

Preventive Detention - UPSC Notes

Preventive detention is basically detention without trial in order to prevent a person from committing a crime. This is an important concept in law and finds frequent mention in the daily news. In this article, you can read all about preventive detention, its meaning, the Supreme Court's stand on preventive detention and other details for the [UPSC exam](#).

Preventive Detention - Meaning & Scope

The law and issue concerning and connected to Preventive Detention is an issue of personal liberty and by default an issue pertaining to human rights.

- Preventive detention refers to taking into custody an individual who has not committed a crime yet but the authorities believe him to be a threat to law and order.
- The Supreme Court in *Alijiv v. District Magistrate, Dhanbad*, stated that while criminal proceedings relate to punishing of a person for an offence committed by him, preventive detention does not relate to an offence.
- In *Ankul Chandra Pradhan v. Union of India*, the Court stated that the object of preventive detention is not to punish but prevent the detainee from doing anything that is prejudicial to the security of the state.
- The power to make Preventive Detention laws in India comes from the Constitution itself which empowers the Parliament to make such laws for reasons connected with Defence, Foreign Affairs or the Security of India. Parliament has exclusive legislative powers.
- The Union and the States have concurrent legislative powers for reasons connected with the security of a State, the maintenance of public order or the maintenance of supplies and services essential to the community.
- Such detention involves custody without any criminal trial, moreover these laws need not follow the procedural guarantees which are fundamental to the detention of an individual in the normal course.
- The Parliament has enacted several laws in this respect which in addition to the notorious **Preventive Detention Act** include:
 - The National Security Act, Section 13, 1980 (provides for administrative detention for a period of up to one year)
 - The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) (provides for administrative detention for a period of up to six months)
 - The Prevention of Black-marketing and Maintenance of Supplies of Essential Commodities Act, Section 13, 1980 (six months)
 - The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, Section 10, 1988.

Supreme Court on Preventive Detention

Some cases in which the SC talked about preventive detention are discussed below.

- The first case to come before the [Supreme Court](#) was *AK Gopalan v. State of Madras*, in which the Court upheld the validity of the Preventive Detention Act. Moreover, the Court also held that Article 22 of the Constitution also provides exhaustive procedural safeguards with respect to preventive detention. Therefore, the Court said that fundamental rights were not violated by the impugned act because it met all the procedural safeguards that are provided in Article 22(5).

Also read: [Articles 19 - 22, Right to Freedom](#)

- In *Ram Manohar Lohia v. State of Bihar*, the Supreme Court attempted to distinguish between the concepts "security of state," "public order," and "law and order." In an astoundingly often-quoted passage, Justice Hidayatullah underscored that only the most severe of acts could justify preventive detention:
 - *One has to imagine three concentric circles. Law and order represents the largest circle within which is the next circle representing public order and the smallest circle represents security of state. It is then easy to see that an act may affect law and order but not public order just as an act might affect public order but not security of state.*
 - The Court concluded that acts affecting only "law and order" without one of the other two categories cannot be a sufficient justification on which to base a detention order. Of course, this analysis, its academic benefits aside, provides little clarification of the contested concepts, as it suggests only that courts may examine the executive's assessments of threats to public security.
- In *Anil Dey v. State of West Bengal*, the Supreme Court held that "the veil of subjective satisfaction of the detaining authority cannot be lifted by the courts with a view to appreciate its objective sufficiency". Although the courts "cannot substitute their own opinion for that of the detaining authority by applying an objective test to decide the necessity of detention for specified purpose, they do review whether the satisfaction is "honest and real, and not fanciful and imaginary". The executive is, therefore, required by the courts to apply its mind to the decision to issue a detention order.

CONCLUSION

Article 22 was in fact a measure to protect, rather than curtail, the [right to life](#) and personal liberty. Mr Seervai discusses this in his Commentary, to conclude that perhaps it would have made better sense to have the first two clauses in Article 22 as part of Article 21, making a separate article for the exclusions. Looking at what happened subsequently, a differently drafted Article 21 might have led to a differently written judgment in the [Maneka Gandhi case](#). It might have prevented the Supreme Court from going so far as to incorporate the substantive due process standard that the Constituent Assembly so painstakingly chose to avoid. Where does Maneka Gandhi leave the due process that Article 22 represented for the Constituent Assembly and Dr. Ambedkar? The Supreme Court has not considered this question fully, yet, although some seepage of Maneka jurisprudence into Article 22 has definitely resulted.

