
COERCION AND CONSTITUTIONAL SAFEGUARDS: PREVENTIVE DETENTION UNDER ARTICLE 22 AND FORCED LABOUR UNDER ARTICLE 23

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ABSTRACT

This paper studies preventive detention under Article 22 of the Constitution of India and sets it beside Article 23, which prohibits trafficking, begar, and other forms of forced labour. It asks whether the Article 22 safeguards, as interpreted by the Supreme Court, constrain executive detention without trial, and what Article 23 adds to an account of constitutional protection against coercion. The method is doctrinal analysis of the constitutional text, the National Security Act, 1980, reported Supreme Court judgments, and selected statutes, with short examples drawn from hypothetical facts. The central finding is that Article 22 both authorizes and limits preventive detention. Grounds must be communicated promptly, the detainee must have a real opportunity to represent, the Advisory Board must review the case, and the courts remain available to test legality. Article 23 operates separately and can reach private exploitation as well as State action, so it informs the wider inquiry without creating a detention safeguard. For example, a person accused of an ordinary assault should ordinarily face investigation and trial, while a credible and imminent threat to public order may raise a distinct preventive question. This is a continuing study. It makes no claim about how well the safeguards work in practice, because it uses no national administrative data on detention orders, representation delays, release outcomes or remedies.

Keywords: preventive detention; Article 22; Article 23; personal liberty; representation; habeas corpus; forced labour; constitutional safeguards.

I. Introduction

Preventive detention is custody imposed to avert anticipated conduct rather than punishment imposed after proof of an offence. Article 22(3)(b) permits one class of preventive detention, and clauses (4) to (7) prescribe the constitutional controls on it.¹ The arrangement is unusual, because the Constitution protects liberty and also recognizes detention without a criminal trial under defined conditions. For example, an order based on a threat to essential supplies must satisfy the governing statutory ground and the Article 22 procedure, and public anxiety alone does not do so.

The problem is institutional as well as textual. A person may be confined without a charge-sheet or trial, and without the ordinary testing of evidence, because the authority's satisfaction is executive and the detainee may lack access to the underlying material. Article 21, as read after *Maneka Gandhi v. Union of India*, requires that procedure affecting liberty be fair, just and reasonable.² For example, if relied-on documents are withheld in a language the detainee cannot understand, the formal right to represent may be of no practical use.

Article 23 enters the study for a different reason. It prohibits traffic in human beings, begar and similar forms of forced labour, and its case law recognizes coercion that goes beyond physical force.³ The two provisions should be kept apart: Article 23 does not regulate detention orders, and Article 22 does not define forced labour. They share one concern, which is power that removes a person's real choice. For example, a debt-bound worker driven by hunger to accept less than the minimum wage presents an Article 23 issue, while custody without valid grounds presents an Article 22 and Article 21 issue.

The paper asks what safeguards Article 22 guarantees and when detention becomes an impermissible substitute for criminal process. It also asks what Article 23 contributes to an account of coercion and vulnerability. It argues that Article 22 is a narrow exception disciplined by Articles 14 and 21, and that its safeguards must be applied promptly and substantively. Article 23 is paired with Article 22 for a limited purpose. It shows that constitutional protection can reach private actors and economic compulsion, and the paper uses it as a point of comparison only. For example, neither arbitrary detention nor below-minimum wages can be

¹ India Const. art. 22, cl. 3(b), cls. 4–7.

² *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248 (India).

³ India Const. art. 23, cl. 1.

justified by a general appeal to public welfare, because each must meet its own constitutional test.

II. Scope and Constitutional Framework

Preventive detention differs from punitive detention, which follows adjudication of past conduct and conviction. A preventive order predicts future harm, and its label does not change the fact of imprisonment. *Rekha v. State of Tamil Nadu* requires that this severe measure stay within narrow limits.⁴ For example, where a person is already being prosecuted for a completed assault, the authority must identify a distinct and proximate future risk and may not simply repeat the accusation.

Detention powers arise under several enactments: the National Security Act, 1980 (NSA), the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA), the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PIT-NDPS Act), and state statutes.⁵ Each has its own grounds, time limits and review route. For example, an NSA detention for public order and a COFEPOSA detention must be tested against their different statutory purposes.

Article 22(1) ordinarily requires that a person arrested be told the grounds of arrest and be allowed to consult a legal practitioner. *Clause (2)* requires production before a magistrate within twenty-four hours, excluding journey time. *Clause (3)* removes enemy aliens and persons detained under preventive detention laws from both clauses, and clauses (4) to (7) then govern preventive detention.⁶ For example, a person arrested on a criminal charge ordinarily relies on the magistrate rule, while a preventive detainee relies on the separate protections in *clauses (4) and (5)*.

Article 22(4) bars detention for more than three months unless an Advisory Board of High Court judges, or persons qualified to be appointed as such, reports before that period ends that

⁴ *Rekha v. State of Tamil Nadu*, (2011) 5 S.C.C. 244 (India).

⁵ The National Security Act, 1980, No. 65, Acts of Parliament, 1980 (India); The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, No. 52, Acts of Parliament, 1974 (India); The Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, No. 7, Acts of Parliament, 1980 (India); The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988, No. 46, Acts of Parliament, 1988 (India).

⁶ India Const. art. 22, cls. 1–3.

there is sufficient cause, subject to the exceptions in clause (7). Clause (5) requires the authority to communicate the grounds as soon as may be and to afford the earliest opportunity to make a representation. Clause (6) allows the authority to withhold facts that it considers contrary to the public interest to disclose. Clause (7) empowers Parliament to prescribe the cases in which detention may continue beyond three months without Board review, the maximum period of detention, and the Board's procedure.⁷ For example, a sensitive source may be withheld, but the factual substance needed to answer the case cannot be removed wholesale.

Section 3 of the Constitution (Forty-fourth Amendment) Act, 1978 provides for reducing the initial period under Article 22(4) from three months to two and for changing the composition of the Advisory Board, but it has not been brought into force.⁸ The operative text therefore still refers to three months and to the existing Board formulation. For example, quoting the two-month rule as current law would misstate the constitutional position.

Article 23(1) prohibits traffic in human beings, begar and other similar forms of forced labour, and makes contravention an offence punishable in accordance with law. Clause (2) permits the State to impose compulsory service for public purposes but bars discrimination on grounds only of religion, race, caste or class.⁹ The prohibition binds private persons as well as the State.¹⁰ For example, a contractor's debt bondage may call for State intervention even though no detention order exists.

In *People's Union for Democratic Rights v. Union of India* (PUDR, the Asiad Workers case), the Court read force broadly to include economic compulsion that leaves a worker without a real choice, and it held that payment below the minimum wage can amount to forced labour.¹¹ *Sanjit Roy v. State of Rajasthan* applied the same principle to famine-relief work.¹² *Bandhua Mukti Morcha v. Union of India* later addressed the State's duty to identify and release bonded labourers and to see to their rehabilitation.¹³ For example, workers who accept less than the statutory minimum because hunger leaves them no alternative cannot be presumed to have

⁷ India Const. art. 22, cls. 4–7.

⁸ The Constitution (Forty-fourth Amendment) Act, 1978, § 3 (India); see *A.K. Roy v. Union of India*, (1982) 1 S.C.C. 271 (India) (declining to direct the Central Government to bring § 3 into force).

⁹ India Const. art. 23, cls. 1–2.

¹⁰ *People's Union for Democratic Rights v. Union of India*, (1982) 3 S.C.C. 235 (India).

¹¹ *PUDR*, (1982) 3 S.C.C. 235; see also The Minimum Wages Act, 1948, No. 11, Acts of Parliament, 1948 (India).

¹² *Sanjit Roy v. State of Rajasthan*, (1983) 1 S.C.C. 525 (India).

¹³ *Bandhua Mukti Morcha v. Union of India*, (1984) 3 S.C.C. 161 (India).

waived Article 23 freely.

III. Literature Review

The case law begins from the contrast between preventive detention provisions and ordinary arrest safeguards. *A.K. Gopalan v. State of Madras* read the fundamental rights as largely separate compartments and upheld most of the early detention framework.¹⁴ *R.C. Cooper v. Union of India* and *Maneka Gandhi* later required the rights to be read together.¹⁵ For example, a procedure may satisfy a statute and still be vulnerable if it is arbitrary or unfair under Articles 14 and 21.

A second line of cases concerns Article 22(5): disclosure, relied-on documents, language and effective representation. *Khudiram Das v. State of West Bengal* held that subjective satisfaction can be reviewed for mala fides, irrelevant material, non-application of mind and failure to consider relevant facts.¹⁶ For example, overlooking a material bail order may vitiate the satisfaction about the likelihood of future conduct.

A third line distinguishes law and order, public order and security of the State. *Dr. Ram Manohar Lohia v. State of Bihar* used the image of concentric circles to separate an ordinary breach of law from conduct that affects the community.¹⁷ Later decisions, including *Banka Sneha Sheela v. State of Telangana* and *Ameena Begum v. State of Telangana*, return to the distinction and require a disturbance of public order before preventive detention can rest on that ground.¹⁸ For example, a neighbourhood quarrel ordinarily belongs in the criminal process, while coordinated violence that disrupts community life may raise a public-order question if the evidence supports it.

A fourth line warns against using preventive detention as a second route to punishment. *Haradhan Saha v. State of West Bengal* accepts that prosecution and detention can coexist because their purposes differ,¹⁹ while *Rekha* holds that ordinary criminal law should be used where it is adequate.²⁰ For example, repeated bail applications do not by themselves show that

14 *A.K. Gopalan v. State of Madras*, 1950 S.C.R. 88 (India).

15 *R.C. Cooper v. Union of India*, (1970) 1 S.C.C. 248 (India); *Maneka Gandhi*, (1978) 1 S.C.C. 248.

16 *Khudiram Das v. State of West Bengal*, (1975) 2 S.C.C. 81 (India).

17 *Dr. Ram Manohar Lohia v. State of Bihar*, (1966) 1 S.C.R. 709 (India).

18 *Banka Sneha Sheela v. State of Telangana*, (2021) 9 S.C.C. 415 (India); *Ameena Begum v. State of Telangana*, (2023) 9 S.C.C. 587 (India).

19 *Haradhan Saha v. State of West Bengal*, (1975) 3 S.C.C. 198 (India).

20 *Rekha*, (2011) 5 S.C.C. 244.

detention is necessary, and the authority must assess the actual prospect of release and the future risk.

On Article 23, *PUDR* and *Sanjit Roy* treat economic necessity as a possible form of force, and *Bandhua Mukti Morcha* recognizes State enforcement duties against private exploiters.²¹ For example, a signed contract may not show free consent where severe debt and deprivation leave a worker no practical alternative.

The framing of Article 22 has its own literature. The Constituent Assembly debated at length how preventive detention could be reconciled with personal liberty, and the text of Article 22 carries that compromise in its procedural safeguards.²² The doctrinal lines above build on that text.

Reported judgments explain legal standards, but they do not show every detention order, representation timeline, release outcome or unlitigated case. For example, the rule that representations must be considered expeditiously cannot be tested nationally from reported judgments alone, because the complete administrative chronology is needed.

This study therefore treats reported cases as sources of doctrine and does not treat them as a proxy for all practice. Its hypotheticals are analytical examples and make no assertion of fact about any litigant. For example, the single-assault example applies the law-and-order distinction and does not describe a named person's case.

IV. Methodology

This is doctrinal legal research. It analyzes the operative constitutional provisions, selected central enactments, and Supreme Court decisions read in their procedural context. Primary sources take priority: the Constitution and statutes as published on India Code or government portals, and judgments as hosted by the Supreme Court. For example, the NSA analysis uses the statute for time limits and the judgments for interpretation, and it does not rely on media summaries.

Cases were selected for their bearing on validity, procedural rights, executive satisfaction, the

21 *PUDR*, (1982) 3 S.C.C. 235; *Sanjit Roy*, (1983) 1 S.C.C. 525; *Bandhua Mukti Morcha*, (1984) 3 S.C.C. 161.

22 See generally Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (1966); 9 Constituent Assembly Debates (Sept. 15–16, 1949).

public-order threshold, review, and Article 23. The method compares holdings and principles and makes no attempt to code every factual variation. For example, *Gopalan* and *Maneka Gandhi* are read together to trace the change in how Articles 21 and 22 are understood, while *PUDR* and *Sanjit Roy* are read together on the Article 23 test.

Four lenses guide the discussion: legality (authority and statutory fit), procedure (communication of grounds and representation), necessity (proximity and ordinary-law alternatives), and remedy (review and release). Article 23 is analyzed separately, through trafficking, begar, coercion and State enforcement. For example, an old allegation raises a proximity question, and underpayment under economic duress raises a separate Article 23 question.

The study is not an empirical census. It does not estimate how often detention or forced labour occurs and cannot establish deterrence or misuse. It does not cover every state enactment or every High Court ruling, and it uses no national administrative data. For example, a judgment holding that delay can invalidate an order says nothing about how common such delay is.

A later phase should collect public orders and annual statistics, code state-level variation, and seek anonymized records where lawfully accessible. For example, a sample of files could test whether grounds, relied-on documents, the receipt of representations and decision dates are recorded consistently.

V. Results and Doctrinal Findings

A.K. Gopalan v. State of Madras is the starting point, but it is limited by its time. It upheld the early detention framework and read the rights largely as separate compartments.²³ *Maneka Gandhi* later required procedure to be fair and non-arbitrary under Articles 14 and 21.²⁴ For example, a statute's use of the words "preventive detention" does not remove the exercise of the power from constitutional review.

Khudiram Das treats subjective satisfaction as a condition precedent to a valid order, so reciting the words of the statute is not enough.²⁵ Courts may ask whether the authority applied its mind, used relevant material, acted for a proper purpose and considered the relevant facts. For

²³ *Gopalan*, 1950 S.C.R. 88.

²⁴ *Maneka Gandhi*, (1978) 1 S.C.C. 248.

²⁵ *Khudiram Das*, (1975) 2 S.C.C. 81.

example, an order based on mistaken identity, or on a document never placed before the authority, cannot be saved by calling the satisfaction subjective.

A.K. Roy v. Union of India reviewed the NSA and its procedural design.²⁶ The Court upheld the Act's framework and left the executive power subject to constitutional limits. Advisory Board proceedings are not criminal trials, but the review must still be meaningful within the constitutional and statutory scheme. For example, a Board must be able to assess sufficient cause and cannot simply endorse an unexplained conclusion.

Article 22(5) imposes two linked duties. The authority must communicate the grounds as soon as may be, and it must afford the earliest opportunity to make a representation.²⁷ The detainee needs enough particulars and relied-on material to answer the case, subject to Article 22(6). *Ichu Devi Choraria v. Union of India* requires that the material relied on in the grounds be supplied to the detenu.²⁸ For example, a bare statement of "danger to public order" without dates, conduct or particulars may prevent any meaningful reply.

State of Bombay v. Atma Ram Shridhar Vaidya and *Khudiram Das* require grounds clear enough to permit a representation.²⁹ A passing reference does not always call for disclosure, but material that the authority relied on and that is needed to challenge the order cannot be withheld. For example, omitting a bail order that was central to the authority's prediction may disable an effective response.

Jayanarayan Sukul v. State of West Bengal requires prompt and independent consideration of a representation.³⁰ Later decisions continue to treat unexplained delay as constitutionally significant. For example, a representation submitted in jail should be forwarded through a traceable process and not left in an administrative queue.

In *Jaseela Shaji v. Union of India*, a COFEPOSA case, the Court quashed the detention because relied-on statements were not supplied and because almost nine months passed before the detenu's representation was decided.³¹ The Court also held that a casual approach by jail authorities does not excuse delay in deciding a representation, and it reiterated that the

26 *A.K. Roy*, (1982) 1 S.C.C. 271.

27 India Const. art. 22, cl. 5.

28 *Ichu Devi Choraria v. Union of India*, (1980) 4 S.C.C. 531 (India).

29 *State of Bombay v. Atma Ram Shridhar Vaidya*, 1951 S.C.R. 167 (India); *Khudiram Das*, (1975) 2 S.C.C. 81.

30 *Jayanarayan Sukul v. State of West Bengal*, (1970) 1 S.C.C. 219 (India).

31 *Jaseela Shaji v. Union of India*, Crim. App. No. 3083 of 2024, 2024 INSC 683 (India Sept. 12, 2024).

Government's duty to decide the representation speedily is separate from Advisory Board procedure. For example, later Board confirmation does not automatically cure avoidable delay in deciding the detainee's own representation.

Haradhan Saha v. State of West Bengal explains that prosecution and preventive detention can coexist because their purposes differ.³² That holding does not allow detention to replace prosecution or to punish a past act. For example, a pending trial does not automatically bar detention, but the authority must explain why future prevention is needed given the prosecution and any bail conditions.

Rekha holds that detention may be illegal where ordinary criminal law can deal with the situation.³³ The order needs a proximate link between past conduct and a real future threat. For example, an old conviction with no recent evidence of recurrence is weak support for an imminent danger to public order.

T.A. Abdul Rahman v. State of Kerala examines delay and the live link between the conduct and the detention.³⁴ In *Sushanta Kumar Banik v. State of Tripura*, a three-judge bench quashed a PIT-NDPS detention after unexplained delay between the proposal and the order, and it noted that the State had never challenged the bail orders granted in the earlier cases.³⁵ *Sama Aruna v. State of Telangana* treats stale material in the same way, in a case where the cited incidents were many years older than the detention order.³⁶ For example, months of inaction after an isolated event may weaken a claim of present necessity unless the gap is adequately explained.

Where a proposed detenu is already in custody, the authority must consider the custody and the real prospect of release. *Kamarunnissa v. Union of India* allows an order in such a case only where the authority knows of the custody and has compelling reasons, on reliable material, to believe that release is likely and that the person would then act prejudicially.³⁷ A theoretical possibility of release is not enough. For example, an order that merely recites that bail is possible, with no material showing that release is likely, does not meet this requirement.

³² *Haradhan Saha*, (1975) 3 S.C.C. 198.

³³ *Rekha*, (2011) 5 S.C.C. 244.

³⁴ *T.A. Abdul Rahman v. State of Kerala*, (1989) 4 S.C.C. 741 (India).

³⁵ *Sushanta Kumar Banik v. State of Tripura*, Crim. App. No. 1708 of 2022, 2022 SCC OnLine SC 1333 (India Sept. 30, 2022).

³⁶ *Sama Aruna v. State of Telangana*, (2018) 12 S.C.C. 150 (India).

³⁷ *Kamarunnissa v. Union of India*, (1991) 1 S.C.C. 128 (India).

Dr. Ram Manohar Lohia v. State of Bihar distinguishes a breach of law and order from a disturbance of public order.³⁸ The effect must reach community life and cannot remain an isolated offence. For example, a single theft ordinarily belongs in investigation and trial, while coordinated acts that produce widespread disruption may require closer public-order analysis.

Ayya v. State of Uttar Pradesh requires that preventive detention laws be construed strictly and that their procedural safeguards be followed meticulously.³⁹ The Court also warned detaining authorities against choosing preventive detention as the easy alternative to the harder route of prosecution. For example, a procedural defect that denies the detainee a real chance to respond can matter even when officials regard the allegations as serious.

Mortuza Hussain Choudhary v. State of Nagaland repeats that preventive detention is a severe measure whose safeguards must be strictly observed, and it holds that the detaining authority must spell out its own satisfaction in separate grounds. The Court quashed PIT-NDPS orders that had been passed mechanically.⁴⁰ A bare recital that the authority was satisfied after examining the proposal and supporting documents does not meet that standard. For example, grounds that simply adopt the police proposal show no independent application of mind.

The safeguards are cumulative and are not interchangeable. The Board assesses sufficient cause under the statute, and the courts test legality and constitutional compliance. The representation is a separate right that exists alongside both. For example, an executive review cannot cure a failure to communicate grounds, and a valid initial order cannot excuse later unexplained delay.

VI. Principal Authorities and Working Maxims

The table below sets out the Article 22 authorities and the Article 23 authorities discussed in this paper, because the paper studies both provisions. The Article 23 decisions are not detention precedents. “Maxim” here means a concise working proposition rather than a separate Latin rule, and each maxim remains subject to the statute and the facts. For example, strict construction does not make every detention order invalid; it means the power must stay within its legal boundaries.

³⁸ *Lohia*, (1966) 1 S.C.R. 709.

³⁹ *Ayya alias Ayub v. State of Uttar Pradesh*, (1989) 1 S.C.C. 374 (India).

⁴⁰ *Mortuza Hussain Choudhary v. State of Nagaland*, 2025 INSC 321 (India Mar. 5, 2025).

Judgment	Contribution	Working maxim
<i>A.K. Gopalan v. State of Madras</i> (1950)	Early validity of the detention framework; compartmentalized reading of rights, later displaced.	Rights analysis must reflect the later integrated liberty doctrine.
<i>State of Bombay v. Atma Ram Shridhar Vaidya</i> (1951)	Grounds must allow a representation.	Notice must be effective in substance.
<i>Dr. Ram Manohar Lohia v. State of Bihar</i> (1966)	Separates law and order, public order and security of the State.	Ordinary disorder is not automatically public disorder.
<i>Jayanarayan Sukul v. State of West Bengal</i> (1970)	A representation receives prompt and independent consideration.	A representation cannot lie dormant.
<i>R.C. Cooper v. Union of India</i> (1970)	Rejects rigid compartmentalization of rights.	Assess the practical effect on rights.
<i>Khudiram Das v. State of West Bengal</i> (1975)	Subjective satisfaction is reviewable for legal defects.	Executive satisfaction is open to review.
<i>Haradhan Saha v. State of West Bengal</i> (1975)	Prosecution and detention can coexist for distinct purposes.	The preventive purpose must be genuinely distinct.
<i>Maneka Gandhi v. Union of India</i> (1978)	Procedure affecting liberty must be fair, just and reasonable.	Procedure affecting liberty must be fair.
<i>Ichhu Devi Choraria v. Union of India</i> (1980)	Material relied on in the grounds must be supplied to the detenu.	Disclosure is part of the right to represent.
<i>A.K. Roy v. Union of India</i> (1982)	Reviews NSA validity, safeguards and Board process; declines to direct commencement of § 3 of the Forty-fourth Amendment.	Preventive power is constitutionally bounded.
<i>People's Union for Democratic Rights v. Union of India</i> (1982)	Economic compulsion and below-minimum wages can be forced labour.	Force includes deprivation of real choice.
<i>Sanjit Roy v. State of Rajasthan</i> (1983)	Relief work does not justify below-minimum wages.	Public purpose does not suspend Article 23.
<i>Bandhua Mukti Morcha v. Union of India</i> (1984)	State enforcement duty against bonded labour.	Article 23 calls for enforcement.
<i>T.A. Abdul Rahman v. State of Kerala</i> (1989)	Unexplained delay can break the live link.	Preventive action needs proximity.
<i>Ayya v. State of Uttar Pradesh</i> (1989)	Strict construction of detention laws and strict compliance with safeguards.	Liberty restrictions need careful scrutiny.

Judgment	Contribution	Working maxim
<i>Kamarunnissa v. Union of India</i> (1991)	Detaining a person already in custody needs compelling reasons and a real prospect of release.	A possibility of release is not a prediction.
<i>Rekha v. State of Tamil Nadu</i> (2011)	Narrow use; ordinary law may be sufficient.	Use exceptional power only when necessary.
<i>Sama Aruna v. State of Telangana</i> (2018)	Stale material cannot establish present necessity.	Past conduct must rationally predict future harm.
<i>Banka Sneha Sheela v. State of Telangana</i> (2021)	Applies the public-order threshold; the apprehended disorder must affect the community at large.	Breach of ordinary law is not always public disorder.
<i>Sushanta Kumar Banik v. State of Tripura</i> (2022)	Unexplained delay and unchallenged bail orders weaken a preventive rationale.	A preventive rationale must remain live.
<i>Ameena Begum v. State of Telangana</i> (2023)	Treats preventive detention as exceptional and tests it against the law-and-order distinction.	Detention must not be used to enforce ordinary law.
<i>Jaseela Shaji v. Union of India</i> (2024)	Non-supply of relied-on statements and delay in deciding a representation violate Article 22(5).	Delay in deciding a representation must be explained.
<i>Mortuza Hussain Choudhary v. State of Nagaland</i> (2025)	The authority must spell out its own satisfaction in separate grounds.	Article 22 permits detention only on strict compliance.

VII. Recommendations

Authorities should prepare a necessity record that identifies the statutory ground, the current evidence, proximity, the ordinary-law alternatives, and any material favourable to the person. This applies *Khudiram Das* and *Rekha* and leaves statutory discretion intact.⁴¹ For example, a required field for an existing bail order may prevent omission of a material fact.

Governments should set up a traceable representation pathway with assigned responsibility, language support, acknowledgment, and recorded reasons for any delay.⁴² This gives practical effect to Article 22(5). For example, the prison could transmit a representation securely on the

⁴¹ *Khudiram Das*, (1975) 2 S.C.C. 81; *Rekha*, (2011) 5 S.C.C. 244.

⁴² India Const. art. 22, cl. 5; *Jaseela Shaji*, 2024 INSC 683.

day of receipt and keep proof of delivery.

The State should publish anonymized annual data on detention orders, grounds, Board outcomes, representations, release dates and court challenges. For example, aggregate processing times would show whether representations are decided promptly without identifying any detainee.

Public procurement and relief-work schemes should include wage audits, contractor accountability, accessible complaint channels, and rehabilitation for survivors of bondage. Article 23 requires enforcement as well as prohibition.⁴³ For example, a commissioning department should verify payroll across subcontractors.

VIII. Conclusion

Article 22 permits preventive detention on conditions. Executive satisfaction can be reviewed, grounds must allow an effective representation, the representation must be decided promptly, and the detention must stay tied to a proximate preventive purpose. Ordinary criminal law remains the default for past conduct. For example, an order that rests on stale allegations and leaves a representation unanswered cannot be defended by invoking public order.

The Article 23 cases bear on a different question. *PUDR* and *Sanjit Roy* hold that economic compulsion and public relief work do not suspend the prohibition on forced labour, and that holding extends constitutional protection against coercion to private relationships.⁴⁴ A coerced and underpaid worker and a detainee held without safeguards have different claims. The comparison is useful because both claims depend on rights being workable in real conditions.

These conclusions rest on reported authorities. Claims about how often non-compliance occurs, and about how practice differs between states, need the empirical work set out in the Appendix. For example, state-level recommendations on representation timelines and wage compliance require measurement before they can be targeted.

43 *PUDR*, (1982) 3 S.C.C. 235; *Bandhua Mukti Morcha*, (1984) 3 S.C.C. 161.

44 *PUDR*, (1982) 3 S.C.C. 235; *Sanjit Roy*, (1983) 1 S.C.C. 525.

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Appendix: Continuing-Study Data Plan

Area	Proposed variables	Illustrative research question
Article 22 orders	Statute, ground, authority, dates, status	Are orders based on proximate material?
Representations	Submission, receipt, forwarding and decision dates; language support	Are representations considered without avoidable delay?
Review and remedies	Board opinion, court outcome, release date	How quickly does a successful challenge produce release?
Article 23 labour	Wage rate, actual wage, debt, contractor chain	Do public works pay at least the legal minimum wage?
Practical safeguards	Counsel, document access, translation	Which supports improve meaningful participation?