

DAILY NEWS ANALYSIS

Preventive Detention in India: Article 22, Supreme Court Safeguards and the Right to Personal Liberty | UPSC 2026

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Preventive detention in India allows authorities to detain individuals without a criminal trial to prevent certain anticipated threats to national security, public order or essential supplies. Recent judicial scrutiny has brought renewed attention to Article 22, procedural safeguards, the distinction between public order and ordinary law-and-order issues, and the constitutional protection of personal liberty. This Civil Service Gurukul article examines the legal framework, relevant Supreme Court judgments, limitations on detention powers and important UPSC Prelims and Mains concepts.

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UPSC CURRENT AFFAIRS | 14 OCTOBER 2026

Art. 22

Arrest and Detention Safeguards

Art. 21

Personal Liberty

3 Months

General Constitutional Review Limit

GS-II

UPSC Mains Relevance

Why Is Preventive Detention in the News?

Preventive detention has returned to public debate following judicial concerns about unlawful detention and restrictions on freedom of movement during political protests.

According to the current affairs developments of October 2026, the Supreme Court directed authorities to ensure that detention powers are exercised lawfully and that citizens' constitutional rights are protected.

The controversy arose in the context of protests concerning the Special Intensive Revision (SIR) of electoral rolls and the Chief Election Commissioner.

UPSC Relevance: The issue connects Articles 19, 21 and 22, executive accountability, judicial review, the right to peaceful protest and the constitutional balance between liberty and security.

What Is Preventive Detention?

Preventive detention refers to the detention of an individual without a criminal trial for the purpose of preventing anticipated harmful activities.

Unlike punitive detention, which follows an alleged or established offence, preventive detention is forward-looking. It aims to prevent conduct considered threatening to national security, public order or other legally specified interests.

Simple Definition for UPSC:

Preventive detention is the legally authorised confinement of a person to prevent certain anticipated harmful activities rather than to punish the person for a past crime.

Preventive Detention vs Punitive Detention

Basis	Preventive Detention	Punitive Detention
Purpose	Prevent anticipated harmful activities	Punish an offence after conviction
Nature	Preventive	Punitive
Criminal Trial	Not a prerequisite	Conviction ordinarily follows criminal trial or legally valid procedure
Constitutional Framework	Articles 21 and 22, particularly Article 22(3)–(7)	Articles 20, 21, 22 and criminal procedure safeguards, as applicable
Judicial Scrutiny	Legality and procedural safeguards can be reviewed	Courts determine guilt and sentence through criminal process

Constitutional Provisions: Article 22

Article 22 of the Indian Constitution deals with protection against arrest and detention in certain cases.

It provides safeguards for ordinary arrests while recognising a separate framework for preventive detention.

Article 22(1)

A person arrested under ordinary criminal law must be informed of the grounds of arrest and has the right to consult and be defended by a legal practitioner of their choice.

Article 22(2)

An arrested individual must ordinarily be produced before the nearest magistrate within 24 hours, excluding the time required for the journey.

Article 22(3)

The safeguards in Article 22(1) and Article 22(2) do not apply to enemy aliens or persons arrested or detained under preventive detention laws.

Article 22(4)

Under the currently operative constitutional framework, preventive detention generally cannot continue beyond three months without the constitutionally required Advisory Board opinion, subject to provisions made by Parliament under Article 22(7).

Article 22(5)

The detaining authority must communicate the grounds of detention as soon as may be and provide the earliest opportunity to make a representation against the detention order.

Article 22(6)

Authorities may withhold certain facts if disclosure is considered contrary to the public interest.

Article 22(7)

Parliament may legislate on exceptional circumstances, maximum detention periods and procedures relating to Advisory Boards within the constitutional framework.

Important Constitutional Clarification:

The 44th Constitutional Amendment Act, 1978 proposed reducing the general Advisory Board review threshold from three months to two months. However, the relevant amendment provision has not been brought into force. The operative constitutional text therefore retains the three-month framework.

Legislative Powers Over Preventive Detention

Constitutional Entry	Subject
Union List, Entry 9	Preventive detention connected with defence, foreign affairs or the security of India
Concurrent List, Entry 3	Preventive detention connected with state security, public order and maintenance of essential supplies and services

The Constitution therefore permits legislative competence over different preventive detention subjects at Union and concurrent levels, subject to constitutional limitations.

Important Preventive Detention Laws in India

- **National Security Act, 1980:** Provides for preventive detention in specified circumstances involving security, public order and essential supplies.
- **Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA):** Addresses preventive detention in relation to smuggling and foreign exchange-related activities.
- **Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988:** Provides preventive detention measures against specified illicit drug-trafficking activities.
- **State preventive detention laws:** Certain states have laws addressing categories of activities regarded as prejudicial to public order.

Role of Advisory Boards

The Advisory Board is an important safeguard in the preventive detention framework.

Under Article 22(4), an Advisory Board consists of persons who are, have been, or are qualified to be appointed as judges of a High Court.

The Board examines whether sufficient cause exists for continued preventive detention under the applicable constitutional and statutory provisions.

However, Advisory Board review does not replace the jurisdiction of constitutional courts to examine unlawful detention.

Public Order vs Law and Order

One of the most important legal distinctions is between a routine breach of law and order and a disturbance of public order.

An ordinary criminal offence does not automatically justify preventive detention.

Law and Order	Public Order
May involve an individual offence	Involves effects on community life or public tranquillity
May be addressed through ordinary criminal law	May engage wider public-security concerns
Impact can remain localised	Impact affects broader public life
Example: An isolated personal assault	Example: Violence seriously disrupting normal community life

Courts examine the nature, degree and wider impact of the alleged activities rather than relying merely on the seriousness of an accusation.

Important Supreme Court Judgments

1. A.K. Gopalan v. State of Madras (1950)

An early constitutional decision examining preventive detention and personal liberty. The case is significant for understanding the historical interpretation of fundamental rights.

2. Maneka Gandhi v. Union of India (1978)

The Supreme Court established that procedures affecting personal liberty must satisfy requirements of fairness, justice and reasonableness.

The judgment fundamentally influenced the interpretation of Article 21 and its relationship with other fundamental rights.

3. Rekha v. State of Tamil Nadu (2011)

The Supreme Court emphasised the exceptional nature of preventive detention and the need to prevent misuse where ordinary legal processes are available and adequate.

4. Shaik Nazneen v. State of Telangana (2022)

The Court reiterated that preventive detention should not be used casually for ordinary criminal offences and stressed the distinction between law-and-order issues and threats affecting public order.

5. Ameena Begum v. State of Telangana (2023)

The Supreme Court emphasised strict judicial scrutiny of preventive detention and the importance of safeguarding personal liberty from arbitrary executive action.

UPSC Mains Enrichment: Judicial decisions demonstrate that preventive detention is constitutionally permitted, but its exercise must comply with substantive and procedural safeguards. Courts must remain vigilant against its routine use as a substitute for ordinary criminal law.

Judicial Review of Preventive Detention

Judicial review is an essential constitutional safeguard against arbitrary detention.

Courts can examine whether the detention order complies with constitutional and statutory requirements.

Grounds for Judicial Intervention

- Absence of relevant material supporting detention.
- Failure to communicate required grounds of detention.
- Delay or failure in considering a representation.
- Detention based on mala fide considerations.
- Non-compliance with mandatory statutory procedures.
- Use of preventive detention for purposes outside the governing law.

The Supreme Court and High Courts can examine unlawful detention through their constitutional writ jurisdictions, including habeas corpus.

Preventive Detention and the Right to Peaceful Protest

Peaceful protest is closely associated with freedoms protected under Article 19, especially freedom of speech and expression and the right to assemble peaceably and without arms.

These freedoms are subject to constitutionally permitted reasonable restrictions.

However, mere disagreement with government policy or participation in peaceful dissent is not, by itself, sufficient justification for preventive detention.

Authorities must demonstrate lawful grounds, comply with procedural safeguards and respect the principle of proportionality where applicable.

Preventive Detention vs BNSS Section 163

Preventive Detention	BNSS Section 163
Authorises detention under an applicable preventive detention law	Authorises urgent orders in specified situations
Directly affects individual liberty through confinement	May restrict specified activities or conduct
Article 22 safeguards are central	Statutory safeguards and constitutional review apply
Requires lawful grounds for detention	Requires statutory conditions for urgent preventive orders

Section 163 of the Bharatiya Nagarik Suraksha Sanhita, 2023 empowers certain magistrates to issue urgent orders in specified circumstances. Such orders should not be confused with detention under preventive detention statutes.

Arguments Supporting and Opposing Preventive Detention

Arguments Supporting	Constitutional Concerns
May prevent serious threats to national security	Restricts liberty without a criminal trial
May help address certain public-order threats	Possibility of executive misuse
Can respond to anticipated harmful activity	Dependence on executive assessments
May operate in exceptional security circumstances	Risks inadequate procedural compliance

**National security and constitutional liberty must be protected together;
exceptional detention powers require exceptional legal scrutiny.**

Reforms and Way Forward

- Ensure preventive detention is used only where legally justified.
- Require careful examination of reliable and relevant material.
- Strengthen timely communication of detention grounds.
- Ensure meaningful opportunity to submit representations.
- Maintain effective Advisory Board scrutiny.

- Promote prompt judicial review of challenged detention orders.
- Prevent routine substitution of detention for ordinary criminal prosecution.
- Strengthen accountability and legal training for detaining authorities.
- Protect peaceful democratic dissent consistent with constitutional limitations.

UPSC Mains Practice Question

GS Paper II | 15 Marks | 250 Words

"Preventive detention represents a constitutional tension between individual liberty and collective security." Critically examine the safeguards provided under Article 22 and the role of the judiciary in preventing arbitrary detention.

Original UPSC-style practice question, not an actual previous-year question.

Model Answer

Introduction: Preventive detention permits confinement without criminal trial to prevent certain anticipated threats. Although constitutionally recognised, it raises concerns about individual liberty under Article 21.

Constitutional Framework: Article 22(1) permits a separate legal regime for preventive detention. Article 22(4) provides for Advisory Board scrutiny under the operative three-month framework, while Article 22(5) ensures communication of grounds and an opportunity for representation.

Concerns: Executive discretion, possible misuse against ordinary offenders, inadequate disclosure of relevant material and procedural delays can undermine fairness.

Judicial Safeguards: The judiciary reviews legality, procedural compliance and misuse of detention powers. Decisions such as *Rekha* and *Ameena Begum* underscore the exceptional nature of preventive detention.

Way Forward: Authorities should adopt strict procedural compliance, ensure meaningful review, preserve the availability of ordinary criminal remedies and uphold accountability.

Conclusion: A constitutional democracy must protect both collective security and individual liberty. Preventive detention should therefore remain an exceptional measure subject to effective judicial supervision.

UPSC Prelims Practice MCQs

These are original practice questions prepared for revision. They are not represented as actual UPSC PYQs.

Question 1.

Consider the following statements regarding preventive detention:

1. It is expressly recognised under the Indian Constitution.
2. Article 22 provides specific safeguards for preventive detainees.

3. It is permissible only after conviction in a criminal trial.

- (a) 1 only
- (b) 1 and 2 only
- (c) 2 and 3 only
- (d) 1, 2 and 3

Correct Answer: (b) 1 and 2 only.

Preventive detention is constitutionally recognised and regulated by Article 22. It is not dependent on conviction in a criminal trial.

Question 2.

Which provision requires a preventive detainee to be informed of the grounds of detention and given the earliest opportunity to make a representation?

- (a) Article 19(1)(a)
- (b) Article 20(3)
- (c) Article 22(5)
- (d) Article 32(4)

Correct Answer: (c) Article 22(5).

Article 22(5) protects the detainee through communication of grounds and an opportunity to challenge detention by representation.

Question 3.

Regarding the 44th Constitutional Amendment and preventive detention, which statement is correct?

- (a) Its proposed two-month review provision is fully operative.
- (b) It completely abolished preventive detention.
- (c) Its relevant two-month amendment provision has not been brought into force.
- (d) It removed Advisory Boards from the Constitution.

Correct Answer: (c).

The relevant 44th Amendment provision proposing the two-month threshold is not operative. The existing Article 22 framework retains the three-month reference.

Question 4.

Which of the following statements regarding legislative competence over preventive detention is correct?

- (a) Only Parliament can legislate on every preventive detention subject.
- (b) Only State Legislatures can legislate on preventive detention.
- (c) Relevant preventive detention subjects appear in both the Union and Concurrent Lists.
- (d) Preventive detention is exclusively a residuary subject.

Correct Answer: (c).

Union List Entry 9 and Concurrent List Entry 3 address different preventive detention subjects.

Question 5.

Which of the following judicial remedies is most directly associated with challenging unlawful detention?

- (a) Mandamus
- (b) Habeas Corpus
- (c) Quo Warranto
- (d) Certiorari

Correct Answer: (b) Habeas Corpus.

Habeas corpus enables constitutional courts to examine the legality of a person's detention and order release where detention is unlawful.

Most Important Topics for UPSC Revision

Priority	Topic	What to Revise
Very High	Article 22	Clauses 1 to 7 and safeguards
Very High	Article 21	Fair procedure and personal liberty
Very High	Judicial Review	Habeas corpus and procedural legality
High	44th Amendment	Unimplemented two-month provision
High	Supreme Court Cases	Rekha, Shaik Nazneen, Ameena Begum
High	Legislative Lists	Union Entry 9 and Concurrent Entry 3
High	Public Order	Distinction from ordinary law and order
Medium	BNSS Section 163	Urgent preventive orders

Conclusion

Preventive detention remains one of the most sensitive features of India's constitutional framework because it authorises deprivation of liberty without the ordinary criminal trial process.

While the Constitution recognises preventive detention for specified purposes, its safeguards and judicial interpretations seek to protect individuals against arbitrary executive action.

For UPSC aspirants, the issue provides an important opportunity to understand the relationship between Articles 19, 21 and 22, legislative competence, procedural fairness and judicial accountability.

A constitutional democracy must ensure that extraordinary security powers do not undermine the fundamental liberties they are ultimately intended to protect.

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