



? Supreme Court Strengthens Article 22 Safeguards, Restricts Re-Arrest After Unconstitutional Arrest and Mandates Judicial Oversight

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Recent Developments: Supreme Court Strengthens Protection Against Illegal Arrest

- In **Jaskaran Jeet Singh Deol v. State of Punjab**, the Supreme Court held that failure to furnish the **written grounds of arrest** violates the constitutional guarantee under **Article 22(1)** and renders the arrest **illegal and unconstitutional**.
- A Bench of **Justices Ujjal Bhuyan and Atul S. Chandurkar** further ruled that an investigating agency cannot independently re-arrest a person whose earlier arrest was declared illegal for breach of Article 22(1).
- The Court permitted the possibility of re-arrest in appropriate cases but subjected it to **prior judicial scrutiny, written grounds of arrest, senior-officer endorsement and accountability for the original violation**.
- The ruling is significant for **personal liberty, due process, police accountability and judicial oversight** because it prevents a constitutional violation during arrest from being treated as an ordinary procedural defect.

Article 22: Constitutional Protection Against Arbitrary Arrest and Detention

Scope and Constitutional Position:

- **Article 22** is a Fundamental Right under **Part III of the Constitution** and provides safeguards to persons arrested or detained.
- Article 22 primarily regulates **arrest and detention**, while **Article 21** provides the broader constitutional protection of life and personal liberty.
- Article 22(1) requires that an arrested person be informed of the **grounds of arrest** as soon as possible and be allowed to consult and be defended by a **legal practitioner of their choice**.
- Article 22(2) requires every arrested person to be produced before the **nearest Magistrate within 24 hours**, excluding the time necessary for the journey from the place of arrest to the court.
- Detention beyond this period requires the **authority of a Magistrate**, subject to the constitutional framework governing preventive detention.
- The safeguards under Article 22 therefore create a constitutional check on the **executive power of arrest and detention**.

Article 22(1) and Written Grounds of Arrest:

- The Supreme Court has clarified that communicating the **grounds of arrest** is not merely a procedural formality but a substantive constitutional safeguard.
- The grounds must contain the **basic facts that necessitated the particular arrest**, enabling the accused to understand the case, consult counsel, oppose custodial remand and seek appropriate legal relief.

- The Court has distinguished “**grounds of arrest**” from generic “**reasons for arrest**” mentioned in a standard arrest memo.
- Generic reasons such as preventing further offences, protecting evidence or facilitating investigation do not by themselves constitute the accused-specific **grounds of arrest**.
- The requirement applies irrespective of the **gravity of the alleged offence** and is not confined to ordinary offences.

Judicial Evolution of the Right to Know Grounds of Arrest

Pankaj Bansal v. Union of India:

- In **Pankaj Bansal v. Union of India**, the Supreme Court held that persons arrested under the **Prevention of Money Laundering Act, 2002** must be furnished the grounds of arrest in writing.
- The Court linked this requirement directly to **Article 22(1)** because knowledge of the grounds is essential for an arrested person to effectively challenge custody and seek bail.

Prabir Purkayastha v. State (NCT of Delhi):

- In **Prabir Purkayastha v. State (NCT of Delhi)**, the Supreme Court extended the written-grounds principle to arrests under the **Unlawful Activities (Prevention) Act, 1967**.
- The Court held that the constitutional safeguard cannot be diluted merely because an arrest is made under a **special criminal statute**.
- It also clarified that filing a **chargesheet** or passing a subsequent remand or cognisance order cannot retrospectively cure an arrest that was unconstitutional from the beginning.

Mihir Rajesh Shah and the Re-Arrest Question:

- Subsequent jurisprudence developed the procedural framework for cases where an accused is released because the constitutional requirement concerning written grounds of arrest was not satisfied.
- The latest **Jaskaran Jeet Singh Deol** judgment strengthens this framework by making **judicial imprimatur** central to any proposed re-arrest after such an illegal arrest.

Jaskaran Jeet Singh Deol Judgment: Re-Arrest Cannot Be an Automatic Executive Action

Facts of the Case:

- The case arose from a **POCSO-related investigation in Punjab** in which the accused was arrested but not furnished the written grounds of arrest.
- The Magistrate found that the constitutional requirement under **Article 22(1)** had not been complied with and directed the accused's release.
- The investigating agency subsequently sought custody again, raising the central constitutional question of whether a person released because of an illegal arrest could be **re-arrested for the same offence**.
- The Supreme Court held that the release did not create a permanent immunity from arrest, but any subsequent arrest must comply with a **strict judicially supervised procedure**.

Conditions for Re-Arrest:

- The investigating agency must first furnish the accused with the **written grounds of arrest**.
- It must then submit an application before the concerned **Magistrate** seeking permission for re-arrest.
- The application must specify the **reasons and necessity for re-arrest** and explain why the grounds of arrest were not supplied during the initial arrest.
- The application must carry the **endorsement of the immediate superior authority** of the officer responsible for the earlier violation.

- The Magistrate must examine whether there were **bona fide reasons** for the initial failure and whether re-arrest is actually necessary.
- The Magistrate should decide the application **expeditiously, preferably within one week**, while following principles of natural justice.
- The investigation must be **transferred to another officer**, preventing the same officer responsible for the constitutional violation from continuing the investigation.
- A **departmental inquiry** must be initiated against the officer responsible for the original lapse, with disciplinary consequences where the violation is established.

Why the Judgment Matters for Personal Liberty

Illegal Detention Is Different from Bail:

- The Supreme Court clarified that release following a violation of Article 22(1) is **not the same as release on bail**.
- In such circumstances, the person is released because the detention itself has become **illegal and unconstitutional**, rather than because a court has granted conditional liberty through bail.
- This distinction is important because a subsequent investigation cannot simply treat the earlier unconstitutional detention as though it had been a valid arrest followed by ordinary bail.

Judicial Oversight Over Re-Arrest:

- The Court held that once Article 22(1) has been violated, the power to re-arrest cannot remain solely with the **same authority that committed the violation**.
- Re-arrest therefore requires **judicial imprimatur**, creating an institutional check between the investigating agency and the decision to restore custody.
- The framework balances two constitutional concerns, **protection of personal liberty** and the legitimate requirement of investigating serious offences.

UPSC Constitutional and Governance Linkages

Key Constitutional Provisions:

- **Article 20:** Protection in respect of conviction for offences.
- **Article 21:** Protection of life and personal liberty.
- **Article 22(1):** Right to know the grounds of arrest and consult a legal practitioner.
- **Article 22(2):** Production before a Magistrate within 24 hours.
- **Article 22(3):** Constitutional exceptions relating to enemy aliens and preventive detention.
- **Article 22(4)–(7):** Safeguards and legislative framework concerning preventive detention.

Criminal Procedure Linkage:

- The constitutional safeguards concerning arrest are complemented by the **Bharatiya Nagarik Suraksha Sanhita, 2023 (BNSS)**.
- The judgment demonstrates how statutory arrest procedures must operate consistently with **Fundamental Rights** and cannot override constitutional safeguards.
- The case therefore illustrates the principle of **constitutional supremacy**, under which executive investigation remains subject to judicial and constitutional limitations.

Significance for Governance and Rule of Law

Police Accountability:

Kamaraj IAS Academy

Plot A P.127, AF block, 6 th street, 11th Main Rd, Shanthi Colony, Anna Nagar, Chennai, Tamil Nadu 600040

Phone: **044 4353 9988 / 98403 94477 / Whatsapp : 09710729833**

- The ruling strengthens **institutional accountability** by requiring investigation transfer and departmental inquiry where an arresting officer violates Article 22(1).
- It discourages the treatment of constitutional violations as routine administrative mistakes that can be corrected after custody has already been secured.

Due Process and Separation of Powers:

- The decision reinforces **judicial review over executive action** while preserving the investigating agency's ability to seek custody when legally justified.
- It establishes a structured balance between **investigative autonomy and constitutional oversight**, rather than granting either side unrestricted authority.
- The requirement of Magistrate approval strengthens the role of the judiciary as an independent safeguard against arbitrary deprivation of liberty.

Value Addition for UPSC:

- **GS-II:** Fundamental Rights, constitutional governance, judicial review, separation of powers, rule of law and accountability of executive agencies.
- **GS-IV:** Constitutional morality, integrity in public administration, accountability, procedural fairness and respect for individual dignity.
- **Essay:** The case illustrates that **personal liberty is protected not only by substantive rights but also by procedural safeguards that constrain State power**.
- **Prelims Fact:** Article 22(1) concerns **grounds of arrest and legal representation**, while Article 22(2) concerns **production before a Magistrate within 24 hours**.
- **Case-Law Chain:** **Pankaj Bansal ? Prabir Purkayastha ? Mihir Rajesh Shah ? Jaskaran Jeet Singh Deol** reflects the judicial development of safeguards concerning communication of arrest grounds and the consequences of non-compliance.
- **Core Principle:** An arrest made in violation of a constitutional safeguard cannot be reduced to a **mere procedural lapse**; where the arrest is rendered unconstitutional, subsequent re-arrest requires compliance with a **judicially supervised constitutional procedure**.