

Preventive detention

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In news- Recently, the Supreme Court of India ruled that Preventive, the dreaded power of the State to restrain a person without trial, detention could be used only to prevent public disorder.

Supreme Court's ruling & directions

Following are the directions given by the Supreme Court to state and its subordinate courts:

- The Supreme Court observed that Preventive detention is a necessary evil only to prevent public disorder.
- The bench said that the **court must ensure that the facts brought before it directly and inevitably lead to a harm, danger or alarm or feeling of insecurity among the general public or any section thereof at large.**
- It observed that whenever an order under a preventive detention law is challenged, one of the questions the court must ask in deciding its legality is: 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
- It **directed the state that it 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.
- It ruled that to invoke a public detention law against someone, it is not enough that his/her actions pose a threat to law and order but must affect the public order.
- The bench also observed that Preventive detention must fall within the four corners of Article 21 (due process of law) read with Article 22 (safeguards against arbitrary arrest and detention) and the statute in

question.

- The judgment came in an appeal filed by the wife of a man placed under preventive detention under the Telangana Prevention of Dangerous Activities Act shortly after he was granted bail in a cheating case.

What is Preventive detention?

- It is the practice of incarcerating accused individuals before trial on the assumption that their release would not be in the best interest of society—specifically, that they would be likely to commit additional crimes if they were released.

Preventive detention in India

The Criminal Procedure Code(CrPC), 1973:

- Under Section 151 of the CrPC preventive detention is action taken on grounds of suspicion that some wrong actions may be done by the person concerned.
- A police officer can arrest an individual without orders from a Magistrate and without any warrant if he gets any information that such an individual can commit any offense.

Indian constitution:

- Article 22 of the Indian Constitution provides protection against arrest and detention in certain cases.

Article-22: Protection against arrest and detention in certain cases

- **As per claus(2) of article 22**, every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of

the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

- The clause (4) of the article states that **no individual can be detained for more than 3 months** unless a bench of High court judges or an Advisory board decides to extend the date.
- The same clause states that **no law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless (a) an Advisory Board** consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court **has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention.**
- As per clause (5) of the article, when any person is detained in pursuance of an order made under any law **providing for preventive detention**, the authority making the order shall, as soon as may be, **communicate to such person the grounds on which the order has been made** and shall afford him the earliest opportunity of making a representation against the order.

Difference between preventive detention and an arrest

- An 'arrest' is done when a person is charged with a crime. An arrested person is produced before a magistrate within the next 24 hours.
- In case of preventive detention, a person is detained as he/she is simply restricted from doing something that might deteriorate the law and order situation.

Preventive detention laws in India

- The Preventive Detention Act, 1950 (PDA)-PDA was initially effective for one year, but was allowed to continue till 1969.
- The Maintenance of Internal Security Act, 1971 (MISA).

MISA remained effective till 1978.

- The National Security Act, 1980 (NSA).