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Analysis of Article 22 of India constitution

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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.¹

Every person who is arrested and detained in Custody shall be produced before the nearest magistrate Within a period of twenty-four hours of such arrest Excluding the time necessary for the journey from the Place of arrest to the court of the magistrate and no such Person shall be detained in custody beyond the said Period without the authority of a magistrate.

Abstract

Article 22 is incorporated in part 3 of Indian constitution, thereby because of this this Article is recognized as a fundamental right of citizens. This article is closely related to individuals personal liberty. Here, Personal Liberty means civil and political rights² This article deals with protective right of Individuals from arrest and detention which impact on their liberty and also ensure that there is no miscarriage of justice.

This article protect every Individuals from arbitrary arrest and detention beside they are Indian or not an Indian this is because India constitution provides “Right of Equality” to every individual.³ This doesn't mean that this Article is Absolute it is not provided to enemy alien this means a contry india does not have friendly relationship.

This right is applicable over all arrest except Arrest under warrant.⁴

Explanation of Article 22

¹The Constitution Of India

² 328 International Journal of Law ISSN: 2455-2194

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³ Article 22 of the Indian Constitution

⁴ 328 International Journal of Law ISSN: 2455-2194

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This article has been categorised into 2 parts

- **Punitive detention**
- **Preventive detention**

Punitive detention – Punitive detention refers to type of detention which is done when the individual has actually committed the crime. If the individual has been detained under this than this Article provide you these safeguards

- If any person is detained he/she shall have right to be told on what grounds he has been arrested by the officer. ⁵
- He shall also have the right to appoint or to hire any advocate or any legal practitioner for his case of his Choice.
- The detained person shall be produced before magistrate just after 24 hour's of his / her detention this provision does not include transportation times
- The detention of that person can only be extended only after consulting with magistrate and producing the person physically in front of him

Objective of these provisions

- This is to protect individuals from arbitrary detention
- To ensure fairness
- To Protect arrested person that he / she shall not be kept in darkness⁶

Landmark Cases

Joginder Kumar v. State of Uttar perdes⁷

The apex court held that no arrest can be made on merely allegation of an offence. By arrest the reputation of that person is harmed. The Court stated that in the interest of rights of person and

⁵Notes on Article 22 of the Indian Constitution
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⁷ Joginder Kumar vs State of UP - Case Analysis



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also integrity of police officers, an arrest should only be made when the officer is satisfied after investigating that the complaint is genuine and bona fide.

Guidelines brought under this case-

- A person arrested and held in custody has the right to give information to their friend, relative or another person about their arrest.
- An entry shall be made in the police diary by the officer detailing who was informed of the arrest.
- The reasons for making the arrest must be recorded in the case diary.
- It is the duty of the Magistrate to before whom the arrested person is brought to check that these requirements have been fulfilled or not.

CBI vs. Anupam J. Kulkarni⁸

Court established guidelines regarding the arrest of an accused, in case investigation is not completed within 24 hours. The court held that the Magistrate can authorise the detention of the accused for 15 days.

Hussainara khatoon v. State of Bihar

Court provide free legal aid service which gives reasonable opportunity to every individual to have legal representation beside worst financial condition.

Preventive detention ⁹

Preventive detention is the type of detention where the individual is detained to prevent him/ her from committing a crime which is reasonably assumed that they may commit

- Here, the person can not be detained from more than three months unless it can only be extended with opinion of advisory board

⁸ Article 22 of the Indian Constitution Garg

⁹

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- A person arrested and held in custody has the right to give information to their friend, relative or another person about their arrest.
- He shall also have the right to appoint or to hire any advocate or any legal practitioner for his case of his Choice

Exceptions

These protections do not apply to

- Enemy aliens (citizens of a country with which India is currently at war).
- Anyone arrested or detained under a preventive detention law.

Parliament powers¹⁰

States that the Parliament may prescribe by law-

- In certain circumstances and classes of cases the detention of persons can exceed for more than 3 months time while under the law requires preventive detention without trying to obtain the opinion of an Advisory Board.
- The maximum period of detention under any law providing for preventive detention in any class or classes of cases.
- the process that an Advisory Board must use when conducting an investigation

Conclusion

In a nut shell Article 22 is the Constitution's way of standing between an ordinary individual and the immense power of the state. On one hand, it protects our personal liberty by ensuring that if the police must not do arbitrary detention.

On the other hand, it acknowledges that the state sometimes needs a tool like preventive detention to stop major threats before they happen. Because this power is easily abused, Article 22 acts as a legal limit putting a strict three-month limit on it and requiring independent judges to review the executive's homework.

Ultimately, Article 22 ensures that even when the government acts to protect national security, it cannot completely abandon the rule of law. It is a vital reminder that in a



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democracy, individual liberty is the rule, and detention without trial must always be the protected.