

SUPREME COURT ON PREVENTIVE DETENTION

Indian apex court, supreme Court ruled that a preventive detention order can only be passed if the detenu is likely to adversely affect the maintenance of public order. The SC also gave direction to governments and to other courts, for dealing with detention under preventive detention. In regards of Preventive Detention for Public Order; the court held that it cannot seriously be disputed that the Detenu may be a 'white collar offender' and if set free, will continue to cheat gullible persons. However, a Preventive Detention Order can only be passed if his activities adversely affect or are likely to adversely affect the maintenance of public order. Clarity on the Term 'Public Order': Preventive detention is a necessary evil only to prevent public disorder, but a liberal meaning cannot be given to the expression public order in the context of preventive detention statute. Contravention of law, such as indulging in cheating or criminal breach of trust, certainly affects 'law and order'.

However, before it can be said to affect 'public order', it must affect the community or the public at large. Direction to the Government: The State 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. Directions to the Courts : One of the questions the courts must ask in deciding the legality under a preventive detention should be: 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. For example, the court said two drunks fighting on a road was a law and order problem, and not 'public disorder'. The solution here was not preventive detention. Preventive Detention Undermines Liberty: Liberty of a citizen is a most important right won by our forefathers after long, historical and arduous struggles. If the power of preventive detention is not narrowed down to limits, the right to liberty will become nugatory (of no value or importance). Therefore, Preventive detention must fall within the ambit of Article 21 (due process of law) and read with Article 22 (safeguards against arbitrary arrest and detention) and the statute in question. Article 22 grants protection to persons who are arrested or detained. Detention

is of two types, namely, punitive and preventive. Punitive detention is to punish a person for an offence committed by him after trial and conviction in a court. Preventive detention, on the other hand, means detention of a person without trial and conviction by a court.

The preventive detention laws made by the Parliament are:

- Preventive Detention Act, 1950. Expired in 1969.
- Maintenance of Internal Security Act (MISA), 1971. Repealed in 1978.
- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), 1974.
- National Security Act (NSA), 1980.
- Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act (PBMSECA), 1980.
- Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985. Repealed in 1995.
- Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PITNDPSA), 1988.
- Prevention of Terrorism Act (POTA), 2002. Repealed in 2004.

The 44th Amendment Act of 1978 has reduced the period of detention without obtaining the opinion of an advisory board from three to two months. However, this provision has not yet been brought into force, hence, the original period of three months still continues. The issue that lies with Indian preventive laws is that, no democratic country in the world has made preventive detention as an integral part of the Constitution as has been done in India. The governments sometimes use such laws in an extra-judicial power. Also, there remains a fear of arbitrary detentions