



Grounds of Arrest - a constitutional safeguard incorporated under the BNSS, 2023

“Failure to inform an arrestee of the grounds in writing renders the arrest illegal, entitling the person to be set free.” – Constitutional principle reaffirmed by the Supreme Court

Impact of Arrest

The arrest of an individual invariably impacts not only the person arrested himself, but also the persons associated with him, i.e. family, friends, relatives, etc., affecting their psychological balance and overall social well-being. The stigma of arrest impairs reputation, undermines social dignity, and reverberates across family and community.

The impacts of arrest are not only limited to societal impact but also extend to the physical and mental health of the person. Such conditions severely impinge upon the fundamental rights of the arrested person and curtail his dignity and personal liberty.

The Protection under the Constitution

Article 21 of the Constitution of India: *“No person shall be deprived of his life or personal liberty except according to procedure established by law”*.

Article 22 of the Constitution of India: A person arrested must be informed of the grounds of his arrest at the earliest and should not be detained without informing him of such grounds.

The Purpose of Communicating Grounds of Arrest

The salutary purpose of informing the grounds of arrest is to enable the person to understand the basis of his arrest and engage legal counsel to challenge his arrest, remand or seek bail and/or avail of any other remedy as may be available to him/her under law.

The Statutory Provision

The Constitutional safeguard provided under Article 22 of the Constitution of India has been part of the Section 50 of the erstwhile CrPC which is now reflected in Section 47 of Bharatiya Nagarik Suraksha Sanhita, 2023, (BNSS 2023) which puts into force the procedural mandate providing for the protection of the personal liberty of the person so arrested. Section 47 of BNSS 2023 casts a duty on the police officer or other person arresting any person without a warrant shall communicate him the grounds of arrest.

Section 47 of BNSS further adds that if a police officer arrests without warrant any person other than a person accused of a non-bailable offence, he shall inform the person arrested that he is entitled to be released on bail and that he may arrange for sureties on his behalf.

The Communication Procedure

Communication Procedure

- Grounds must be furnished **in writing** and in a language understood by the arrestee.

Note: No doubt, if the communication is in writing it will bear the name and designation of the officer and location of police station.

- In exceptional circumstances, oral communication is permissible at the time of arrest.



- Written grounds must follow within a reasonable time, and no later than **two hours before production before the magistrate.**
- Remand papers must contain grounds of arrest; delays must be explained to the magistrate.

Duties of the Police Officer making the Arrest

1. Inform the arrestee of reasons and place of detention.
2. Record in the station book who has been informed.
3. Inform the arrestee of his right to notify a relative or friend.

Duties of the Magistrate

1. Ensure grounds of arrest are communicated in a language understood.
2. Confirm the arrestee is informed of his right to notify a relative or friend.

Consequences of Failure to inform Grounds of Arrest

The requirement of informing the arrested person of the grounds of arrest, is a mandatory binding constitutional safeguard which has been included in part III of the Constitution under the head of Fundamental Rights. The objective of constitutional safeguard is to place the person in a position to comprehend the basis of allegations levelled against him. It is possible only if the grounds are furnished to him in a language understood by him, thereby enabling him to exercise his rights effectively.

The failure to supply grounds of arrest in a language understood by the arrestee renders the constitutional safeguards illusory and infringes the personal liberty of the person as guaranteed under Article 21 and 22 of the Constitution of India. As such, the arrest and subsequent remand would be rendered illegal and the person will be at liberty to be set free.

In Mihir Rajesh Shah v State of Maharashtra (2025 SCC OnLine SC 2356), the Supreme Court reaffirmed that failure to supply written grounds of arrest vitiates both arrest and remand, rendering them illegal.
