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**Arrest Procedures Under Scrutiny:
Hon'ble Supreme Court of India
Clarifies When Failure to Inform
Grounds of Arrest Vitiates Custody.**

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I. Introduction

1. Arrest constitutes one of the gravest intrusions into personal liberty permitted under Indian Constitutional Law. It marks a point at which the coercive authority of the State most directly confronts the individual. Accordingly, arrest cannot be treated as a routine step in investigation, but as an exceptional measure that must strictly conform to the safeguards prescribed by the Constitution of India and applicable statutory framework. The Supreme Court of India has consistently affirmed that the power of arrest is not an unfettered executive discretion, but a regulated power subject to close constitutional and judicial scrutiny.
2. The recent decision in *Mihir Rajesh Shah v. State of Maharashtra*¹ marks a significant reaffirmation and consolidation of this constitutional position. The judgment brings doctrinal clarity to the scope, content and consequences of the obligation to inform an arrested person of the grounds of arrest, anchoring it firmly within the guarantees of Articles 21 and 22 of the Constitution.

II. Article 22(1): A Substantive Constitutional Guarantee

3. Article 22(1) of the Constitution mandates that no person who is arrested shall be detained in custody without being informed of the grounds of arrest or be denied the right to consult a legal practitioner of their choice. As clarified by the Hon'ble Supreme Court in *Mihir Rajesh Shah* (Supra), this protection is not a procedural embellishment but a substantive right flowing directly from the guarantee of personal liberty under Article 21.
4. The Court has reiterated that the purpose of informing the grounds of arrest is to place the arrested person in a position to meaningfully exercise legal remedies particularly to oppose remand and seek bail. Any interpretation that reduces this obligation to a formality would defeat the constitutional object underlying Article 22(1).

¹ 2025 INSC 1288

III. Universality of the Obligation

5. A crucial contribution of Mihir Rajesh Shah lies in his rejection of a fragmented approach to constitutional safeguards. The Court reaffirmed that the obligation to inform grounds of arrest applies uniformly across all arrests, irrespective of whether they arise under the Bharatiya Nyaya Sanhita 2023 or under special statutes.
6. The judgment expressly disapproved the notion sometimes advanced in enforcement practice that enhanced safeguards are relevant only in cases involving stringent statutes such as the Prevention of Money Law Act, 2000 or Unlawful Activities (Prevention) Act, 1967. Fundamental rights, the Court reiterated, do not fluctuate based on legislative labels or the perceived gravity of the offence. They adhere to the individual, not to the statute under which the arrest is made.
7. This reasoning aligns with the deeper constitutional principle that State power cannot be immunised from constitutional scrutiny by legislative design.

IV. Statutory Reinforcement under Bharatiya Nagarik Suraksha Sanhita, 2023

8. The Bharatiya Nagarik Suraksha Sanhita, 2023, reinforces constitutional guarantees by codifying arrest safeguards. Section 47 of Bharatiya Nagarik Suraksha Sanhita, 2023 mandates that the arresting officer shall forthwith communicate the full particulars of the offence or the grounds of arrest. Section 48 of Bharatiya Nagarik Suraksha Sanhita, 2023 supplements this by requiring immediate intimation of arrest to a relative or nominated person.
9. In Mihir Rajesh Shah, the Supreme Court clarified that these provisions are not standalone statutory rights, but legislative instruments intended to operationalise Article 22(1). Consequently, non-compliance with Bharatiya Nagarik Suraksha Sanhita arrest provisions does not remain a mere statutory irregularity it acquires a constitutional dimension.
10. This interpretation elevates statutory arrest procedures from administrative guidelines to enforceable constitutional obligations.

V. Mode of Communication: Meaningful, Not Mechanical

11. While Article 22(1) does not expressly prescribe the mode of communication, the Supreme Court has clarified that the mode must be such as to effectively serve

the constitutional purpose. In *Mihir Rajesh Shah*, the Court held that communication of

grounds of arrest must be meaningful, intelligible, and capable of being utilised for legal defence.

12. Drawing upon earlier precedent, the Court noted that mere oral intimation particularly at the moment of arrest may not satisfy this requirement. Furnishing the grounds of arrest in writing is therefore not treated as a rigid technical mandate but as the most reliable method to ensure effective compliance and avoid factual disputes regarding communication.²

VI. Timing and Limited Flexibility

13. The expression “as soon as may be” has been interpreted by the Court to allow limited flexibility only in genuinely exigent circumstances. In *Mihir Rajesh Shah*, the Court acknowledged that situations may arise where it is not practically feasible to immediately furnish written grounds such as arrests effected during the commission of a serious offence. However, the Court cautioned that such situations cannot be normalised. The obligation to communicate the grounds subsists and must be fulfilled at the earliest possible opportunity. Administrative convenience or investigative urgency cannot justify routine deviation from constitutional requirements.

VII. Consequences of Non-Compliance

14. The Supreme Court has reaffirmed that failure to communicate the grounds of arrest strikes at the root of the constitutional guarantee under Article 22(1). An arrest effected in breach of this requirement is unlawful and continued custody based on such arrest is constitutionally unsustainable.³
15. Importantly, the Court clarified that subsequent events such as filing of a charge-sheet or grant of remand cannot cure the illegality arising from an unconstitutional arrest. This principle underscores the duty of magistrates to independently verify compliance with arrest safeguards at the remand stage.⁴

VIII. Practical Implications

16. The judgment carries far-reaching implications for the criminal justice system:

²2023 INSC 866.

³2024 INSC 414.

⁴2025 INSC 162.

- ❖ Investigating agencies must institutionalise strict compliance mechanisms at the arrest stage.
 - ❖ Defence counsel is reminded that scrutiny of arrest legality is not peripheral but foundational to protecting liberty.
 - ❖ Magistrates and courts are constitutionally bound to act as the first line of protection against unlawful deprivation of liberty.
17. The decision reinforces that constitutional compliance is not adversarial to effective investigation; rather, it legitimises State action and preserves public confidence in the justice system.

IX. Conclusion:

18. This reasoning aligns with the deeper constitutional principle that State power cannot be immunised from constitutional scrutiny by legislative design. The constitutional law of arrest rests on a simple but profound principle: liberty cannot be curtailed without accountability. Communication of the grounds of arrest is the earliest and most visible expression of that accountability.
19. As reaffirmed in *Mihir Rajesh Shah v. State of Maharashtra*, this obligation is non-negotiable, statute-neutral, and central to the rule of law. The transition to the Bharatiya Nagarik Suraksha Sanhita framework does not dilute constitutional protections it reinforces them.
20. In an era of expanding investigative powers, the judgment serves as a timely reminder that constitutional discipline at the threshold of arrest is the cornerstone of a rights-respecting criminal justice system.



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