



Preventive Detention

For Prelims: [Supreme Court](#), [Preventive detention](#), [Article 22](#), [High Court judges](#), [Punitive detention](#), [Public Order](#), [Law and Order](#), [Ram Manohar Lohia vs State of Bihar \(1965\)](#)

For Mains: Preventive detention and its significance in maintaining law and order.

[Source: TH](#)

Why in News?

Recently, the [Supreme Court](#) has held that advisory boards under preventive detention laws should not behave like mere “rubber-stamping authorities” for the government,

- They should act as safety valves that stand between the capricious use of power by the state and the right to personal liberty.

What is Preventive Detention?

▪ Background:

- Laws authorising **preventive detention** existed in **British colonial rule** in India since **1818**.
- The **Defence of India Act of 1915** was passed on the outbreak of the [First World War](#), and the same was repeated in connection with emergency regulations made during the [Second World War](#).
 - Both have provisions of preventive detention i.e., **detention of a person without trial and conviction**.

▪ About:

- [Preventive detention](#) means the detention of a person **without trial and conviction** by a court. Its purpose is not to **punish a person** for a past offence but to prevent him from committing an offence in the near future.
- The detention of a person cannot exceed **three months** unless an advisory board reports sufficient cause for extended detention.
- **Grounds for Preventive Detention:**
 - State security
 - Public order
 - Foreign Affairs, etc.

▪ Two Types of Detentions:

- [Preventive detention](#) is when a person is held in [police custody](#) only on the basis of a suspicion that they would conduct a criminal act or cause harm to society.
 - The police have the authority to hold anyone they suspect of committing a criminal offence and also to make arrests without a warrant or a magistrate’s authorisation in certain cases.
- [Punitive detention](#) which means detention as a punishment for a criminal offence. It occurs after an offence is actually committed, or an attempt has been made towards the

commission of that crime.

▪ **Protection:**

- **Article 22** grants protection to persons who are **arrested** or **detained**.
 - It 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**.
 - The article makes it mandatory for preventive detention laws to form **advisory boards** consisting of persons qualified to be **High Court judges**.
 - Under different laws, review boards must assess detention orders **every three months** to determine if there's enough reason for preventive detention. They examine evidence, request more information if needed, listen to the person detained, and then report if the detention was justified or not.
- **Safeguards Available to the Detained Person:**
 - A person may be taken to **preventive custody** only for **3 months**.
 - The period of detention may be extended beyond **3 months**, only after 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 the public interest.
 - The detainee is provided an opportunity to **challenge** his/her detention.

▪ **The Relative Preventive Laws:**

- **Public Safety Act (PSA).**
- **Narcotic Drug and Psychotropic Substance Act (NDPS), 1985.**
- **National Security Act:** The **NCRB** data showed that the number of people arrested under the **National Security Act (NSA)** had dipped significantly compared to 2020.
 - Preventive detentions under the **NSA** peaked in **2020** at **741**. This number dropped to **483** in **2021**.

▪ **Issues Relate to Preventive Detention:**

- **Dent to Democracy:** No democratic country in the world has made preventive detention as an integral part of the Constitution as has been done in India.
- **Extra Judicial Authority:** Governments occasionally leverage such laws to exert extrajudicial authority, raising concerns about arbitrary detentions.
- **Misuse of other Acts:** There are several laws like the Unlawful Activities (Prevention) Act, 1967 which have potential to be misused for preventive detentions.
- **Manipulation by Government Officials:** District magistrates and the police also often make preventive detentions to control law and order in emerging communal clashes or clashes between any two communities, even when it might not always lead to public disorder.

Supreme Court on Preventive Detention:

- **Ameena Begum Case, 2023:** The Supreme Court held that **preventive detention is an exceptional measure** meant for emergency situations and **should not be used routinely**.
 - The **objective of preventive detention is not to punish but to prevent** anything prejudicial to the security of the state.
- **Ankul Chandra Pradhan Case, 1997:** This case emphasised that the purpose of preventive detention is to **prevent harm to the security of the state, rather than to impose punishment**.

What is Public Order and Law & Order?

▪ **About:**

- **Public order** refers to the maintenance of peace, stability, and harmony within society, ensuring that activities and behaviours do not disrupt the overall well-being or safety of the community.
- **Public order** is also one of the grounds for restricting **free speech** and other **fundamental rights**.

▪ **Power to Maintain Public Order:**

- Under **Entry 9 of List I (Union List)**, the Constitution of India provides the Parliament with the **exclusive power** to enact a law for preventive detention for the reasons connected with defence, foreign affairs, or security of India.
- Under **Entry 3 of List III (Concurrent List)**, both Parliament and State Legislature have powers to enact such laws for the reasons related to the maintenance of **public order** or the maintenance of supplies or services essential to the community.
- According to [State List \(List 2\)](#) of the [Seventh Schedule](#) of the Constitution, the power to legislate on aspects of public order rests with the states.

▪ **Distinction Between Public Order and Law & Order:**

- The Supreme Court distinguished between **'public order'** and **'law and order'**.
- In [Ram Manohar Lohia vs State of Bihar Case, 1965](#), the Supreme Court held that the problem of **'law and order'** affected only a few individuals, but an issue of public order influenced the community or the public at large or even the country.
 - The difference between **'law and order'** and **'public order'** lies in the degree and extent of their scope.
- The SC clarified that to bring the activities of a person within the expression of **"acting in any manner prejudicial to the maintenance of public order"** the activities must be of such a nature that the ordinary laws cannot deal with them or prevent subversive activities affecting society.

Way Forward

- **National Commission to Review the Working of the Constitution (NCRWC):** Submitted its report in **2002** after reviewing the **Preventive Detention Provisions** provided two recommendations:
 - The maximum period for detention under Article 22 should be six months
 - The composition of the advisory board should consist of a chairman and two other members who should be serving judges of a High Court.
- **Supreme Court's View:** In July 2022, while setting aside the **preventive detention order** issued for a **chain-snatcher** in **Telangana**, observed that these powers accorded to the State were **"exceptional"** and that since they affect the liberty of an individual, they should be used **sparingly**.
 - The court had also noted that these powers should not be used to **control ordinary law and order problems**.

Drishti Mains Question

Q. Discuss the Preventive Detention and its effectiveness in maintaining public order and national security.

Legal Insight: [Legality Of Preventive Detention](#)

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