International Journal for Multidisciplinary Research (IJFMR)
E-ISSN: 2582-2160 ● Website: www.ijfmr.com ● Email: editor@ijfmr.com

An Analysis of Preventive Detention Cases in The State of Tamil Nadu

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Abstract

This research paper provides a comprehensive analysis of preventive detention cases in Tamil Nadu, examining its legal framework, historical evolution, and contemporary implications. The study explores the constitutional provisions of preventive detention under Article 22 of the Indian Constitution and juxtaposes them with international human rights standards. Despite being a democratic nation, India continues to implement preventive detention laws that authorize detention without trial, raising concerns about personal liberty and human rights. The research highlights the historical emergence of preventive detention laws from the colonial era to post-independence legislations such as the National Security Act, 1980, and other related laws. Furthermore, statistical data from the National Crime Records Bureau (NCRB) is analyzed to understand demographic patterns of preventive detention in Tamil Nadu, revealing socio-economic disparities among detainees. The study also critically assesses judicial interventions, case laws, and the effectiveness of existing legal safeguards. The findings suggest that preventive detention laws are frequently misused, leading to the arbitrary deprivation of personal liberty. The paper argues for a more balanced approach that ensures national security while upholding human rights principles.

INTRODUCTION

Life, liberty, equality, and dignity are fundamental rights of human beings. Among them, liberty is a primordial right essential for maintaining order in society, and personal liberty is paramount to human dignity and happiness. It evolves at the international level, is incorporated by the legislature, and is enforced by the judiciary at the domestic level. However, in enforcing personal liberty under preventive detention laws, there is a gap in domestic laws relating to personal liberty. Hence, the judiciary relies on human rights instruments to uphold and enforce personal liberty in India. "Liberty is itself the gift of the law and may, by law, be forfeited or abridged."[1]. India, the world's largest democracy, guarantees personal liberty under Article 21 and provides for preventive detention under Article 22 of the Constitution. No civilized country has granted preventive detention as an ordinary legislative power during peacetime. However, preventive detention laws authorize the detention of individuals without trial, justified by suspicion or a reasonable probability of the person committing an offense. Preventive detention is a serious invasion of the inviolable right to personal liberty, recognized worldwide. Such laws were vehemently opposed by freedom fighters before independence. Since independence, the Parliament of India has enacted several preventive detention laws from time to time.

[1] A.D.M Jabalpur *v.* Shukla, AIR 1976 SC 1206. (Justice A.N.Ray)

India is the only democratic country in the world that has incorporated preventive detention laws under Article 22 of the Constitution as part of fundamental rights. However, preventive detention is not a new concept. It already existed, as seen in the detention of freedom fighters under the Rowlatt Act of 1919 and during the Quit India Movement of 1942. These instances exemplify the use of preventive detention. In India, utmost importance is given to an individual's right to life and personal liberty. Since personal liberty is paramount to human dignity and happiness, the Constitution of India safeguards this right. In matters relating to preventive detention, where there is deprivation of liberty without trial, subsequent safeguards are provided under Article 22 of the Constitution.

Nowadays, international human rights are an emerging area of jurisprudence. These rights are implemented through multilateral treaties such as the Universal Declaration of Human Rights (hereinafter referred to as UDHR)[2] and the International Covenant on Civil and Political Rights (hereinafter referred to as ICCPR)[3], among others, which are recognized by most countries worldwide. There is a universal consensus on evolving fundamental human rights under international law. These foundational human rights documents are also supported by both international and municipal laws. Section 2(1)(d) of The Protection of Human Rights Act, 1993 defines human rights as "the rights relating to life, liberty, equality, and dignity of the individual, guaranteed by the Constitution or embodied in the International Covenants and enforceable by courts in India."

Most constitutions of the world, including India's, have enshrined such provisions. As a result, India now places greater importance on the observance of human rights than before. The rationale behind this is that preventive detention creates circumstances under which personal liberty can be deprived. Therefore, everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention, and all persons deprived of their liberty shall be treated with humanity and respect for the inherent dignity of the human person.

WHAT IS CALLED 'PREVENTIVE DETENTION'

The word detention simply refers to the arrest or custody of a person. It can be either legal or illegal. However, when it concerns the security of the state and the welfare of society, a distinct term comes into play—preventive detention.

The word preventive differs from punitive, as noted by Lord Finlay in R. v. Halliday, where he stated that it is not a punitive measure but a preventive one.

Preventive detention is also referred to as administrative detention since it is ordered by the executive, with decision-making authority resting exclusively with administrative or managerial bodies. Preventive detention involves imprisoning individuals before trial on the presumption that their release would not be in the best interest of society and that, if released, they might commit further crimes. This measure is also used when the release of an accused person is considered detrimental to the state's ability to conduct its investigation.

[2] Article 9 of the UDHR of 1948 states that "No one shall be subjected to arbitrary arrest, detention or exile" and Article 12 of the same states that "No one shall be subjected to arbitrary interference with his privacy, family home or correspondence, or to attacks upon his honour and reputation. Everyone has the right to the protection of the law against such interference or attacks".

[3]Articles 7,9 and10 of the ICCPR respectively states that, "No one shall be subjected to torture or be cruel, inhuman or degrading treatment or punishment. In particular, no one shall be subjected without his free consent to medical or scientific experimentation".

Simply put, preventive detention means detaining a person without trial or conviction by a court, based solely on an apprehension formed in the mind of the executive authority. In Mariappan v. The District Collector & Others, the court held that the objective of detention laws is not to punish individuals but to prevent certain crimes from being committed.

There are two common types of detention: i) Punitive detention, which refers to detention as a punishment for a criminal offense. It occurs after an offense has actually been committed or when an attempt has been made to commit a crime. ii) Preventive detention, which refers to the incarceration of a person in advance to prevent the possibility of committing or engaging in a crime. Preventive detention is, therefore, an action taken based on the apprehension that the person in question might engage in wrongful acts.

For the purpose of this research study, the term Preventive Detention is defined.

According to Lord Mc Millan, "Preventive detention is an anticipatory measure and does not relate to an offence. It is not to punish a man for having done something but to intercept him before he does it and to prevent him from doing it"[4].

Dr.Ahustosh in his work 'Law of Preventive Detention' defined the word Preventive Detention as, "No offence is proved, nor any change formulated; and the justification of such detention is suspicion or reasonable probability and not criminal conviction which can only be warranted by legal evidence".[5]

According to Mukherjea J., Preventive Detention Law means, "The object is not to punish a man for having done something but to intercept him before he does it and to prevent him from doing it. No offence is proved, nor any charge formulated; and the justification of such detention is suspicion or reasonable probability and not criminal conviction which can only be warranted by legal evidence".

According to Altamas Kabir, J., "The primary object of preventive detention is not to punish a person for having done something, but to intercept him before he does it. To put it differently, it is not a penalty for past activities of an individual but is intended to pre-empt the person from indulging in future activities sought to be prohibited by a relevant law and with a view to preventing him from doing harm in future".

In the march of law evolved by the highest Court of Justice in India catena of definitions available for the word 'preventive detention laws' devised by the judges of the Supreme Court of India. But for the purpose of the research study, the operational definition is construed as follow: "It means a preventive measure resorted by the executive to intercept the person and prevent the person before committing an offence under National Security, Economic Interested Offences and Public Order laws."

HISTORICAL VIEW ON THE EMERGENCE OF PREVENTIVE DETENTION LAW IN INDIA

In India, the history of Preventive Detention Laws dates back to the days of British colonial regime, when the Government was empowered to detain anybody on mere suspicion.[6] In the pre-independence era, the British government enacted several laws providing for preventive detention, such as the Defence

[4]Lord Hailsham of St. Mary Lebone, (UK: Halsbury's Law of England, Vol.8, Fourth Edition, 1974).

[5]Dr.Ashutosh, (Advocate) **Law of Preventive detention**, (New Delhi: Universal Law Publication, First Edition, 2014).

[6]Bengal Regulation- III of 1818 (Bengal State Prisoners Regulation); see also Rule 26 of the Rules framed under the Defence of India Act, 1939 which allowed detention if it was "satisfied with respect to that particular person that such detention was necessary to prevent him from acting in any manner prejudicial to the defence and safety of the country. Elaborated in Emperor *vs* Sibnath, AIR 1945 PC 156.

of the Realm Act, 1914 and the Emergency Powers (Defence) Act, 1939 in the backdrop of the two World Wars.

Post Independence, India has enacted its first preventive detention law, the Preventive Detention Act, 1950 (PDA) was initially effective for one year, but was allowed to continue till 1969. Its validity was upheld by the Supreme Court in the famous case of *A.K Gopalan vs State of Madras*, *AIR 1950 SC 27*, which is well known among jurists as India's first fundamental rights case. Since then, India has periodically enacted various such laws. One of the most prominent among them is the Maintenance of Internal Security Act, 1971 (MISA) is infamous for its use during the Emergency period in the 1970s to arrest opposition party leaders. It is remained effective till 1978. Two years later, the National Security Act, 1980 (NSA) was enacted which continues to be effective to date. Therefore, barring the two short periods of 1970-71 and 1978-80, India has always at least one preventive detention law in place. The principle of preventive detention, in other words, has been permanently embedded into the Indian legal system.

In spite of the prohibition under ICCPR the Constitution of India allows Preventive Detention Legislations to be passed against its own citizen and others, on the grounds of 'defence, foreign affairs, or the security of India' and connected with 'Security of a State, the maintenance of public order, or the Maintenance of Supplies and services essential to the community.[7] Articles 22(3) to (7) of the Constitution allows an individual to be detained by State agencies without charge or trial for up to three months, even thereafter it may be extended for the period of one year and in some cases it may extended to six months even during peace times.

The framers of the Constitution of India were of the view that in free India, when there will be democratic and representative form of Government, the need for framing such Preventive Detention Legislations will rarely arises and shall be sparingly and cautiously used, but it was right in 1950 that the Parliament passed the Preventive Detention Act to curb the activities which violate the public order, national security and economic interest in several parts of India. That first Home Minister of India Sardar Vallabhai Patel the Iron man of India drafted the first Preventive Detention Law for India namely Preventive Detention Act, 1950 after spending several sleepless nights, and was enacted for the period of only one year. However, it continues up to till date in different name like, National Security Act, 1980 (herein after referred as NSA), The Maintenance of Internal Security Act, 1971 (herein after referred as MISA), Prevention of Terrorism Act, 2002,(herein after referred as POTA), The Terrorists and Disruptive Activities(Prevention) Act,1985,and modified in 1987, (herein after referred as TADA), The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act,1974 (herein after referred as COFEPOSA), further it was extended for specific legislations for specific offences like regulation of foreign exchange like COFEPOSA, The Foreign Exchange Regulation Act,1973,(herein after referred as FERA), Foreign Exchange Management Act,1999, (herein after referred as FEMA) extra.

Part XVIII, Articles 352 to 360 of the Indian Constitution speaks about emergency provisions. Even before independence on 03.09.1939 the Governor General of India proclaimed grave emergency existed whereby the security of India was threatened by World War II, thereafter Defence of India Act, 1939 was enacted. After independence the President of India proclaimed first emergency on 26.10.1962 due to external aggression of People's Republic of China, subsequently India faces another Emergency during

[7]Entry 9 of List I and Entry 3 of List III of the Ninth Schedule of the Constitution of India.

the External aggression of Pakistan, during that time Defence of India Act 1962 and Defence of India Rules 1962 was enacted, under the said Act and rules subject can be detained under Preventive Detention without communicating the grounds, without providing opportunity to submit representation and defend his case, no maximum period of detention mentioned and there is no review available for the detenue before the Advisory board.

PREVENTIVE DETENTION CASES IN TAMIL NADU

According to National Crimes Record Bureau, (NCRB), Ministry of Home Affairs, the State of Tamil Nadu is witnessing a greater number of Preventive detention cases in India than any other States, every year it is reported that at least 2000 Habeas Corpus Writ Petitions filed before the Hon'ble High Court of Madras and Madurai Bench of Madras High Court in challenging the detention orders. Such preventive detention law is classified and studied under three different heads namely National Security, Economic Interest and Public Order.

We can now assess the Prison Statistics Reports for the last 4 years from 2016 to 2019 to have clear understanding of the demographic details on people who were kept under preventive detention law in the State of Tamilnadu. In 2017 onwards only, The NCRB reports have classified those persons in custody into their caste and religion wise.

As per the Prison Statistics Report 2016, it is stated that there were 1481 persons including 55 women detained under the preventive detention law in Tamilnadu. Out of the 1481 detenue, there were 453 of them illiterate, 598 detenue were below 10^{th} Std, only 321 of them studied up to 12^{th} Std.

As per the Prison Statistics Report 2017, it is stated that there were 810 persons including 22 women detained under the preventive detention law in Tamilnadu. Out of the 810 detenue, there were 301 of them illiterate, 293 detenue were below 10^{th} Std, only 154 of them studied up to 12^{th} Std. There were 590 detenue belong to Hindu religion, 119 muslim and 101 Christian. They were further classified based on their caste that 272 Schedule Caste, 31 Schedule Tribes, 507 Other Backward Classes.

As per the Prison Statistics Report 2018, it is stated that there were 741 persons including 29 women detained under the preventive detention law in Tamilnadu. Out of the 741 detenue, there were 231 of them illiterate, 252 detenue were below 10^{th} Std, only 171 of them studied up to 12^{th} Std. There were 512 detenue belong to Hindu religion, 98 muslim and 131 Christian. They were further classified based on their caste that 282 Schedule Caste, 28 Schedule Tribes, 384 Other Backward Classes and 47 other castes.

As per the Prison Statistics Report 2019 it is stated that there were 1240 persons including 37 women detained under the preventive detention law in Tamilnadu. Out of the 1240 detenue, there were 402 of them illiterate, 445 detenue were below 10^{th} Std, only 219 of them studied up to 12^{th} Std. There were 983 detenue belong to Hindu religion, 140 muslim, 116 Christian and 1 Sikh. They were further classified based on their caste that 349 Schedule Caste, 41 Schedule Tribes, 839 Other Backward Classes and 11 other castes.

In these above given statistics, we can able to understand that majority number of detenue were illiterate and most of them belong to middle class and poverty-stricken family backgrounds. When we look at the number of cases of detenue released from the custody were high. It reflects that most of the people have been detained unnecessarily without valid reason. They have been arrested and detained mechanically by misuse of executive power in many cases.

LEGAL REMEDIES AVAILABLE FOR THE DETENUE

While remedies available to the detenue who detained under preventive detention without judicial trial is to represent his grievance by way of submitting oral and written representation before Advisory Board constituted under Article 22 of the Indian Constitution, to submit representation before the detaining authority as well as before appropriate Government have power to approving and confirming the detention order. To submit representation before the secretary to Government to revoke the detention order, and to approach the Hon'ble High court, which possess territorial jurisdiction to examine the validity of the Detention Order by invoking the writ jurisdiction under Article 226 of the Constitution by filing Writ of Habeas Corpus.

Meanwhile the detenue can even directly approach the Supreme Court of India under Article 32 of Constitution of India for testing the legal validity of the detention order. The detention order can be challenged by the detenue or through the friends and relatives of the detenue. The detenue can himself and through his friends and relatives send representations to the appropriate authorities and advisory board for revoke the detention order and file Habeas Corpus Writ Petition before the jurisdictional High Court for quash the detention order.

The detenue or the State authorities who passed the detention order used to approach the Supreme Court of India, against the verdict of the High Court. The judgement delivered by the Supreme Court of India is treated as Law of the Land under Article 141 of the Constitution of India and it is treated as binding precedent for all High Courts and Subordinate Courts. The approach of the Supreme Court of India expanding the concept of personal liberty while deciding the validity of the detention orders passed under Preventive Detention legislations. The views of the Supreme Court of India changes from time to time, that after independence and before emergency the Apex Court followed the law laid down in *A.K.Gopalan* case AIR 1950 SC 27.

LANDMARK JUDGMENTS BY THE SUPREME COURT OF INDIA

The Supreme Court of India upholds the said Act and Rule in *Mohan Chowdhury vs Chief Commissioner, Union Territory of Tripura AIR 1964 SC 173 case*. On 25.06.1975 third Emergency was declared in India, it extended up to the year 1977, which was treated as darkest period in Independence India, thousands of Indians detained under Maintenance of Internal Security Act, it was challenged before the Supreme Court, the majority judges of the Supreme Court uphold the detention under Maintenance of Internal Security Act 1971 on 28.04.1976 in *A.D.M.Jabalpur vs Shiv Kant Shukla* case (Habeas Corpus Case), though Justice Khanna delivered dissenting opinion on the concept of personal liberty, like dissenting voice of Lord Shaw in The *King vs Halliday* and Lord Atkin in *Liversidge vs. Anderson*in England.

The Hon'ble Supreme Court of India expanded the concept of personal liberty through fair, just and equitable clause in *Maneka Gandhi AIR 1978 SC 597* case, till now the dictum laid down in *Manaka Gandhi* case following by the Supreme Court, particularly cases arising relating to preventive detention. From this, the Supreme Court of India has given different meaning to personal liberty in different era, it may be divided in to two major divisions, i.e., during emergency and during peace times. Hence in this research work an attempt is made to probe the role of the Supreme Court of India in expanding the scope of personal liberty under the Preventive Detention Laws from the year 1950 to December 2015.

Chief Justice Dr. A.S. Anand in *Sunil Fulchand Shah vs Union of India and others* observed that: "...personal liberty is one of the most cherished freedoms, perhaps more important than the other

freedoms guaranteed under the Constitution. It was for this reason that the Founding Fathers enacted the safeguards in Article 22 in the Constitution so as to limit the power of the State to detain a person without trial, which may otherwise pass the test of Article 21, by humanizing the harsh authority over individual liberty. Since, preventive detention is a form of precautionary State action, intended to prevent a person from indulging in a conduct, injurious to the society or the security of the State or public order, it has been recognised as "a necessary evil" and is tolerated in a free society in the larger interest of security of the State and maintenance of public order.

Altamas Kabir, J., in *State of Maharashtra and Ors. vs Bhaurao Punjabrao Gawande,* observed that: "...Personal liberty is a precious right. So did the Founding Fathers believe because, while their first object was to give unto the people a constitution whereby a government was established..."

In R.M.Lodha, J., in *Dropti Devi vs Union of India,* observed that: "Article 21, which is the most sacrosanct and precious of all other Articles insofar as an individual is concerned, guarantees protection of life and personal liberty. It mandates that no person shall be deprived of his life or personal liberty, except according to procedure established by law."

P.Sathasivam, J., in *Baby Devassy Chully vs Union of India* observed on 'personal liberty' as follows: "In a matter affecting the personal liberty of a citizen, it is the duty of the Courts to take all endeavours and efforts for an early decision. All the High Courts advised to give priority for the disposal of the matters relating to personal liberty of a citizen, particularly, when the detention period is one year or less than a year and, more so, after hearing the parties, the decision must be known to the affected party without unreasonable delay."

RECOMMENDATIONS

In a recent circular issued by the Tamil Nadu Director General of Police (DGP) to his senior colleagues in cities and districts, who head police units in their respective jurisdictions, attention was drawn to the need to avoid mistakes in cases related to preventive detention. Circular RC.No.1006119/Crime4(3)/2021, dated 10.03.2021, highlighted various errors that often occur while invoking the Tamil Nadu Preventive Detention Act, 14 of 1982. These mistakes, committed by the sponsoring authorities while passing detention orders, have led to the Hon'ble High Court of Madras allowing multiple Habeas Corpus Petitions (HCPs). Consequently, such errors undermine the purpose of the Act.

The following mistakes have been frequently pointed out by the Hon'ble Court in detention orders:

1. Illegible copies in the detention order, grounds of detention, and booklet.
2. Delay in considering representations, either pre-detention or post-detention. The Hon'ble Supreme Court has ruled in multiple cases that even a delay of three days, without a proper explanation, constitutes an unreasonable delay.
3. Failure to provide proper acknowledgment of the arrest intimation to the family, relatives, or friends of the detenue.
4. Failure to serve the detention order and grounds of detention to the detenue within five days from the date of detention (excluding the date of detention).
5. Lack of continuity in the booklet (e.g., missing paragraphs or pages).
6. Errors or omissions in the detention order and grounds of detention, such as typographical mistakes in crime numbers, sections, names, and dates.

7. Inaccurate translation of the English version into Tamil.
8. Unjustified delay in passing the detention order between the date of arrest and the detention order (e.g., exceeding 30 days).
9. FIR serial number and crime number not in order.
10. Failure to mention the crime number in the seizure mahazar and arrest memo after registering the FIR.
11. Relied-upon documents not included in the booklet at the time of passing the detention order.
12. Failure to include pre-detention representation in the booklet or discuss it in the grounds of detention.
13. Discrepancies in arrest time or seizure mahazar.
14. Failure of the detaining authority to mention or enclose details of the bail application or charge sheet in the adverse case.
15. Use of an outdated case as a reference in the grounds of detention.
16. Reference to a similar case where at least one section does not relate to the sections in the ground case and is not similar in nature.
17. Failure to provide a 161 Cr.P.C. statement or proof of efforts made by the detenue or their representative to apply for bail when the bail application is dismissed in the ground case.
18. Incorrectly stating that no bail application has been filed when one is actually pending.
19. Failure to serve relied-upon documents in a language known to the detenue.
20. Representation replies not addressing all points raised.
21. Failure to specify the authority to which the detenue can submit a representation in the grounds of detention.
22. Failure of the detaining authority to mention satisfaction of grounds while passing the detention order.
23. Failure to mention the impact on public tranquility while passing the detention order.
24. Non-approval of the detention order within 12 days and failure to forward the detention order, grounds, and booklet within three weeks from the date of the detention order.
25. Non-supply of copies of the search mahazar and seizure mahazar.
26. Failure to inform the detenue in the grounds of detention about their right to represent to the Secretary to the Government, the Advisory Board, and the detaining authority before approval by the State.
27. Discrepancies between the stated and recovered volume of contraband and the volume sent to the laboratory.
28. Non-supply of the Tamil version of the detention order.
29. The reported quantity of arrack samples exceeding the volume of the bottle in which they were collected.
30. When the public prosecutor raised no objection to granting bail in the ground case, and bail was granted, the detention order is vitiated.
31. Failure to place the remand extension order before the detaining authority while passing the detention order, and non-supply of the same to the detenue.
32. Failure to extend remand through the court.
33. Incorrectly registering the ground case as an injury case when the complainant is not injured, and failure to include a doctor's certificate confirming injuries or a written statement by the complainant

before the court denying any injuries.

34. Failure to communicate the order of detention to the family members or friends within a reasonable time.
35. Non-supply of the surrender petition copy.
36. Pre-determination of detention, as evident from instances where the sponsoring authority reported to the bail court that the detenue was likely to be detained under the Goondas Act even before recommending detention.
37. Non-supply of the Revenue Official's report on the pre-detention representation.
38. Non-supply of evidence obtained in in-camera proceedings.
39. Unexplained long delay between the registration of the FIR and the arrest of the detenue.

By addressing these recurring errors, authorities can ensure that preventive detention laws are applied fairly and in accordance with constitutional safeguards.

The investigating officers shall follow these instructions scrupulously and ensure that such violations are not committed in the future while invoking preventive detention laws. Senior supervising officers are hereby instructed to sensitize the investigating officers under their control and provide them with suitable guidance in this regard. A review shall be conducted every three months regarding Habeas Corpus Petitions (HCPs) allowed by the court for the reasons mentioned above, and investigating officers shall be held accountable for the same. Failure to adhere to these instructions will be taken seriously, and appropriate disciplinary action shall be initiated for non-compliance.

The above instructions and recommendations were issued by the Director General of Police (DGP) of Tamil Nadu following the intervention of the Hon'ble High Court. The misuse of executive powers vested in officers has led to the curtailment of personal liberty and freedom of movement. If these recommendations are properly adhered to and procedures are meticulously followed, wrongful detentions in the state of Tamil Nadu can be effectively prevented.

CONCLUSION

Crime is a revolt against the whole society and an attack on the civilization of the day. Public order is the foundation of any organized, civilized society, and any attempt to disrupt it affects both society and the community. It involves more than just the ordinary maintenance of law and order. Public order should be maintained not only in terms of the nature or quality of an act but also in its degree and impact on society.

Every violation of the law inevitably affects order, but an act that disrupts law and order may not necessarily disturb public order. The key test is not the type of act but its potential impact. A disturbance of public order must be distinguished from acts directed against individuals, which do not affect society to the extent of causing a general breakdown of public tranquillity. Public order concerns the broader community rather than just individuals. It holds greater significance than other major concerns, such as national security and economic interests, due to its direct impact on society.

Therefore, the Central Government has empowered State Governments to enact preventive detention laws for maintaining public order. Meanwhile, the Central Government has sought to expand preventive detention measures to include punitive forms of such laws. Public order laws have significantly impacted personal liberty. In many cases, past activities, prior records, or alleged grounds for preventive detention under the guise of public order have been fabricated and manipulated by the executive to achieve ulterior motives.