

## PREVENTIVE DETENTION: POLITY

**NEWS:** Preventive detention must not act as a substitute for criminal prosecution or bail: SC judgment

### WHAT'S IN THE NEWS?

The Supreme Court quashed a preventive detention order under Kerala's Goonda Act, reiterating that such detention cannot bypass bail or criminal prosecution and must be used only in exceptional cases. It emphasized the constitutional safeguards under Article 22 and the need for strict adherence to due process.

### Background of the Case

- The case involved *Rajesh*, a registered moneylender in Kerala, who was detained under Section 3(1) of the Kerala Anti-Social Activities (Prevention) Act, 2007.
- He was labelled a “notorious goonda” by the police, despite being out on bail in all pending cases.
- His wife, Dhanya M, challenged the preventive detention in the Kerala High Court, which upheld it.
- On appeal, the **Supreme Court quashed the detention**, stating it was arbitrary and a misuse of the preventive detention provision.

### Key Observations by the Supreme Court

- **Preventive Detention ≠ Criminal Prosecution:**
  - Preventive detention is an exceptional measure, not a substitute for criminal proceedings.
  - It must not be used to bypass bail or ongoing judicial processes.
- **Doctrine of Exceptionality:**
  - Detention is a *constitutional exception* under **Article 21** and should be invoked in only the *rarest of rare cases*.
  - Routine or casual use violates the principle of liberty.
- **Failure to Establish ‘Public Order’ Disturbance:**
  - The SC held that the state failed to establish how the detainee's actions disrupted public order.

- It reiterated the difference between mere criminal activity and actual threats to public order.
- **Violation of Due Process:**
  - The Court observed that there were no compelling reasons for detention when regular trial processes were ongoing.
  - It warned against *executive overreach* in curtailing personal liberty.

## Constitutional Provisions on Preventive Detention

- **Article 22 of the Indian Constitution:**
  - Provides safeguards to those arrested or detained.
- **Article 22(3)(b):**
  - Allows preventive detention *without applying normal arrest safeguards* in matters of public order and state security.
- **Article 22(4):**
  - Detention beyond 3 months requires approval by an **Advisory Board** composed of judges/qualified High Court judges.
- **Article 22(7):**
  - Parliament can:
    - Extend detention without Advisory Board approval under specific conditions.
    - Define maximum duration of detention.
    - Prescribe Advisory Board procedures.

## What is Preventive Detention?

- A legal mechanism allowing authorities to detain a person **without a trial**, based on **reasonable suspicion** of potential harm to public order or security.
- It is **not based on guilt or evidence of a crime**, but rather on the anticipation of a potential threat.

## Major Preventive Detention Laws in India

- **National Security Act (NSA), 1980:**
  - Allows detention up to 12 months without charges for state security and public order.
- **Unlawful Activities (Prevention) Act (UAPA), 1967:**
  - Targets terrorism and unlawful activities; allows extended detention without bail.

- **Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFE-POSA), 1974:**
  - Used against economic offenders involved in smuggling and forex violations.
- **Public Safety Acts (e.g., J&K PSA):**
  - Applied for preventing threats to state security or disruption of public peace.
- **Kerala Anti-Social Activities (Prevention) Act, 2007:**
  - State law for habitual offenders.
  - **Section 2(j)** defines “anti-social elements”.
  - **Section 3(1)** empowers District Magistrates to detain individuals to prevent perceived threats to public order.

### Preventive Detention vs. Punitive Detention

Aspect	Preventive Detention	Punitive Detention
Grounds of Detention	Anticipation of harm to public order or security	Punishment after trial and conviction
Right to Be Informed	Not absolute; can be withheld in public interest	Absolute right to know grounds
Legal Representation	Limited; no guaranteed right to legal counsel	Full legal rights ensured
Applicability	Applicable to both citizens and aliens	Not applicable to enemy aliens

### Supreme Court Guidelines for Preventive Detention (Jaseela Shaji Case, 2024)

- **Fair Opportunity:** Detaining authority must furnish all documents used to justify detention.
- **Language Accessibility:** Documents must be given in a language the detainee understands.
- **Protection under Article 22(5):** Failure to supply documents violates the detainee’s fundamental right to challenge the detention.
- **Timeliness:** Delays in informing detainees or in proceedings violate procedural fairness.
- **Use of Technology:** Authorities must use digital means to ensure no delays in communication or legal processes.

### Important Supreme Court Judgments on Preventive Detention

- **A.K. Gopalan vs. State of Madras (1950):**
  - Upheld the Preventive Detention Act, 1950.
  - Viewed Article 22 as a self-contained code for detention procedures.
- **Khudiram Das vs. State of West Bengal (1975):**

- Clarified that detention is preventive, not punitive.
- Emphasised need for proper application of mind by the detaining authority.
- **Amed Noor Mohammad Bhatti vs. State of Gujarat (2005):**
  - Held that suspicion of prejudicial activity is enough to justify preventive detention.
- **Justice K.S. Puttaswamy vs. Union of India (2017):**
  - Introduced proportionality as a principle in evaluating State interference with personal liberty.
- **Shaikh Nazneen vs. State of Telangana (2022):**
  - Reiterated that preventive detention must be used sparingly and not for routine criminal law enforcement.
- **Jaseela Shaji vs. Union of India (2024):**
  - Strongly emphasized the importance of procedural safeguards under Article 22(5).

#### **Data on Preventive Detention in India**

- **As per NCRB 2021:**
  - **Total arrests:** 1,48,20,298
  - **Preventive Detention arrests** (mostly under Section 151 CrPC): 89,00,174
  - Represents over **60% of total arrests**, indicating large-scale use of this tool even before actual criminal activity.

#### **Concerns Regarding Preventive Detention**

- **Judicial Limitations:**
  - Courts can only verify procedural compliance, not the subjective satisfaction of detaining authorities.
- **Human Rights Violations:**
  - Denial of fair trial and lack of legal remedies make detainees vulnerable to abuse and arbitrary incarceration.
- **Arbitrary Executive Power:**
  - Often applied to suppress political dissent, activism, or protests without transparency.
- **Violation of International Norms:**

- Goes against the **International Covenant on Civil and Political Rights (ICCPR)**, which mandates strict conditions for detention.
- **Prolonged Detentions Without Trial:**
  - Contradicts natural justice, rule of law, and human dignity.

## Way Forward: Reforms and Safeguards

- **Strict Procedural Compliance:**
  - All detention orders must meet constitutional standards of fairness, reason, and necessity.
- **Judicial Oversight:**
  - Courts must ensure periodic review of detention cases, even beyond advisory boards.
- **Independent Advisory Boards:**
  - Free from executive influence; composed of serving or retired judges with full autonomy.
- **Time-Bound Review Mechanisms:**
  - Prevents indefinite or prolonged detentions.
- **Ensure Right to Legal Representation:**
  - Even in preventive detention, detainees must be allowed to challenge detention effectively.
- **Transparent Investigation:**
  - Authorities must document and justify each case with evidence and reasons.
- **Compensation for Wrongful Detention:**
  - Legal recourse and state compensation in cases of illegal detention must be institutionalized.

## Conclusion

- Preventive detention, though constitutionally permitted, must always be treated as an *extraordinary measure*, not a routine administrative shortcut.
- **The Supreme Court's verdict serves as a strong reminder that personal liberty under Article 21 is sacrosanct**, and any encroachment must pass the tests of legality, necessity, and proportionality.

- Balancing state security with constitutional rights is the key to ensuring a just, democratic legal order in India.

**Source:** <https://www.thehindu.com/news/national/preventive-detention-must-not-act-as-a-substitute-for-criminal-prosecution-or-bail-sc-judgment/article69695309.ece>