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DIGITAL ARREST AND VIRTUAL PROCESSING: A QUIET CHALLENGE TO THE CONSTITUTIONAL PROMISE

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INTRODUCTION: WHEN PROGRESS DEMANDS CAUTION

The preamble of the Constitution of India is often quoted but rarely paused over . It's words -justice, liberty, Equity , dignity are not merely aspirational ; they are the moral compass of Indian legal system. Every innovation in governance , every reform in law enforcement and every procedural change must answer only one question : Does it strengthen or weaken this Constitutional Promise ?

In recent years , criminal justice system has embraced digital technology at an unprecedented pace . Video conferencing has become routine in courts , FIRs can be lodged online , Summons are sent automatically and investigations increasingly rely on digital Communication. These changes were largely welcomed , especially during the pandemic When physical access to courts and police station was severely limited .Digital tools were seen as instruments of accessibility and efficiency .

However Alongside these developments , a troubling and largely unexplained practice has begun to surface-what is informally referred to as “digital Arrest”. While the term has no legal recognition , the reality it describes is increasingly visible . Individuals are subjected to virtual control by law enforcement authorities without formal Arrest, Judicial oversight or statutory Authority. This article argues that if these practices are left unchecked it may pose a serious threat to constitutional value embedded in the preamble .

WHAT EXACTLY IS A DIGITAL ARREST ?

A digital Arrest does not involve handcuffs , lockups or police vans. Instead it operates through screen and digital instructions. Individual may be called to remain continuously available on video calls , directed not to leave their homes , or pressured to comply with investigation demands under implicit

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threat of Arrests . Often these directions are issued informally, without written orders or clear legal justification

What makes this practice concerning is its ambiguity. The individual is neither formally arrested nor fully free . There is no Arrest memo , no communication on ground of Arrest, no immediate production before magistrate. Yet , the persons ambiguity is seriously curtailed liberty of his is restricted.

Indian criminal laws does not recognises such a category neither in the code of criminal procedure nor the Bharatiya Nagarik Suraksha Sanhita 2023 , provides for virtual custody or digital confinement. Arrest, as understood in law, requires either physical restraint or voluntary submission to lawful authority. Digital arrests exist outside this framework, making them constitutionally suspect from the outset .

VIRTUAL PROCESSING : A NECESSARY REFORM , NOT A LICENSE

It is important not to conflate digital arrests with virtual processing. Virtual processing refers to the use of technology for procedural convenience-online filing of complaints, video conferencing for hearings, electronic transmission of summons, and digital record-keeping. These reforms were introduced to reduce delays, cut costs, and improve access to justice.

Courts have consistently supported such measures, particularly when they enhance transparency and efficiency. However, judicial endorsement of virtual tools has always been conditional. Technology is meant to assist the justice system, not transform the nature of state power.

The danger arises when procedural tools are stretched beyond their intended purpose . The Supreme Court has consistently maintained that technology is meant to aid the justice delivery system, not alter the nature of rights and duties under the law. When virtual tools are extended beyond their intended procedural role and used to exert coercive control over individuals, they cross a constitutional boundary

LIBERTY IS NOT ONLY PHYSICAL FREEDOM

The Constitution's commitment to liberty is broader than freedom from physical detention. Article 21 has been interpreted to include mental autonomy, privacy, dignity, and the right to live without

arbitrary interference. The Preamble reinforces this understanding by placing liberty and dignity at the heart of constitutional governance.

Digital arrests challenge this understanding in a fundamental way. Even without physical confinement, constant surveillance, compelled availability, and the looming threat of arrest create a state of psychological restraint. The individual's freedom to move, to disconnect, and to live without fear is compromised.

The Supreme Court has repeatedly emphasized that arrest is a serious invasion of personal liberty and must be used sensibly. By allowing informal digital restraints to replace formal arrest procedures, the State risks normalizing restrictions that escape judicial scrutiny. Liberty, in such cases, is eroded quietly rather than taken away openly.

THE ABSENCE OF DUE PROCESS

Due process is the backbone of criminal law. Every arrest must be accompanied by safeguards - communication of grounds, preparation of arrest memo, access to legal counsel, and prompt production before a magistrate. These safeguards are not technical formalities, they are protections against abuse of power.

Digital arrests bypass these protections almost entirely. There is often no official record of restraint, no documentation to challenge, and no clear authority to question. This absence of procedural clarity makes it extremely difficult for individuals to seek legal remedies.

From a constitutional perspective, this is deeply problematic. Article 21 permits deprivation of liberty only through procedure established by law. Informal digital restraints do not qualify as such a procedure. They exist in a grey zone where power is exercised without responsibility and control without accountability.

RULE OF LAW VS RULE OF CONVENIENCE

The rule of law, a basic feature of the Constitution, requires that power be exercised through known, transparent, and reviewable procedures. Digital arrests invert this principle. They prioritize administrative convenience over legal certainty and executive efficiency over individual rights.

Technology cannot become a shortcut around constitutional safeguards. The State does not gain new powers simply because the medium of communication has changed. Any expansion of police authority must come from legislation, not innovation by practice.

Allowing digital arrests to continue unchecked sets a dangerous precedent. It signals that constitutional limits are flexible when technology makes control easier. This is precisely the kind of erosion the Preamble was designed to prevent

REIMAGINING TECHNOLOGY THROUGH CONSTITUTIONAL VALUES

The solution is not to resist digitalization but to constitutionalize it. Technology must be shaped by constitutional values. Clear statutory guidelines are needed to define the limits of virtual policing and investigation.

Judicial intervention is equally crucial. Courts must draw a firm line between permissible virtual procedures and impermissible digital restraints. Law enforcement agencies must be trained not only in the use of technology but also in the constitutional boundaries that govern its use.

Most importantly, citizens must remain aware that liberty cannot be surrendered informally. The absence of handcuffs does not mean the absence of detention.

EQUALITY AND THE UNEQUAL BURDEN OF DIGITAL CONTROL

On paper, digital procedures look neutral—one video call or online notice appears the same for everyone. In reality, they do not feel the same. For someone with legal awareness or access to a lawyer, a virtual instruction from the police can be questioned. For a student, a worker, or a person from a marginalised background, the same instruction feels like an order that cannot be refused. Fear fills the gap where the law is unclear. Digital control, when informal and undocumented, ends up weighing heaviest on those with the least power. Equality loses meaning when liberty depends on one's position, not one's rights.

CONCLUSION: PROTECTING THE PREAMBLE IN DIGITAL AGE

The Constitution of India does not oppose progress; it demands responsibility. Digital tools can strengthen the criminal justice system, but only if they operate within constitutional limits. The practice

of digital arrests, as it currently exists, threatens to normalize a form of restraint that operates outside law, oversight, and accountability.

If justice is to remain meaningful, liberty must remain real, and dignity must remain protected—even in virtual spaces. The true test of India’s digital future lies not in how efficiently it controls, but in how faithfully it preserves the constitutional promise made in its Preamble.

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