

Protection against arrest and detention in
certain cases
ARTICLE 22

TWO ASPECTS OF ARTICLE
22

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graph TD; A[TWO ASPECTS OF ARTICLE 22] --> B[PERSONS DETAINED UNDER ORDINARY LAW ART. 22(1) TO 22(3)]; A --> C[PERSONS DETAINED UNDER PREVENTIVE DETENTION LAWS [ART. 22(4) TO 22(7)]]
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PERSONS DETAINED UNDER
ORDINARY LAW
ART. 22(1) TO 22(3)

PERSONS DETAINED UNDER
PREVENTIVE DETENTION
LAWS
[ART. 22(4) TO 22(7)]

- **Persons detained under ordinary law [article 22(1) to 22(3)]**
- Article 22 (1) and 22(2) provide the following rights:-
- right to be informed of Grounds of arrest [Art. 22(1)]
- Right to be consulted and represented by a lawyer of choice [article 22(1)]
- Right to be produced before the magistrate within 24 hours of arrest [article 22(2)]

- No detention in custody beyond 24 hours except with the order of the magistrate.
- Article 22 provides minimum procedural safeguards that must be provided in any law enacted by the State.
- Article 22 provides minimum procedural safeguards that must be provided in any law enacted by the State.
- Article 22(3) provides that clause 1 and 2 shall not apply to any alien and person arrested detained under preventive detention laws.

- **Persons detained under preventive detention laws article 22 (4) to article 22 (7)**
- **Article 22 (4) to 22 (7)** lay down the procedure to be followed in case of a person is determined under preventive detention laws.
- The object of preventive detention is to intercept the person before he commits a crime. Arrest in such a law is made on the basis of suspicion or reasonable probability of commission of offence.
- Article 22(4) provides that no law providing for preventive detention shall authorise the detention of a person for a longer period than 3 months unless the advisory body reports that detention beyond the period of three months is necessary.

- Advisory board shall consist of persons who are or have been or are qualified to be appointed as judges of the High Court.
- Article 22(5) provides that the authority making an order under preventive detention laws shall communicate the grounds on which the order is made and shall afford him the opportunity to make representation against order.
- Article 22(6) provides that authority may refrain from disclosing such facts which in its opinion are against public interest to disclose.

- Article 22(7) enables the Parliament to make laws of preventive detention prescribing:-
- Circumstances under which and classes of persons who may be detained for a period longer than three months without obtaining the opinion of the advisory body.
- maximum period of which a person may be detained under preventive detention laws
- Procedure to be followed by the advisory board.
- 44th constitutional amendment 1987 changed certain rules in article 22 (4) relating to preventive detention but this amendment has not been brought into force.

- **A.K. Gopalan Vs. The State of Madras** The preventive Detention Act, 1950, with the exception of section 14 thereof did not contravene any of the Articles of the Constitution and even though section 14 was ultra vires inasmuch as it contravened the provisions of Article 22 of the Constitution, as this section was severable from the remaining sections of the Act, the invalidity of Section 14 did not affect the validity of the Act as a whole and the detention of the petitioner was not illegal.

- In **A K Roy vs Union of India 1982** Supreme Court laid down following guidelines relating to arrest under preventive detention laws:
- After detention the family members of detenu should be informed about detention and place of detention
- detenu must be detailed in a place where he had actually resides unless in certain exceptional circumstances detention at other places is feasible
- return you must be and title to books writing materials on food and visits from family and friends