

## LETTER & SPIRIT

### The constitutional limits on arrest

The Supreme Court has reinforced safeguards against arbitrary arrest, holding that an arrested person must be informed of the grounds of arrest; constitutional protections under Articles 21, 22, along with judicial guidelines, seek to balance the state's power to arrest with the individual's right to personal liberty and dignity



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#### THE GIST

- Constitutional and legal safeguards require the police to record the time of arrest and produce the arrested person before a magistrate within 24 hours.
- Supreme Court guidelines, including those in *Arnesh Kumar*, stress that arrest should not be routine and must be justified by the necessity of the case.

The constitutionality of arrest in India needs to be examined to reinforce democratic values and ensure that the authority of the state and the liberty of the citizen are properly balanced. Recently, the Supreme Court, in *Vihaan Kumar v. State of Haryana* (2025), held that every arrested person must be properly and meaningfully informed of the grounds for his arrest. Failure to provide information shall amount to a violation of Article 22(1) of the Constitution and Section 50 of the Criminal Procedure Code (Section 47 of the BNSS, 2023).

Sometimes, communication is conducted with the arrested person's relatives, which appears to be a formality. Considering this, the verdict says that communicating the details of the arrest to relatives or providing ambiguous records does not satisfy the constitutional requirements.

Therefore, the arrested person must be directly informed of the grounds of arrest in a manner that enables him to understand them. This would be in line with the Constitutional philosophy of putting a check on any possible arbitrary exercise of power.

## Legal safeguards

The court has opined that if the initial arrest was unconstitutional, subsequent remand orders would also be deemed illegal. Moreover, to fulfil the requirements of Article 22(2) and Section 57 of the CrPC (Section 58 of the BNSS, 2023), the arrest memo must contain the time of arrest. These constitutional and legal provisions say that the police must present the arrested person to a local magistrate within 24 hours, excluding the travel time.

The court also condemned degrading treatment in custody, affirming the right to dignity under Article 21, and directed the state to amend its procedures to prevent future violations. Thus, this judgment sets a strong precedent for safeguarding personal liberty and procedural fairness in India's criminal justice system.

Arrest is different from detention. While detention is a temporary hold for investigation and the person is not charged with any offence, arrest is a formal police custody with a probable cause of commission of an offence. Article 22 deals with both arrest and

detention. In non-cognisable offences such as simple hurt, defamation, etc., a warrant is needed for arrest, whereas in cognisable offences such as murder, rape, etc., arrest is without a warrant.

## Court's guidelines on arrest

In *Arnesh Kumar v. State of Bihar* (2014), the Supreme Court laid down guidelines for arrests to prevent the misuse of criminal laws. The law should not be used as a tool to harass someone. Considering this, it is obvious that allowing criminal prosecution to continue based on frivolous and false allegations would amount to an abuse of legal process and would also be detrimental to the concept of natural justice, which is perhaps the most significant form of justice enshrined in the Constitution.

In the guidelines, the court said that arrests should be an exception in cases where the punishment is less than seven years. The police must determine whether an arrest is necessary under Section 41 of the CrPC (Section 35 of the BNSS). Thus, routine arrests cannot be made merely because the power to arrest has been given to the police. The necessity must be justified.

It is well known that personal freedom is a major part of the Constitution. Unnecessary arrests hurt a person's reputation and would be detrimental to personal liberty.

## Constitutionality of arrest, detention

Article 22 protects against arrest and detention to ensure freedom of person, and hence has a direct link with the concept of personal liberty under Article 21. Article 22 provides important procedural safeguards for a person who is arrested, including the right to be informed and the right to consult and be defended by his lawyer as soon as possible, and finally the right to be presented before the nearest magistrate within 24 hours.

The Article also deals with the concept of preventive detention where these procedural safeguards do not apply. The definition of preventive detention in India is inspired by a British law, Regulation 14-B of the Defence of the Realm Act, 1914, which says that all detentions that are not punitive may be considered preventive. The detention may continue for three months, and if the period expires, an Advisory Board shall permit the extension of the period.

Thus, Article 22 protects a person from being arrested or detained, signifying the protection of his liberty against any arbitrary action by the state. However, the provision of arrest and detention exemplifies the exercise of the state's authority.

Personal liberty in the Constitution is founded in the principle of natural justice, which is enshrined in the entire constitutional scheme. Further, the Golden Triangle of India's Constitution as explained by the Supreme Court in *Maneka Gandhi v. Union of India* (1978) suggests that Article 21 is related to Articles 14 and 19. Of the two, Article 14 is an antithesis to arbitrariness and the substantive natural justice emanates from it, whereas

Article 19(1) incorporates procedural natural justice. Therefore, any arbitrary exercise of the power of arrest or detention would amount to a violation of the Golden Triangle. This has been the reason why the framers of the Constitution ensured that a delicate balance between authority and liberty is maintained and vibrant democracy in India is sustained.

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