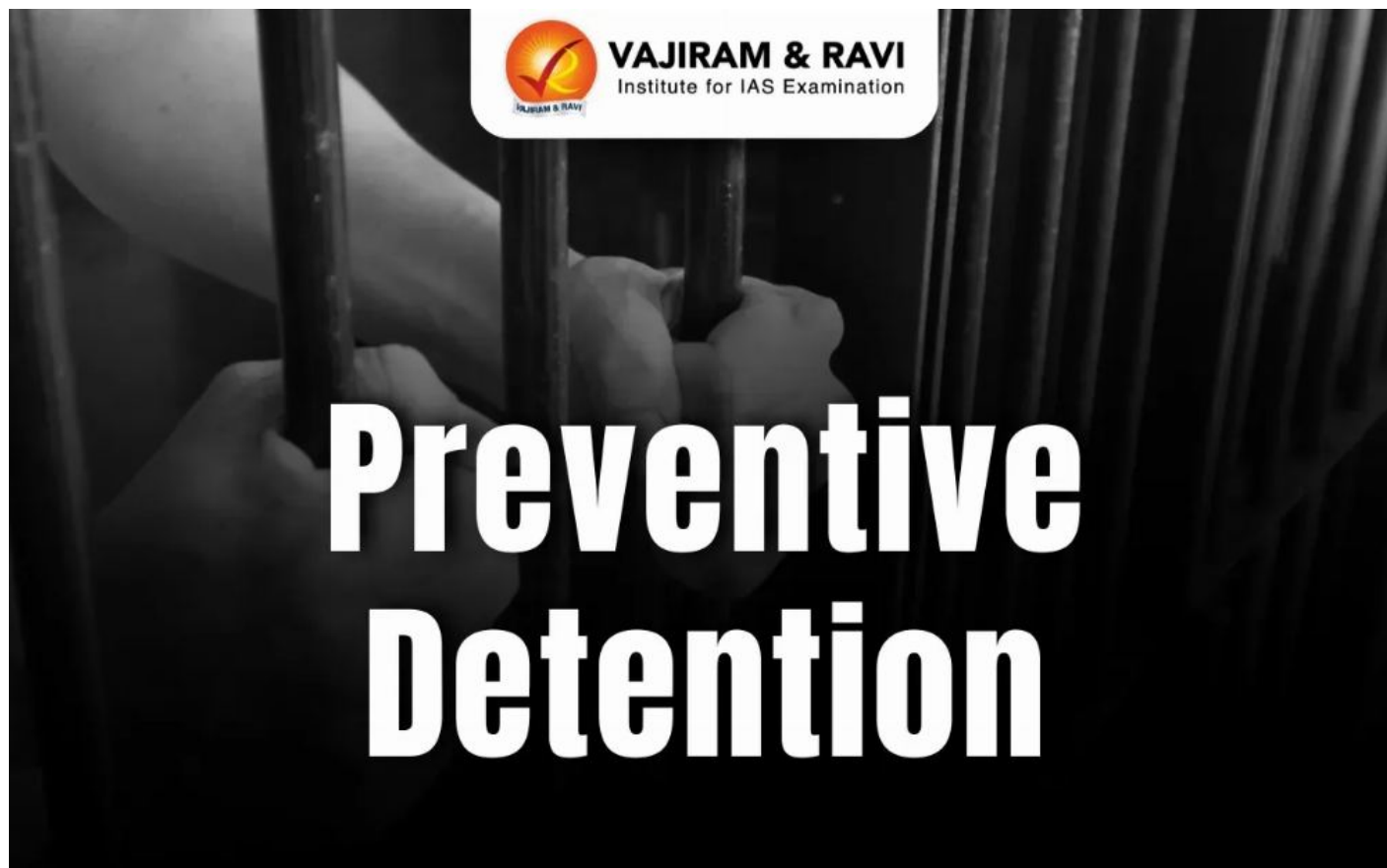


Preventive Detention, Types, Provisions, Issue, Judgements

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Why in News?

The Delhi government has empowered the Commissioner of Police to exercise powers under National Security Act, 1980, as there are ongoing protest in the capital city Delhi regarding the NEET Exam Paper leak.

Preventive Detention

Preventive Detention is a legal process of detaining a person without trial or court conviction to prevent them from committing an offence in the future. The Constitution of India permits preventive detention under some specific circumstances. Still, its use remains a matter of debate as it directly affects the Right to Personal Liberty under **Article 21 of Indian Constitution**.

Preventive Detention Historical Background

The idea of **preventive detention** originated during British rule and was mainly used to suppress political dissent and maintain colonial control.

- **1818 - Bengal State Prisoners Regulation III:** One of the earliest preventive detention laws that empowered the British Government to detain individuals without trial.
- **1915 - Defence of India Act:** Enacted during the **First World War** to suppress revolutionary movements and anti-colonial activities.
- **1939-1945 - Defence of India Rules:** During the **Second World War**, similar powers were granted to detain individuals suspected of threatening British interests.
- **1950 - Preventive Detention Act:** Independent India's first preventive detention law was enacted after the Constitution came into force.
- **1969:** The Preventive Detention Act expired.
- **1980 - National Security Act (NSA):** Introduced to provide preventive detention powers for maintaining national security and public order.

Types of Detention

There are two major types of detention under the Indian legal system: Punitive Detention and Preventive Detention. While both involve the custody of an individual, their purpose and legal basis are different.

1. Punitive Detention:

Punitive detention is the detention of a person **as a punishment for a criminal offence** after the offence has been committed and proved in a court of law.

- Imposed **after the commission of a crime**.
- Requires **investigation, trial, and conviction** by a competent court.
- Based on **evidence proving the accused's guilt**.
- Intended to **punish the offender** and deter future crimes.
- Governed by the **Bharatiya Nyaya Sanhita (BNS)** and the **Bharatiya Nagarik Suraksha Sanhita (BNSS)**.

2. Preventive Detention:

Preventive detention is the **detention of a person without trial or conviction** to prevent them from committing an offence that may threaten **national security, public order, or public safety**.

- Imposed **before an anticipated offence is committed**.
- Does **not require a criminal conviction**.
- Based on the likelihood that a person may engage in activities harmful to the State or society.
- Intended to **prevent future offences**, not punish past conduct.
- Permitted under **Article 22 of the Constitution** and governed by preventive detention laws such as the **National Security Act (NSA), 1980**.

Preventive Detention Constitutional Provisions

The **Constitution of India** permits preventive detention under **Article 22**, balancing the need for **national security and public order** with safeguards to protect individual liberty.

- It is one of the few provisions that expressly permits **detention without trial** under specific circumstances.
- **Article 22(1) and 22(2)** provide safeguards for persons arrested under ordinary criminal law, such as the right to be informed of the grounds of arrest and to be produced before a magistrate within 24 hours.
- **Article 22(3)** excludes persons under preventive detention from some of these protections.
- **Article 22(4)** states that no person can ordinarily be detained for more than **three months** unless an **Advisory Board** finds sufficient cause for continued detention.
- **Article 22(5)** requires the detaining authority to **communicate the grounds of detention** and provide the detainee an opportunity to make a representation against the detention order.
- **Article 22(6)** allows the government to withhold facts if disclosing them would be **against the public interest**.
- **Article 22(7)** empowers **Parliament** to prescribe the maximum period of preventive detention and regulate the procedure of the Advisory Board.

Preventive Detention Laws in India

India has enacted various preventive detention laws to protect national security, public order, and public safety by preventing activities that may threaten the nation's interests before they occur. These laws are:

1. National Security Act (NSA), 1980

The **National Security Act (NSA), 1980** empowers the Central and State Governments to detain individuals to prevent activities that may threaten the **security of India, public order**, or the **maintenance of essential supplies and services**.

- Enacted in **1980** to strengthen preventive detention powers.
- Allows detention without formal charges or trial for up to **12 months**, subject to periodic review.
- Applicable to Indian citizens as well as foreign nationals.
- Detention orders can be issued by the **Central Government, State Governments, District Magistrates, or Commissioners of Police**.
- The detention order must be reviewed by an **Advisory Board** within the period prescribed under the Act.
- Commonly invoked in cases involving **terrorism, communal violence, anti-national activities, and threats to public order**.

2. Public Safety Act (PSA)

The **Jammu and Kashmir Public Safety Act (PSA), 1978** is a preventive detention law enacted to maintain **public order** and protect the **security of the State**.

- Applicable in the **Union Territory of Jammu and Kashmir**.

- Allows detention without trial to prevent activities considered harmful to public order or state security.
- A person may be detained for **up to one year** for activities affecting **public order**.
- Detention may extend **up to two years** for activities considered a threat to the **security of the State**.
- Detention orders are generally issued by the **District Magistrate** or the **Divisional Commissioner**.

Issue Related to Preventive Detention

Although preventive detention is intended to protect **national security** and **public order**, its use raises several constitutional and human rights concerns.

- **Restriction on Personal Liberty:** Detention without trial affects the **fundamental right to life and personal liberty** under **Article 21**.
- **Risk of Arbitrary and Misuse:** Broad executive powers may lead to **arbitrary detention** or misuse against political opponents, activists, or ordinary law and order situations.
- **Limited Due Process:** A detainee is deprived of the safeguards of a regular criminal trial, and the government may withhold certain grounds of detention in the **public interest**.
- **Weak Judicial Oversight:** Courts mainly review the legality of detention procedures rather than the executive's subjective satisfaction, limiting effective judicial scrutiny.

Supreme Court on Preventive Detention

The **Supreme Court of India** has consistently held that **preventive detention is an exceptional measure** and should be used **sparingly** to protect national security and public order, not as a substitute for ordinary criminal law.

- **A.K. Gopalan v. State of Madras (1950):** The Supreme Court upheld the constitutional validity of the **Preventive Detention Act, 1950**, recognizing the power of preventive detention under **Article 22** while emphasizing compliance with constitutional safeguards.
- **Ram Manohar Lohia v. State of Bihar (1965):** The Court distinguished '**law and order**' from '**public order**', holding that preventive detention should be invoked only when public order is genuinely threatened.
- **Ankul Chandra Pradhan v. Union of India (1997):** The Court observed that the objective of preventive detention is **to prevent future prejudicial activities**, not to punish a person for past offences.
- **Rekha v. State of Tamil Nadu (2011):** The Supreme Court ruled that preventive detention should be used only in **exceptional circumstances** when ordinary criminal law is inadequate.
- **Ameena Begum v. State of Telangana (2023):** The Court reiterated that preventive detention is an **extraordinary power** meant for emergency situations and should not be used routinely or to bypass normal criminal proceedings.

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