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THE CONSTITUTIONAL JURISPRUDENCE OF ARREST IN INDIA: FROM THE POWER AND NECESSITY OF ARREST TO THE RIGHT TO KNOW THE GROUNDS OF ARREST

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I. ABSTRACT

Arrest is among the most intrusive powers exercised by the State against the individual. Though legally distinct from guilt, arrest often produces consequences that extend beyond the criminal process, including reputational injury, social stigma, loss of employment, and impairment of personal and family relationships. These consequences become especially grave where proceedings ultimately end in discharge, acquittal, or exoneration. Indian constitutional jurisprudence has therefore increasingly treated arrest not merely as an investigative tool, but as a serious deprivation of personal liberty requiring constitutional justification. This paper examines the evolution of Indian arrest jurisprudence from the distinction between the power to arrest and the necessity to arrest, developed in Joginder Kumar and Arnesh Kumar, to the contemporary right of an arrested person to be informed of the grounds of arrest under Article 22(1). It analyses the relationship between Articles 14, 21 and 22(1), the statutory safeguards under the CrPC and the BNSS, and the developing distinction between 'reasons for arrest' and accused-specific 'grounds of arrest'. Particular attention is given to Pankaj Bansal, Ram Kishor Arora, Prabir Purkayastha, Vihaan Kumar, Kasireddy Upender Reddy, Mihir Rajesh Shah, Karan Singh and Dr Rajinder Rajan. The central thesis is that Indian arrest law is moving from a power-centric model towards a constitutional accountability model consisting of four sequential safeguards: lawful power, demonstrable necessity, meaningful communication of grounds and effective judicial scrutiny. The paper's distinctive contribution lies in its analysis of the temporal operation of the written-communication requirement, especially the expression 'henceforth' in Mihir Rajesh Shah. It argues

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that while Article 22(1) protected arrested persons before that decision, Mihir Rajesh Shah standardised the future procedural regime for written communication of grounds. This distinction is essential to evaluating non-compliance in both pre-Mihir and post-Mihir arrests.

II. KEYWORDS

Power of Arrest, Necessity of Arrest, Personal Liberty Article 21; Due process Article 22(1); Natural Justice.

III. INTRODUCTION AND RESEARCH PROBLEM

The power to arrest is an essential component of the criminal justice system. Without the ability to deprive an accused person of liberty in appropriate circumstances, the State may be unable to investigate offences effectively, prevent interference with evidence, secure the presence of an accused before a court or protect witnesses from intimidation. Yet arrest is also one of the most coercive manifestations of State power. The legal system therefore confronts a fundamental tension. On one side lies the legitimate interest of the State in investigating and prosecuting crime. On the other stands the constitutional commitment to personal liberty, dignity and freedom from arbitrary State action.

The constitutional philosophy of India places liberty at the heart of the legal order. Article 21 provides that no person shall be deprived of life or personal liberty except according to procedure established by law. Article 22(1), more specifically, requires that a person arrested shall be informed, as soon as may be, of the grounds of such arrest and shall not be denied the right to consult and be defended by a legal practitioner of his choice.

These guarantees acquire particular importance because arrest is frequently accompanied by consequences that are not strictly legal in character.

A person who is arrested is often treated by society as a person who has committed the offence. The presumption of innocence, which is fundamental to criminal jurisprudence, frequently disappears in public perception. Arrest may therefore result in:

1. damage to personal reputation;
2. injury to family honour;

3. loss of employment or professional opportunities;
4. difficulty in obtaining accommodation;
5. disruption of business relationships;
6. impairment of marriage and personal relationships;
7. social isolation; and
8. continuing stigma even after acquittal.

The problem becomes particularly acute in high-profile cases and in the digital age, where the fact of arrest may remain permanently accessible online. The law, therefore, must recognise that an arrest is not merely a temporary deprivation of liberty. It can have enduring consequences. The jurisprudence of the Supreme Court has progressively responded to this reality. The first major development was the recognition that the power to arrest is not synonymous with the necessity to arrest. The second has concerned the right of the arrested person to know why the State has deprived him of liberty.

The present paper therefore examines arrest jurisprudence not as a collection of isolated procedural rules but as an integrated constitutional discipline. The central argument is that the legitimacy of an arrest must be tested sequentially: first, whether the State possesses lawful authority to arrest; secondly, whether the facts establish a necessity to arrest; thirdly, whether the arrested person has been meaningfully informed of the grounds for deprivation of liberty; and fourthly, whether the arrest withstands effective judicial scrutiny. The movement from power to necessity, from necessity to communication, and from communication to judicial accountability represents the deeper constitutionalising of arrest law in India.

A. Research Objectives

This paper addresses the following principal questions:

1. To trace the constitutional evolution of arrest jurisprudence in India from the recognition of the distinction between the power to arrest and the necessity to arrest to the contemporary right to know the grounds of arrest.

2. To examine the interaction between Articles 14, 21 and 22(1) of the Constitution and the statutory safeguards contained in the CrPC, 1973 and the BNSS, 2023.
3. To analyse the jurisprudential development from Joginder Kumar and Arnesh Kumar through Pankaj Bansal, Ram Kishor Arora, Prabir Purkayastha, Vihaan Kumar, Kasireddy Upender Reddy and Mihir Rajesh Shah.
4. To determine the constitutional meaning and practical content of "grounds of arrest", particularly the distinction between generic reasons for arrest and accused-specific factual grounds.
5. To examine whether the requirement of written communication of grounds of arrest is confined to special statutes or extends to all arrests under ordinary criminal law.
6. To analyse the temporal operation of the written-communication rule prescribed in Mihir Rajesh Shah, particularly in light of its use of the expression "henceforth".
7. To examine the subsequent judicial treatment of this temporal issue, particularly the decision of the Delhi High Court in *Karan Singh v State (NCT of Delhi)* and the Supreme Court's subsequent decision in *Dr Rajinder Rajan v Union of India*.
8. To propose procedural and institutional reforms capable of strengthening constitutional accountability in the exercise of arrest powers.

B. Research Questions

The paper addresses the following principal questions:

1. Whether the existence of statutory power to arrest automatically justifies the exercise of that power;
2. What is the legal distinction between the power to arrest and the necessity to arrest;
3. What is the constitutional foundation of the right to know the grounds of arrest;
4. Whether Article 22(1) requires written communication of the grounds of arrest;

5. Whether the written-communication requirement applies only to special statutes such as the PMLA and UAPA or to all arrests;
6. What constitutes sufficient "grounds of arrest";
7. Whether the constitutional content of grounds differs where the arrest is made pursuant to a warrant;
8. Whether non-communication or inadequate communication automatically invalidates an arrest;
9. What is the relevance of prejudice in determining the consequence of non-compliance;
10. How should the expression "henceforth" in *Mihir Rajesh Shah* be interpreted;
11. What is the significance of the prospective interpretation adopted in *Karan Singh*; and
12. What is the legal position concerning written grounds of arrest following *Dr Rajinder Rajan* as of July 2026?

C. Research Methodology

Primary sources comprise the Constitution of India, the Code of Criminal Procedure, 1973, the *Bharatiya Nagarik Suraksha Sanhita*, 2023, relevant special criminal statutes, judgments of the Supreme Court of India and relevant decisions of the High Courts.

The citations in this paper follow the ILI Citation Style, with case-law references presented in the standard Indian legal format of case name, year, reporter, volume and page wherever available.

The study employs a chronological and thematic analysis of the principal judicial decisions governing arrest and communication of grounds. Particular attention is given to the evolution of constitutional standards under Articles 14, 21 and 22(1), the statutory framework under Sections 41, 41A and 50 of the CrPC and Sections 35 and 47 of the BNSS, and the relationship between statutory arrest powers and constitutional limitations.

IV. CONSTITUTIONAL ARCHITECTURE OF ARREST

The law of arrest in India rests upon a combination of constitutional and statutory provisions. At the constitutional level, three provisions are particularly relevant:

1. **Article 14:** Article 14 guarantees equality before law and equal protection of laws. Its significance in arrest jurisprudence lies in its prohibition against arbitrary State action.
2. **Article 21:** Article 21 protects life and personal liberty. Following *Maneka Gandhi v. Union of India*, the procedure by which liberty is deprived must satisfy standards of fairness, reasonableness and non-arbitrariness.⁴
3. **Article 22(1):** Article 22(1) specifically provides: "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." Article 22(1) therefore operates at the precise moment when the coercive power of the State is exercised.

Its constitutional significance is twofold:

1. First, it requires the State to inform the arrested person of the grounds of deprivation of liberty.
2. Second, it facilitates meaningful access to legal representation.

The two guarantees are interconnected.

A person cannot effectively consult counsel, oppose police custody, seek bail or challenge the legality of an arrest without knowing the factual basis for the arrest. The three constitutional provisions operate cumulatively rather than in isolation. Article 14 controls arbitrariness; Article 21 protects substantive and procedural liberty; and Article 22(1) imposes specific procedural restraints at the moment of arrest. An arrest which is

⁴ *Maneka Gandhi v. Union of India*, (1978) 1 SCC 248

technically authorised by statute may nevertheless be constitutionally infirm if it is arbitrary, unnecessary or procedurally defective.

V. ARREST, PRESUMPTION OF INNOCENCE AND SOCIAL STIGMA

Criminal jurisprudence rests upon the principle that an accused is presumed innocent until proven guilty. Arrest, however, frequently produces the opposite social consequence. The public often interprets arrest as evidence of culpability. This phenomenon creates what may be termed the social stigma of arrest. The problem is not merely theoretical. Even when criminal proceedings terminate in acquittal, the individual may continue to face:

1. suspicion from employers;
2. reluctance from landlords;
3. damaged professional reputation;
4. strained personal relationships;
5. adverse media coverage; and
6. social exclusion.

The criminal process therefore creates an asymmetry. An acquittal may legally restore liberty, but it cannot necessarily restore reputation. This reality strengthens the constitutional argument for restraint in the exercise of arrest powers. The State should not deprive a person of liberty merely because the law technically permits it to do so.

The question must always be: Was the arrest necessary, justified and procedurally fair?

This question forms the foundation of modern arrest jurisprudence.

VI. POWER TO ARREST AND NECESSITY TO ARREST

The Supreme Court's decision in *Joginder Kumar v. State of Uttar Pradesh* is a foundational authority on this distinction.⁵ The Court recognised that the existence of power to arrest is one thing; the justification for exercising that power is another.

⁵ *Joginder Kumar v. State of U.P.*, (1994) 4 SCC 260.

This principle was subsequently reinforced in *Arnesh Kumar v. State of Bihar*, where the Supreme Court cautioned against routine arrests and emphasised statutory compliance in cases where the offence attracts imprisonment up to seven years.⁶

The constitutional significance of this distinction extends beyond offences punishable with imprisonment up to seven years. The broader principle is that arrest is an exercise of coercive State power requiring justification in relation to the individual case. Statutory power answers the question whether arrest is legally permissible; necessity answers whether arrest should actually be made. The two inquiries must not be collapsed into one. Thus, the proper constitutional sequence is not:

FIR → Arrest → Investigation

but:

Information → Investigation → Assessment → Necessity → Arrest, if justified.

This distinction is central to the constitutional legitimacy of arrest. The principle can be expressed in the following proposition: The law may authorise arrest without requiring arrest in every case falling within the statutory provision. This distinction is fundamental to Section 41 of the CrPC and its successor provision, Section 35 of the BNSS. Where the statutory conditions are satisfied, the police may possess the power to arrest. But the officer must still examine whether arrest is necessary.

The necessity requirement may arise where arrest is needed:

1. to prevent further offences;
2. to facilitate proper investigation;
3. to prevent disappearance or tampering with evidence;
4. to prevent inducement, threat or promise to witnesses; or
5. to ensure the accused's presence before the court.

⁶ *Arnesh Kumar v. State of Bihar*, (2014) 8 SCC 273.

The existence of these statutory considerations means that the investigating officer must undertake an independent application of mind. Arrest cannot become a mechanical response to the registration of an FIR.

VII. STATUTORY FRAMEWORK: FROM CRPC TO BNSS

The CrPC was replaced by the BNSS with effect from 1 July 2024.

For present purposes, the important provisions include:

Comparison of CrPC and BNSS Provisions

Former CrPC Provision	BNSS Provision	Subject
Section 41	Section 35	When police may arrest without warrant
Section 41A	Section 35(3) onwards	Notice of appearance
Section 41B	Section 36	Procedure of arrest and duties of officer
Section 50	Section 47	Grounds of arrest and right to bail
Section 50A	Section 48	Information regarding arrest to relative/friend
Section 57	Section 58	Production before Magistrate
Section 167	Section 187	Procedure when investigation cannot be completed within 24 hours
Section 157	Section 176	Procedure for investigation

The transition from the CrPC to the BNSS does not alter the constitutional source of the right under Article 22(1). The constitutional guarantee survives legislative change.

This is particularly important because Article 22(1) does not derive its existence from Section 50 CrPC or Section 47 BNSS. Rather, those statutory provisions operationalise a constitutional right.

Therefore, the replacement of the CrPC by the BNSS should not be interpreted as diminishing the constitutional standard established under Article 22(1).

The transition from the CrPC to the BNSS is therefore a legislative transition rather than a constitutional reset. The safeguards under Article 22(1) continue independently of the statutory nomenclature. Section 47 of the BNSS must consequently be interpreted harmoniously with Article 22(1), rather than treated as an exhaustive source of the right.

VIII. ARTICLE 22(1) AND THE RIGHT TO KNOW THE GROUNDS OF ARREST

Section 50 of the CrPC required the arresting officer to communicate the full particulars of the offence or the grounds of arrest.

Section 47 of the BNSS substantially continues this protection.

The constitutional and statutory requirements operate together.

However, a distinction must be maintained between:

1. reasons for arrest; and
2. grounds of arrest.

This distinction has become one of the most important features of contemporary arrest jurisprudence.

"Reasons for arrest" may consist of general statutory formulations such as the necessity of arrest for proper investigation or prevention of tampering with evidence.

"Grounds of arrest", by contrast, must relate to the particular accused and the particular facts that led the arresting officer to conclude that arrest was justified.

A generic statement that:

"Your arrest is necessary for proper investigation"

may explain a statutory reason but does not necessarily tell the arrested person why he personally has been arrested. The latter requires disclosure of the factual basis sufficient to enable meaningful legal challenge.

The expression "grounds of arrest" must be understood in its constitutional context. A ground is not synonymous with the bare statutory provision under which the arrest is made. Nor is it identical to the internal reasons recorded by the investigating officer for deciding that arrest is necessary.

The constitutional question is whether the information communicated to the arrestee is sufficiently intelligible and specific to enable him to understand the factual basis of the deprivation of liberty and to exercise his legal rights effectively.

This distinction assumes particular importance because the power to arrest and the obligation to communicate the grounds of arrest arise at different levels. The officer may have recorded detailed reasons for arrest internally, but the constitutional safeguard is concerned with what is actually communicated to the person whose liberty has been taken away.

IX. PANKAJ BANSAL: WRITTEN GROUNDS AND THE PMLA

The jurisprudence entered a new phase with *Pankaj Bansal v. Union of India*.^[4]

The case concerned Section 19 of the PMLA.

The Supreme Court examined the statutory requirement that the person arrested be informed of the grounds of arrest. The Court emphasised that merely informing the arrested person orally was insufficient and directed that written grounds be furnished.

The significance of *Pankaj Bansal* lies in its understanding of Article 22(1) as requiring an effective and meaningful communication. The right to be informed cannot be reduced to a ritualistic declaration. The arrested person must know sufficient facts to:

1. understand the basis of arrest;

^[4] *Pankaj Bansal v. Union of India*, (2024) 7 SCC 576

2. consult counsel effectively;
3. challenge the arrest;
4. oppose remand; and
5. seek bail.

The judgment therefore transformed the requirement from a formal obligation into a substantive constitutional safeguard. However, the use of "henceforth" generated controversy.

The arrest of the petitioners had preceded the judgment. The Court nevertheless formulated the requirement for future arrests.

The question arose whether this represented:

1. prospective creation of a new procedural rule; or
2. prospective enforcement of an existing constitutional right.

The distinction remains crucial. The significance of Pankaj Bansal is therefore not merely that it prescribed written grounds in the context of Section 19 of the PMLA. Its larger significance lies in recognising that communication of grounds must be effective enough to permit the arrested person to exercise the constitutional right to challenge the deprivation of liberty. The later jurisprudence, however, demonstrates that the precise temporal and procedural consequences of Pankaj Bansal required further clarification.

X. RAM KISHOR ARORA: THE TEMPORAL AND PROCEDURAL QUALIFICATION

Ram Kishor Arora v Directorate of Enforcement, 2023 INSC 1082, is an important intermediate stage in the development of the jurisprudence.⁷ The Supreme Court considered the legality of an arrest under Section 19 of the PMLA where the grounds of arrest had been orally communicated to the arrestee, who had acknowledged them, while a written copy was supplied subsequently.

⁷ Ram Kishore Arora v. Directorate of Enforcement, (2024) 7 SCC 599

The Court interpreted the expression "as soon as may be" in Section 19 of the PMLA as requiring communication as early as possible without avoidable delay. Having regard to the statutory requirement that the arrested person be produced before the competent court within twenty-four hours, the Court held that furnishing the written grounds within twenty-four hours could constitute sufficient compliance, provided the arrestee had been informed of the grounds orally and the statutory requirements were otherwise satisfied.

This aspect of *Ram Kishor Arora* is significant because it demonstrates that the constitutional requirement of meaningful communication and the precise procedural mode of compliance were not always treated as identical questions.

More importantly, *Ram Kishor Arora* treated the rule subsequently articulated in *Pankaj Bansal* as prospective. It therefore represents an important precedent for understanding the temporal dimension of later judicially prescribed procedural requirements.

The distinction is conceptually important. A judgment may recognise an existing constitutional principle while simultaneously prescribing a particular procedural mechanism for its future implementation. The existence of the right and the temporal application of a newly articulated mode of compliance are analytically distinct questions. This distinction becomes particularly important when examining the later use of the expression "henceforth" in *Mihir Rajesh Shah*.

The decision also demonstrates that the constitutional requirement does not necessarily amount to an unrestricted right of discovery. The grounds of arrest are intended to inform the arrestee of the basis of the deprivation of liberty; they do not automatically entitle the accused to the entire case diary or every item of investigative material.

XI. PRABIR PURKAYASTHA: CONSTITUTIONALISATION BEYOND THE PMLA

The decision in *Prabir Purkayastha v. State (NCT of Delhi)* significantly expanded the jurisprudence.⁸

The case arose under the UAPA. The Supreme Court rejected the argument that the principle concerning written grounds was confined to Section 19 of the PMLA.

The judgment recognised the constitutional significance of Article 22(1). This represented a conceptual shift. If the right to be informed of grounds of arrest arises from Article 22(1), it cannot logically depend solely upon whether the arresting authority is acting under the PMLA or UAPA. The constitutional right belongs to the person arrested. The statutory source of arrest may vary, but the constitutional protection remains. The significance of *Prabir Purkayastha* can therefore be stated as follows:

1. The constitutional guarantee of Article 22(1) travels with the arrest, irrespective of the statute under which the power to arrest is exercised.
2. The decision also emphasised the difference between "reasons for arrest" and "grounds of arrest".
3. Generic reasons are insufficient.
4. The grounds must be sufficiently specific to the individual accused.

The importance of *Prabir Purkayastha* lies in the movement from a statute-specific interpretation towards a constitutional principle. Once the requirement is recognised as flowing from Article 22(1), the source of the arrest power cannot ordinarily determine whether the constitutional safeguard exists. The statutory regime may determine the conditions under which arrest is permissible; it cannot extinguish the constitutional right to know why liberty has been taken away.

⁸ *Prabir Purkayastha v. State (NCT of Delhi)*, (2024) 8 SCC 254

XII. VIHAAN KUMAR: THE CONSTITUTIONAL REQUIREMENT AND THE MODE OF COMMUNICATION

The decision in *Vihaan Kumar v. State of Haryana & Anr.*, 2025 INSC 162; (2025) 5 SCC 799, introduced an important analytical nuance into the developing jurisprudence. The Court examined the language of Article 22(1), which requires that a person arrested be 'informed, as soon as may be, of the grounds for such arrest'. The constitutional text does not itself expressly prescribe that the information must invariably take a written form. The significance of *Vihaan Kumar* therefore lies in distinguishing the constitutional requirement of effective communication from the precise mode by which such communication must be affected.

At the same time, *Vihaan Kumar* should not be presented as merely a smooth intermediate step in a fully linear doctrinal progression. Its emphasis that Article 22(1) mandates communication of grounds, but does not itself expressly prescribe written communication in every case, creates a degree of tension with the later line of authority represented by *Pankaj Bansal*, *Mihir Rajesh Shah* and *Dr Rajinder Rajan*, where written communication was treated as central to making the constitutional safeguard effective.

This tension became especially significant when, in *State of Meghalaya v. Sonam Raghuvanshi*, the Supreme Court on 9 July 2026 noted the apparent conflict among coordinate-bench decisions and indicated that the question whether grounds of arrest must invariably be supplied in writing may require consideration by a larger Bench. The central constitutional inquiry after *Vihaan Kumar* remains whether the arrested person has been sufficiently and effectively informed of the factual basis of the deprivation of liberty so as to understand why he has been arrested and to exercise his legal rights.

Written communication is therefore not constitutionally irrelevant; rather, the controversy concerns whether it is an indispensable constitutional mode in every case or a judicially standardised procedural requirement designed to secure effective compliance with Article 22(1). Accordingly, *Vihaan Kumar* is best understood not only as a bridge between Article 22(1) and the later written-communication framework, but also as the

principal source of the doctrinal qualification that continues to inform the debate on the mode of communication.

This reading enables the subsequent decisions, including *Mihir Rajesh Shah* and *Dr Rajinder Rajan*, to be understood as strengthening the written-grounds requirement, while recognising that the precise reconciliation of these coordinate-bench authorities remained open to further clarification as of July 2026.

XIII. KASIREDDY UPENDER REDDY AND THE CONTENT OF GROUNDS OF ARREST

The decision in *Kasireddy Upender Reddy v State of Andhra Pradesh & Ors.*, Criminal Appeal No. 2808 of 2025, decided on 23 May 2025, 2025 INSC 768, requires separate treatment because its central holding concerns the distinction between warrant-based and warrantless arrests.⁹ The Supreme Court held that where a person is arrested pursuant to a warrant, the warrant itself constitutes the grounds or reasons for the arrest. If the warrant is read over to the person arrested, the requirement of informing him of the grounds of arrest is satisfied.

The position is materially different where the arrest is made without a warrant. In such a case, the arrested person must be informed why he has been arrested. Merely identifying the statutory provision allegedly violated is insufficient. The communication must disclose the basic factual circumstances and the acts attributed to the person which constitute the alleged offence. The Court thus emphasised that the arrested person must receive sufficient knowledge of the basic facts constituting the grounds and that the information must be communicated effectively in a language understood by him. This distinction is directly relevant to the broader framework developed in this paper. In a warrant-based arrest, the judicial warrant itself supplies the constitutional basis for communication, subject to the warrant being properly communicated to the arrestee. In

⁹ *Kasireddy Upender Reddy v State of Andhra Pradesh & Ors.*, Criminal Appeal No. 2808 of 2025, decided on 23 May 2025, 2025 INSC 768

a warrantless arrest, however, the arresting authority bears the obligation of communicating the factual basis of the arrest.

The decision therefore reinforces the distinction between legal authority to arrest and communication of the factual grounds for exercising that authority. It also supports the proposition that grounds of arrest must be personal and intelligible rather than merely statutory.

XIV. MIHIR RAJESH SHAH: THE CONSTITUTIONAL RULE FOR ALL OFFENCES

The decision in *Mihir Rajesh Shah v State of Maharashtra & Anr.*, Criminal Appeal No. 2195 of 2025 and connected matters, decided on 6 November 2025, 2025 INSC 1288, represents the most significant recent development in the constitutional jurisprudence of arrest.¹⁰ The case arose from arrests under ordinary penal law and required the Supreme Court to consider whether the written-ground requirement was confined to special statutes or constituted a general constitutional requirement. The Court held that the obligation under Article 22(1) to inform an arrested person of the grounds of arrest applies to arrests under general as well as special criminal laws. Written communication became the governing procedural rule. The Court further held that the grounds should be furnished in a language understood by the arrestee and that mere oral communication would ordinarily not satisfy the prescribed procedure.

The Court nevertheless recognised that exceptional circumstances may exist where immediate written communication is impracticable, particularly in cases involving an offence committed in *flagrante delicto*. In such circumstances, oral communication may initially be made, but written grounds must follow within the prescribed reasonable period and, in any event, not later than two hours before production of the arrested

¹⁰ *Mihir Rajesh Shah v. State of Maharashtra & Anr.*, Criminal Appeal No. 2195 of 2025 and connected matters, decided on 6 November 2025, 2025 INSC 1288, paras 52–56.

person before the Magistrate for remand proceedings.¹¹ The significance of the decision is therefore not limited to the requirement of written grounds. It establishes a structured constitutional procedure designed to ensure that the right to know the grounds of arrest become meaningful before judicial remand.

The requirement serves at least four purposes:

1. enabling the arrestee to understand the basis of the deprivation of liberty;
2. facilitating meaningful consultation with counsel;
3. enabling effective opposition to police or judicial custody; and
4. enabling the Magistrate to scrutinise the legality of the arrest.

The written-ground requirement is therefore best understood as an accountability mechanism rather than a mere documentary formality.

XV. THE "HENCEFORTH" QUESTION AND TEMPORAL APPLICATION

The use of the expression "henceforth" in *Mihir Rajesh Shah* raises a significant question concerning the temporal application of the written-communication requirement.¹² Two propositions must be carefully distinguished.

First, Article 22(1) has existed since the commencement of the Constitution. The constitutional right of an arrested person to be informed of the grounds of arrest therefore did not originate in *Mihir Rajesh Shah*.

Secondly, the Supreme Court in *Mihir Rajesh Shah* prescribed a uniform procedural requirement concerning written communication of those grounds in arrests governed by the judgment.

The distinction between these two propositions is essential. It would be conceptually incorrect to conclude that an individual arrested before 6 November 2025 possessed no

¹¹ *Mihir Rajesh Shah v State of Maharashtra & Anr.*, Criminal Appeal No. 2195 of 2025 and connected matters, decided on 6 November 2025, 2025 INSC 1288

¹² *Mihir Rajesh Shah v State of Maharashtra & Anr.*, Criminal Appeal No. 2195 of 2025 and connected matters, decided on 6 November 2025, 2025 INSC 1288

constitutional right to be informed of the grounds of arrest. Article 22(1) plainly existed before that date and had been judicially interpreted in several decisions.

At the same time, the use of "henceforth" indicates that the specific uniform written procedure prescribed by Mihir Rajesh Shah was intended to govern arrests prospectively. This interpretation received significant judicial support in *Karan Singh v State (NCT of Delhi)*, 2026 DHC 570-DB, decided on 23 January 2026. The Delhi High Court expressly held that the Mihir Rajesh Shah mandate requiring uniform written communication of grounds of arrest operates prospectively. The Court further considered the petitioner's contemporaneous awareness of the basis of arrest, the absence of demonstrated prejudice and the delay in raising the grievance.

Karan Singh therefore provides an important judicial application of the "henceforth" language. It supports the proposition that the uniform written-communication procedure prescribed in Mihir Rajesh Shah is prospective. However, this should not be understood as extinguishing the constitutional protection for earlier arrests. The legal position concerning pre-6 November 2025 arrests must instead be assessed by reference to the constitutional and statutory law applicable at the relevant time, including Pankaj Bansal, Ram Kishor Arora, Prabir Purkayastha, Vihaan Kumar and other applicable authorities. The temporal analysis may therefore be stated as follows:

1. **Pre-6 November 2025 arrests:** The constitutional obligation to inform the arrested person of the grounds of arrest existed. The precise procedural consequences of non-compliance, including whether written communication was mandatory in the particular statutory context, had to be determined according to the law then applicable.
2. **Post-6 November 2025 arrests:** The uniform written-communication regime prescribed in Mihir Rajesh Shah governs. The grounds must ordinarily be supplied in writing, in a language understood by the arrestee, subject to the limited exceptional circumstances recognised by the judgment.

The subsequent Supreme Court decision in *Dr Rajinder Rajan v Union of India*, decided on 1 April 2026, provides important confirmation of the practical force of this post-Mihir requirement. The Supreme Court granted relief in an NDPS matter where the arrested persons had not been supplied written grounds before their production before the Magistrate. The decision demonstrates that the written-ground requirement is not merely directory but has substantive consequences for the legality of custody.

Accordingly, as of July 2026, the controversy concerning the prospective character of the *Mihir Rajesh Shah* written-communication rule has received substantial judicial clarification, although questions concerning the treatment of individual pre-Mihir arrests may continue to arise depending upon their facts and the law applicable at the time of arrest.

XVI. REASONS FOR ARREST VERSUS GROUNDS OF ARREST

This distinction deserves independent treatment. An arrest memo may record reasons such as: prevention of further offence; proper investigation; prevention of tampering with evidence; prevention of inducement or threat to witnesses; or ensuring presence before the court. These are statutory considerations. They answer the question:

Why is arrest necessary as an investigative measure? The grounds of arrest answer a different question: Why has this particular person been arrested in this particular case?

The two concepts should not be conflated. A person cannot meaningfully challenge an arrest merely by being told: "You are arrested because your arrest is necessary for proper investigation."

That statement does not disclose what the investigating agency believes the person has done. The grounds must therefore be personal and sufficiently specific.

Recent judicial applications of *Mihir Rajesh Shah* have emphasised precisely this distinction. Courts have treated generic or cyclostyled formulations as potentially insufficient where they do not communicate the factual basis of the arrest.

The distinction is reinforced by *Kasireddy Upender Reddy*. Where arrest is pursuant to a warrant, the warrant itself can constitute the grounds. Where arrest is without a

warrant, however, the arresting authority must communicate the factual basis of the arrest. Thus, the constitutional requirement is sensitive to the source of the arrest power but remains directed towards the same objective: ensuring that the person deprived of liberty understands the legal and factual basis for that deprivation.

The distinction may therefore be expressed as follows:

Reasons for arrest explain why the investigating officer considers custodial deprivation necessary. Grounds of arrest explain why the particular individual has been subjected to that deprivation in the particular case.

The former is primarily directed towards accountability within the investigating process; the latter is constitutionally directed towards the arrested person and the exercise of his right to challenge the deprivation of liberty.

XVII. THE PREJUDICE TEST AND THE BURDEN OF PROOF

The question of prejudice assumes particular importance in cases concerning arrests made before the uniform written-communication rule prescribed in *Mihir Rajesh Shah*. A prejudice-oriented approach may have practical justification. Criminal investigations sometimes involve urgent circumstances, and a constitutional procedural safeguard should not be interpreted in a manner entirely divorced from the circumstances surrounding the arrest. At the same time, prejudice cannot become a device by which the State avoids demonstrating compliance with a constitutional obligation. The person arrested may be placed in a difficult position if he is required to establish prejudice arising precisely from the failure to inform him of the grounds. The preferable approach is therefore to distinguish between the periods before and after *Mihir Rajesh Shah*. For post-*Mihir* arrests:

1. The State must establish that the written grounds were supplied in accordance with the prescribed procedure.
2. The grounds must be sufficiently specific and intelligible.

3. The grounds must ordinarily be furnished in a language understood by the arrestee.
4. Any departure from immediate written communication must fall within the narrow exceptional circumstances recognised by the Supreme Court.
5. Written grounds must be furnished within the prescribed time and, in any event, before the stipulated period preceding remand.

For pre-Mihir arrests, the court must apply the legal regime applicable at the time of arrest while examining whether the constitutional requirement of effective communication was substantially fulfilled and whether the petitioner has established legally relevant prejudice.

The decision in *Karan Singh* illustrates this approach in the context of an arrest made before *Mihir Rajesh Shah*. The Delhi High Court relied upon the prospective operation of *Mihir*, the petitioner's contemporaneous awareness of the substance of the allegations, absence of demonstrated prejudice and delay in challenging the arrest.

The Supreme Court's subsequent decision in *Dr Rajinder Rajan*, however, demonstrates the stricter position applicable to post-Mihir arrests. Failure to provide written grounds before the prescribed remand stage may have substantive consequences for the legality of custody.

XVIII. ARREST UNDER SPECIAL STATUTES

India's criminal justice system contains numerous special enactments conferring arrest powers. These include:

1. PMLA;
2. UAPA;
3. NDPS Act;
4. Customs Act;
5. CGST Act;
6. Companies Act provisions concerning specified offences; and

7. other regulatory and economic statutes.

Special statutes frequently contain stringent arrest provisions because of the nature of the offences involved. However, the existence of a special statutory regime does not eliminate constitutional protection. The fundamental principle remains:

Special statutory power is subject to constitutional limitations. The Supreme Court's jurisprudence in Pankaj Bansal and Prabir Purkayastha demonstrates this proposition. The statutory source of the power may alter the conditions for arrest, but it cannot extinguish Article 22(1).

This has particular significance in economic offences, where arrest may carry severe reputational consequences even before trial.

The jurisprudence therefore establishes a constitutional floor beneath which special statutory regimes cannot fall. Special statutes may prescribe additional safeguards or different substantive conditions for arrest, but the constitutional guarantee under Article 22(1) continues to govern the exercise of coercive power.

XIX. ARREST UNDER THE BNSS AND ORDINARY PENAL LAW

The replacement of the CrPC by the BNSS does not alter the constitutional architecture. Section 35 of the BNSS governs circumstances in which police may arrest without warrant.

Section 47 addresses communication of grounds of arrest.

The constitutional principle remains governed by Article 22(1).

Therefore, the transition from IPC/CrPC to BNS/BNSS does not create a new constitutional regime.

The jurisprudence developed under Article 22(1) continues to apply.

The decision in Mihir Rajesh Shah is particularly significant because it concerned ordinary penal offences and thereby removed any residual uncertainty regarding the application of the constitutional principle beyond special statutes.

The significance of Mihir Rajesh Shah is particularly pronounced in the BNSS era because the judgment concerned an arrest under ordinary penal law and interpreted Section 47 of the BNSS together with Article 22(1). The decision consequently removes the argument that the requirement of written grounds is confined to specialised statutory regimes.

The constitutional safeguard therefore travels with the arrest irrespective of whether the arrest is made under the BNS/BNSS framework, the PMLA, the UAPA, the NDPS Act, the Customs Act or another special enactment, subject to the particular statutory conditions governing the arrest.

XX. ARREST, NATURAL JUSTICE AND HUMAN DIGNITY

The requirement to communicate grounds of arrest may be understood as a criminal-procedure manifestation of natural justice.

The traditional principles of natural justice require that a person affected by State action should know the basis upon which adverse action is taken.

Arrest is more intrusive than most administrative actions.

The individual loses physical liberty. The State therefore assumes a correspondingly greater duty of justification.

The requirement of grounds of arrest serves four constitutional purposes:

1. **Transparency:** The State must disclose the basis of its coercive action.
2. **Accountability:** The investigating officer must be able to justify the arrest.
3. **Legal representation:** The accused can consult counsel meaningfully.
4. **Judicial review:** The Magistrate can independently examine the legality and necessity of custody.

The constitutional significance is therefore greater than the mere provision of information. The right to grounds is an instrument for controlling arbitrary State power. The requirement of communicating grounds also reflects a deeper principle of constitutional dignity. The individual is not merely an object of investigation. He remains a rights-bearing constitutional person whose liberty cannot be taken away without

explanation. The right to know why one has been arrested is therefore both a procedural safeguard and an affirmation of human dignity.

XXI. LATEST POSITION AS OF JULY 2026

The jurisprudence as it stood at the end of July 2026 may be summarised as follows:

1. **Proposition 1:** Registration of an FIR does not automatically justify arrest. The existence of an FIR does not eliminate the requirement of assessing whether arrest is necessary.
2. **Proposition 2:** Power and necessity are distinct. The statutory power to arrest must be distinguished from the necessity to exercise that power in the individual case.
3. **Proposition 3:** Article 22(1) applies to arrests under general as well as special criminal law. The constitutional right is not confined to the PMLA or UAPA.
4. **Proposition 4:** Written communication is the stricter post-Mihir rule, but its doctrinal foundation remains under judicial examination. Following Mihir Rajesh Shah and Dr Rajinder Rajan, written grounds of arrest constitute the stricter procedural requirement for arrests governed by the post-Mihir framework. However, the position cannot be described as fully harmonised. In *State of Meghalaya v. Sonam Raghuvanshi*, on 9 July 2026, the Supreme Court noted the apparent conflict between *Vihaan Kumar*, which did not treat written communication as invariably mandatory, and the *Pankaj Bansal-Mihir Rajesh Shah-Dr Rajinder Rajan* line, which strongly favours written communication of grounds of arrest. The Court indicated that the issue might require consideration by a larger Bench. Although the petition was later disposed of on 23 July 2026 without such reference, the larger question concerning the mode of communication was not finally resolved.
5. **Proposition 5:** Grounds must be meaningful and accused-specific.

Generic statutory formulations do not ordinarily satisfy the constitutional

requirement where they fail to disclose the factual basis connecting the accused with the alleged offence.

6. **Proposition 6:** The language of communication matters. The grounds must be communicated in a language understood by the arrestee.
7. **Proposition 7:** Warrant-based arrests occupy a distinct position. Under *Kasireddy Upender Reddy*, where arrest is pursuant to a warrant, the warrant itself may constitute the grounds if properly read over and communicated to the arrestee. In a warrantless arrest, specific factual grounds must be communicated.
8. **Proposition 8:** Exceptional circumstances are recognised. In the limited circumstances identified in *Mihir Rajesh Shah*, oral communication may initially be permissible where immediate written communication is impracticable, but written grounds must follow within the prescribed period.
9. **Proposition 9:** The written grounds must precede meaningful remand proceedings where the post-Mihir framework applies. The *Mihir Rajesh Shah* framework requires written grounds sufficiently before production for remand, with the judgment prescribing an outer limit of two hours before such production in the circumstances covered by its directions. This requirement must now be read with the qualification that the precise constitutional status of written communication in every case may require larger-Bench clarification.
10. **Proposition 10:** Non-compliance may have substantive consequences, but the nature of the defect remains relevant. *Dr Rajinder Rajan v. Union of India*, decided on 1 April 2026, demonstrates that failure to provide written grounds in accordance with the post-Mihir regime can render the arrest and consequent custody vulnerable to constitutional challenge. However, the later disposal of *State of Meghalaya v. Sonam Raghuvanshi* on 23 July 2026 indicates that courts may distinguish complete non-service of grounds from defective, inadequate or irregular communication. In the latter category, prejudice to the accused may remain a relevant consideration.

- 11. Proposition 11:** The uniform written-communication rule has been treated as prospective, though its interaction with Article 22(1) remains capable of further clarification. The Delhi High Court in *Karan Singh v. State* (NCT of Delhi) expressly treated the *Mihir Rajesh Shah* mandate concerning uniform written communication as prospective. This does not mean that Article 22(1) lacked force before *Mihir Rajesh Shah*; it means that the particular procedural form prescribed in that case was treated as governing future arrests.
- 12. Proposition 12:** Prospectivity does not mean that Article 22(1) did not apply before *Mihir Rajesh Shah*. The constitutional right to be informed of the grounds of arrest existed independently of *Mihir Rajesh Shah*. What was prospectively standardised was the written procedure governing its implementation. The distinction between the constitutional existence of the right and the judicially standardised mode of enforcement is therefore central to the correct understanding of the law.
- 13. Proposition 13:** The *Sonam Raghuvanshi* proceedings qualify any claim of doctrinal finality as of July 2026. The Supreme Court's 9 July 2026 observations in *State of Meghalaya v. Sonam Raghuvanshi* show that the written-grounds issue remained doctrinally live at the end of July 2026. The later order dated 23 July 2026 disposed of the particular petition without making a larger-Bench reference, but it did so on the narrower basis of distinguishing non-service from inadequate communication and examining prejudice. The broader inter-bench conflict concerning whether Article 22(1) invariably requires written communication therefore remained unresolved. Accordingly, the latest position is that written communication is the safer, stricter and presently dominant constitutional standard after *Mihir Rajesh Shah* and *Dr Rajinder Rajan*, but the precise mode-of-communication question remains open to possible larger-Bench clarification.

XXII. SUGGESTIONS AND RECOMMENDATIONS

1. **23.1 A Uniform Statutory Grounds-of-Arrest Form:** The BNSS framework should ideally be supplemented by a standardised "Grounds of Arrest" form. The document should contain:
 - the alleged offence;
 - the material factual allegations;
 - the specific role attributed to the accused;
 - the material facts connecting the accused to the alleged offence;
 - the statutory and factual reasons necessitating arrest;
 - the date and time of arrest;
 - the date and time of communication of the grounds;
 - the language in which the grounds were communicated; and
 - an acknowledgment by the arrestee, wherever practicable.

Such standardisation would substantially reduce subsequent disputes regarding compliance.

2. **23.2 Digital Acknowledgment:** Where technologically feasible, the written grounds may be supplied digitally with a time-stamped acknowledgment. A digitally authenticated record could establish the exact time at which the grounds were furnished and reduce factual disputes.
3. **23.3 Translation and Comprehension:** The constitutional requirement should not be reduced to the physical delivery of a document. The arrestee must understand the grounds. Where the arrested person does not understand the language of the arresting authority, the grounds should be translated or explained in a language understood by him.
4. **23.4 Judicial Scrutiny at the Remand Stage:** The Magistrate should actively verify:
 - whether grounds were communicated;
 - when they were communicated;

- whether they were supplied in writing;
- in what language;
- whether the arrestee understood them;
- whether the grounds were sufficiently specific; and
- whether the statutory and constitutional timelines were followed.

The arrest memo should not be treated as conclusive proof of constitutional compliance.

5. **23.5 Distinction between Investigation and Arrest:** Investigating agencies should be trained to understand that arrest is not a substitute for investigation. The proper sequence should ordinarily be: Information → Investigation → Assessment → Necessity → Arrest, if justified. The converse sequence: FIR → Arrest → Investigation should not become the institutional norm.
6. **23.6 Recording of Reasons for Non-Arrest:** The statutory scheme already recognises the importance of recording reasons where arrest is not made despite the existence of circumstances potentially permitting arrest. Investigating officers should be encouraged to record their decision-making process in a manner capable of subsequent judicial scrutiny.
7. **23.7 Accountability of Arresting Officers:** Repeated non-compliance with constitutional safeguards should attract appropriate administrative consequences. A constitutional right becomes meaningful only when institutional incentives support compliance.

XXIII. CONCLUSION

The jurisprudence of arrest in India is undergoing a fundamental constitutional transformation. The legal system is gradually moving away from an approach in which arrest is viewed as an ordinary incident of criminal investigation towards one in which arrest is recognised as a serious interference with personal liberty. The evolution may be understood through four stages: Power → Necessity → Communication → Judicial Accountability. The first stage asks whether the State possesses lawful authority to arrest.

The second asks whether arrest is actually necessary in the circumstances of the individual case.

The third asks whether the arrested person has been meaningfully informed of the grounds upon which liberty has been taken away. The fourth asks whether the arrest withstands judicial scrutiny.

The decisions in *Joginder Kumar* and *Arnesh Kumar* established the distinction between power and necessity. Pankaj Bansal strengthened the right to know the grounds. Ram Kishor Arora addressed the timing of communication and demonstrated the importance of prospectivity in procedural requirements. Prabir Purkayastha constitutionalised the principle beyond the PMLA. Vihaan Kumar examined the constitutional distinction between the right to be informed and the precise mode of communication. Kasireddy Upender Reddy clarified the distinction between warrant-based and warrantless arrests and emphasised the need for meaningful factual communication. Mihir Rajesh Shah subsequently brought the jurisprudence into the domain of ordinary criminal law and prescribed a uniform written-communication regime.

The subsequent decision in *Karan Singh* has given judicial support to the prospective operation of the uniform written-communication requirement, while Dr Rajinder Rajan demonstrates the substantive consequences of non-compliance with that requirement in post-Mihir arrests. The temporal controversy must nevertheless be approached with conceptual precision.

The constitutional right under Article 22(1) was not created by Mihir Rajesh Shah. It existed from the commencement of the Constitution. What the Supreme Court clarified and standardised in *Mihir Rajesh Shah* was the procedural manner in which that constitutional guarantee is to be implemented in the future. Consequently, two propositions can simultaneously be true:

1. First, persons arrested before 6 November 2025 were constitutionally entitled to be informed of the grounds of arrest.

2. Secondly, the uniform written procedure prescribed by Mihir Rajesh Shah operates prospectively.

This distinction prevents two opposite errors: treating Mihir Rajesh Shah as creating the constitutional right itself, or treating its prospective operation as rendering Article 22(1) irrelevant to earlier arrests. Ultimately, the legitimacy of the power of arrest depends not merely upon the seriousness of the offence or the statutory authority of the investigating agency. It depends upon whether the State can answer four questions:

1. Why can this person be arrested?
2. Why is it necessary to arrest this person?
3. What are the specific grounds for arresting this person?
4. Has the person been given a meaningful opportunity to challenge the deprivation of liberty?

A criminal justice system committed to constitutionalism must ensure that arrest is never treated as a declaration of guilt. The ultimate objective of arrest jurisprudence should therefore be to ensure that no person loses liberty merely because the State possesses the power to take it away.

XXIV. BIBLIOGRAPHY

A. Table of Cases

Sr. No.	Case	Citation	Principle
1	<u>Maneka Gandhi v Union of India</u>	(1978) 1 SCC 248	Procedure depriving liberty must be fair, just and reasonable
2	Joginder Kumar v State of U.P.	(1994) 4 SCC 260	Power to arrest is distinct from necessity to arrest

Sr. No.	Case	Citation	Principle
3	D.K. Basu v State of W.B.	(1997) 1 SCC 416	Safeguards against custodial abuse
4	Arnesh Kumar v State of Bihar	(2014) 8 SCC 273	Arrest is not automatic; necessity must be assessed
5	Pankaj Bansal v Union of India	(2024) 7 SCC 576	Written grounds of arrest in PMLA context
6	Ram Kishor Arora v Directorate of Enforcement	2023 INSC 1082	Timing of communication; prospective application of Pankaj Bansal
7	Prabir Purkayastha v State (NCT of Delhi)	(2024) 8 SCC 254	Constitutionalising of grounds-of-arrest requirement beyond PMLA
8	Vihaan Kumar v State of Haryana & Anr.	2025 INSC 162; (2025) 5 SCC 799	Constitutional content and mode of communication
9	Kasireddy Upender Reddy v State of Andhra Pradesh & Ors.	2025 INSC 768	Warrant itself may constitute grounds; specific grounds required in warrantless arrest
10	Mihir Rajesh Shah v State of Maharashtra & Anr.	2025 INSC 1288	Written grounds applicable to ordinary as well as special offences; prospective procedural framework

Sr. No.	Case	Citation	Principle
11	Karan Singh v State (NCT of Delhi)	2026 DHC 570-DB	Mihir Rajesh Shah written-communication rule operates prospectively
12	Dr Rajinder Rajan v Union of India & Anr.	Decided 1 April 2026	Post-Mihir consequences of failure to supply written grounds before remand

B. Table of Statutes

Sr. No.	Statute	Provision	Subject
1	Constitution of India	Art. 14	Equality and protection against arbitrary State action
2	Constitution of India	Art. 21	Life and personal liberty
3	Constitution of India	Art. 22(1)	Grounds of arrest and right to counsel
4	Constitution of India	Art. 22(2)	Production of arrested person before Magistrate
5	Code of Criminal Procedure, 1973	Section 41	Arrest without warrant
6	Code of Criminal Procedure, 1973	Section 41A	Notice of appearance

7	Code of Criminal Procedure, 1973	Section 41B	Procedure of arrest and duties of arresting officer
8	Code of Criminal Procedure, 1973	Section 50	Grounds of arrest and right to bail
9	Code of Criminal Procedure, 1973	Section 50A	Information regarding arrest to relative or friend
10	Code of Criminal Procedure, 1973	Section 57	Production before Magistrate within twenty-four hours
11	Code of Criminal Procedure, 1973	Section 167	Procedure where investigation cannot be completed within twenty-four hours
12	Bharatiya Nagarik Suraksha Sanhita, 2023	Section 35	Arrest without warrant
13	Bharatiya Nagarik Suraksha Sanhita, 2023	Section 36	Procedure of arrest and duties of arresting officer
14	Bharatiya Nagarik Suraksha Sanhita, 2023	Section 47	Grounds of arrest and right to bail
15	Bharatiya Nagarik Suraksha Sanhita, 2023	Section 48	Information regarding arrest
16	Bharatiya Nagarik Suraksha Sanhita, 2023	Section 58	Production before Magistrate

17	Bharatiya Nagarik Suraksha Sanhita, 2023	Section 187	Procedure where investigation cannot be completed within twenty-four hours
18	Prevention of Money-Laundering Act, 2002	Section 19	Power to arrest
19	Unlawful Activities (Prevention) Act, 1967	Relevant provisions	Arrest and procedural safeguards
20	Narcotic Drugs and Psychotropic Substances Act, 1985	Relevant provisions	Arrest and custodial safeguards
21	Customs Act, 1962	Section 104	Power to arrest
22	Central Goods and Services Tax Act, 2017	Section 69	Power to arrest

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