity Building for Indian Judicial Officers

(i) Targeted Training Programs

- Conduct workshops at Judicial Academies.
- Updates in CPC and relevant case law on execution.
- Practical aspects of conducting auctions and managing attachments.
- Effective use of technology (e-Courts, e-filing, e-auctions).
- Inter-agency coordination protocols.

(ii) Explore Alternatives

- Consider out-of-court settlements or alternative dispute resolution (ADR) if it can lead to a faster, mutually agreeable resolution, provided the terms are legally documented and certified by the court.

(iii) Best Practice Sharing

- Encourage High Courts to facilitate sessions where experienced judges share successful strategies for execution.

(iv) Resource Materials

- Develop and circulate practical guides and checklists for judicial officers on various aspects of decree enforcement.
- A duty should be cast upon the Nazir to submit a monthly report as to how many decrees or orders have been assigned to him for execution by different executing courts and what steps have been taken by him. The report must be submitted timely to the Judge-in-Charge/the PDJ/the executing court concerned.

(v) Monitor and Follow-Up

- Actively monitor the status of the execution petition and advocate for its expeditious disposal. Remind the court of the Supreme Court guidelines on time limits for execution proceedings.

Conclusion

The remedy of execution by arrest and detention is an extraordinary remedy. It is not punitive and neither the arrest waves of the right to comply the court decree it gives a realization to the decree holder of the value of decree passed in his favour it

also protects the judgement debtor if he is not in the condition of complying with the court order .Willful defaulters are liable to be arrested. This remedy is twofold as it protects the degree holder as well as judgement debtor. This remedy is not exhausted and it also prevents unusual harassment of judgement debtor also protects judgement debtor by giving subsistence allowance during his period of arrest .

The execution proceedings are a critical facet of the judicial system, primarily designed to enforce court decrees and ensure justice through the practical implementation of judgments. Order 21, Rules 58 and 59 of the Civil Procedure Code, 1908, serve as the cornerstone for handling claim petitions within these proceedings. These rules provide a robust framework for third parties to assert their rights and contest the attachment and sale of properties, emphasizing the careful balancing of interests among various stakeholders in significance of these rules, underscoring the necessity for a precise and equitable adjudication process that respects the rights of all parties. This not only safeguards the interests of the claimants but also upholds the integrity of judicial enforcement processes, ensuring that execution is carried out justly and in accordance with the law. Ultimately, the provisions allow for a comprehensive judicial review that can prevent wrongful executions and ensure that justice prevails, maintaining the decree's integrity while respecting legitimate third-party claims.

By embracing these strategies discussed in the paper, execution courts can work towards ensuring that decrees are not mere pieces of paper but effective instruments of justice, delivered in a timely manner.