

Law On
Preventive Detention

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1. **“Preventive Detention”**: **Meaning of?**: ‘Preventive Detention’ means detention of a person without a trial or conviction by a Court. The primary objective of preventive detention is not to punish an individual for a past offence but to prevent him from committing an offence in future.
2. **Object of preventive detention**: The essential concept of preventive detention is that the detention of a person is not to punish him for something he has done but to prevent him from doing it. The basis of detention is the satisfaction of the Executive of a reasonable probability of the likelihood of the detenu acting in a manner similar to his past acts and preventing him by detention from doing the same. A criminal conviction on the other hand is for an act already done which can only be possible by a trial and legal evidence. There is no parallel between prosecution in a court of law and a detention order under the Act. One is a punitive action and the other is a preventive act. In one case a person is punished on proof of his guilt and the standard is proof beyond reasonable doubt whereas in preventive detention a man is prevented from doing something which it is necessary for reasons mentioned in Section 3 of the Act to prevent. See: Aameena Begum Versus State of Telangana (2023) 9 SCC 587

3. **Meaning of “public order”:** “Maintenance of public order” and “public order” in the context of preventive detention laws have to be interpreted in the light of Articles 21 & 22 of the Constitution of India. Hence, ruling in *Madhu Limaye*, (1970) 3 SCC 746 that liberal meaning must be given to “public order” is not applicable in interpreting the expression “public order” in the context of preventive detention laws. See: *Banka Sneha Sheela Versus State of Telangana*. (2021) 9 SCC 415
4. **Grounds for preventive detention:** Power of preventive detention can be exercised by the authorities on following grounds:
 - (I) Public order
 - (II) Security of State
 - (III) Law and order. See: *Banka Sneha Sheela Versus State of Telangana*. (2021) 9 SCC 415
5. **Power of preventive detention cannot be exercised in routine manner:** Powers to be exercised under the preventive detention laws are exceptional powers which have been given to the Government for its exercise in an exceptional situation as it strikes hard on the freedom and liberty of an individual, and thus cannot be exercised in a routine manner. See: *Shaik Naznen Versus State of Telangana*, (2023) 9 SCC 633
6. **Preventive detention under National Security Act, 1980:** Grounds for ordering preventive detention of a person under the provisions of the National Security Act, 1980 must be such as a rational human being can consider connected with the fact in respect of which the satisfaction is to be reached. The grounds must be relevant to the subject-matter of the enquiry and must not be extraneous to the scope and purpose of the statute. See: *Ameena Begum Versus State of Telangana* (2023) 9 SCC 587.
7. **Personal freedom holds paramount importance:** No freedom is higher than personal freedom and no duty higher than to maintain it unimpaired. The Court’s writ is the ultimate insurance against illegal detention. The Constitution enjoins conformance with the provisions of

Article 22 and the Court exacts compliance. Article 22(5) vests in the detenu the right to be provided with an opportunity to make a representation. Here the Law Report tells a story and teach a lesson. It is that the principal enemy of the detenu and his right to make a representation is neither high-handedness nor mean-mindedness but the casual indifference, the mindless insensibility, the routine and the red tape of the bureaucratic machine. See: Francis Coralie Mullin versus W.C. Khambra,(1980) 2 SCC 275

8. Necessity of communicating grounds of preventive detention under

NSA, 1980: Article 22 (5) of the Constitution of India requires the detaining authority to communicate the grounds of detention as soon as may be, and also to afford the detenu an earliest opportunity of making his representation against the detention. See:

- (I) Sarabjeet Singh Mokha Versus District Magistrate, Jabalpur (2021) 20 SCC 98.
- (II) Sarfaraz Alam Versus Union of India and Others 2024 SCC Online SC 18
- (III) Article 22(5) of the Constitution of India provides for the communication of the grounds on which the order of detention has been made by the detaining authority “as soon as may be”. Section 8(1) of the National Security Act, 1980 uses the expression “as soon as may be”. Qualifying it with the requirement that the communication of grounds should ordinarily not be later than five days and, in exceptional circumstances, for reasons to be recorded in writing not later than ten days from the date of detention. Section 8(1) also embodies the second requirement of Article 22(5) affording to the detenu the earliest opportunity of making a representation against the order to the appropriate Government. See: Sarabjeet Singh Mokha Versus District Magistrate, Jabalpur (2021) 20 SCC 98.

9. **Advisory Board's report not binding on State Government:** Advisory Board's report is not binding on the State Government. Both the State Government and the Central Government are empowered under the NSA, 1980 to revoke an order of detention. See: Sarabjeet Singh Mokha Versus District Magistrate, Jabalpur (2021) 20 SCC 98.
10. **Grounds for Courts to question preventive detention:** Whenever an order under a prevention 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. See: Ameena Begum Versus State of Telangana (2023) 9 SCC 587
11. **Strict observance of law necessary for preventive detention:** To unchain the shackles of preventive detention, it is important that the safeguards enshrined in our Constitution, particularly under the "golden triangle" formed by Articles 14, 19 and 21, are diligently enforced. See: Ameena Begum Versus State of Telangana (2023) 9 SCC 587
12. **Correctness of allegations in FIR taken as ground of preventive detention cannot be decided by High Court under Article 226:** In the present case, the petitioner was detained under the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986. On challenge to her detention, the Supreme Court held that correctness of the allegations in an FIR cannot be adjudicated by the High Court under Article 226 of the Constitution and it may only intervene in exceptional cases, if the allegations made in the FIR ex facie do not disclose any offence at all. Hence, prayer for quashing the FIR was rightly refused by the High Court under Article 226 of the Constitution. See: Padma Mishra Versus State of Uttarakhand (2021) 15 SCC 595
13. **Difference between detention under COFEPOSA and other preventive laws:** Detention order under COFEPOSA and Preventive Detention Act, 1950 can be passed either by the Government, or by the specially empowered officer. However, under Section 3 of the Preventive

Detention Act, the specially empowered officer, within 12 days of the detention, has to seek for an approval from the Government for continued detention, and only if the government approves the same can the detention be continued. This process of seeking an approval from the Government is essentially a transfer of power from the empowered officer to the Government, making the Government the detaining authority after the initial lapse of 12 days. In the COFEPOSA Act, however, no such approval is required from the Government, and hence the detaining authority and the Government remain to be two separate bodies independent of each other. This difference between the COFEPOSA Act and the other preventive detention laws has been upheld by this Court in many cases earlier. See: Pramod Singla versus Union of India and Others 2023 SCC Online SC 374

14. **Preventive Detention by Police under CrPC:** Section 151 of the Code of Criminal Procedure allows the police to carry out preventive arrest (without a warrant from a Magistrate) to detain an individual to prevent him from committing a crime.
