STUDY NOTES · BASIC CONCEPT

Know about Right to Protest, Difference between Arrest and Detention and Principle of Proportionality

Polity & Governance

11 Oct 2026

A. What is the Right to Protest?

The right to protest is derived primarily from the fundamental rights to freedom of speech and expression and peaceful assembly.

- Article 19(1)(a): Freedom of speech and expression.
- Article 19(1)(b): Right to assemble peacefully and without arms.
- Article 19(1)(c): Right to form associations or unions, subject to constitutional provisions.

These rights enable citizens to express disagreement with government policies, demand reforms and participate in democratic processes.

Important: The right to protest is not absolute. Restrictions must satisfy the applicable constitutional and legal requirements.

B. What Is Preventive Detention or Preventive Police Action?

Preventive action seeks to prevent a reasonably anticipated breach of peace or other legally specified harm rather than punish a person for an offence already established through trial.

It is important to distinguish between:

- Preventive police action: Measures taken under applicable law to prevent an anticipated breach of peace.
- Preventive detention: Detention under specific preventive-detention laws, subject to constitutional safeguards.
- Punitive detention: Detention following criminal proceedings and the applicable legal process.

These terms are not interchangeable. The legal basis, purpose and safeguards differ.

C. Important Constitutional Articles

Article	Constitutional significance
Article 14	Equality before the law and equal protection of the laws
Article 19(1)(a)	Freedom of speech and expression
Article 19(1)(b)	Right to assemble peacefully and without arms
Article 19(2)	Permits reasonable restrictions on speech and expression on specified grounds
Article 19(3)	Permits reasonable restrictions on peaceful assembly on grounds of sovereignty and integrity of India or public order
Article 21	Protection of life and personal liberty
Article 22	Safeguards relating to arrest and detention, including special provisions for preventive detention

BECOME IAS
AI-Powered UPSC Preparation by ZINKPOT

D. What Is the Difference Between Arrest and Detention?

Arrest is a formal legal act of taking a person into custody under applicable law.

Detention refers more broadly to the holding of a person in custody or restricting their liberty under a legal authority. Its precise meaning depends on the context and governing law.

A person being detained does not, by itself, establish that they have committed an offence. The legality of the action depends on its legal basis and compliance with applicable safeguards.

E. What Is the Role of an Executive Magistrate?

An Executive Magistrate performs functions assigned under criminal procedure and other applicable laws, including certain preventive and public-order functions.

Depending on the legal provision invoked, an Executive Magistrate may consider whether preventive action is justified and whether specified procedural requirements have been met.

Executive Magistrates are distinct from Judicial Magistrates, who exercise judicial functions under the criminal justice system.

F. What Is the Principle of Proportionality?

BECOME IAS
AI-Powered UPSC Preparation by ZINKPOT

The principle of proportionality requires State action restricting rights to have a legitimate purpose and to be appropriately tailored to that purpose.

In the context of protests, authorities should consider:

1. Whether a restriction has a lawful basis.
2. Whether it serves a legitimate objective, such as public order.
3. Whether the measure is necessary and proportionate.
4. Whether a less restrictive alternative could achieve the objective.
5. Whether adequate safeguards and remedies are available.

For example, imposing reasonable conditions on a peaceful demonstration may be preferable to imposing a blanket restriction when those conditions can adequately address the identified risks.