BLOGS

Notes on Article 22 of the Indian Constitution

Ruchika Mohapatra · 04 Jan 2024

Edit TABLE OF CONTENTS Introduction Clauses under Article 22 Landmark Cases on Article 22 Important Questions on Article 22 Conclusion

Introduction

Article 22 of the Indian Constitution pertains to the protection of a person's right to personal liberty and safeguards against detention or arrest without proper legal procedure. This article is considered to be one of the fundamental rights guaranteed to citizens of India.

Article 22 applies to both citizens and non-citizens and protects individuals in cases of arrest and detention in certain cases by providing certain important rights. The core object behind this clause is to ensure the personal liberty of individuals is maintained by preventing arbitrary arrests and detention. These safeguards are, however, not applicable to

- Enemy aliens
- People arrested under preventive detention law.

Clauses under Article 22 of the Indian Constitution

Article 22(1) states that any person who is arrested and detained shall be informed of the grounds for such arrest and shall have the right to consult and be represented by a legal practitioner of their choice. This provision ensures that an arrested person is not kept in the dark about the reason for their arrest and has the right to legal assistance.

The first right states that the person who has been arrested or detained needs to be informed of the grounds of such arrest or detention thereby ensuring that the arrest/ detention is not arbitrary. In the case of ***Joginder Kumar v. State of U.P.*** it was held that a detained person should know the cause of his detention and is entitled to let any third person know the location of his detention.

The second right enables the arrested person/detenu to get a chance to be represented by a legal practitioner of their choice. This right is available right from the moment a person has been arrested. This enables the arrested person to get a fair trial. The Supreme Court in ***Hussainara Khatoon v. State Of Bihar*** has held that the right to a speedy trial is a constitutional right.

Article 22(2) states that any person who is arrested and detained must be produced before the nearest magistrate within 24 hours of their arrest, excluding the time required for transportation. This provision is aimed at preventing arbitrary detention and ensuring that the detained person is produced before a judicial authority within a reasonable time.

This clause also finds support in **Section 56 of CrPc** and **Section 167 of CrPc**.

This clause also states that no person who is arrested should be detained for more than 24 hours without being produced before a magistrate or judicial authority and getting the detention authorized as mentioned in Section 167. These 24 hours are not inclusive of the time of travel from the place of arrest to the magistrate's court.

Article 22(3) is an exception to clauses (1) and (2) of Article 22 and it states that none of the rights mentioned in clause 1 and 2 of the Article would be applicable for a person who is deemed to be an enemy alien and anybody who is arrested or detained under the law providing for preventive detention.

Article 22(4) states that no law providing for preventive detention shall be made except in cases specified in Article 22(3) and (4). Preventive detention refers to the detention of a person to prevent them from committing a crime in the future. This provision ensures that preventive detention is not misused by the government to suppress dissent or opposition.

Article 22 (5) states that 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.

Parliament may by law prescribe the circumstances under 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.

Article 22(6) states that Clause (5) doesn't require the authority issuing any such order to disclose information that it deems to be contrary to popular opinion and interest.

Article 22(7) states that the Parliament may prescribe by law-

(a) the circumstances and classes of cases in which detention of persons for more than 3 months of detention time while under the law requires preventive detention without trying to obtain the opinion of an Advisory Board in accordance with the provisions of clause (4) sub-clause (a).

(b) the maximum period of detention under any law providing for preventive detention in any class or classes of cases.

(c) the process that an Advisory Board must use when conducting an investigation under clause (4) subclause (a).

Landmark Cases on Article 22 of the Indian Constitution

Several important cases have been heard by the Indian courts with regards to Article 22.

In the case of ***A.K. Gopalan v. State of Madras***, the Supreme Court held that the right to personal liberty was limited to the procedure established by law and that the court could not go beyond the provisions of the law to examine the merits of an arrest or detention. This decision was widely criticized as being too restrictive of individual rights.

In the case of ***Menaka Gandhi v. Union of India***, the Supreme Court held that the right to personal liberty was not limited to the procedure established by law but also included substantive due process. This decision was a significant departure from the Gopalan decision and was seen as a major victory for individual rights.

In the case of ***State of West Bengal v. Anwar Ali Sarkar***, the Supreme Court held that the right to legal representation was a fundamental right and that the state was obligated to provide legal aid to a person who could not afford it. This decision was significant in ensuring that the right to legal representation was available to all, regardless of their financial means.

In the case of ***D.K. Basu v. State of West Bengal***, the Supreme Court issued guidelines for the arrest and detention of a person, including the requirement that the arresting officer must inform the person of their right to legal representation and that a relative or friend of the person must be informed of their arrest. This decision was significant in ensuring that the arrest and detention of a person was conducted in a humane and fair manner.

Conclusion

In conclusion, Article 22 of the Indian Constitution is an essential component of individual rights and protects against arbitrary arrest and detention. The provision for legal representation and the right to be produced before a magistrate within a reasonable time ensures that the detained person is not left in the dark and has access to legal assistance. The provision for restriction on preventive detention ensures that a person is not kept in custody indefinitely and that preventive detention is not misused by the government. The various court decisions have helped to clarify and strengthen the protection of individual rights under Article 22.

Important Questions on Article 22

1. A was arrested by a police party from his house and kept in a secluded building for three days, without informing any person about the arrest or the place of his detention. For all these days A was neither told about the reasons or grounds of his arrest now permitted to contact any person. After three days confinement A was released and informed that he was free to go anywhere. What are the illegalities involved in the above arrest process? [Punjab 2001]
2. What protections against arrest and detention have been provided to a person in the Constitution of India? [RJS 1986, MPJS 2012]
3. Discuss the constitutional protection against Preventive Detention as granted under Article 22.