

**"NEAREST MAGISTRATE"
IN ARTICLE 22 OF THE CONSTITUTION**

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The question, whether the Constitutional provisions regarding arrest and detention guaranteed under Article 22 of the Constitution could be interpreted in favour of state action, deviating from the language used, was recently posed in one of the training courses conducted by this Institute. The question was raised particularly with reference to judgment of Division Bench of the Allahabad Court in Amarnath and another v. Union of India and others (1990 All Cri. A. 634), in which the Bench, although held that the provisions of Article 22 (2) including production before nearest Magistrate within 24 hours are imperative, yet observed elsewhere in the judgment that the question of nearest Magistrate would be relevant only when person arrested and detained is produced before another Magistrate beyond 24 hours and the benefit of travelling period is claimed which benefit is available only when production is before 'nearest Magistrate'. The Bench ultimately held that in its view, the detention of person detained in the interior of District Gonda who was produced before a Magistrate at Allahabad within 24 hours itself and not before any Magistrate in any of the intervening Districts, was not vitiated,

The question whether the 'nearest Magistrate' means the Magistrate nearest to the place where a person is arrested and taken in custody or where he is produced by the police within 24 hours, was raised before the Supreme Court in Rajendra Agarwal v. Chief Metropolitan Magistrate, 1935 (Supp.) S.C.C. 607, but the Court did not decide the question, as the accused by that time had been released, observing that the question is not free from difficulty and equires consideration at depth.

The relevant portion of Article 22 of the Constitution reads as under:-

“(1) No person who is arrested shall be detained in custody without being informed as soon as may be of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of twenty- four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate and no such person shall be detained in custody beyond the said period without the authority of a Magistrate.”

The provision of Article 22 (1) and (2) are mandatory in nature but so far as phrases 'as soon as may be' in Article 22(1) and 'the nearest Magistrate' in Article 22(2) are concerned there appears to be some room for

interpretation; otherwise the language of Article is quite clear and unambiguous. Article 22 puts, check on arbitrary and illegal arrests and gives certain protections and guarantees to the person arrested and taken in custody, also puts a check on police detaining a person for longer period and producing him before a Magistrate of their choice without adhering to the Constitutional provisions *limiting* the time for production of the person so detained.

A look at legislative history regarding Art. 22 may be of some assistance in the matter of interpretation of phrase 'the nearest Magistrate'. Although external aid in interpreting a provision can be taken yet the views of mover of a Bill are never conclusive in the matter.

Article 22 clause (2) was not in the draft Constitution but at the close of deliberations of the Constituent Assembly it was sought to be added. Dr. Ambedkar, The Chairman of the Draft Commission explained the circumstances which led him to introduce Article 15A (present Article 22(2)). He stated:-

"It merely lifts from the Criminal Procedure Code two of the most fundamental principles which every civilised country follows as principles of international *justice*. By making these parts of the *Constitution*, we are making a fundamental change because we put a limitation on the authority of both Parliament and State Legislatures not to abrogate these two provisions because now they are part and parcel of the Constitution itself... the provisions contained in this are sufficient, against illegal or arbitrary arrests."

During the course of discussion an amendment was made by Shri Pataskar who wanted that before the word 'Magistrate' the word 'First Class' may be added. The amendment was opposed by Dr. Ambedkar who gave his reasons for the same.

Dr. Ambedkar stated "Well, I find some difficulty in accepting the words suggested by him for two reasons. We have in clause (2) used very important words, namely, "the nearest Magistrate" and I thought that was very necessary because otherwise it would enable a police officer to keep a man in custody for longer period on the ground that a particular Magistrate to whom he wanted, take the accused or the Magistrate who would be ultimately entitled to try the, accused was living at a distance far away and therefore he had a justifiable ground for detaining him for the longer period. In order to take away any such argument, we had used the words, "the nearest Magistrate". Now supposing we were to add the words "the nearest First Class Magistrate" the position would be very difficult. There may be "the nearest Magistrate" who should be approached by the police in the interests of the accused himself in order that his case may be judicially considered. But he may not be a First Class Magistrate. Therefore, we have really to take a choice: whether we shall give the accused the earliest opportunity to have his matter decided and looked into by the Magistrate near about or whether we should go in search of a First Class Magistrate. I think "the nearest Magistrate" is the best provision in the interests of the liberty of the accused. I might also point out to my Friend, Mr. Pataskar,

that even if I were to accept his amendment "the nearest First Class Magistrate" it would be perfectly possible for the Government of the day to amend the Criminal Procedure Code to confer the powers of a First Class Magistrate on any Magistrate whom they want and thereby cheat the accused. I do not think therefore that his amendment is either desirable or necessary and I cannot accept it"

Thus according to the mover of this provision, the expression 'the nearest Magistrate' was introduced as a check on the police in detaining a person beyond 24 hours, seeking its justification on the ground that nearest Magistrate or one who ultimately was entitled to try the case was not available within this period. It is apparent that the intention of the mover of this provision was not to give police a free hand to produce the person detained before a Magistrate of their choice or only before the Magistrate who would have jurisdiction to try the case which at the stage was not required at all.

The principles of interpretation of Constitutional provisions are that they are to be interpreted broadly and liberally and not in a narrow and pedantic sense but at the same time its language cannot be stretched or perverted. If the language is plain and unambiguous it is the duty of Court to adopt that meaning only and the provision is to be interpreted as It is and not as it ought to be. In the case of State of Punjab v. Ajaib Singh, AIR 1953 SC 10, the Supreme Court observed... "that if the language of the Article is plain and unambiguous and admits of only one meaning, then the duty of the Court is to adopt that meaning irrespective of the inconvenience that such a construction may produce. If, however, two constructions are possible, then the Court must adopt that which will ensure smooth and harmonious working of the Constitution and eschew the other which will lead to absurdity or give rise to practical inconvenience or make well established provisions of law nugatory".

Article 22 gives protection in cases of arrest without warrant issued by a Court on the accusation that the arrested person or the suspected person was or is suspected to have committed or is likely to commit an act of criminal nature or some activity prejudicial to state interest. The expression 'nearest Magistrate' is preceded by the word 'the' which also finds place before the expression 'Court of the Magistrate' in the same Article 22(2). The word 'the' is definite article and, denotes a particular person or thing. The Supreme Court in Consolidated Coffee Ltd. v. Coffee Board, AIR 1980 SC 1468 also particularised the word 'agreement' in view of use of word 'the' before It.

The period of twenty four hours fixed for production excluding the time spent for travelling is for the production before 'the court of the Magistrate'. The word used is again 'the' and not 'a', which means before the court of the said nearest Magistrate. The 'nearest Magistrate' is to be nearest from the place of arrest. The use of word 'such' between the words 'within a period of twenty four hours' and 'arrest' clearly spells out the same, as well as the place from where 'the nearest Magistrate' is to be found out. This provision in the Constitution is obviously for checking illegal and arbitrary

arrest and detaining a person for longer time and restraining the police to produce a person within 24 hours, may be after torturing the person, before a Magistrate of their choice or from whom they expect liberalism.

In Amar Nath's case (Supra) apparently no stress was laid on the use of word 'the' at two places and It appears that no difference was sought to be made between 'the' and 'a' and that is why production before a Magistrate after crossing several Districts was taken to be in conformity with Article 22 of the Constitution of India. It may be that some record was produced before the Court and the Bench was satisfied that in the circumstances of the case the same was sufficient compliance with the provisions of Article 22(2).

Occasions may arise when production of a person arrested and detained before 'the nearest Magistrate' may not be in public Interest and create situation of 'law and order', the maintenance of which is the Sovereign function of State. The intention and purpose of the Article could not be that if the production of the person detained before 'the nearest Magistrate' Is fraught with danger or is not possible the detention would be illegal and the person so arrested is to be released.

The Constitution of India which is the basic law of the country, when framed could not have envisaged circumstances which were not existing or which may arise in future and many difficultres which may arise In future could not have been seen. In the case of Francis Coralie Mullin v. Administrator, Union Territory of Delhi, AIR 1981 SC 746 (at Page 752) it was observed -"This principle of Interpretation which requires that a Constitutional provision must be construed, not in a narrow and constricted sense, but In a wide and liberal manner so as to anticipate and take account of changing conditions and purposes so that the Constitutional provision does not get atrophied or fossilized but remains flexible enough to meet the newly emerging problems and challenges, applies with greater force in relation to a fundamental right enacted by the Constitution."

Similarly, in the case of Video Electronics Pvt. Ltd, v State of Punjab AIR I 1990 SC 820 at page 837, It was observed. Constitution is a living organism and r the latent meaning of the expressions used can be given effect to only if a I particular situation arises. It is not that with changing times the meaning changes but changing times illustrate and illuminate the meaning of the expressions used. The connotation of the expressions used takes its shape and colour Involving dynamic situations".

These principles of interpretation of Constitution keep gates open for flexibility and taking into consideration flexibility and administrative difficulties particularly that of law and order without doing violence to the language of the provision. It is to be noticed that production before any other Magistrate is not foreign to the language of Article 22(2) and at one place it has been expressly provided viz. the subsequent production after first production of a person arrested can be before any other Magistrate, as provided in later part of Article 22(2), who Is competent to deal with the matter and not necessarily any nearest Magistrate.

Sometimes adverse situation, like 'law and order' problem, safety and the security of the accused, may crop up justifying production, of detained person not before 'the nearest Magistrate " but before any other Magistrate. Then in those compelling circumstances, taking recourse to such a procedure, may obviously mean sufficient compliance of the provisions of Article 22(2). If such production is not designed to legalise illegal arrest which Article 22(2) checks or is intended to detain the person arrested for longer period on any excuse and for producing him before a Magistrate chosen by the police for the purpose without any special reason or compelling circumstances itself or on the dictates of some superior authority, the production before any other Magistrate other - than nearest from the place of arrest would not be vitiated.

It is thus clear that production is to be before 'the nearest Magistrate' from the place of arrest but under certain compelling circumstances as mentioned before, if it is before any other Magistrate, the same could also be deemed to production before 'the nearest Magistrate' and it will be a substantial compliance of the Constitutional provisions not defeating its object and purpose.

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