

## PREVENTIVE DETENTION AND VIOLATION OF HUMAN RIGHTS WITH SPECIAL REFERENCE TO TAMILNADU ACT 14 OF 1982-A CRITICAL ANALYSIS

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Recent findings by the Supreme Court suggest that preventive detention provisions are remnants of colonialism and grant the state discretionary power. It was observed that they also pose a significant danger to an individual's entitlement to personal freedom, as protected by Article 21. Furthermore, apart from the remark made by the Supreme Court, there have been several instances where laws have been improperly employed, leading to the presentation of cases before the Courts. For the purpose of safeguarding public order or national security, the government has the authority to detain an individual in preventive custody without pressing charges or initiating a trial. The field of humanities has been a prominent subject of conversation since the General Assembly of the United Nations officially accepted the Universal Declaration of Human Rights on December 10, 1948. Human rights organizations have been diligently striving to safeguard these fundamental rights in numerous places across the globe. There are no constraints or prohibitions on the fundamental rights of individuals in any particular country. The right in question is a basic human entitlement that is universally applicable, irrespective of one's race, gender, sexual orientation, language, religion, political ideology, nationality, or any other characteristic. These rights should not be impeded by an autocratic government or a malevolent individual.

According to Jaques Maritian, "The human person possesses rights because of the very fact that it is a person, a whole, a master of itself and its acts and which consequently is not merely a means to an end but an end which must be treated as such.....these are things which are owed to man because of the very fact that he is a man."<sup>38</sup> Preventative detention laws are present in all countries worldwide,<sup>39</sup> however there is no universally agreed-upon definition of preventative custody due to variations in how the law is applied. Therefore this paper will give a clear analysis of Preventive

Detention And Violation Of Human Rights With Special Reference To Tamilnadu Act 14 Of 1982.

### What is Preventive Detention?

Preventive detention means to detain a person so that to prevent that person from committing on any possible crime. In other words, preventive detention is an action taken by the administration on the grounds of the suspicion that some wrong actions may be done by the person concerned which will be prejudicial to the state.

### What are the Provisions related to Detention?

- Section 151 of Criminal procedure code provides a police officer may arrest a person without any orders from the magistrate and without any warrant, if it appears to him that the commission of the offence cannot be prevented without arrest.
- Article 22 of the Indian Constitution deals with the protection of rights in case of

<sup>38</sup> Quoted by, Hamid, Kaji Akhter; Human Rights, Self-determination and the Right to Resistance, 1994, Dhaka, p. 24.

<sup>39</sup> For examples, In Malaysia-The Internal Security Act, 1960; The Emergency (Public Order and Prevention of Crime) Ordinance, 1969. In Nigeria-The State Security (Detention of Persons) Decree, 1966; Armed Forces and Police (Special Powers) Decree, 1967; Public Security (Detention of Persons) Decree No. 1, 1979 The State Security (Detention of Persons) Decree, 1984. In Singapore-Criminal Law (Temporary Provisions) Ordinance, 1955; Federation of Malaya Internal Security Act, 1960. In Sri Lanka-Public Security Ordinance, 1947; The Prevention of Terrorism (Temporary Provisions) Act, 1979.

arrest and detention. It outlines certain safeguards that must be provided to individuals who are arrested or detained.

Here is a summary of the provisions of Article 22:

- Preventive detention finds a place in Article 22 of the Constitution.
- Preventive detention, is a detention without trial,
- It is a negation of the Rule of Law and the principle of fair trial.
- A person is deprived of his or her liberty and incarcerated on the basis of suspicion

Article 22 grants specific fundamental rights and protections to those who are arrested and detained. The purpose of these laws is to prevent random arrests and ensure the protection of individuals' personal freedom. Preventive detention is the act of holding individuals in custody without a trial or formal charges, with the purpose of preventing future crimes or upholding public order. Although there are rare instances where preventative detention can be justified, it has the capacity to infringe upon human rights if not adequately regulated and protected.

In India, preventive detention is permitted under the Constitution and is regulated by laws such as the Maintenance of Internal Security Act (MISA), the Armed Forces (Special Powers) Act (AFSPA), and the National Security Act (NSA).

In the case of Ahmed Noor Mohamad Bhatti V. State of Gujarat<sup>40</sup>, the Supreme Court confirmed that Section 151 of CrPC is constitutionally valid. The court ruled that even if a police officer abuses this power, it does not make the provision arbitrary or unreasonable. In the case of *Mariappan v. The District Collector and Others*<sup>41</sup>, it was determined that the purpose of detention and its associated

legislation is not punitive, but rather to prevent the occurrence of specific crimes.

#### GROUND FOR DETENTION:

Preventive detention can only be justified on four specific circumstances.

1. State security,
  2. Preservation of public order,
  3. The upkeep of provisions and vital utilities, as well as the protection of the nation's security and defense.
  4. Matters pertaining to international relations or the safeguarding of India's security.
- An individual can only be held in custody without a trial based on one or more of the reasons mentioned above. An individual who is held in preventive custody does not have the right to personal freedom as granted by Article 19 or Article 21.

#### OBJECT OF PREVENTIVE DETENTION:

- a) Preventive detention is implemented to provide security to society.
- b) The purpose is not to punish an individual for their actions, but to intervene before they commit a crime and prevent them from doing so.
- c) A preventative detention is a precautionary action that is not intended to be punitive.

The State of Tamilnadu implemented legislation in 1982 with the aim of preventing the recurrence of crimes.

In 1982, Ordinance 1 of 1982 was promulgated by the Governor of Tamil Nadu titled "Tamil Nadu Prevention of Dangerous Activities of Bootleggers, Drug Offenders, Goondas, Immoral Traffic Offenders and Slum Grabbers Ordinance, 1982". The statement of object and reasons, so far as they are presently relevant, reads as under: "

In order to ensure that the maintenance of public order in this State is not adversely affected by the activities of these five classes of known anti-social elements without resorting to the National Security Act, 1980, it was considered necessary to enact a special

<sup>40</sup> (2005) 3 SCC 647,

<sup>41</sup> <https://indiankanoon.org/doc/94318874/visited on 06/07/2024: 1.33 p.m>

legislation to provide as follows:— (a) To define with precision the terms “bootleggers”, “drug offender”, “goonda”, “immoral traffic offender” and “slum grabber”; (b) To specify their activities which adversely affect public order; and (c) To provide for preventive detention of the persons indulging in these dangerous activities.” The ordinance was replaced by Act 14 of 1982 with effect from 10.02.1982. Forest offenders were subsequently added to the original five categories of offenders vide Amendment Act 1 of 1988. Video Pirates and Sand Offenders were added in 2004 and 2006 respectively. In 2014, cyber law offenders and sexual offenders were added to the kitty taking the total tally to 10.

#### SALIENT FEATURES OF ACT 14 OF 1982

- i) Enacting legislation to deter hazardous behaviors of specific individuals who exhibit anti-social tendencies.
- ii) To uphold societal harmony and guarantee the well-being of the general population.
- iii) To provide a clear and exact definition of the terms “bootleggers”, “drug offender”, “goonda”, “immoral traffic offender”, and “slum-grabber”.
- iv) To delineate the specific actions that has a negative impact on public order.
- v) To establish provisions for the apprehension of individuals engaging in these hazardous activities.
- vi) To detain the wrongdoers through the use of prejudicial detention.

#### WHO IS A GOONDA?

Section 2(f) states “goonda” means a person, who either by himself or as a member of or leader of a gang habitually commits, or attempts to commit or abets the commission of offence, punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code (Central Act XLV of 1860)”.

Goondas Act also defines

- bootleggers,
- drug offenders,
- forest offenders,<sup>42</sup>
- immoral traffic offenders,
- sand offenders,<sup>43</sup>
- slum grabbers
- sexual offenders<sup>44</sup>
- cyber-law offenders<sup>45</sup>
- video pirates<sup>46</sup>

As per the 2011 judgment of the Madras High Court in the case of “*Arumugam vs. State of Tamilnadu*”<sup>47</sup>, a person can be detained as a goonda even for a single crime under the Act.

#### ORDER FOR DETENTION (SECTION 3):

The order was issued to prevent anyone from engaging in any activities that could harm public order, when it is deemed essential, and it mandates the detention of such individuals. The individual held by this order is referred to as a “detenu”.

According to Section 3(1) of the Act, the State Government is empowered to authorize the detention of individuals who are involved in bootlegging, cyber law offenses, drug offenses, forest offenses, or goonda activities, if they are satisfied that doing so is necessary to prevent these individuals from engaging in any activities that could harm public order. Section 3(2) grants the District Magistrate or the Commissioner of Police the authority to approve the detention of individuals. Detention orders issued under Section 3(2) will be valid for twelve days, unless they are granted by the State Government before that time. A detention order issued under Section 3(1) will initially be valid for a maximum duration of three months. However, if the State Government is satisfied, it can be

<sup>42</sup>Act No.1 of 1988:- Forest Offenders are added

<sup>43</sup>Act No.16 of 2006:- Sand Offenders are added

<sup>44</sup>Act No.20 of 2014:- Sexual-offenders are added

<sup>45</sup>Act No.19 of 2014:- Cyber law offenders are added

<sup>46</sup>Act No.32 of 2004:- Video Pirates are added

<sup>47</sup> 2011(4) CTC 353

extended for an additional period of up to three months at any time. Section 9 of the Act establishes an Advisory Board, to which all cases of detention are sent for review under Section 10. The Board has the authority to either revoke or confirm the order of detention. If the detention is validated under Section 12, the detention order can be extended for a maximum duration of twelve months from the date of detention (as per Section 13). This is the overarching framework of the Act.<sup>48</sup>

#### IMPLEMENTATION OF DETENTION ORDERS:

The order of detention can be enforced at any location

- ii) by physically apprehending and restraining the individual
- iii) By conveying information to him
- iv) By employing coercion to apprehend
- v) If women are to be apprehended, it should not be done between sunset and sunrise

#### WHO HAS THE AUTHORITY TO ISSUE A DETENTION ORDER?

1. The State Government's secretary responsible for the Home, Prohibition, and Excise Department of the State of Tamilnadu.
2. The District Collector has the position of the District Magistrate.
3. The Commissioner of Police.

Recently, a panel of judges consisting of Justice R.Sureshkumar and Justice K.K.Ramakrishnan proposed that the State Government should amend Act 14 of 1982. The amendment would involve granting the Zonal Inspector General of Police (IG) the authority to issue detention orders under the Goondas Act, instead of delegating this power to the District Magistrate / District Collector.<sup>49</sup>

#### JUDICIAL INTERVENTION IN PREVENTIVE DETENTION

The jurisdiction of suspicion, which is commonly referred to as preventive detention, is constitutionally permissible under Article 22(4) of the Constitution of India. Reiterating that preventive detention is essentially a freckle on the Constitutional canvas is unnecessary, and as Patanjali Sastri, J. reminds us, "This sinister looking feature, so strangely out of place in a democratic Constitution which invests personal liberty with the sacrosanctity of a fundamental right and so incompatible with the premises of its Preamble is doubtless designed to prevent an abuse of freedom by anti-social and subversive elements which might imperil the national welfare of the infant Republic."

"Prison Statistics India Report 2021" of the National Crime Records Bureau of the Ministry of Home Affairs.

"Tamil Nadu has reported the maximum number of detenues (51.2%, 1,775) in the country followed by Telangana (11.4%, 396) and Gujarat (10.7%, 372) at the end of 2021".

In this State, it is possible to assert without fear of contradiction that at least 15-20 detention orders are set aside each day in both the Principal seat and the Madurai Bench. Additionally, 10-15 new admissions under Act 14 of 1982 are made on a daily basis. In essence, we had reserved 15-20 detention orders, only to discover that 10-15 new cases were added to the list.<sup>50</sup> It is important to mention that 445 out of the 517 cases filed challenging the detention under the Goondas Act were quashed, which accounts for 86% of the cases. The remaining 14% of the cases were infructuous due to the detention period concluding or the detenues being released on the Advisory Board's orders.

The Division Bench of the Madurai High Court encountered a comparable circumstance in the case of *Irusammal v. State*<sup>51</sup>, which involved a bootlegger in violation of Act 14 of 1982. The Division Bench observed that the

<sup>48</sup>[https://www.indiacode.nic.in/bitstream/123456789/13294/1/corrected\\_dep\\_copy\\_of\\_goondas\\_act\\_14\\_of\\_1982.pdf](https://www.indiacode.nic.in/bitstream/123456789/13294/1/corrected_dep_copy_of_goondas_act_14_of_1982.pdf), last visited on 07/07/2024 at 12.30 p.m

<sup>49</sup> <https://timesofindia.indiatimes.com/city/madurai/hc-for-giving-zonal-igs-powers-to-pass-orders-under-goondas-act/articleshow/101147735.cms>, last visited on 07/07/2024 at 12.30 p.m

<sup>50</sup> [https://www.livelaw.in/pdf\\_upload/462-sunitha-v-additional-chief-secretary-to-government-14-nov-2022-445682](https://www.livelaw.in/pdf_upload/462-sunitha-v-additional-chief-secretary-to-government-14-nov-2022-445682), last visited on 07/07/2024 at 2.25 p.m

<sup>51</sup> 2008-2-LW (Cr)1433

purpose of detaining a person in these Acts is to maintain public order or safeguard the security of the State. It also took note of the insensitive manner in which detention orders were being passed. This alone provides justification for executive detention without trial. With the utmost care and vigilance, orders should be issued when individuals are detained on this basis. However, when orders are issued that need to be revoked, it is possible to infer that the authority is negligent or casual. If so, the award of compensation may be justified, as even one hour of such detention is neither morally acceptable nor legally sustainable.

It is concerning that this trend is also expanding in other jurisdictions. The detainee in *V. Shantha v. State of Telangana*, was subjected to preventive detention as a result of his sale of spurious seeds to cultivators. The Supreme Court condemned the "gross abuse of statutory power" and stated that the order of preventive detention issued to the detainee was based on the fact that his illegal activities were endangering the safety and financial well-being of impoverished and small farmers. It is a flagrant abuse of the statutory power of preventive detention to classify the detainee as a "goonda" affecting public order due to the insufficient yield of the chilli seed he sold and to prevent him from securing bail. The Act appears to be irrelevant to the basis for detention<sup>52</sup>.

"Unintentionally, this Court has also been entangled in the vicious cycle if we are to find fault with the State and the Executive. The aforementioned statistics indicate that by the time we take up the HCP case for final hearing, a minimum of six months of detention has elapsed, and we subsequently complete the formality of invariably setting aside the detention orders." Consequently, it is imperative that all institutions acknowledge the reality and transcend their comfort zones. Frequently, an exercise that causes an institution to feel embarrassed serves as a catalyst for evolution, which ultimately enhances the standards of the

criminal justice system. The State and the Executive are expected to take this order seriously, as the Court has previously stated that the State will be subject to costs in the event that the detention is deemed unconstitutional."<sup>53</sup>

### PREVENTIVE DETENTION AND HUMAN RIGHTS

Nevertheless, there have been apprehensions regarding the misuse of preventive detention powers in India and its potential impact on human rights. Some of the most significant topics that will be addressed.

- 1) Absence of Judicial Oversight: Preventive detention circumvents the conventional judicial process by retaining detainees without formal charges or trial. This raises concerns regarding the violation of the right to a fair trial and due process.
- 2) Excessive Detention: Preventive detention laws permit the detention of detainees for extended periods without the need for charges or court proceedings. This can result in a protracted loss of liberty, which may constitute a violation of the right to personal freedom and liberty.
- 3) Vague and wide Definitions: The definitions of "public order," "security," and "preventive detention" in Indian laws are frequently ambiguous and wide. This enables a broad interpretation, which may result in politically motivated or arbitrary detentions.
- 4) Limited Access to Legal Representation: Detainees who are subjected to preventive detention frequently encounter obstacles in obtaining legal representation, which complicates their ability to challenge their detention or pursue redress.
- 5) Dissent Suppression: Allegations have been made that preventive detention powers have been employed to suppress political dissent, impede activism, and restrict freedom of expression and assembly.

<sup>52</sup> (2017) 14 SCC 577

<sup>53</sup> Ibid

It is crucial to acknowledge that preventive detention has the potential for abuse; however, it may also be necessary in specific situations to safeguard public order and national security. Nevertheless, the implementation of preventive detention must adhere to international human rights standards and be subject to transparent and effective accountability mechanisms.

## CONCLUSION

Although preventive detention laws can be a beneficial instrument for maintaining law and order, their implementation must be approached with caution to prevent any infringements on human rights. The government must guarantee that these laws are not abused and are used only when necessary to prevent any undue damage to individuals.

A person in preventive detention is entitled to compensation in the event of a violation of the ICCPR. The ICCPR does not explicitly prohibit preventive detention. Preventive detention is not "arbitrary arrest and detention" in its own right, and is, therefore, a permissible deprivation of liberty under Article 9(1) upon its face. However, preventive detention must adhere to the principles of justice and may not be deemed unjust or inappropriate, as a result of the broad interpretation of "arbitrary" put forth in this paper. Consequently, the prohibition on arbitrary arrest and detention under the ICCPR will apply to a preventive detention law of a signatory State if it is oppressive and does not align with the principles of justice or dignity of the human person. Therefore, an evaluation of the legality of preventive detention legislation within a given state must be predicated on a precise examination of the proportionality and appropriateness of the specific preventive detention measures.



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