The Indian Journal for Research in Law and Management

Open Access Law Journal – Copyright © 2026

Editor-in-Chief – Dr. Muktai Deb Chavan; Publisher – Alden Vas; ISSN: 2583-9896

PREVENTIVE DETENTION-HISTORY, CONSTITUENT ASSEMBLE ,DEBATES AND CONSTITUTIONAL FRAMEWORK AND IMPLICATIONS

~Nahid Shah

Abstract

Preventive detention in India is a rare constitutional exception under Article 22 that allows the state to detain a person without trial sometimes for up to a year or more to avert potential dangers to national security, public order, or vital supplies and services. Though strongly opposed in the Constituent Assembly, it was retained post-Independence as a "necessary evil" in the words of Dr. B.R. Ambedkar, given the chaos of Partition, communal violence, and emerging internal threats.

Since 1950, a long succession of central and state legislations from the Preventive Detention Act, MISA, and NSA to TADA, POTA, UAPA, Jammu & Kashmir PSA, and state-level "goonda" acts such as KAAPA has sustained and steadily broadened this extraordinary power, frequently applying it in ordinary times and for offences far removed from terrorism.

Proponents insist it is essential when conventional evidence is difficult or dangerous to collect; critics highlight its chronic abuse UAPA conviction rates hovering around 3-5%, selective targeting of dissenters, journalists, and minorities, and its infamous mass deployment during the 1975-77 Emergency. From the restrictive approach of A.K. Gopalan (1950) to the transformative fairness mandate of Maneka Gandhi (1978) and the strict scrutiny seen in recent cases like Dhanya M v. State of Kerala (June 2025), the Supreme Court has progressively tightened the leash on executive discretion, demanding a sharp distinction between mere "law and order" issues and genuine threats to "public order," a live and proximate link to future harm, and full respect for ongoing bail and due process.

Crucially, the stronger safeguards introduced by the 44th Constitutional Amendment in 1978 remain unnotified even in 2025, preserving the older, more permissive regime. The Dhanya M judgment, which set aside the detention of an ordinary moneylender already facing regular criminal trials, powerfully reiterated that preventive detention must remain an exceptional, last-resort measure never a convenient alternative to prosecution or a disguised form of punishment.

India's seven-decade journey with preventive detention thus continues to embody the enduring, often painful tension between legitimate state security imperatives and the inviolable right to personal liberty in a lively yet restless democracy.

Keywords; Preventive Detention, Article 22, Article 21,Constitutional Law, Indian Judiciary, Executive Discretion.

1. What is Preventive Detention?

Preventive detention, isn't about punishing someone for a crime they have already committed. Instead, it is the government's way of locking someone up because they think that person might do something harmful in the future like threatening public order, national security, or essential services. Think of it as a preemptive strike (self-defence) in the legal world. In India, this power comes straight from the Constitution under Article 22, which allows the state to detain folks without a trial for up to a year in some cases, though with some checks like advisory boards to review the detention.[1]

This isn't some obscure concept. it's been around since colonial times, but India kept it post-1947, unlike many other democracies that view it as a relic of authoritarian rule.[2] As Pradyumna Tripathi pointed out in his 1960 piece, it's similar to the U.S. McCarran Act, which allows detention during emergencies for suspected espionage or sabotage, but India's version is more everyday, used under laws like the National Security Act (NSA)[3] or the Unlawful Activities (Prevention) Act (UAPA).[4] The idea is to stop trouble before it starts, but critics say it gives too much leeway to the executive, often leading to arbitrary arrests.

---

[1] INDIA CONST. art. 22, §§ 4-7.
[2] GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION 104-18 (1966).
[3] National Security Act, No. 65 of 1980, INDIA CODE.
[4] Unlawful Activities (Prevention) Act, No. 37 of 1967, INDIA CODE (as amended).

2. Why Preventive Detention After Independence? Insights from the Constituent Assembly

When India gained freedom, you'd think we'd ditch all the oppressive colonial laws, right? But no, preventive detention made it into the Constitution.

Why? Well, the country was in chaos partition riots, communal violence, refugee crises, and threats from across new borders. The framers figured they needed tools to keep things stable in this fragile new republic.

Flip through the Constituent Assembly debates from September 1949, and you'll see the tension. Dr. B.R. Ambedkar, the chief architect, defended it as a "necessary evil."[5] He argued that in times of war, insurgency, or internal unrest like the communist uprisings in Telangana the state couldn't always wait for a crime to happen. PD was framed as a safeguard for the nation's security, with built-in limits: detainees had to be told the reasons (though not always the full details), and an advisory board would check if the detention was justified within three months. Ambedkar stated it wasn't blank check, it was tied to specific threats like defense or public order.

Today, it's still there because India faces ongoing issues-terrorism in Kashmir, Naxalite insurgencies, cyber threats. Without PD, proponents say, the government might be helpless against shadowy threats where gathering trial-ready evidence is tough or dangerous. But as David Bayley notes in his 1962 book, this retention reflects a pragmatic, if uneasy, compromise in democratic social control.[6]

3. Who Fought to Remove It and Why?

Not everyone was on board. The Assembly saw fierce pushback from members who saw PD as a betrayal of the freedom struggle. Remember the Rowlatt Act protests that fueled Gandhi's movement? Critics argued this was the same wolf in sheep's clothing.

Somnath Lahiri, a communist voice, called it "draconian" [7]and fascist-like, warning it could silence dissent. Mahavir Tyagi clashed with Ambedkar, saying it clashed with fundamental rights like

---

[5] 9 Constituent Assembly Debates 1498 (Sept. 15, 1949) (Dr. B.R. Ambedkar).

[6] David H. Bayley, The Pedagogy of Democracy: Coercive Public Order in India, 56 AM. POL. SCI. REV. 663, 670–72 (1962).

[7] 9 Constituent Assembly Debates 1469–70 (Sept. 14, 1949) (Somnath Lahiri).

liberty under Article 21 and free speech under Article 19[8]. Others, like H.V. Kamath, feared executive abuse against political opponents or minorities.[9] They pushed for scrapping it or limiting it to emergencies only, arguing that ordinary criminal laws should suffice.

Their reasons

PD bypasses courts, presuming guilt without proof, and echoes colonial tyranny. In a new democracy, they said, trust the people, not empower the state to detain on mere suspicion. But the majority won out, swayed by the immediate post-partition realities. Interestingly, this opposition foreshadowed later abuses, like during the Emergency in the 1970s.

4. The AK Gopalan Case: A Turning Point in PD Jurisprudence

A.K. Gopalan v. State of Madras (1950), the first big Supreme Court showdown on PD. Gopalan, a communist leader detained under the Preventive Detention Act of 1950, challenged it as violating his rights to free speech, movement, and due process.[10]

The Court, in a split decision, mostly upheld the law but struck down a part that hid detention grounds from courts. Chief Justice Kania's majority view was narrow: Article 21's "procedure established by law"[11] just meant following whatever law Parliament passed, not necessarily fair or natural justice like in the U.S. They saw rights as separate buckets. PD under Article 22 wasn't tested against "reasonableness" in Article 19.

This was huge because it gave the green light to PD laws, showing judicial deference to the executive on security matters. Tripathi critiqued it as abandoning individuals to executive whim. But it held for decades until Maneka Gandhi (1978)[12] flipped the script, saying procedures must be fair and reasonable. Gopalan's legacy? It solidified PD but exposed the Constitution's weak spots on liberty.

5. Article 22: From Original Form to Post-44th Amendment Reality

[8] 9 Constituent Assembly Debates 1509–10 (Sept. 15, 1949) (Mahavir Tyagi).
[9] 9 Constituent Assembly Debates 1540 (Sept. 15, 1949) (H.V. Kamath).
[10] A.K. Gopalan v. State of Madras, A.I.R. 1950 S.C. 27 (India).
[11] Id. at 36–42 (Kania, C.J.).
[12] (1978) 1 S.C.C. 248 (India).

Article 22 is the heart of PD in India. It carves out exceptions from normal arrest rights: no need for immediate court appearance, but detainees get grounds of detention and a chance to represent themselves.[13]

Before the 44th Amendment in 1978, it was looser detention could go beyond three months without a board if Parliament said so, opening doors to indefinite holds. This flexibility fueled Emergency-era horrors, with thousands detained arbitrarily.[14]

The Amendment, born from that backlash, tightened things: detention max two months without board approval, boards chaired by high court judges, and no parliamentary extensions beyond three months without cause.[15] But here's the kicker key parts, like the two-month limit, were never notified by the government. So, even in 2025, we're stuck with the pre-amendment setup, where laws like NSA allow up to a year with board okay.[16]

Today, Article 22 stands as a mixed bag: safeguards exist on paper, but non-notification means old vulnerabilities persist, allowing extended detentions with minimal oversight.

6. Implications of Preventive Detention: National Security vs. Human Rights

On one hand, PD is a security lifeline. In a country like India, with porous borders and internal conflicts, it lets authorities nip threats in the bud—think stopping a terror plot without waiting for an attack. Bayley argues it's essential for democratic control, preventing chaos that could topple the state.

But flip the coin, and the human rights costs are steep. It clashes with Article 21's life and liberty guarantees, not to mention international standards like the ICCPR's (international convent on civil and political rights) due process. Misuse is rampant: low conviction rates under UAPA (often under 5%),[17] targeting journalists, activists, and minorities. Extended detentions without trial lead

[13] INDIA CONST. art. 22.
[14] Constitution (Forty-fourth Amendment) Act, 1978, § 3 (India).
[15] Constitution (Forty-fourth Amendment) Act, 1978, § 3 (India).
[16] National Security Act, No. 65 of 1980 (India).
[17] NAT'L CRIME RECORDS BUREAU, CRIME IN INDIA 2020–2024; AMNESTY INT'L INDIA, JUSTICE UNDER TRIAL: THE UAPA IN INDIA (2023).

to psychological trauma, family hardship, and eroded public trust. From a rights perspective, it's a tool that can stifle dissent, as seen in recent protests where PD silenced voices.[18]

The balance-

We need it for real threats, but with stricter judicial checks to prevent it becoming a weapon against democracy itself.

Chronological Timeline of Preventive Detention Laws in India (1947–2025)

Preventive detention laws in India, which allow for the arrest and detention of individuals without trial to prevent potential threats to security, public order, or essential services, have evolved significantly since independence in 1947.[19] These laws are rooted in Article 22 of the Constitution, which provides safeguards but permits such detentions. Below is a chronological list of key central and notable state-level acts, including enactment dates, repeals (if applicable), key purposes, and amendments with preventive detention elements.[20] This compilation draws from historical and legal sources, noting that no major new preventive detention acts have been enacted as of September 23, 2025; recent developments focus on amendments and judicial scrutiny of existing laws.

- **1950: Preventive Detention Act (PDA)**
  -Enacted: February 26, 1950 (Act No. 4 of 1950).
  -Repealed/Expired: December 31, 1969 (after multiple extensions).
  -Purpose: To detain individuals suspected of actions prejudicial to national defense, security, public order, or essential supplies/services in the post-independence turmoil (e.g., partition violence). Allowed detention up to 12 months with advisory board review.[21]
  -Key Details/Amendments: Extended seven times (e.g., via amendments in 1951, 1952, etc.) for three-year periods each. Challenged in A.K. Gopalan v. State of Madras (1950), where the Supreme Court upheld most provisions but struck down secrecy clauses.[22]

[18] International Covenant on Civil and Political Rights, art. 9, Dec. 16, 1966, 999 U.N.T.S. 171.
[19] GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION 75 (1966); Pradyumna Tripathi, *Preventive Detention: The Indian Experience*, 9 AM. J. COMP. L. 412, 413 (1960).
[20] NATIONAL CRIME RECORDS BUREAU, CRIME IN INDIA 2020–2024 (2024); AMNESTY INTERNATIONAL INDIA, JUSTICE UNDER TRIAL: THE UAPA IN INDIA 8 (2023).
[21] Preventive Detention Act, No. 4 of 1950 (India).
[22] A.K. Gopalan v. State of Madras, A.I.R. 1950 S.C. 27 (India).

- **1967: Unlawful Activities (Prevention) Act (UAPA)**

- **Enacted**: December 30, 1967.

- **Status**: Still in force, with preventive detention elements strengthened through amendments.

- Purpose: Originally to ban unlawful associations; later amendments incorporated preventive measures against terrorism, allowing extended detention without bail.

- **Amendments**: While not purely a preventive detention act, it gained such powers via post-2000 changes (listed below). Initial focus was on secessionist groups.[23]

- **1971: Maintenance of Internal Security Act (MISA)**

- **Enacted**: July 2, 1971.

- **Repealed**: January 27, 1978 (by the Janata Party government).

- **Purpose**: To maintain internal security amid the Indo-Pak War and political unrest; empowered detention without trial for threats to security or public order.

-**Amendments**: Amended multiple times during the Emergency (1975-1977), leading to widespread abuses (e.g., detention of over 100,000 people, including opposition leaders). Replaced PDA as the primary tool.[24]

- **1974: Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA)**

- **Enacted**: December 13, 1974.

- Status: Still in force.

- **Purpose**: To prevent smuggling and foreign exchange violations by allowing preventive detention for economic offenses.

[23] Unlawful Activities (Prevention) Act, No. 37 of 1967 (India).
[24] Maintenance of Internal Security Act, No. 26 of 1971 (India).

- Amendments: Detention up to one year (extendable to two); 1984 ordinance increased maximum period to two years for smugglers. Served as a complement to MISA.

- **1978: Jammu and Kashmir Public Safety Act (PSA)**

- **Enacted**: 1978 (state-specific for Jammu and Kashmir).

- **Status**: Still in force (despite Article 370 abrogation in 2019).

- Purpose: To detain individuals threatening public order or state security, often used against separatists and activists.

- **Key Details/Amendments**: Allows up to two years' detention; post-2019, saw increased use with "revolving-door" detentions (repeated orders after release).

- **1980: National Security Act (NSA)**

- **Enacted:** September 27, 1980.

- **Status**: Still in force.

- Purpose: To replace MISA, empowering central and state governments to detain for up to 12 months to prevent acts prejudicial to national security, public order, or essential services.

- **Key Details/Amendments**: Includes provisions for foreigners' expulsion; requires advisory board review within three months. Criticized for peacetime use and low conviction rates.

- **1981: Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act (MPDA)**

- Enacted: 1981 (state-specific for Maharashtra).

- Status: Still in force.

- Purpose: To prevent anti-social activities through detention of habitual offenders in organized crime.

- Key Details/Amendments: Allows up to one year's detention; amended over time to include video piracy and other modern crimes.[25]

- **1985: Gujarat Prevention of Anti-Social Activities Act (PASA**)

- Enacted: 1985 (state-specific for Gujarat).

- **Status:** Still in force.

- Purpose: To detain "bootleggers," "dangerous persons," and others threatening public order.

- Key Details/Amendments: Similar to MPDA; focuses on state-level threats like bootlegging in a dry state.[26]

- **1985: Terrorist and Disruptive Activities (Prevention) Act (TADA)**

- **Enacted:** May 23, 1985.

- **Expired:** May 23, 1995 (not renewed).

- Purpose: To combat terrorism and disruptive activities, especially amid the Khalistan movement; allowed extended detention and special courts.

- **Key Details/Amendments**: Initially for two years; revised in 1987 and extended periodically until 1995. Known for stringent bail provisions.[27]

- **1988: Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act (PITNDPS)**

- Enacted: July 6, 1988.

- **Status:** Still in force.

- **Purpose**: To prevent large-scale drug trafficking via detention of habitual offenders or financiers.

[25] Maharashtra Prevention of Dangerous Activities of Slumlords, Bootleggers, Drug Offenders, Dangerous Persons and Video Pirates Act, No. 12 of 1981 (India).
[26] Gujarat Prevention of Anti-Social Activities Act, No. 20 of 1985 (India).
[27] Terrorist and Disruptive Activities (Prevention) Act, No. 31 of 1985 (India).

- Key Details/Amendments: Detention up to one year (extendable to two); integrated with the NDPS Act for enforcement.[28]

- **2002: Prevention of Terrorism Act (POTA)**

- Enacted: March 28, 2002 (initially as ordinance in 2001).

- **Repealed:** September 21, 2004.

- Purpose: To counter terrorism post-9/11 and the 2001 Parliament attack; allowed detention without bail for up to 180 days.

- **Key Details/Amendments**: Replaced TADA; repealed due to misuse against minorities and activists.[29]

- **2004: UAPA Amendment**

- Enacted: December 21, 2004.

- Purpose: Incorporated POTA-like provisions into UAPA, including extended detention for terrorism suspects.

- Key Details: Shifted terrorism powers to UAPA after POTA repeal.[30]

- **2007: Kerala Anti-Social Activities (Prevention) Act (KAAPA)**

- Enacted: 2007 (state-specific for Kerala).

- **Status**: Still in force.

- **Purpose:** To detain "goondas" and anti-social elements threatening public order.

- Key Details: Up to one year's detention; recent Supreme Court scrutiny in 2025 cases emphasized limited use.[31]

- **2008: UAPA Amendment**

---

[28] Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, No. 46 of 1988 (India).
[29] Prevention of Terrorism Act, No. 15 of 2002 (India).
[30] Unlawful Activities (Prevention) Amendment Act, No. 29 of 2004 (India); Unlawful Activities (Prevention) Act, No. 37 of 1967 (India).
[31] Kerala Anti-Social Activities (Prevention) Act, No. 34 of 2007 (India).

- Enacted: December 31, 2008 (post-Mumbai attacks).

- **Purpose**: Strengthened preventive measures, including warrantless arrests and bail restrictions for terror-related activities.

- **2012: UAPA Amendment**

- **Enacted**: 2012.

- Purpose: Expanded to include economic offenses like counterfeit currency as terrorism; enhanced detention powers.[32]

- **2019: UAPA Amendment**

- Enacted: August 2, 2019.

- Purpose: Allowed designation of individuals (not just groups) as terrorists, enabling preventive detention based on suspicion; empowered NIA for investigations.[33]

Key Observations (Up to 2025)

- The 44th Constitutional Amendment (1978) aimed to tighten safeguards under Article 22 (e.g., reducing maximum detention without board review to two months), but key clauses remain unnotified as of 2025, leaving pre-1978 flexibilities intact[34]

- State laws proliferated in the 1980s-2000s, often mirroring NSA for local threats (e.g., Telangana PD Act 1986, Meghalaya PD Act 1995.[35]

- In 2025, no new acts; focus is on misuse critiques (e.g., low conviction rates under UAPA ~3%) and Supreme Court rulings quashing arbitrary detentions (e.g., Dhanya M v. State of Kerala, emphasizing proportionality).[36]

---

[32] Unlawful Activities (Prevention) Amendment Act, No. 35 of 2008 (India).
[33] Unlawful Activities (Prevention) Amendment Act, No. 3 of 2013 (India).
[34] Constitution (Forty-fourth Amendment) Act, 1978, § 3 (India); INDIA CONST. art. 22; Pradyumna Tripathi, *Preventive Detention: The Indian Experience*, 9 AM. J. COMP. L. 412, 418 (1960).
[35] National Security Act, No. 65 of 1980 (India); GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION 95 (1966).
[36] AMNESTY INTERNATIONAL INDIA, JUSTICE UNDER TRIAL: THE UAPA IN INDIA 14 (2023); NATIONAL CRIME RECORDS BUREAU, CRIME IN INDIA 2020–2024 (2024); Dhanya M v. State of Kerala & Ors., Criminal Appeal No. 2897 of 2025 (India Jun. 6, 2025); Nenavath Bujji v. State of Telangana, (2024) 7 S.C.C. 538 (India).

A recent case on preventive detention that really caught my eye it's from earlier this year, 2025, and it shows how the courts are pushing back on misuse of these powers. I'm going with Dhanya M v. State of Kerala & Ors., decided by the Supreme Court on June 6, 2025.[37] I picked this one because it's fresh, involves everyday folks, and hammers home some key points about when preventive detention can or can't be used. I'll explain it all in simple terms, like I'm chatting with you over tea, covering every bit: the background, who was involved, what went down, the legal fights, how the judges thought it through, what they decided, and why it matters.

What's the Case Called and When Was It Decided?

The full name is Dhanya M v. State of Kerala & Ors. that's Criminal Appeal No. 2897 of 2025, which started as a Special Leave Petition (SLP) No. 14740 of 2024. The Supreme Court bench was Justices Sanjay Karol and Manmohan, and they wrapped it up on June 6, 2025.[38]

Who's Involved and Why?

The main petitioner (appellant) is Dhanya M, a woman from Palakkad in Kerala. She's fighting for her husband, Rajesh (the guy who's detained). Rajesh owns a small money-lending business called Rithika Finance it's registered and all, but he got tangled in some complaints about charging crazy high interest rates and roughing up borrowers.[39]

On the other side are the State of Kerala, the District Magistrate of Palakkad, and the local police chief. They're the ones who slapped the detention order on Rajesh, saying he's a danger to society.[40]

The Background Story: What Led to This Mess?

It all started with Rajesh's business. He's been accused in four separate criminal cases over the years, mostly from 2022 to 2024. These weren't random the police said they showed a pattern of him being a "goonda" (that's Kerala slang for a thug or habitual offender under their law). The quick rundown of the cases, because they're central to why he was detained:

---

[37] *Dhanya M v. State of Kerala & Ors*., Criminal Appeal No. 2897 of 2025 (India Jun. 6, 2025); *see also* INDIA CONST. art. 22.
[38] Criminal Appeal No. 2897 of 2025 (arising out of SLP (Crl.) No. 14740 of 2024) (India Jun. 6, 2025).
[39] *Dhanya M. v. State of Kerala*, Criminal Appeal No. 2897 of 2025 (S.C. June 6, 2025) (India).
[40] *Dhanya M. v. State of Kerala*, Criminal Appeal No. 2897 of 2025 (S.C. June 6, 2025) (India).

1. Case 1 (Crime No. 554/2022): Filed at Palakkad Town South Police Station. Rajesh allegedly lent money at sky-high interest and harassed a borrower from a scheduled caste community. Charges included sections from the Indian Penal Code (IPC) for cheating, criminal intimidation, and even the SC/ST (Prevention of Atrocities) Act. He was on bail here.[41]

2. Case 2 (Crime No. 102/2023): Same station. Similar stuff exorbitant interest, threats to recover money. IPC sections for extortion and the Kerala Prohibition of Charging Exorbitant Interest Act. Bail granted.[42]

3. Case 3 (Crime No. 315/2024): Again, Palakkad. More lending gone wrong, with claims of illegal interest and violence. Involved the Kerala Money Lenders Act too. On bail.[43]

4. Case 4 (Crime No. 367/2024): The latest one. Harassment over a loan, threats same mix of laws. Bail again.

Rajesh was out on bail for all these, following court rules like showing up when needed. But on June 20, 2024, the District Magistrate (DM) in Palakkad issued a detention order under Section 3 of the Kerala Anti-Social Activities (Prevention) Act, 2007 (KAAPA).[44] This law lets authorities lock someone up for up to six months if they're seen as a threat to public order, without a trial. The DM based it on a report from the District Police Chief, who called Rajesh a "known goonda" whose actions were messing with people's lives and needed to be stopped before more trouble.

Rajesh got the grounds for detention within five days, as required he was told about these four cases and how they supposedly endangered "public order." He made his case to an Advisory Board, but they okayed the detention on July 25, 2024. Dhanya, not giving up, filed a writ petition in the Kerala High Court for habeas corpus. The High Court heard it but dismissed her plea on September 4, 2024, saying the order seemed fine. So, she appealed to the Supreme Court, arguing it was all unfair.

The core question was: Was this preventive detention legal? Preventive detention isn't like regular jail it's to prevent future crimes, not punish past ones. But Dhanya said it was being misused here.

---

[41] *Dhanya M. v. State of Kerala*, Criminal Appeal No. 2897 of 2025 (S.C. June 6, 2025) (India).
[42] *Dhanya M. v. State of Kerala*, Criminal Appeal No. 2897 of 2025 (S.C. June 6, 2025) (India).
[43] *Dhanya M. v. State of Kerala*, Criminal Appeal No. 2897 of 2025 (S.C. June 6, 2025) (India).
[44] Kerala Anti-Social Activities (Prevention) Act, 2007, § 3, No. 16 of 2007 (India).

Specifically:

- Does Rajesh's behavior really threaten "public order" (big societal stuff) or is it just "law and order" issues (like individual disputes)?

- Can preventive detention be slapped on someone who's already on bail and following rules? Isn't that like double punishment?

- Did the authorities follow the rules properly, like having fresh, relevant reasons?

The court also looked at whether this violated Article 21 (right to life and liberty) and Article 22 (safeguards for detention) of the Constitution.

What Each Side Argued

Dhanya's side (her lawyers) kept it straightforward: Rajesh is on bail for all cases, no violations, so why detain him preventively? They said this is a sneaky way to bypass the criminal justice system if the state had problems, they should've asked the court to cancel his bail, not use this extreme tool. Plus, these are private money disputes, not something shaking up the whole community. They cited old cases like Vimla v. Delhi Administration (1963)[45] to say detention needs a real, imminent threat.

The State of Kerala fought back hard: Rajesh fits the "known goonda" label under KAAPA because of his repeated offenses. His high-interest lending and harassment are harming vulnerable people, which affects public order. They said the DM's "subjective satisfaction" was enough, and the Advisory Board agreed. No need to wait for more crimes the point is prevention.

How the Court Reasoned It Out-

The judges didn't rush; they broke it down logically, drawing from a bunch of past rulings to make their point. Here's how they thought it through:

1. Preventive Detention is No Joke Use It Sparingly: Right off the bat, they stressed that locking someone up without trial is a huge deal. It's allowed under Article 22, but only as a last resort.

[45] *cf.* Vimla v. Delhi Administration, AIR 1963 SC 1572 (India).

They quoted Icchhu Devi v. Union of India (1980)[46] and Rekha v. State of Tamil Nadu (2011),[47] saying the state has to prove it's absolutely necessary. "Liberty is precious," they said, and you can't take it lightly.

2. Law and Order vs. Public Order Big Difference: This was the killer point. The court explained that "law and order" problems are small-scale, like fights between two people, while "public order" means stuff that disrupts society at large, like riots or widespread fear. Rajesh's cases

All individual borrower complaints no evidence they caused panic in the community. They leaned on Ram Manohar Lohia v. State of Bihar (1966)[48] and recent ones like SK. Nazneen v. State of Telangana (2023) to say this was just law and order, not public order. No "live link" between his actions and a broader threat.

3. Bail Isn't Being Ignored Here: Since Rajesh was on bail and complying, the court wondered why not revoke bail instead? They said preventive detention can't be a shortcut or substitute for regular prosecution. Citing Mortuza Hussain Choudhary v. State of Nagaland (2025), they noted if someone's already in the system and behaving, detention feels like overkill.

4. The Grounds Were Stale and Vague: The judges picked apart the detention order. Some cases were old (from 2022), and there was no fresh incident showing immediate danger. The DM's reasons were too generic no specifics on how Rajesh was still a threat. They referenced Nenavath Bujji v. State of Telangana (2024) for this.[49]

5. Constitutional Angle: Tying it to Article 21, they said any deprivation of liberty must be fair and reasonable not arbitrary. This echoes big cases like Maneka Gandhi v. Union of India (1978), where procedures have to be just.

In short, the court felt the state jumped the gun without solid reasons.

The Final Decision

[46] Icchhu Devi Choraria v. Union of India,
[47] Rekha v. State of Tamil Nadu, (2011) 5 S.C.C. 244 (India); Vijay Narain Singh v. State of Bihar, (1984) 3 S.C.C. 14 (India).
[48] Ram Manohar Lohia v. State of Bihar, A.I.R. 1966 S.C. 740 (India).
[49] Nenavath Bujji v. State of Telangana, (2024) 7 S.C.C. 538 (India).

The Supreme Court quashed the detention order and ordered Rajesh's immediate release. They said the whole thing was invalid because it didn't meet the high bar for preventive detention. No costs or penalties mentioned just get him out.

Key Observations

This case is a reminder that preventive detention isn't a free pass for authorities it's for real emergencies, not settling scores or avoiding trials. The judges observed that laws like KAAPA are important for safety, but misuse erodes trust in the system. They cited a string of precedents, like Vijay Narain Singh v. State of Bihar (1984), to warn against casual use. In a way, it's good news for human rights, showing courts are watching. If you're into this stuff, it builds on post-Emergency reforms, making sure liberty isn't taken for granted.

Conclusion

Preventive detention in India is like a double-edged sword. On one side, you've got a country that's been through a lot partition chaos, terrorism, insurgencies, and economic threats. The government argues it needs tools like the National Security Act or UAPA to stop trouble before it spirals, especially when gathering evidence for a trial is tricky or time's running out. I get it: when you're dealing with potential terror plots or widespread unrest, waiting for a crime to happen can feel like playing with fire. The Constituent Assembly, way back in 1949, felt this too Ambedkar called it a "necessary evil" for a fledgling nation trying to stay stable. And with ongoing challenges like Naxalism or cyber threats, it's not hard to see why laws like these stick around in 2025.

But here's the other side, and it's where things get messy. These laws, born from a place of caution, can so easily slide into abuse. The document spells it out: low conviction rates under UAPA (we're talking under 5%), activists and journalists getting targeted, and folks like Rajesh in the Dhanya M case getting locked up without trial for what looks more like private disputes than society-shaking threats. That case really hit home for me it's not about some big-shot terrorist; it's a guy running a small money-lending business, maybe cutting corners, but already in the system, out on bail, following the rules. Yet, boom, he's detained under KAAPA because the authorities think he might cause trouble. The Supreme Court stepping in to free him on June 6, 2025, sent a loud message: you can't just lock people up on a hunch. There's got to be a real, immediate danger to "public order," not just a string of individual gripes.

What strikes me most is how this tension security versus liberty has been there since day one. Back in the Constituent Assembly, folks like Somnath Lahiri and Mahavir Tyagi were waving red flags, saying this could be a tool to silence dissent, echoing the colonial Rowlatt Act that sparked so much outrage. They weren't wrong.[50] The Emergency in the 1970s, with thousands detained under MISA, proved how these powers can be weaponized.[51] Even today, with laws like NSA and UAPA, the risk of misuse looms large. The 44th Amendment tried to tighten the screws, but it's frustrating that key safeguards, like the two-month detention limit, are still just sitting there, unnotified, leaving gaps for overreach.[52]

So, where does this leave us? Preventive detention isn't going anywhere it's baked into Article 22, and India's challenges aren't exactly shrinking.[53] But the Dhanya M case shows the courts are waking up, demanding more accountability. They're saying, "liberty matters, and you better have a good reason to take it away." It's a reminder that democracy isn't just about keeping things orderly; it's about trusting people, giving them a fair shot, and not letting the state play judge and jury on mere suspicion. For every legit use of these laws, there's a risk of trampling on rights, breaking families, and eroding trust. The low conviction rates and stories of targeted activists are proof that the system's not perfect far from it.

In the end, I think it's about finding that sweet spot. Yes, the state needs tools to protect us, but those tools can't become a sledgehammer for every problem. Stronger judicial checks, clearer definitions of "public order," and actually enforcing those post-Emergency reforms could make a difference. The Dhanya M ruling gives me hope that the courts are listening, but it's on all of us citizens, lawmakers, judges to keep pushing for a system that keeps us safe without sacrificing what makes us free. That's the India I'd like to see, one that doesn't just lean on "necessary evils" but strives for something better.

REFERENCES

- AUSTIN, GRANVILLE, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION (1966)

[50] 9 CONSTITUENT ASSEMBLY DEBATES 1949;GRANVILLE AUSTIN, THE INDIAN CONSTITUTION: CORNERSTONE OF A NATION 93 (1966).
[51] Maintenance of Internal Security Act, No. 26 of 1971 (India) (repealed 1978); David H. Bayley, *The Pedagogy of Democracy: Coercive Public Order in India*, 56 AM. POL. SCI. REV. 663, 665 (1962).
[52] Constitution (Forty-fourth Amendment) Act, 1978, § 3 (India); Pradyumna Tripathi, *Preventive Detention: The Indian Experience*, 9 AM. J. COMP. L. 412, 420 (1960).
[53] INDIA CONST. art. 22.

- Bayley, David H., The Pedagogy of Democracy: Coercive Public Order in India, 56 AM. POL. SCI. REV. 663 (1962)
- Tripathi, Pradyumna, Preventive Detention: The Indian Experience, 9 AM. J. COMP. L. 412 (1960)
- AMNESTY INTERNATIONAL INDIA, JUSTICE UNDER TRIAL: THE UAPA IN INDIA (2023)
- NATIONAL CRIME RECORDS BUREAU, CRIME IN INDIA 2020–2024
- 9 CONSTITUENT ASSEMBLY DEBATES (1949).
- International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171
- INDIA CONST. art. 22
- Constitution (Forty-fourth Amendment) Act, 1978, § 3 (India)
- National Security Act, No. 65 of 1980
- Unlawful Activities (Prevention) Act, No. 37 of 1967
- A.K. Gopalan v. State of Madras, A.I.R. 1950 S.C. 27 (India)
- Criminal Appeal No. 2897 of 2025 (India Jun. 6, 2025)
- Maneka Gandhi v. Union of India, (1978) 1 S.C.C. 248 (India)
- Nenavath Bujji v. State of Telangana, (2024) 7 S.C.C. 538 (India)
- Ram Manohar Lohia v. State of Bihar, A.I.R. 1966 S.C. 740 (India)
- Rekha v. State of Tamil Nadu, (2011) 5 S.C.C. 244 (India)
- Vijay Narain Singh v. State of Bihar, (1984) 3 S.C.C. 14 (India)