

ISSUANCE OF PROCLAMATION TO ENSURE PRESENCE OF ACCUSED AT TRIAL: AN EMPTY RHETORIC

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ABSTRACT

The author in this article shall be discussing proclamation as a mode for ensuring the accused presence at trial and the effects of issuing proclamation. A person's right to liberty is seriously undermined by issuance of proclamation against him. The author shall discuss the Court's duty before issuing a proclamation. Once proclamation is issued, the follow up procedure is sluggish. The Legislature in the newly enacted Bharatiya Nagarik Suraksha Sanhita, 2023 has enacted far reaching reforms with respect to proclaimed offenders. The Courts have also played an active role in trying to plug the loopholes of the mechanism. The author shall discuss the follow up procedure that shall be undertaken in order to ensure the efficacy of proclamation as a tool to ensure accused presence. In the end, the author explores the possibility of conducting trials of proclaimed offenders in absentia so that the rule of law is not undermined and there is no secondary victimisation of the victim who helplessly stares the criminal justice system where the accused takes the system for ransom by absconding himself and rendering the case infructuous. The author in the last part shall discuss the suggestions which shall be undertaken by the law enforcement agencies to ensure that proclamation does not become a mere formality but a robust tool to ensure accused presence at the trial.

KEYWORDS: *Absconding; Accused; Presence; Proclamation; Trial*

1. INTRODUCTION

The presence of the accused at trial is an essential part of the fair trial that Article 21 of the Constitution envisions. The accused needs to be present for each stage of the inquiry and trial. Usually, an accused person won't be prosecuted by the court unless they actually appear in court. This requirement of personal appearance protects the accused's right to confront his accusers and make a defence.¹ The different kinds of processes that can be issued for the appearance of the accused are (i) summons; (ii) warrants; (iii) proclamation and (iv) attachment of Property. Summons is a non-coercive method for ensuring presence whereas warrants, proclamation and attachment² are coercive measures.

The Court issues summons in summon cases asking the accused/suspect to present himself before the court. They may be served personally or through electronic means.³ The person in response to the summons must not only appear in the court on the date and at the time fixed in the summons but must also not

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¹ Michel Proulx, *The Presence of the Accused at Trial*, 25 Crim. L.Q. 179 (1983).

² The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India), § 84-89 . [The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1973 (India), § 82-96].

³ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India), § 63-71. [The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1973 (India), § 61-69].

leave the court without its permission unless the case is decided.⁴ At times, the accused contends the service of summons. When such a question arises as whether the summons were duly served or not, the Court has to apply its mind to decide about the validity of the service of summons.⁵ Any omission in the service of summons may not by itself vitiate a trial. The trial may only be vitiated by a defect in its proceedings by which the accused is prejudiced.⁶

The second method used to get the accused to show up at trial is to serve an arrest warrant.⁷ The court has power to issue a warrant that is eitherailable or not. When a summons or aailable warrant are unlikely to produce the desired outcome, non-ailable warrants should be issued.

In *Raghuvansh Dewanchand Bhasin v. State of Maharashtra*,⁸ has issued guidelines for the mechanism to be adopted while issuing non-ailable arrest warrants. The Courts should exercise this discretion of issuingailable or non-ailable warrants cautiously by striking a balance between societal interests and personal liberty.⁹

Section 84 of the *Sanhita* empowers the Court to issue proclamation. It states that the Court may issue a written proclamation against him if it has reason to believe that any person against whom it has issued a warrant has absconded or is concealing himself so that such warrant cannot be executed.¹⁰ It requires the accused to appear before the Court on a specified time which shall not be less than 30 days from the date of publishing of the proclamation. The said proclamation needs to be duly published in some conspicuous part of the town or village or home where the person ordinarily resides and the Court-house. Additionally, if the Court deems fit, a copy of the proclamation shall be published in a daily newspaper circulating the place in which the person ordinarily resides. A proclamation becomes illegal if the court issues it without giving an opportunity to the accused to appear before it within thirty days prior to such a publication.¹¹ The Court is empowered to attach the property of any

⁴ Balroop v. State, A.I.R. 1956 All. 270 (India).

⁵ Parasurama Odayar v. Appadurai Chetty, A.I.R. 1970 Mad. 271 (India).

⁶ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India), § 511. [The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1973 (India), § 465].

⁷ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India), § 72-83. [The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1973 (India), § 70-81].

⁸ (2012) 9 S.C.C. 791 (India).

⁹ Inder Mohan Goswami v. State of Uttaranchal, (2007) 12 S.C.C. 1 (India).

¹⁰ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India), § 84. [The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1973 (India), § 82].

¹¹ L Vijay Kumar v. State, (2010) Cr. L.J. 1309 (Mad.) (India).

person concerned against whom a proclamation has been issued.¹² An order of attachment can only be made after an order of proclamation has been issued for justifiable reasons. However, there is an exception to this general rule when the attachment order can be made simultaneously with a proclamation order on two occasions: firstly, when the property is about to be disposed of and secondly, the property is about to be removed from the local jurisdiction of the Court.¹³

Among the different ways devised by the criminal justice system to ensure the presence of the accused at trial is the issuance of a proclamation. However, this tool has so far been an empty rhetoric as no notable efforts are done to ensure the accused's presence and the files of such 'proclaimed offenders' go to the record room and gather dust for years. This makes the whole mechanism of proclamation empty rhetoric.

1.1 OBJECTIVES OF STUDY

The current study is carried out to further the legal discourse so that proclamation does not become a mere formality but a robust tool to ensure accused presence at the trial. In order to achieve this aim, the following research objectives have been framed:

1. To examine the Court's duty before issuing proclamation.
2. To analyse the legal implications of issuance of proclamation.
3. To explore the follow up procedure that shall be undertaken after issuance of proclamation.
4. To study the doctrine of trial in absentia.
5. To suggest suitable interventions that shall be undertaken by the law enforcement agencies to ensure that proclamation becomes an effective tool.

2. RESEARCH METHODOLOGY

The author in the present study has used a doctrinal method to complete the study. The research material and literature for the purpose of this article was collected from the libraries. Online data sources like JSTOR, Hein online, SCC Online and Manupatra were used. News articles and other print media information was also used by the author to understand the basis of proclamation and its efficacy. The author has been immensely helped by tools like Adobe Reader, Google Keep for the compilation of this article.

¹² The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India), § 85(1). [The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1973 (India), § 83].

¹³ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India), § 85 (1) proviso. [The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1973 (India), § 83(1) proviso].

3. EFFECTS OF ISSUANCE OF PROCLAMATION

A person's right to liberty is seriously undermined by issuance of proclamation against him. The author in this part shall discuss the legal ramifications of issuance of proclamation against a person.

3.1 DECLARATION OF PERSON AS 'PROCLAIMED OFFENDER'

Where a person fails to appear as specified by the proclamation then the court may after making an inquiry declare a 'proclaimed absconder' as a 'proclaimed offender'.¹⁴ There is a difference between 'proclaimed absconder' and 'proclaimed offender'. A 'proclaimed absconder' is one in respect of whom a proclamation has been published and he fails to adhere to the proclamation. When the 'proclaimed absconder' fails to adhere to the proclamation and is accused of certain serious offences like murder, kidnapping or abducting in order to murder, robbery, dacoity etc. he may be declared as a 'Proclaimed Offender' by the Court. Declaring a person as a proclaimed absconder/offender is a serious issue as it affects the liberty of a person and also affects his rights.

3.2 INITIATION OF CRIMINAL PROCEEDINGS

A person who does not appear in the Court in response to proclamation exposes himself to criminal liability. The person who has been declared as a proclaimed absconder/offender can be prosecuted under section 209 of the *Bharatiya Nyaya Sanhita, 2023* [section 174A of the *Indian Penal Code, 1860*]. The *Sanhita* provides punishment for a term up to three years/fine/both or community service in case of non-appearance by proclaimed absconder and punishment for a term up to seven years with fine in case of non-appearance by the proclaimed offender. This provision was introduced in the erstwhile *Indian Penal Code, 1860* in the year 2005 so that proclamation becomes an effective tool for ensuring the accused's presence.

3.3 ARREST

A proclaimed absconder/offender is also vulnerable to arrest as he may be arrested by any police officer without a warrant¹⁵ or by any private person.¹⁶ An obligation has been casted on every member of the village panchayat, an officer

¹⁴ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India), § 84 (4). [The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1973 (India), § 82(4)].

¹⁵ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India), § 35 (d). [The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1973 (India), § 41(1)(c)].

¹⁶ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India), § 40 (1). [The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1973 (India), § 43(1) proviso].

employed with the affairs of the village and every person residing in the village to communicate to the nearest magistrate/police station of any person whom he knows or reasonably suspects to be a proclaimed absconder/offender.¹⁷

3.4 DENIAL OF ANTICIPATORY BAIL

In addition to exposure to the risk of being arrested, the persons who have been declared as proclaimed offender/absconder also face the risk of not getting the benefit of anticipatory bail. Though there is no legislative provision for denial of bail to such persons, the Courts are slow in granting bail to persons against whom a proclamation has been issued. The Apex Court was categorically against the grant of anticipatory bail to the proclaimed offender in *Lavesh v. State (NCT of Delhi)*.¹⁸ Later on in 2014 in *Madhya Pradesh v. Pradeep Sharma*,¹⁹ also the Court took a similar view. The same view has been reiterated by the Supreme Court in *State of Haryana v. Dharamraj*²⁰ wherein the Court observed that anticipatory bail can be granted to proclaimed offenders only in exceptional and rare cases. The Allahabad High Court in the recent case of *Archana Gupta v. State of U.P.*,²¹ held that a person against whom proclamation proceedings have been initiated or who has been declared a proclaimed offender/absconder is not entitled to the relief of anticipatory bail.

3.5 IDENTIFICATION OF PROPERTY

New provisions have been inserted in the *Bharatiya Nagarik Suraksha Sanhita, 2023* for identification and attachment of property of proclaimed persons. According to this provision, the Court may initiate the process of requesting assistance from a state or an authority in the contacting state for identification, attachment, and forfeiture of property belonging to proclaimed persons upon written request from a police officer not below the rank of Superintendent of police or commissioner of police.

3.6 EVIDENCE TAKEN IN ACCUSED'S ABSENCE

There is an exception to the usual rule that all evidence in criminal trials must be taken in the presence of the accused person or, if the accused's personal attendance is not required, in the attendance of his pleader.²² In cases where it is

¹⁷ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India), § 34 (1)(b). [The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1973 (India), § 40(1) (b)].

¹⁸ (2012) 8 S.C.C. 730 (India).

¹⁹ (2014) 2 S.C.C. 171 (India).

²⁰ 2023 S.C.C. Online S.C. 1085 (India).

²¹ 2023 LiveLaw (AB) 21 (India).

²² The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India), § 308. [The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1973 (India), § 273].

proved that the accused has absconded and there is no immediate prospect of arresting him, the Court has the discretion to record the evidence in the absence of the accused.²³ If the deponent is deceased, missing, incapable to provide testimony, or cannot be found without creating significant delay, expense, or difficulty, the recorded evidence may be used later on in the investigation or prosecution against the accused. The provision is engrafted with the laudable purpose to ensure that there is no indefinite delay in trial. However, the proclaimed offender/absconder is assailable as the evidence would be recorded in his absence.

Thus, initiation of proclamation proceedings and declaration of the accused as proclaimed offender/absconder lays bare an accused to a number of risks.

4. COURT'S DUTY WHILE ISSUING PROCLAMATION

As discussed above, declaring a person as a proclaimed offender juxtaposes his right to liberty and also makes him vulnerable to criminal prosecution. Liberty is the most precious human right, as acknowledged by all civilised nations. It must be done only after the first two modes of ensuring accused presence have not borne fruits. Nonetheless, it is standard procedure in our criminal justice system to declare someone as a proclaimed offender.²⁴ It is now the norm in any case where the accused fails to appear. Therefore, the cardinal question is whether an inquiry is to be conducted by the Court before issuing a proclamation?

Issuance of a proclamation can have far-reaching effects. Therefore, the answer to the above mentioned question is 'yes'. Inquiry must be conducted by the Court to see whether the accused has actually absconded. Secondly, the Court must also see whether all efforts have been made by a police officer to execute the arrest warrant.

4.1 ACCUSED MUST HAVE ABSCONDED

A declaration can only be made in cases when the accused has escaped or hid so well that an arrest order cannot be served. The word 'absconding' does not mean absence from one's residence on a day. According to Black's Law Dictionary, the term absconding means to depart secretly or suddenly, especially to avoid arrest, prosecution or service of process.²⁵ Absconding describes the act of someone hiding from their place of abode, regardless of the fact that they hide there or else.

²³ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India), § 355. [The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1973 (India), § 299].

²⁴ Sunil Tyagi v. Govt. of (NCT of Delhi), 2021 S.C.C. Online Del. 3597 (India).

²⁵ Jayendra Vishnu Thakur v. State of Maharashtra, (2009) 7 S.C.C. 104 (India).

In *Gauri Shankar Jain v. State of Bihar*,²⁶ it was held that ‘absconding’ would mean remaining out for some days. Therefore, if a police officer goes to a house and does not find the occupant there, it may not necessarily be said that that man was absconding.

It is not sufficient to merely not show up in reply to a warrant for the purpose to start proclamation procedures. The Court issuing proclamation shall record that the accused has absconded or is concealing himself and the concealment is deliberate and not mere non-availability at the address.²⁷ In a case before Delhi High Court, where the accused was a Director of a private limited company issued a cheque that was dishonoured. Summons were issued by the Court multiple times but were returned unserved. Later on, bailable and then non-bailable warrants were issued. The magistrate issued a proclamation and noted that the accused was escaping to evade the execution of warrants. Thereafter, he was declared as a proclaimed offender. The accused went before the court, arguing that because the other party gave bogus addresses, he had been declared a proclaimed offender without receiving proper summons or warrants. The Court held that the petitioner was never served with any summons/warrants before being declared as a proclaimed offender as the addresses given in the complaint were either incorrect or incomplete.²⁸ Therefore every non-appearance by the accused does not warrant the issuance of a proclamation. It is necessary to prove that the accused has ‘absconded’ or ‘concealed’ himself. Only in such circumstances, proclamation must be issued.

In *Bhavin Tanwar v. State of Rajasthan*,²⁹ the Rajasthan High Court reiterated that mere non-appearance on a date fixed by the Court is not sufficient for the Court to have ‘reasons to believe’ that the accused has absconded or concealed himself. The Court in this case struck down the proceedings initiated by the lower court for proclamation.

Proclamation must not be issued whenever a warrant fails of its effect. All possible attempts to execute the warrant should have been made. The officer sent to serve the warrant must be examined as to the measures adopted by him to serve it, and if on his evidence, or in any other manner the magistrate is satisfied that the accused is evading justice, only then may the processes of proclamation and attachment be issued. In *Rohit Kumar v. State of NCT of Delhi*,³⁰ the Delhi High Court held that proclamation can be issued only when there is a report by a police officer before the Magistrate that the person against whom an arrest warrant has been issued has absconded or concealed himself so that the warrant cannot be executed.

²⁶ 1973 Cr. L.J. 137 (Pat.) (India).

²⁷ *Supra note 24*.

²⁸ *Ibid.*

²⁹ 2022 S.C.C. Online Raj. 1018 (India).

³⁰ 2008 Cri. L.J. 3561 (India).

In *Pankaj Singh v. State of Uttar Pradesh*,³¹ the Allahabad High Court held prior to issuance of proclamation under section 82, the Court has to record a reason that the person against whom an arrest warrant was issued has absconded or concealed himself so that warrant cannot be executed. The Court in this case held that it is a mandatory duty casted on the court to record as to how and when the person concerned has concealed himself or absconded to avoid execution of arrest warrant. The court has to indicate that the person was particularly aware that proceedings had been initiated against him and an arrest warrant has been issued. The expression “such warrant cannot be executed” used in the section is important because what is required is that the accused has absconded or concealed himself despite being aware of the issuance of an arrest warrant. If there is no such finding, then the accused cannot be said to have dodged the warrant and proceedings of the proclamation cannot be initiated.

The magistrate must record the grounds of satisfaction, that the accused was absconding or concealing himself to evade justice.³² The Court has to be subjectively satisfied from the materials before it that the accused has absconded.³³ In *Pawan Kumar Gupta v. State of West Bengal*,³⁴ the Court held that in the absence of materials to show that the court was so satisfied, the proclamation is illegal.

4.2 EFFORTS MADE BY POLICE OFFICER TO EXECUTE WARRANTS

Though the above discussion shows that all possible attempts are to be made by a police officer to execute arrest warrants but the reality is dismayed. There are a large number of cases where the warrants remain unserved. According to NCRB Crime in India Statistics of 2019, for the 2,79,60,897 processes received by the police throughout the year, 30,32,189 remain unserved.³⁵ This shows that 10% of the processes remain unserved. In 2020, for the 1,02,57,627 processes received, 18,74,966 remain unserved.³⁶ This means that 15% of the processes remain unserved. Thus, there was a steep increase from 2019 to 2020 in processes that were unserved. However, in 2021 out of 1,93,91,178 processes received 23,65,894 remained unserved which formed 11% of the total processes.³⁷

The crux of the problem is the non-availability of the address of the accused. Given that the first point of identification of the accused is the point at

³¹ *Supra* note 29.

³² 12(2) HALSBURY'S LAWS OF INDIA 106.0863 (2nd ed.).

³³ *Supra* note 24.

³⁴ 1973 Cri. L.J. 1368 (India).

³⁵ CRIMES IN INDIA, 2019, p. 1130 (2019).

³⁶ CRIMES IN INDIA, 2020, p. 1146 (2020).

³⁷ CRIMES IN INDIA, 2021, p. 1177 (2021).

which the person is arrested for investigation, due care must be taken to record all relevant particulars of the accused at this stage. It is ironic to note that such verification exercises are conspicuously absent. It is observed that in several cases where the proclaimed offender has been released by the police/court, despite Form No. 47 of the *Bharatiya Nagarik Suraksha Sanhita, 2023* [Form 45 of the *Criminal Procedure Code, 1973*] dedicating a column on address, the address of the accused is not available as the practice of mentioning the name of the state and town to which accused belongs has gained acceptance.³⁸ The police officer must verify the residential address along with documentary proof of such address.

The Delhi High Court in *Sunil Tyagi v. Govt. of NCT of Delhi*,³⁹ has drafted a performa in which information must be sought. It provides that in addition to other documents, the accused should be asked to share his photograph and copies of at least two documents namely Aadhar card/passport/PAN card/bank account/credit card/ration card/telephone bill/electricity bill. In case of private complaints, the complainant shall share the available addresses along with documentary proof and affidavit that the addresses are complete and true to the best of his knowledge.

Therefore, prior to issuance of the proclamation the police officer must be asked to file an affidavit/status report stating (i) all available addresses/phone number/email address (if available) of the accused and other details available in the information sheet along with documents;⁴⁰ (ii) proof of service of the arrest warrant by post/hand/mobile/email and service on a family member/neighbour with credible proof;⁴¹ and (iii) the reasons for the inability to execute the warrant. The Court shall examine the officer as to the measures taken for executing the warrant.

When the proclamation is issued by the Court, it is to be published in all three modes, that is, at some conspicuous part of the home, town or village where the person ordinarily resides and the Court-house. The Courts may get the proclamation published in a daily newspaper circulating the place in which the person ordinarily resides.⁴² In order to ensure that the proclamation is properly issued, the Court must ask the police to file an affidavit along with photographs/videography of the affixation of proclamation. This affidavit

³⁸ GS Bajpai, *How lack of proper identification of arrested persons slows down legal process*, INDIAN EXPRESS, Aug. 23, 2021.

³⁹ *Supra note 24*.

⁴⁰ *Ibid.*

⁴¹ *Id.*

⁴² The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India), § 84(2). [The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1973 (India), § 82(2)].

should be mandatory prior to publication in the newspaper. The Delhi High Court has devised a Performa for details to be submitted to the Court.⁴³

It is for the Courts to ensure that the proclamation is not issued in a routine manner and the mechanism of the issuing process is not abused. The Courts should mandatorily record a finding that the accused has absconded and is aware that an arrest warrant has been issued. The Courts should ask from the concerned police officer to file an affidavit/status report to that effect so that proclamation proceedings are initiated only in relevant cases and the mechanism is not misused.

5. FOLLOW-UP PROCEDURE AFTER ISSUANCE OF PROCLAMATION

It is being contended that though the declaration of person as proclaimed offender/absconder in case of non-appearance has become a standardised practice, there is no follow-up procedure to ensure their presence at trial which makes the whole mechanism of proclamation empty rhetoric. The rationale of issuance of the process is to ensure accused presence. Therefore, once a person is declared as a proclaimed absconder/offender, efforts must be made to secure his attendance. According to a report submitted by Delhi Police, the number of proclaimed offenders in 2014 was 18,541 out of which 6,000 were proclaimed offenders. This figure of proclaimed persons rose to 26,532 in 2019.⁴⁴ The number of proclaimed offenders is increasing day by day. However, no efforts are made to ensure the accused's presence and the files of such proclaimed offenders' cases go to the record room and gather dust for years.

The criminal justice system provides for the attachment of properties of any person concerned against whom a proclamation has been issued either simultaneously or after issuance of proclamation.⁴⁵ However, this mechanism is rarely followed as is evident from the reports submitted by CBI, where out of 793 accused persons who were declared as proclaimed offenders from 1st January, 2015 to 31st October, 2019 properties of only 21 Proclaimed Offenders were attached.⁴⁶

In order to ensure that the mechanism of proclamation works in substance there is a need to follow a four-pronged strategy. Firstly, efforts must be made to nab these offenders. Secondly, attachment proceedings must be initiated by

⁴³ *Supra* note 24.

⁴⁴ *Ibid.*

⁴⁵ The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India), § 85 proviso. [The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1973 (India), § 83].

⁴⁶ *Supra* note 24.

the Courts; thirdly criminal prosecution must be launched against the proclaimed offender/person and fourthly there must be a review mechanism.

5.1 ARREST OF PROCLAIMED OFFENDERS

Efforts must be made to arrest these proclaimed persons/offenders. In *Lallan Singh v. State of Uttar Pradesh*,⁴⁷ the Supreme Court in a 3-Judge bench judgement noted that there was no effective mechanism to apprehend the proclaimed offenders. It is the duty of the state to make all reasonable efforts to arrest him. The primary responsibility for securing the arrest of a Proclaimed Person/Offender rests with the police of the station under whose jurisdiction he is a resident. The names/details/pictures of proclaimed persons/offenders should be published on government websites and made public. They should also be displayed in police stations and a central database of proclaimed persons/offenders should be prepared. Pursuant to Supreme Court's directions, the Home Ministry has uploaded the information of Proclaimed Offenders on its website.⁴⁸ A dedicated website and a specialised cell must be created for tracking and arresting proclaimed persons/offenders.

5.2 ATTACHMENT OF PROPERTY OF PROCLAIMED PERSONS

As discussed above, the *Sanhita* empowers the Court to attach the property of persons against whom proclamation has been issued either afterwards or in some cases simultaneously in case of non-appearance after making a proper inquiry. Police shall be asked to trace and identify proclaimed person/offender's movable/immovable properties and file a report. The Court shall thereafter proceed to attach the properties as per law.

However, the irony is that these proceedings are seldom initiated because of the difficulty in identifying the properties of the concerned person. The position becomes further complex when the property is located in some other state. In order to overcome this difficulty, the *Sanhita* has introduced a new provision for identification and attachment of property of proclaimed persons. This provision must be utilised.

5.3 CRIMINAL PROSECUTION AGAINST PROCLAIMED PERSON

Section 209 of the *Bharatiya Nyaya Sanhita, 2023* [section 174A of the *Indian Penal Code, 1860*] provides punishment for non-appearance in response to proclamation. The provisions for punishing non-appearance was inserted in the *Indian Penal Code, 1860* in the year 2005 with the hope that it would be a deterrent for persons fleeing justice. The court after declaring a person as

⁴⁷ (2015) 13 S.C.C. 362 (India).

⁴⁸ Special Correspondent, *Home Ministry uploads details of proclaimed offenders on its portal*, HINDU, Aug. 22, 2020.

proclaimed person/offender should not close the matter, but direct the police to initiate action under section 209 of the *Sanhita*. Though no time period is prescribed for prosecution under this section the same should be lodged within a reasonable time.

However, the reality is that prosecution for non appearance is initiated only in very limited cases. As per the reports of CBI, in 2019 prosecution under section 174A of the *Indian Penal Code, 1860* was launched only in 2 cases.⁴⁹ The Delhi High Court in the case of *Sunil Tyagi v. Govt. of (NCT of Delhi)*,⁵⁰ opined that if the proclaimed person/offender does not surrender or is not traced within a period of six months from being declared as proclaimed person/offender, then proceedings under section 174A of the *Indian Penal Code, 1860* to be initiated.

5.4 REVIEW MECHANISM

Periodic review is necessary in order to ensure that issuance of proclamation becomes a tool of substance for procuring the attendance of accused rather than an empty formality. There must be a mechanism for periodical review of cases where the accused has been declared as proclaimed absconder/offender so that there is no indefinite delay in trial. The Supreme Court in *Lallan Singh v. State of Uttar Pradesh*,⁵¹ lamented that there was no system to review the cases of proclaimed offenders at regular intervals or to make the concerned officer accountable for their failure to take further action by attachment of property or otherwise. The Court noted that an effective supervisory mechanism is required to deal with cases of proclaimed offenders. In order to ensure that the mechanism is effective the Courts must be asked to file periodic reports as to the number of persons declared as proclaimed offenders/persons; the cases in which attachment proceedings initiated and the cases in which criminal prosecution initiated. The police officers must also be asked to file periodic reports as to numbers of persons declared as proclaimed offender/person in their jurisdiction and the efforts made by them to ensure their arrest.

6. TRIAL IN ABSENTIA OF PROCLAIMED OFFENDER

The whole objective of issuing proclamation is to ensure accused presence at the trial. Accused has an indispensable right to be present at the trial and defend his case. However, there are persons who remain at large and their presence cannot be secured even after adopting all the measures to compel their appearance. As a result of their absence from trial, the criminal proceedings are stalled and lead to secondary victimisation of the victim because the victim is left with no option but to wait till the accused appears as the criminal

⁴⁹ *Supra* note 24.

⁵⁰ 2021 S.C.C. Online Del. 3597 (India).

⁵¹ *Supra* note 47.

proceedings become infructuous. Therefore, the pertinent question that arises is can the trial be conducted in absence of the accused when the accused himself holds the criminal justice system at ransom by absenting himself?

Till 2023, there was no provision for conducting trial in absentia. Though there were piecemeal provisions which allowed the courts to record the evidence of witnesses in cases where the accused had absconded and there was no immediate prospect of arresting him.⁵² The *Code of Criminal Procedure, 1973* did not have provision for trial in absentia.

The Supreme Court in 2017 in *Hussain v. UOI*,⁵³ recommended that the *Criminal Procedure Code, 1973* should be amended to introduce provisions for trial in absentia. The Court in this case suggested that in order to ensure speedy trial in cases where the accused has absconded, provision for trial in absentia shall be included on the lines of provisions provided in the *Code of Criminal Procedure* of Bangladesh.⁵⁴ In 2018, again in the case of *Bachche Lal Yadav v. Akhand Pratap Singh*,⁵⁵ where the case was pending for more than 5 years as the accused had absconded, the Supreme Court sought a reply from the Central Government regarding the status of suggestion of trial in absentia given in *Hussain's* case. It is pertinent to note that such provisions exist in other countries also.⁵⁶

Subsequently in 2023, the newly enacted *Bharatiya Nagarik Suraksha Sanhita, 2023* provides for inquiry, trial or judgement in absentia of proclaimed offenders. Section 356 of the *Sanhita* provides that when a person declared as a proclaimed offender absconds to evade trial and there is no immediate prospect of arresting him, then it shall be deemed that he has waived his right to be present. The Court in such cases shall after recording reasons in writing, in the

⁵² The Bharatiya Nagarik Suraksha Sanhita, 2023, No. 46, Acts of Parliament, 2023 (India), § 335. [The Code of Criminal Procedure, 1973, No. 2, Acts of Parliament, 1973 (India), § 299].

⁵³ (2017) 5 S.C.C. 702 (India).

⁵⁴ Section 339-B of the Code of Criminal Procedure, 1898 of Bangladesh provides that - (1) Where after the compliance with the requirements of Section 87 and Section 88, the Court has reason to believe that an accused person has absconded or concealing himself so that he cannot be arrested and produced for trial and there is no immediate prospect of arresting him, the Court taking cognizance of the offence complained of shall, by order published in at least two national daily Bengali Newspapers having wide circulation, direct such person to appear before it within such period as may be specified in the order, and if such person fails to comply with such direction, he shall be tried in his absence.

(2) Where in a case after the production or appearance of an accused before the Court or his release on bail, the accused person absconds or fails to appear, the procedure as laid down in sub-section (1) shall not apply and the Court competent to try such person for the offence complained of shall, recording its decision so to do, try such person in his absence.”

⁵⁵ 2018 S.C.C. Online S.C. 3813 (India).

⁵⁶ For example, UK, Canada, New Zealand.

interest of justice proceed with the trial and pronounce the judgement in absentia.

The Legislature has incorporated certain safeguards in order to ensure that the section is not misused. The safeguards are, firstly, the Court has to record reasons in writing for trial of proclaimed offenders in absentia. Secondly, trial shall not commence unless ninety days have lapsed from the date of framing of charges. Thirdly, the Court must ensure that all procedure required for declaring a person as proclaimed offender has been complied with before initiating the provisions of trial in absentia of the proclaimed offender. Fourthly, the Court shall ensure that the proclaimed offender is represented by an advocate.

7. CONCLUSION AND SUGGESTIONS

The presence of the accused is not a mere form. It is the very essence of a criminal trial that not only the accused shall be brought face to face with the witnesses against him, but also with his triers.⁵⁷ Efforts must be made to ensure accused presence at trial by execution of arrest warrants. It can be said that the very basis of a fair trial is threatened if the accused/suspect is declared as a proclaimed offender without proper service or if proclamations are issued in a routine manner. The Courts must be guided by the principles of justice and equity in relation to proceedings of proclamation.⁵⁸ The mockery is that though declaring a person as proclaimed offender in case of non-appearance has become a customary practice, the follow-up procedure is sluggish and torpid. It is the responsibility of the Courts to ensure that issuance of proclamation is proper and the follow-up procedures are strictly adhered to after declaring the person as proclaimed offender so that the loopholes in the existing system are plugged. Introduction of provisions which enable the court to conduct trial of proclaimed offenders in absentia is a major breakthrough and can go a long way in ensuring that the provisions of proclaimed offenders does not remain a mere paper formality. Some of the suggestions in order to ensure that proclamation becomes an effective tool to ensure accused presence at trial are:

- A proper endeavour should be made by the Courts for compliance with the statutory provisions of issuing summons and warrants before embarking on the path to initiate proclamation proceedings.
- However, once the Court declares the accused as a proclaimed offender/absconder every attempt should be made to arrest him and criminal proceedings must be initiated against him.
- Mentioning the accused name and address in a proper format can go a long way in ensuring the arrest of the accused.

⁵⁷ Gullie B Goldin, *Presence of the Defendant at Redition of the Verdict in Felony Cases*, 16 Colum. L. Rev. 18 (1916).

⁵⁸ *Supra* note 31.

- Civil society should also be involved in tracking the floating population of their locality. There should be efficient coordination between law enforcement agencies to ensure that proclaimed offenders are arrested at the earliest.
- The Court processes should be streamlined so that the trial of proclaimed offenders once they are arrested is expedited.
- The legal procedures for attachment of property belonging to proclaimed offender should be initiated so that they are deterred from escaping the criminal justice system.
- Once the Court decides to proceed against the accused and hold his trial in absentia, the safeguards mentioned under the section must be strictly followed and the trial should be conducted at the earliest.

The loopholes in the existing mechanism of proclamations must be plugged so that the technique of proclaimed offender becomes imperative of ensuring the accused presence in court rather than remaining an empty rhetoric.

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