

Article 22

- **22. Protection against arrest and detention in certain cases**
- (1) 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**
- (2) 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

- (3) Nothing in clauses (1) and (2) shall apply
- (a) to any person who for the time being is an enemy alien; or
- (b) to any person who is arrested or detained under any law providing for preventive detention

- (4) **No law** providing for preventive detention shall authorise the detention of a person **for a longer period than three months**
- unless (a) an **Advisory Board** consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months **that there is in its opinion sufficient cause for such detention:**
- (5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, **communicate to such person the grounds on which the order has been made** and shall afford him the earliest **opportunity of making a representation** against the order

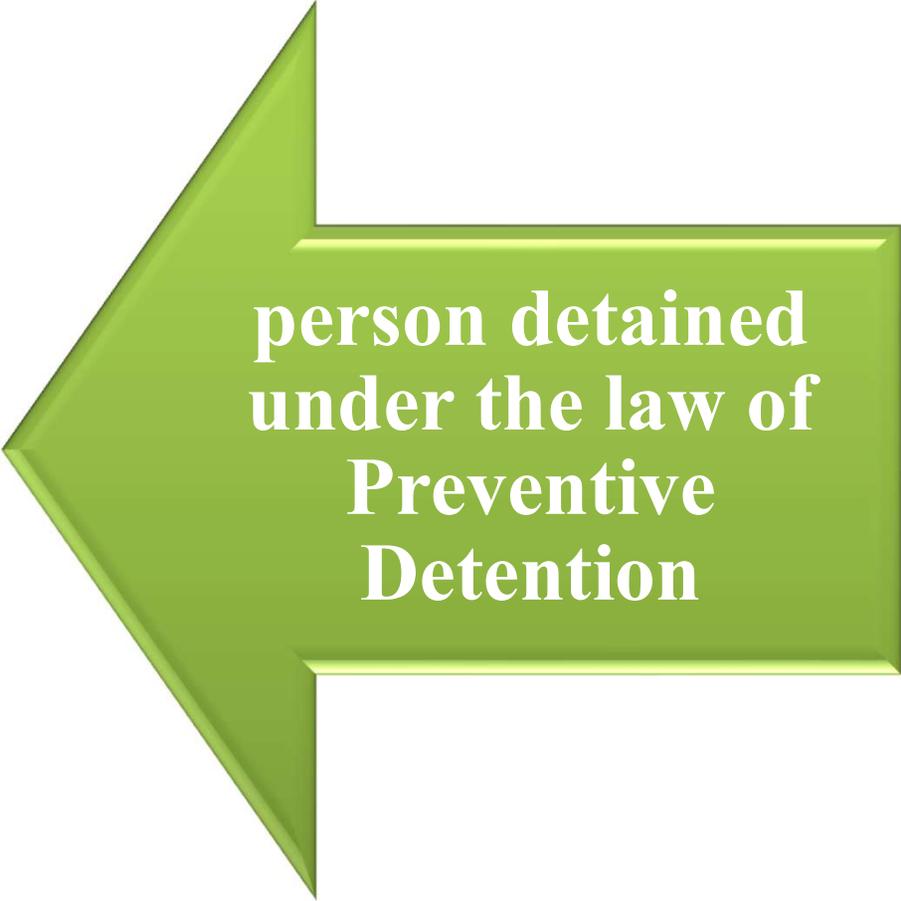
- (6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose
- (7) Parliament may by law prescribe
- (a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub clause (a) of clause (4)
- (b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention;

- Article 22 makes the **minimum procedural requirements** which must be included in any law enacted by legislature in accordance
- According to Article 21 a person can be deprived of his life or personal liberty in accordance with the procedure prescribed by law.
- Article 22 provides those procedural requirements. If these procedural requirements are not complied with, it would then be deprivation of personal liberty which is not in accordance with the procedure established by law.

- Article 22 deals with two separate matters



**persons arrested
under the
ordinary law of
crimes**



**person detained
under the law of
Preventive
Detention**

- **Article 22 not a complete Code.**
- At one time it was thought that Art. 22 was a complete Code in regard to laws providing for preventive detention and that the validity of an order of detention should be determined strictly according to the terms within the four corners of Article 22

- It was held in *A. K. Gopalan v. State of Madras*, AIR 1950
- that a detenu cannot claim the freedoms guaranteed by Article 19(1)(d) if it was infringed by his detention, and that the validity of the preventive detention law was not to be tested in the light of the reasonableness of the restrictions imposed thereby on the freedom of movement; nor on the ground that his right to personal liberty was infringed under Art. 21 otherwise than according to the procedure established by law
- In *R.R. Cooper v. Union of India* 1970
- The court held the procedure prescribed under the preventive detention law must be reasonable and just and fair under Articles 14, 19 and 21 of the Constitution
- the Court has applied it in relation to Article 14, 19 and 21

Rights of arrested person under ordinary law

- (a) the right to be informed 'as soon as may be' of ground of arrest,
- (b) the right to consult and to be represented by a lawyer of his own choice,
- (c) the right to be produced before a Magistrate within 24 hours,
- (d) the freedom from detention beyond the said period except by the order of the Magistrate

Scope

Article 22 (1)
and (2) is
available to



Citizens and



non citizens

Right to be informed 'as soon as may be' of ground of arrest

- Section 50 of CrPC states that it is the duty of every police officer to arrest any person without a warrant, to let the person being arrested know the grounds of arrest immediately. Non-compliance with this provision renders the arrest illegal
- Section 55
- -When any police officer making an investigation or requires any officer subordinate to him to arrest without a warrant any person who may lawfully be arrested without a warrant, he shall deliver to the officer required to make the arrest an **order in writing, specifying the person to be arrested and the offence or other cause for which the arrest is to be made** and the officer so required shall, **before making the arrest, notify** to the person to be arrested the substance of the order and, if so required by such person, shall show him the order.

- Section 75 - The police officer or other person executing a warrant of arrest shall notify the substance thereof to the person to be arrested, and, if so required, shall show him the warrant.

- This is necessary to enable the arrested person to know the grounds of his arrest and **to prepare for his defence.**
- Article 22 is in the nature of a **directives**
- The words used in Article 22 (1) are **as soon as** may be' which means as nearly as is reasonable in the circumstances of a particular Case.
- If the grounds of arrest is delayed it must be justified by reasonable circumstances.
- **In Joginder Kumar v. State of U.P. 1994** the SC has laid down guidelines governing arrest of a person during investigation
- This is intended to strike a balance between needs of police on one hand and protection of human rights of citizens from oppression and injustice at hands of law enforcing agencies
- There must be some reasonable justification for arrest that such arrest was necessary and justified

- The National Police Commission in its third report has pointed out that power of arrest is one of **the chief source of corruption in the police.**
- According to the report, **nearly 60 per cent of the arrests are either unnecessary or unjustified**

- The Court has laid down the following guidelines to be followed in making arrest of a person :

(1) An arrested person being held in custody is entitled, if he so request to have one friend, relative or other person who is known to him or likely to take an interest in his welfare told as far as is practicable that he has been arrested and where he is being detained.

(2) Police officer shall inform the arrested person when he is brought to police station of this right.

(3) An entry shall be required to be made in the police diary as to who was informed of the arrest.

The Court directed that it shall be the duty of the Magistrate, before whom the arrested person is produced to satisfy himself that these requirements have been complied with.

Exceptions

- If the person is at the time being an enemy alien.
- If the person is arrested under certain law made for the purpose of “**Preventive Detention**”

