

Preventive Detention

Taking someone into custody who has not yet committed a crime but who the authorities believe poses a threat to law and order is known as preventive detention. Since this custody is ordered by the executive and the sole decision-making authority rests with the administrative or management authorities, the term "preventive detention" is also known as "administrative detention."

- Preventive detention is defined by Section 151 of the Criminal Procedure Code of 1973 (CrPC) as an activity conducted based on a suspicion that the person in question may have committed some crimes.
- If a police officer learns that a certain person may commit a crime, he or she may be arrested without needing a warrant or a magistrate's instructions.
- In some circumstances, the Indian Constitution's Article 22 guarantees protection from being detained and arrested.
- While the arrested person is provided with the different rights outlined in Articles 22(1) and (2) of the Constitution in the case of an arrest and detention, according to the law of Preventive Detention outlined in Article 22(3), such protections are not extended to the arrested custody.
- The protections in accordance with Preventive Detention are provided in clauses (4) to (7).

Preventive Detention Act, 1950

The Preventive Detention Act, 1950, or the PD Act, supports human imprisonment where it is necessary for state purposes such as national defence, keeping the peace and maintaining public order, handling foreign affairs, etc.

- In the case of *AK Gopalan v. The State of Madras*, when it was evident that a person's freedom did not qualify as guaranteed under Article 21, the Preventive Detention Act, 1950 was challenged in court.
- After adopting a restrictive interpretation of Articles 21 and 22, the Supreme Court declined to consider the judicial system's shortcomings.
- In the *Maneka Gandhi v. Union of India* decision, the court considerably broadened the definition of personal liberty and how it should be used.
- The court ruled that Article 19 is not preempted by Article 21 and that any legislation restricting a citizen's personal freedom must pass both Article 19 and 21's scrutiny.

Preventive Detention: Important Judgements by Supreme Court

The following discusses a few instances where the Supreme Court mentioned preventive detention.

AK Gopalan v. State of Madras

- A judge maintained the Preventive Detention Act's legality. The Court further declared that Article 22 of the Constitution offers comprehensive procedural protections concerning Preventive Detention.

- As a result, the Court determined that the contested conduct complied with the procedural protections outlined in Article 22 and did not infringe on basic rights provided in Article 22(5).

Ram Manohar Lohia v. State of Bihar

- The Supreme Court made an effort to distinguish between the ideas of "public order," "security of the state," and "law and order."
- The Court concluded that acts affecting merely law and order without touching one of the other two categories could not serve as a sufficient basis for a detention order.
- Obviously, despite the academic advantages of this reasoning, it simply suggests that courts have the authority to review the executive's determinations of dangers to the public's security.

Anil Dey v. State of West Bengal

- The Supreme Court ruled that courts cannot see through the detaining authority's subjective satisfaction to judge whether it is objectively sufficient.
- By using an objective standard to determine whether a person must be detained for a specific reason, courts cannot substitute their judgement for that of the detaining authority. Still, they can assess whether the satisfaction is sincere and real rather than whimsical and fictitious.
- Therefore, the administration must use good judgement when deciding whether to grant a detention order, as required by the courts.

Alijav v. District Magistrate, Dhanbad

According to the Supreme Court, preventive detention does not penalise a person for an offence they committed, whereas criminal processes do.

Ankul Chandra Pradhan v. Union of India

According to the Court, the goal of Preventive Detention is to prevent the inmate from doing anything that could endanger the state's security, not to punish them.

Significance of Preventive Detention

One of the few countries in the world that allows Preventive Detention during times of peace without the safeguards seen as essential in other nations to preserve fundamental human rights in India. Under Article 22 of the Indian Constitution, preventive detention may be utilised at any time, whether in peace, non-emergencies or other circumstances.

The Constitution permits detainees to be kept without charge or trial for up to three months while denying them the right to legal representation, cross-examination, prompt or periodic review, court access, or compensation for illegal arrest or detention.

- To stop anti-national elements from committing activities harmful to the nation's security and defence, the first PD Act was passed on February 26, 1950. After the remaining two years of operation, the statute was due to expire. However, the act's time frame was periodically extended, and in 1971, it was eventually repealed.
- To create internal security in India, the Maintenance of Internal Security Act (MISA) was established in 1971. It was viewed as a contentious measure since it was frequently used to harass and imprison those who opposed Congress's leadership, including

journalists, social workers, and various opposition parties. In 1977, the law was eventually repealed.

- In 1974, the Foreign Exchange and Prevention of Smuggling Activities Act, or COFEPOSA, was passed. It established preventive detention as a means of preserving and enhancing foreign exchange as well as of discouraging illegal activity. This law served as a fallback for MISA- 1971, and it survived MISA's repeal in 1977. On July 13, 1984, a different regulation raised the initial one-year jail period for smugglers to two years.
- The TADA, or Terrorist and Disruptive Activities (Prevention) Act, was introduced in 1985 in response to the separatist movement in Khalistan. The act was originally intended to last for two years, but in 1987 it was updated and reintroduced. This Act is considered the strongest and most restricting legislation created under the preventive detention system. Up until 1993, this act's duration had been increased every two years. There was no law at the centre level to combat terrorism in India from the end of its time frame in 1995 till POTA's passage.
- POTA, or the Prevention of Terrorism Act of 2002, was proposed as a TADA-like law in April 2001. In response to the terrorist events that occurred in the USA in 2001, the POTO (Prevention of Terrorism Ordinance, 2001) was created as a binding regulation. POTA was developed within the theoretical parameters of state national security and international Islamic terrorism. An ordinance revoked the law on September 21, 2004.
- The Prohibited Activities (Prevention) Act (UAPA), which was initially passed in 1967, declares all such groups that are considered to be separatist supporters to be unlawful. In the 1990s, when the Babri Mosque was demolished, and Kashmiri separatist activities were on the rise, many organisations were deemed invalid under this statute. The Act was then revised by the Unified Progressive Alliance (UPA) administration in 2004. In the wake of the 2008 Mumbai attacks, the act underwent another revision.
- The fabrication and distribution of premium counterfeit money, as well as supporting groups deemed unlawful under the definition of "terrorist operations," were all included in the 2012 UAPA amendment as examples of acts that threaten the stability of the nation's economy. The most recent change to the legislation, made in 2019, gives the NIA the power to designate people as "terrorists" because they may have connections to terrorist acts and organisations.