

Corrigendum/Explanation SFG 2025 Level 1 Test 2

There is 1 change in today's paper (Q.3). In Q.3, the correct answer is Option (c).

Also, some extra explanations have been provided for the students who have raised doubts.

In Q.3) the correct answer is option (c).

There was a doubt raised regarding the Statement I of the question that "I. No person can be detained under any preventive detention law for more than three months unless such detention is approved by an Advisory Board."

Explanation: Statement I is incorrect. Under Article 22(4) of the Constitution, **no person can be detained under any preventive detention law for a period exceeding three months unless such detention is approved by an Advisory Board.**

The Advisory Board must consist of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court, and it examines whether sufficient cause exists for the continued detention. If the Board reports that there is no sufficient cause, the person must be released immediately.

But at the same time Article 22(7) of the Constitution, gives the power to Parliament by law to provide circumstances under which a person may be detained for a period longer than three months without obtaining the opinion of an Advisory Board. Eg. National Security Act 1980 provides for- Circumstances in which persons may be detained for periods longer than three months without obtaining the opinion of Advisory Boards. **So, the statement is incorrect.**

For Future Reference:

Q.3) With reference to the provisions regarding Preventive Detention under the Indian Constitution, consider the following statements:

- I. No person can be detained under any preventive detention law for more than three months unless such detention is approved by an Advisory Board.
- II. Only Parliament can make laws with regards to preventive detention in India.
- III. The constitutional protection against preventive detention is available to both citizens and non-citizens.

Which of the statements given above is/are correct?

- a) I and II only
- b) I, II and III
- c) III only
- d) I and III only

Ans) c

Exp) Option c is the correct answer.

Preventive detention refers to the **detention of a person to prevent the possible commission of an offence** rather than to punish for an act already committed.

The Constitution of India, under **Articles 22(3) to 22(7)**, expressly **permits preventive detention**, making India one of the few democratic countries to constitutionally sanction such a measure.

Statement I is incorrect: Under **Article 22(4)** of the Constitution, **no person can be detained under any preventive detention law for a period exceeding three months unless such detention is approved by an Advisory Board.**

The Advisory Board must consist of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court, and it examines whether sufficient cause exists for the continued detention. If the Board reports that there is no sufficient cause, the person must be released immediately.

But at the same time Article 22(7) of the Constitution, gives the power to Parliament by law can provide circumstances under which a person may be detained for a period longer than three months without obtaining the opinion of an Advisory Board. Eg. National Security Act 1980 provides for- Circumstances in which persons may be detained for periods longer than three months without obtaining the opinion of Advisory Boards.

Statement II is incorrect: The **Constitution divides the legislative power on preventive detention between the Parliament and the State Legislatures.**

Parliament alone can make laws on preventive detention for reasons related to defence, foreign affairs, and the security of India, while both Parliament and State Legislatures can legislate on matters concerning a State's security, public order, and the maintenance of essential supplies and services.

Hence, the **power is not exclusive to Parliament**, but **shared between the Union and the States.**

Statement III is correct: The **constitutional protection concerning preventive detention, applies to all persons, whether citizens or non-citizens.**

Similarly, the procedural safeguards relating to arrest and detention under Articles 22(1) and 22(2) are also available to both categories of persons. Thus, these provisions ensure that even non-citizens enjoy constitutional protection against arbitrary preventive detention.

Knowledge Base:

Safeguards and Rights of the Detenu under Preventive Detention:

- **Communication of Grounds:** The grounds of detention must be **communicated to the detenu** to inform them of the reasons for their detention. However, the **State may withhold facts** if their disclosure is considered **against the public interest**.
- **Right to Representation:** The detenu must be **given an opportunity to make a representation** against the detention order.

Major Laws on Preventive Detention:

- National Security Act (NSA), 1980
- Conservation of Foreign Exchange and Prevention of Smuggling Activities (COFEPOSA) Act, 1974
- Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980.

Source:) <https://ncert.nic.in/textbook.php?keps2=2-10> Page: 35.

Mastering Indian Polity by Forum IAS, 1st Edition, Chapter: 10 – Fundamental Rights, Page: 107-110.

Subject:) Polity

Topic:) Fundamental Rights

Subtopic:)

In Q.37) There was a doubt raised regarding the explanation of Statement I.

Explanation: Statement I is incorrect. Article 359 (1) of the Constitution of India states that 'Where a Proclamation of Emergency is in operation (it may be due to any reasons mentioned under Article 352 i.e. whether by war or external aggression or armed rebellion), the President may by order declare that the right to move any court for the **enforcement of such of the rights conferred by Part III (except articles 20 and 21)** as may be mentioned in the order and all proceedings pending in any court for the enforcement of the rights so mentioned **shall remain suspended** for the period during which the Proclamation is in force or for such shorter period as may be specified in the order.

This simply means that the enforcement of Article 20 and 21 can not be suspended by presidential order during an emergency due to any reason.

Hence, where a proclamation of Emergency under Article 352 is in operation on the ground of war (or any other reason), the right of individuals to file a Habeas Corpus petition before the Supreme Court (which falls under the purview of Article 21 of the Constitution) does not stand suspended. Hence the statement is incorrect.

Source:

<https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2024/07/20240716890312078.pdf> (Article 359, page 216)

In Q.44) There was a doubt raised regarding statement I of the question that A law prescribing punishment for those acts which are declared to be offences under Part III of the Constitution can be enacted only by the Parliament, and not by any State Legislature?

Explanation: Statement I is correct. Article 35 (a) of the Constitution of India states **that the Parliament shall have, and the Legislature of a State shall not have, power to make laws**— (i) with respect to any of the matters which under clause (3) of article 16, clause (3) of article 32, article 33 and article 34 may be provided for by law made by Parliament; and (ii) **for prescribing punishment for those acts which are declared to be offences under this Part (Part III)**, and Parliament shall, as soon as may be after the commencement of this Constitution, make laws for prescribing punishment for the acts referred to in sub-clause (ii).

Hence Article 35 explicitly prohibits the states from making any law prescribing punishment for those acts which are declared to be offences under Part III of the Constitution.

Source:

<https://cdnbbsr.s3waas.gov.in/s380537a945c7aaa788ccfcdf1b99b5d8f/uploads/2024/07/20240716890312078.pdf> (Article 35, page 20)

In Q.16) There was doubt raised regarding option II of the question that the Right to vote in India is a constitutional right or not?

Explanation: As per Article 326 of the Constitution of India, the elections to the House of the People and to the Legislative Assembly of every State shall be on the basis of adult suffrage; that is to say, **every person who is a citizen of India and who is not less than eighteen years of age on such date as may be fixed in that behalf by or under any law made by the appropriate Legislature** and is not otherwise disqualified under this Constitution or any law made by the appropriate Legislature on

the ground of non-residence, unsoundness of mind, crime or corrupt or illegal practice, **shall be entitled to be registered as a voter at any such election.** Thus as per Article 326, Right to vote is a Constitutional Right.

However, we acknowledge the doubt raised by the students that as per the Anoop Barnwal case, the right to vote is a Statutory right, and also the recent Centre's submission in the Supreme Court that the right to vote is a statutory right. But at the same time, in ADR case 2024, the judges observed that the right to vote is a constitutional right under Article 326. Thus, there is confusion as to the exact status of the right to vote. For the time being, we are not changing any the answer to the question. In 1 or 2 days when we are able to better conclude based on discussion with other faculties, we will confirm the same and if any changes are required in the answer, we will update you accordingly.