



# SC Judgement on Preventive Detention

## Why in News

Recently, the [Supreme Court \(SC\)](#) ruled that a [preventive detention](#) order can only be passed if the detenu is likely to adversely affect the maintenance of public order.

- The SC also gave **direction to governments and to other courts**, for dealing with detention under preventive detention.

## Key Points

- **Preventive Detention for Public Order:** The court held that it cannot seriously be disputed that the **Detenu may be a 'white collar offender'** and if set free, will continue to cheat gullible persons.
  - **However, a Preventive Detention Order can only be passed if his activities adversely affect or are likely to adversely affect the maintenance of public order.**
- **Clarity on the Term 'Public Order':** Preventive detention is a **necessary evil** only to prevent public disorder, but a **liberal meaning cannot be given** to the expression public order in the context of preventive detention statute.
  - Contravention of law, such as indulging in cheating or criminal breach of trust, **certainly affects 'law and order'**.
  - However, before it can be said to affect 'public order', **it must affect the community or the public at large.**
- **Direction to the Government:** The State **should not arbitrarily resort to "preventive detention"** to deal with all and sundry "law and order" problems, which could be dealt with by the ordinary laws of the country.
- **Directions to the Courts : One of the questions** the courts must ask in deciding the legality under a preventive detention should be:
  - **Was the ordinary law of the land sufficient to deal with the situation?** If the answer is in the affirmative, the detention order will be illegal.
  - For example, the court said two drunks fighting on a road was a law and order problem, and not 'public disorder'. The solution here was not preventive detention.
- **Preventive Detention Undermines Liberty:** Liberty of a citizen is a most important right won by our forefathers after long, historical and arduous struggles.
  - If the power of preventive detention is not narrowed down to limits, the right to liberty will become nugatory (of no value or importance).
  - Therefore, Preventive detention must fall within the ambit of **Article 21** (due process of law) and read with **Article 22** (safeguards against arbitrary arrest and detention) and the **statute in question.**

## White Collar Crime vs Blue Collar Crime

- **White Collar Crime:** The term "white collar crime" refers to **financially motivated, nonviolent**

**crime** committed by individuals, businesses and government professionals.

- These crimes are characterized by deceit, concealment, or violation of trust.
- Examples of white-collar crimes include **securities fraud, corporate fraud, and money laundering, Ponzi and pyramid schemes, etc.**
- White-collar crime has been associated with the **educated and affluent.**
- The term was first coined in **1949 by sociologist Edwin Sutherland.**
- **Blue Collar Crime:** These crimes are **primarily small scale**, for immediate beneficial gain to the individual or group involved in them.
- This can also include personal related crimes that can be **driven by immediate reaction**, such as during fights or confrontations.
- These crimes may include Narcotic production or distribution, sexual assault, theft, burglary, assault or murder.

## Preventive Detention

### ▪ Constitutional Provisions:

- **Article 22 grants protection to persons who are arrested or detained.** Detention is of two types, namely, **punitive and preventive.**
  - Punitive detention is to punish a person for an offence committed by him after trial and conviction in a court.
  - Preventive detention, on the other hand, means detention of a person without trial and conviction by a court.
- Article 22 has two parts—**the first part deals with the cases of ordinary law** and the **second part deals with the cases of preventive detention law.**

Rights Given Under Punitive Detention	Rights Given Under Preventive Detention
<ul style="list-style-type: none"> <li>▪ Right to be informed of the grounds of arrest.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The detention of a person cannot exceed three months unless an advisory board reports sufficient cause for extended detention.</li> <li>▪ The board is to consist of judges of a high court.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Right to consult and be defended by a legal practitioner.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The grounds of detention should be communicated to the detenu.</li> <li>▪ However, the facts considered to be against the public interest need not be disclosed.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Right to be produced before a magistrate within 24 hours, excluding the journey time.</li> </ul>	<ul style="list-style-type: none"> <li>▪ The detenu should be afforded an opportunity to make a representation against the detention order.</li> </ul>
<ul style="list-style-type: none"> <li>▪ Right to be released after 24 hours unless the magistrate authorises further detention.</li> </ul>	
<ul style="list-style-type: none"> <li>▪ These safeguards are not available to an enemy alien.</li> </ul>	<ul style="list-style-type: none"> <li>▪ This protection is available to both citizens as well as aliens.</li> </ul>

**Note:** The **44<sup>th</sup> Amendment Act of 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.

### ▪ The preventive detention laws made by the Parliament are:

- Preventive Detention Act, 1950. Expired in 1969.
- 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 (NSA), 1980.**

- Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act (PBMSECA), 1980.
- Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985. Repealed in 1995.
- Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PITNDPSA), 1988.
- Prevention of Terrorism Act (POTA), 2002. Repealed in 2004.

- **Issues related to Preventive Detention Laws in India:**

- No democratic country in the world has made preventive detention as an integral part of the Constitution as has been done in India.
- The governments sometimes use such laws in an extra-judicial power. Also, there remains a fear of arbitrary detentions.

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