



Abuse of Preventive detention Laws

This editorial is based on [“Safeguards and procedures: On India’s preventive detention laws”](#) which was published in the Hindu on 12/04/2023. It discusses the issues associated with the colonial era preventive detention laws.

For Prelims: Fundamental rights, Freedom of speech, Right to life and personal liberty, Protection against arrest and Detention

For Mains: Preventive detention laws: legal provisions, arguments in favor, issues and judiciary’s stand.

Recently, the Supreme Court has observed that [preventive detention](#) laws are of colonial legacy and confer arbitrary powers on the state. It also observed that they also pose serious threat to the personal liberty of an individual provided by [Article 21](#).

In addition to the Supreme court’s observation, there have been several instances where the misuse of the laws has been seen and cases have been filed before the Courts.

In this context let’s discuss what is preventive detention, issues related to this and what should be the way forward.

What is Preventive Detention?

- Preventive detention means to detain a person so that to prevent that person from committing on any possible crime.
- In other words, preventive detention is an action taken by the administration on the grounds of the suspicion that some wrong actions may be done by the person concerned which will be prejudicial to the state.

What are the Provisions related to Preventive Detention?

- **Sec 151 of CrPC** provides a police officer may arrest a person without any orders from the magistrate and without any warrant, if it appears to him that the commission of the offence cannot be prevented without arrest.
- [Art 22](#) provides for the constitutional safeguards related to such detentions.

On what grounds a person can be detained?

- The grounds for Preventive detention are:
 - State security,
 - Public order,

- Foreign Affairs, and
- Community services.

What are the Safeguards Available to the person detained?

- At the first instance, a person may be taken to preventive custody only for 3 months.
 - The period of detention may be extended beyond 3 months, only on approval by the Advisory Board.
- The detainee has the right to know the grounds of his/her detention.
 - However, the state may refuse to tell the grounds if it is necessary to do so in public interest.
- The detainee is provided opportunity to challenge his/her detention.

What are the Arguments in Favour of Preventive Detention?

- **Protection of National Security:** Preventive detention laws are essential to safeguard national security by allowing authorities to detain individuals who may pose a threat to public safety, national security or the peace and order of the society.
- **Proactive Measure to Prevent Crimes:** Preventive detention can be used as a proactive measure to prevent crimes before they happen. It is often used to detain individuals who are likely to engage in criminal activities or who have already committed crimes in the past.
- **Upheld by Judiciary:** The judiciary has upheld the validity of such laws as they have been very useful in maintaining public order. The Supreme Court has also laid down guidelines to ensure that preventive detention is used judiciously and that individuals are not detained arbitrarily.
 - In *Ahmed Noor Mohamad Bhatti V. State of Gujarat*, the Supreme Court upheld the constitutional validity of Section 151 of CrPC ruling that the abuse of this power by the police officer cannot render this provision as arbitrary and unreasonable.
 - In *Mariappan v. The District Collector and Others* case, it held that the aim of detention and its laws is not to punish anyone but to stop certain crimes from being committed.
- **Constitutional Safeguards are Available:** The Constitution of India provides several safeguards to prevent the misuse of preventive detention laws.
 - At the first instance, a person may be taken to preventive custody only for 3 months.
 - The period of detention may be extended beyond 3 months, only on approval by the Advisory Board.
 - The detainee has the right to know the grounds of his/her detention.
 - However, the state may refuse to tell the grounds if it is necessary to do so in public interest.
 - The detainee is provided opportunity to challenge his/her detention.
- **Deterrent for the Potential Offenders:** The fear of being detained can act as a deterrent to individuals who may be planning to engage in criminal activities.

What are the Issues with the Preventive Detention Law?

- **Used for trivial reasons:** There have been several instances where the authorities have been found using the laws for petty issues. One of the strangest instances is when a person was detained as goonda for selling substandard chilli powder.
- **Lack of Proper Definition:** In various state laws, there's no clarity on what grounds a person must be detained. Thus, law's ambit is rarely restricted to habitual offenders.
- **Has Colonial Legacy:** Some experts argue that such laws are not needed in modern times as it was used against the freedom fighters during the British raj.
- **Against Fundamental Rights:** Such laws are in clear conflict with the Fundamental rights. detaining a person on uncertain grounds as he could commit a crime infringes the Fundamental Rights under [Art 19](#) and [21](#).
- **Misuse:** In several instances, it has been seen that such laws have been misused in vindictive manner. In several cases political parties have been seen misusing the laws to punish the members of opposition. During the COVID period, various state governments invoked [National](#)

Security Act (NSA) on several opposition leaders and journalists.

- **Safeguards aren't Enough:** [Art 22](#) gives the person the right to be informed of grounds of his arrest, but the very same article also provides for non-disclosure of the grounds in public interest. The refusal of disclosing the grounds of detention is not a safeguard in true sense.

What should be the Way Forward?

- **Uniformity in Laws:** Different states have different laws related to this as Law and order is a subject under state list. Still the central government must urge states to have some kind of uniformity through some model act.
- **Remove the Scope of Ambiguity:** The nature of the crimes under the laws must be clearly defined in a view to reduce the scope of ambiguity. For instance, Tamilnadu's Goondas Act' covers offenders who range from bootleggers, slum grabbers, forest offenders to video pirates, sex offenders and cyber-criminals.
- **Ensure Effective Use of Laws:** The authorities must be trained in way that they act proportionately and do not misuse the laws. Also, the laws must be used to serve the greater purpose of maintaining public order and should not be used on trivial issues and for vendetta. As directed by hon'ble Supreme court in Mariappan v. The District Collector and Others case.
- **Use Alternate Methods:** The authorities must find some alternate and try to avoid detention if possible. The punishment for a crime should be directly related and proportionate to the severity of the crime committed. For example, a small fine might be appropriate for a minor offense, while a long prison sentence might be appropriate for a serious or violent crime.
- **Use in Rarest of the Rare cases:** The laws must not be used arbitrarily in any case. The gravity of the crime must be judged by the authorities and laws should be used in rarest of the rare instances.

Conclusion

While preventive detention laws can be a useful tool in maintaining law and order, their implementation needs to be done with caution to avoid any violations of human rights. The government needs to ensure that these laws are not misused and that they are used only when necessary to prevent any undue harm to individuals.

Drishti Mains Question

The Preventive detention laws have often been criticized for their misuse. Critically analyse the need of such laws in the light of judiciary's view on such laws.