



New Standards for Preventive Detention

For Prelims: [Supreme Court](#), [Preventive Detention](#), [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#), [Article 22\(5\)](#), [Fundamental Rights](#), [Parliament](#), [State Legislature](#), [44th Amendment Act, 1978](#), [Unlawful Activities \(Prevention\) Act \(UAPA\), 1967](#), [Article 21](#).

For Mains: Role of judiciary in balancing democratic principles and personal liberty with preventive detention laws.

Source: [HT](#)

Why in News?

Recently, in the *Jaseela Shaji vs the Union of India case, 2024*, the [Supreme Court \(SC\)](#) set up **new standards** for [preventive detention](#).

- The ruling came in response to a preventive detention order under the [Conservation of Foreign Exchange and Prevention of Smuggling Activities \(COFEPOSA\) Act, 1974](#), upheld by the **Kerala high court**.

What are the New Standards for Preventive Detention?

- **Fair and Effective Opportunity:** SC held that the **detaining authority** must provide the detainee with **copies of all documents** relied upon for detention, and **failure** to do so **invalidates** the detention.
- **Constitutional Right:** SC stressed that **personal liberty** is a paramount [constitutional right](#). Failure to provide all relevant documents and information to challenge the detention effectively would constitute a violation of the fundamental right under [Article 22\(5\)](#) of the Constitution.
- **Non-arbitrary Actions:** Authorities are required to guard against **arbitrary actions** and ensure detainees' rights are respected at all stages.
 - It includes furnishing documents in a **language the detainee can understand**.
- **Avoiding Undue Delay:** Authorities must ensure **timely communication** related to detention, using available technology to **avoid unnecessary delays**.

What are the Key Facts About Protection Against Arrest and Detention?

- **Constitutional Basis:** [Article 22](#) of the Indian Constitution grants **protections** to individuals who are **arrested or detained**.
 - These provisions ensure [fundamental rights](#) are protected under different circumstances of arrest or detention.
- **Types of Detention:** There are **two types** of detention.
 - **Punitive Detention:** Punishes a person **after trial and conviction** in court for an offence they committed. It follows [due process of law](#).
 - **Preventive Detention:** Involves detaining a person **without trial or conviction**, aiming

to **prevent a future offence**. This detention is based on **suspicion** and serves as a **precautionary measure** to avoid potential harm.

- **Parts of Article 22:** There are **two parts** of Article 22.
 - **First Part:** The first part deals with rights under **ordinary law** i.e., laws not related to preventive detention. Rights include (**Except** enemy aliens or individuals detained under preventive detention laws).
 - **Right to be Informed:** A person must be told the **grounds of their arrest**.
 - **Right to Legal Representation:** The arrested individual has the **right to consult** and be defended by a **legal practitioner**.
 - **Right to Prompt Judicial Review:** They must be presented before a magistrate within **24 hours of arrest**.
 - **Right against Prolonged Detention:** They must be **released after 24 hours** unless a magistrate authorises further detention.
 - **Second Part:** It deals specifically with protections under **preventive detention laws**, which apply to **both citizens and non-citizens**.
 - **Maximum Detention without Review:** The detention of a person cannot exceed **three months** unless the advisory board reports sufficient cause for extended detention. The board is to consist of **judges of a high court**.
 - **Communication of Detention Grounds:** The **grounds of detention** should be communicated to the **detenu**. However, the facts considered to be against the **public interest** need not be disclosed.
 - **Right to Representation:** The detenu should be afforded an **opportunity** to make representation against the **detention order**.
- **Legislative Power on Preventive Detention:** The Parliament has **exclusive authority** to make a law of preventive detention for reasons connected with **defence, foreign affairs and the security of India**.
 - Both the **Parliament** as well as the **state legislatures** can **concurrently** make a law of preventive detention for reasons connected with the **security of a state**, the maintenance of **public order** and the maintenance of **supplies and services essential to the community**.
- **Parliament's Power to Extend Detention:** Article 22 authorises the **Parliament** to prescribe:
 - the **circumstances and the classes** of cases in which a person can be detained for **more than three months** under a preventive detention law without obtaining the opinion of an advisory board;
 - the **maximum period** for which a person can be **detained** in any classes of cases under a preventive detention law; and
 - the **procedure** to be followed by an **advisory board** in an inquiry.
- **Key Amendments:** The **44th Amendment Act, 1978** has reduced the period of detention without obtaining the opinion of an advisory board from **three to two months**.
 - However, this provision has **not yet been brought into force**, hence, the original period of **three months still continues**.
- **Preventive Detention Laws in India:** Several preventive detention laws have been enacted by Parliament to maintain national security, and public order, and prevent crimes. **Examples**.
 - Maintenance of Internal Security Act (MISA), 1971 (**Repealed in 1978**)
 - Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), 1974
 - **National Security Act (NASA), 1980**
 - Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985 (**Repealed in 1995**).
 - Prevention of Terrorism Act (POTA), 2002 (**Repealed in 2004**)
 - **Unlawful Activities (Prevention) Act (UAPA), 1967** (Amended several times, including in 2004, 2008, 2012, and 2019).
- **Criticism of Preventive Detention in India:** No **democratic country** in the world has made preventive detention an **integral part of the Constitution** as has been done in India.
 - It is unknown in the United States.
 - It was used in Britain only during the **First and Second World Wars**.
 - In India, preventive detention existed even during **British rule**. For example, the **Bengal State Prisoners Regulation, 1818** and the **Defence of India Act, 1939** provided for preventive detention.

What are the Issues with the Preventive Detention Law?

- **Misuse of Law:** Preventive detention **coexists** with **fundamental rights** in the Indian Constitution, but its misuse for political gains or [controlling free speech](#) has raised concerns.
 - Cases in Uttar Pradesh, where preventive detention was invoked for trivial issues like **local cricket disputes**, show potential for abuse.
- **Lack of Checks and Balances:** The **broad powers to detain** with limited judicial oversight raise the risk of misuse of authority.
 - The scope for **judicial scrutiny** is confined to ensuring that **procedural safeguards** are followed, but **not the merits of the detention**.
- **Lack of Transparency:** The frequent use of detention to curb dissent shows a need for greater **accountability** in its application.
- **Colonial-Era Laws:** Some preventive detention laws date back to **colonial times** and do not align with modern [human rights](#) standards.

What are Important Judicial Cases Related to Preventive Detention?

- **Shibban Lal v. State of Uttar Pradesh Case, 1954:** The SC held that courts are **not competent** to inquire into the veracity of facts that form the basis for detention.
 - This indicates a **limited role for judicial intervention** in preventive detention cases.
- **Khudiram v. State of West Bengal Case, 1975:** The SC ruled that it **lacks the power** to assess the validity of the grounds for detention under the [Maintenance of Internal Security Act, 1971 \(MISA\)](#).
 - SC emphasised that the **detaining authority's decision is final**, with courts unable to substitute their judgement.
- **Nand Lal Bajaj v. The State of Punjab and Anr Case, 1981:** The Supreme Court acknowledged that preventive detention laws are **inconsistent** with the principles of a **parliamentary system**.
 - However, it ruled that the issue is **political in nature**, making it the responsibility of the **legislature**, not the judiciary.
- **Rekha v. State Of Tamil Nadu Case, 2011:** The Supreme Court called preventive detention "**repugnant to democratic ideas**" and urged its application within narrow limits to avoid violating [Article 21](#) (Right to Life and Liberty).
- **Mariappan vs the District Collector And Others Case, 2014:** The Madras High Court reiterated that preventive detention is meant to **prevent harm to the state, not to punish the detainee**.
 - The decision to detain is based on the **subjective satisfaction** of the authority, within criteria such as **state security, public order, foreign affairs, and community services**.
- **Prem Narayan v. Union of India Case, 2019:** the Allahabad High Court stated that preventive detention is an **infringement upon the personal freedom** of an individual and it can't be imposed casually.
- **Abhayraj Gupta v. Superintendent, Central Jail, Bareilly Case, 2021:** The Allahabad High Court held that preventive detention should not be used when a person is already detained.
 - The court observed that if a detained person's actions **did not cause widespread public disorder or disrupt societal peace**, there was no valid basis to detain him under preventive detention laws.

Conclusion

Preventive detention, while constitutionally permitted in India, is often seen as a **challenge to democratic principles and personal liberty**. Though vital for **national security**, unchecked powers can infringe on fundamental rights, especially the **right to life and liberty**. Reforms are essential to **balance security with human rights**, ensure fair process, and prevent abuse. A comprehensive **review and modernization** of colonial-era laws are necessary to make preventive detention just and reasonable in contemporary India.

Drishti Mains Question:

Q. Examine the constitutional provisions related to preventive detention in India. How does the judiciary help in balancing individual liberty and national security with respect to preventive detention?

UPSC Civil Services Examination, Previous Year Question (PYQ)

Prelims

Q. The Rowlatt Act aimed at (2012)

- (a) compulsory economic support to war efforts
- (b) imprisonment without trial and summary procedures for trial
- (c) suppression of the Khilafat Movement
- (d) imposition of restrictions on freedom of the press

Ans: (b)

Q. During the Indian Freedom Struggle, why did the Rowlatt Act arouse popular indignation? (2009)

- (a) It curtailed the freedom of religion
- (b) It suppressed the Indian traditional education
- (c) It authorised the government to imprison people without trial
- (d) It curbed the trade union activities

Ans: (c)

Mains

Q. Indian government has recently strengthened the anti-terrorism laws by amending the Unlawful Activities(Prevention) Act, (UAPA), 1967 and the NIA Act. Analyse the changes in the context of the prevailing security environment while discussing scope and reasons for opposing the UAPA by human rights organisations. **(2019)**