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Article 22: Preventive Detention

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Article 22: Preventive Detention

Two people are arrested. One is told why, is taken to a magistrate within 24 hours, and is defended by a lawyer. The other is held for months with no trial in sight. The Constitution allows both. Article 22 draws the line between ordinary arrest and preventive detention.

What are the two tracks of Article 22?

Ordinary arrest

Article 22 has two tracks. Clauses (1) and (2) cover ordinary arrest. Clauses (3) to (7) cover preventive detention.

A person arrested under an ordinary law has four rights.

- Police must tell the person the **grounds** for the arrest, as soon as may be.
- The person can consult a **lawyer of their choice**.
- The lawyer can defend them.
- They must reach the nearest **magistrate within 24 hours**. The journey time does not count.

No one can be kept in custody beyond 24 hours without a magistrate's authority.

Sources: constitutionofindia.net

Preventive detention

Preventive detention means holding a person to stop a feared offence. No crime has been proved and no trial happens.

Clause (3)(b) says the ordinary-arrest rights in clauses (1) and (2) do not apply to it.

A stricter set of checks takes over instead. It is precaution, not punishment.

So every Article 22 question starts with one step. Decide which track the case is on.

Sources: indiankanoon.org; constitutionofindia.net

The two tracks side by side

Point	Ordinary arrest, clauses (1)-(2)	Preventive detention, clauses (4)-(7)
Purpose	Deal with an offence	Stop a feared offence
Magistrate within 24 hours	Yes	No
Lawyer of choice	Yes	No
Grounds told	As soon as may be	As soon as may be, but facts against public interest can be withheld
Longer than three months	Not applicable	Needs an Advisory Board, unless Parliament provides otherwise

Sources: constitutionofindia.net; indiankanoon.org

Order Authority orders detention
Grounds Told as soon as may be
Representation Earliest chance to object
3 months Advisory Board reports

Quick check 1. A person held under a preventive detention law has the right to be produced before a magistrate within 24 hours. *(True or False?)* See answer ↓

What safeguards protect a person under preventive detention?

The three-month rule and the Advisory Board

A preventive detention law cannot hold anyone longer than **three months** unless an Advisory Board agrees.

The Board must report, before the three months end, that there is sufficient cause.

Its members are judges of a High Court, former judges, or persons qualified to be judges.

- The Board is the one independent check between a person and the order.
- Parliament can still set a maximum period of detention.

That last point shows why the three-month rule is not the whole story.

Sources: constitutionofindia.net; indiankanoon.org

Grounds, representation and Parliament's power

The detaining authority must tell the person the **grounds** of the order, as soon as may be. It must also give the earliest chance to make a **representation** against it.

Clause (6) sets a limit. The authority need not disclose facts it thinks are against the public interest.

Clause (7) lets Parliament set three things by law.

- The cases where detention beyond three months needs no Board.
- The **maximum period** of detention.
- The procedure the Board follows.

All these safeguards are procedural. They check how detention is done.

Sources: constitutionofindia.net; thakur-foundation.org

> **Quick check 2.** Under Article 22, the authority must always disclose every fact behind a detention order. *(True or False?)* See answer ↓

Who is left out of the ordinary-arrest rights?

Enemy aliens and preventive detainees

Two groups cannot claim the rights in clauses (1) and (2).

- An **enemy alien**, meaning a citizen of a country at war with India, for the time being.
- Anyone arrested or detained under a law providing for **preventive detention**.

Both exceptions sit in clause (3).

Note the difference. Preventive detainees still keep the safeguards of clauses (4) to (7).

Sources: thakur-foundation.org; constitutionofindia.net

> **Quick check 3.** Enemy aliens can claim the 24-hour rule of Article 22(2). *(True or False?)* See answer ↓

How did Gopalan and the 44th Amendment shape the law?

Gopalan, 1950

In A.K. Gopalan v. State of Madras (1950), the Supreme Court upheld the Preventive Detention Act, 1950. It decided the case on 19 May 1950.

The petitioner sought release through a habeas corpus petition under Article 32.

One part failed. **Section 14** barred a detainee from telling the Court the grounds of the order. The Court held it void to that extent.

The rest of the Act stood. The Court also held that Article 19 does not apply to a law that deals directly with preventive detention.

Sources: indiankanoon.org

The 44th Amendment

The 44th Amendment (1978) rewrote clause (4) in Section 3.

- The limit would fall from three months to **two months**.
- The Board would have a Chairman who is a **serving High Court judge**.
- It would have at least two other members.
- The Chief Justice of the High Court would help constitute the Board.

But the Act came into force only on dates the Centre notified. That change to Article 22 was not brought into force. The original three-month rule still operates.

Sources: indiankanoon.org; thakur-foundation.org

Why not give preventive detainees a trial?

Because nothing has happened yet. The state acts to stop a feared offence.

Without a trial, the grounds and the Advisory Board are the main checks left.

This is why courts and exams focus on these safeguards.

Sources: indiankanoon.org; thakur-foundation.org

> **Quick check 4.** The 44th Amendment's change to the Advisory Board in Article 22 was brought into force in 1978. *(True or False?)*
>
> See answer ↓

What did D.K. Basu add to the safeguards of arrest?

The D.K. Basu guidelines

Clause (1) and (2) say little about how police must behave. In D.K. Basu v. State of West Bengal (1997), the Supreme Court added steps for every arrest.

- The police officer must prepare a **memo of arrest** at the time of arrest. A witness must attest it, and the arrestee must counter-sign it.
- The arrestee may have a friend or relative told of the arrest as soon as practicable.
- A doctor must examine the arrestee every 48 hours in custody.
- The arrestee may meet a lawyer during interrogation, though not throughout it.

Sources: indiankanoon.org

> **Quick check 5.** Under the D.K. Basu guidelines, the police must prepare a memo of arrest at the time of arrest. *(True or False?)*
>
> See answer ↓

What happened to liberty during the Emergency?

ADM Jabalpur, 1976

During the Emergency, detainees asked courts to free them through habeas corpus. A majority of four judges of the Supreme Court held that Article 21 was the sole repository of the right to life and liberty. When Article 21 was suspended, those rights fell with it.

Justice H.R. Khanna dissented. He held that the rule of law did not end during an emergency.

Sources: indiankanoon.org

How the law answered

In 2017, a nine-judge Bench called the four majority judgments in ADM Jabalpur **seriously flawed**. It held that life and personal liberty are inalienable rights.

The 44th Amendment (1978) had already acted. It excepted Articles 20 and 21 from the rights that an emergency can suspend.

Sources: indiankanoon.org

> **Quick check 6.** The 44th Amendment allows Article 21 to be suspended during an emergency. *(True or False?)* See answer ↓

Exam Edge

Previous Year Questions

Real questions on this topic.

Why does preventive detention still matter today?

Reading a detention case

Courts still test preventive detention laws against Article 22. A.K. Roy v. Union of India (1982) tested the National Security Act, 1980.

The Court held that preventive detention is not barred by the Constitution. It also refused to strike down the Act for vagueness.

When you read about a detention under such a law, ask four questions.

- Was it within the **three-month** limit, or did a Board report?
- Were the **grounds** given?
- Was a **representation** allowed?
- Did an **Advisory Board** find sufficient cause?

Sources: thakur-foundation.org

An example: the National Security Act, 1980

The National Security Act shows these limits at work. The government must place the grounds before its Advisory Board within **three weeks** of detention. The Board must report within **seven weeks**.

The Act also sets a maximum of **twelve months** of detention in one stretch.

So Article 22 gives a floor of safeguards. A law like this fills in the exact periods.

Sources: thc.nic.in

What should you remember?

Ordinary arrest: 24 hours and a magistrate. Preventive detention: three months and an Advisory Board.

Clause (7) is Parliament's power. Clause (6) allows withholding facts in the public interest.

Gopalan was decided in 1950. Enemy aliens are left out of clauses (1) and (2).

Sources: indiankanoon.org; constitutionofindia.net

Practice MCQs

1. Under Article 22(2), within how many hours must an arrested person be produced before the nearest magistrate, excluding journey time?

A. 12 hours

B. 24 hours

C. 48 hours

D. 72 hours

See answer ↓

2. Under Article 22(4), a preventive detention law cannot ordinarily allow detention beyond three months unless which body reports sufficient cause?

A. The police commissioner

B. A magistrate’s court

C. An Advisory Board

D. The President

See answer ↓

3. Which clause of Article 22 allows Parliament to fix the maximum period of preventive detention?

A. Clause (3)

B. Clause (5)

C. Clause (6)

D. Clause (7)

See answer ↓

4. In A.K. Gopalan v. State of Madras (1950), which section of the Preventive Detention Act did the Supreme Court hold void?

A. Section 14

B. Section 3

C. Section 7

D. Section 10

See answer ↓

5. Which change to Article 22(4) did Section 3 of the 44th Amendment (1978) propose, though it was never brought into force?

A. Abolishing preventive detention

B. Cutting the limit from three months to two months

C. Letting the police chair the Advisory Board

D. Removing the right to a lawyer

See answer ↓

6. Which person cannot claim the rights given by Article 22(1) and (2)?

A. A person arrested for theft

B. A citizen held by the police overnight

C. A person who has hired a lawyer

D. A person held under a preventive detention law

See answer ↓

Answer Key

1. **B.**
   Clause (2) sets a limit of 24 hours, not counting the journey to the court. No one can be held longer without a magistrate's authority.
   ↑ Q1
2. **C.**
   The Advisory Board must report before the three months end. Its members are High Court judges, former judges or persons qualified to be judges.
   ↑ Q2
3. **D.**
   Clause (7) lets Parliament prescribe the maximum period. It also covers cases that need no Board and the Board's procedure.
   ↑ Q3
4. **A.**
   Section 14 barred a detainee from telling the Court the grounds of the order. The Court held it void to that extent and upheld the rest of the Act.
   ↑ Q4
5. **B.**
   The 44th Amendment would have cut the limit to two months. It would also have made a serving High Court judge the Board's Chairman.
   ↑ Q5
6. **D.**
   Clause (3)(b) removes the rights of clauses (1) and (2) from preventive detainees. An enemy alien is the other excluded person.
   ↑ Q6

Quick-check answers

1. **False.** Clause (3)(b) removes the rights in clauses (1) and (2) for preventive detention. ↑ 1
2. **False.** Clause (6) lets the authority withhold facts it considers against the public interest. ↑ 2
3. **False.** Clause (3)(a) excludes an enemy alien from clauses (1) and (2). ↑ 3
4. **False.** That change was never notified into force. ↑ 4

5. **True.** The memo must be attested by a witness and counter-signed by the arrestee. ↑ 5
6. **False.** It excepted Articles 20 and 21 from suspension. ↑ 6

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