Preventive Detentions in Andhra Pradesh

An Instrument of State against Personal Liberty

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Summary

This paper critically evaluates the nature of the AP Preventive Detention Act, 1986 and scrutinizes the methods of its invocation to deprive the personal liberty of the citizens without a trial. It examines with evidence from the field, the justifications of the state for making this law and its machinery and the process to invoke it. It further asks the question whether its use is within the permissible limits, set by the Constitution. It also takes a look at how the Constitutional Courts have given definite shape to the limits of detention power, while asserting their own power of judicial review of detentions with a self-restraint. And it concludes that while interpretation of the Article 22 by the Supreme Court gives a ray of hope against the abuse of power of detentions, the High Court has been dismissing the detention orders on procedural grounds rather than on substantial grounds of the abuse of power. This may not deter the governments from abuse of this power as long as the constitutional courts adhere to procedural hierarchies in the name of judicial restraint. The judiciary and civil society have to devise ways of preventing the abuse of detention power as a litmus test to preserve the sanctity of personal liberty, the Constitution cherishes under Article21.

1. Introduction

(a) The Andhra Pradesh Prevention of Dangerous Activities Act 1986

The Andhra Pradesh Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders and Land Grabbers Act, 1986 (the Act of 1986, hereafter) claims to prevent the activities of the citizens which are prejudicial to the maintenance of public order. It identifies 6 classes of offenders repeatedly violating the ordinary laws, and asserts the need for this special law. Taking a wide scope, it encompasses the support, attempts and abetment to commit any of the offences that affect public order. Public order is 'deemed likely to be affected adversely if their activities are considered as calculated to cause directly or indirectly a feeling of insecurity among the public'[1]. It provides the widest amplitude to interpret the actions of the accused through its expressions like 'making preparations', 'likely to affect adversely', 'indirectly', 'calculated to cause', 'alarm' and 'feeling of insecurity'.

[1] Explanation to the section 2 of the Act of 1986.

(b) The Justification

The government, while introducing the Bill under the Article 22 of the Constitution had justified this exceptional measure on the grounds of increasing crimes and the failures of the prosecution under ordinary laws. Neither did it produce any statistical evidence in support of its claim nor did the Opposition in legislative assembly evaluate the claim as real or imaginary, relative or absolute. Some of the elements of the Bill were part of the Andhra Pradesh Prevention of Anti-Social and Hazardous Activities Act, 1980, which provides the government with the power of externment of the 'Goondas' and habitual offenders. But the later law gives the accused the right to defend themselves with the assistance of lawyers. However, there was no discussion on its effectiveness prior to the enactment of the Act of 1986.

The Opposition parties questioned the objectives of this Bill in the absence of emergency or armed revolution[2]. Their understanding that the detentions without a trial are necessitated by war and revolutions belong to the pre-Independence period, as preventive detention is a legislative theme is like any other[3]. They recalled AK Gopalan[4] as the first victim of preventive detention law after Independence and pointed out potential abuse of the Bill. Stating that there existed enough criminal laws, they accused the government of lacking the political will to prevent crimes. They conceded a need for tougher laws, but preferred amending the provisions of Criminal Procedure Code to a detention statute. They even alleged a deeper collusion of the governmental machinery with the land grabbers[5] and alleged a deliberate failure to prevent crimes. Without cleansing the police machinery of such trends, they argued, the state was not going to stem the rising crimes. Their experiences of the high-handedness of the police in the old city of Hyderabad and against political militancy in Telangana made them suspect the purpose of the law. The government's failure to set up special courts under the Andhra Pradesh Land Grabbing (Prohibition) Act, 1982 and inclusion of the land grabbing offences in the current Bill[6] further strengthened their doubts. These responses accurately expose the primary objective of the bill as being to handle the problem of law and order without being accountable to the judiciary.

The government, however advanced two general arguments in its defence: first, there being a need to take tougher action against increasing crimes but the penal laws not being enough of a

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[2] Andhra Pradesh State Legislative Assembly debates: 13th September 1985; page no. 614-641.
[3] Item 3 of list III of the 7th Schedule of the Constitution.
[4] A well-known communist, detained under the Preventive Detention Act, 1950. *A.K Gopalan vs The State of Madras.* 1950 AIR 27, 1950 SCR 88.
[5] Legislators, Mohd. Makaramuddin from Charminar Constituency, Sripada Rao from Mandani Constituency. *Supra page 637.*
[6] Legislator Vidhya Sagar Rao. *Supra page 22.*

deterrent; second, the courts granting bail liberally being a problem in curbing the crimes. However, the Assembly did not discuss what were the special circumstances under which particular categories of offences were prejudicial to the maintenance of 'public order', as Article 22 of the Constitution contemplates.

(c) Do the Statistics Corroborate the Grounds of Justification?

The Act of 1986 had included the drug offences[7], offences against the body[8] and property[9], immoral traffic Act and the offence of land grabbing in its scope. The offences, which were already part of the ordinary laws, were brought into the scope of the Act. What is the justification to bring them under this exceptional law? These offences, at an all-India level, had remained stable at 3.7% of the total percentage of crimes from 1977 to 1981[10]. A decline in property crimes, viz., dacoity, burglary, theft and robbery can be observed for the period 1975-85.[11] 1982 recorded a 5.5% smaller number of dacoity cases at an all-India level[12]. The central government criminalized the usage of Narcotic Drugs and Psychotropic Substances only in 1985 and hence no sudden surge was visible under such offences. The Goonda activities, an offence in Indian Penal Code (IPC), was already part of the Andhra Pradesh Prevention of Anti-Social and Hazardous Activities Act, 1980. The later law already gives power to the state to imprison those accused of Goonda activities and create a tribunal to appeal against such imprisonment but it was not constituted.[13] Another 20 offences of IPC were incorporated into the 1986 Act[14]. Neither the justification of increasing crime and nor of lack of tougher laws were substantiated by the evidence and hence the grounds for its enactment is totally absent.

(d) Three Months Detention without Effective Representation

The Act of 1986 empowers the government to detain a citizen under several conditions and constraints indicating its exceptional nature. The government delegates the power to the District

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[7] The Excise Act of 1968 and NDPS Act of 1986
[8] Goonda offences punishable under Chapter XVI, Chapter XVII or Chapter XXII of the Indian Penal Code and Suppression of Immoral Traffic in Women and Girls Act, 1956
[9] Commission and abetment of Dacoit under sections 395 to 400 of the Indian Penal Code, 1860
[10] https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/CHAPTER-3-1982.pdf)
[11] Preface, page IV, https://ncrb.gov.in/sites/default/files/preface1985.pdf
[12] (https://ncrb.gov.in/sites/default/files/crime_in_india_table_additional_table_chapter_reports/CHAPTER-3-1982.pdf
[13] This statute was invoked sporadically until 1999, when a detention under it was quashed and ordered the government to constitute a Tribunal to challenge the detention orders http://www.scconline.com/DocumentLink/mhjA8x0S: 1999 SCC OnLine AP 1182.
[14] Commission and abetment of Dacoit under sections 395 to 400 of IPC; Goonda: Offences punishable under Chapter XVI or Chapter XVII or Chapter XXII of the Indian Penal Code.

Magistrates[15] and the Commissioners of Police for three months at a time, only if circumstances warrant it[16]. This conditionality has been made redundant in practice since this power has been delegated in an uninterrupted manner since the inception of the law[17]. This has normalized an exceptional law.

The Act of 1986 contemplates a schema of detention which invariably deprives a person of personal liberty for at least 3 months before any relief can be sought. The detention order would initially be in force for 12 days unless it is approved by the government[18]. The detenu can be informed of the grounds of detention within 5 days of detention[19]. However, the government is not required to disclose the facts if it is considered to be against public interest[20]. Within 3 weeks[21] of detention, it has to be referred to the Advisory Board and based on its opinion, the chief secretary can either confirm or revoke the detention within 7 weeks[22]. The detenu has a right to representation but is not entitled to take the assistance from a legal practitioner[23]. If he represents prior to its confirmation, the government issues a combined order of rejection of his representation and confirmation of the detention, which leaves the detenu with one less opportunity to challenge the detention[24]. As a result, the detenu moves the writ of habeas corpus only after confirmation of the detention and engages an advocate. Consequently, the detenu is forced to challenge the detention only after three months as the law implicitly ensures.

2. Methodology of Study

To understand the practices of preventive detention in the state, data has been collected from the websites of the government[25], high court and supreme court, ex-detenus, their families, retired prison officers and practicing advocates. All this data has been read and analysed to

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[15] The delegation is so specific that a Join - Collector, temporarily being District Magistrate, is not competent to detain a person: *Saroj Mehandi and Others vs The Government Of Andhra Pradesh*. https://indiankanoon.org/doc/144432238/

[16] Subsection 2 of section 3 of the Act 1986. See *Supra* note 1.

[17] The powers under the National Security Act 1980 and AP Prevention of Dangerous Activities Act 1986 have been delegated once in three months since their enactment. And since 12-03-2008 it has been extended 113 times. A report from the Intelligence Department of the Police is the basis for this delegation but they have not been made public. https://goir.ap.gov.in/Reports.aspx.

[18] Sub-section 3 of section 3 of the Act 1986

[19] Sub-section 1 of section 8, *Supra* note 1

[20] Ibid, subsection 2 of section 8.

[21] Section 10, ibid.

[22] Sub section 1 of section 11. Ibid.

[23] Sub-section 5 of section 11, Supra note 1

[24] Interview with Advocate D. Purnachandra Reddy, Guntur, 2 July 2022.

[25] Until July 2021, https://goir.ap.gov.in/Reports.aspx provided basic details of the detentions but no longer. Consequently, the detentions are challenged on the grounds of lack of information on its further developments. All citations of GOs are from this source.

understand the pattern of invoking the law and its implications for the personal liberties of the citizens. In this section, data from government and reported judgements are used.

(a) Information in Public Domain: what does it reveal and hide?

Year	No. Detentions as per AP Govt. website	No. Detenus' Representations rejected	No. Detentions revoked	No. detentions challenged in High Court since 1987	No. detention revoked by High Court	No. detentions upheld by High Court	% Of the detentions revoked by High Court.
1987 to 2007	NA	NA	NA	36	28	8	77%
2008-2014*	195	19	4	27	13	14	48%
2014	37	0	1	5	3	2	60%
2015	58	10	0	10	8	2	80%
2016	39	0	0	19	14	5	73%
2017	47	7	1	5	4	1	80%
2018	47	3	1	3	2	1	66%
2019	22	7	1	3	3	0	100%
2020	24	8	0	4	4	0	100%
2021	15*	10	0	10	10	0	100%
	484	64 (13%)	8 (1.6%)	122	89	33	72%

* Up to the formation of new state in June 2014
* Up to June 2021 only.

- From 2008 to June 2021, the state of Andhra Pradesh detained 484 persons. This includes the detenus from the region of Telangana in undivided state. The total number of detenus is definitely more than 484, as no data is available from 1986 to 2007.
- Except in rare cases, all the detentions are diligently approved and confirmed within 12 days and within 7 weeks by the government.

- The government has been delegating the power of detention to the District Magistrates and the police commissioners as a matter of 'routine'[26].
- The government rejected all the representations of 64 detenus (13% of total detenus) but offered no reasons for its decisions.
- The government revoked only 1.6% of the detentions as the Advisory Board felt there are sufficient reasons for detaining the remaining detenus. Imagine a 98.4 percent of convictions under ordinary laws; the government could achieve this feat by acting as the prosecutor, jury and judge. But in the past 3 years, the High Court declared all the detentions challenged illegal.
- As per reported judgments, since 1987, the High Court declared 72% (89 of the 122[27] total detentions) of detentions to be illegal. But this could be much more as there are a number of unreported judgements, which requires a separate study to understand the pattern.
- Since 2008, only 17 per cent of the total detenus were able to challenge their detentions. Even this could be more as a large number of judgements are not reported. In 2021, ten out of 15 detenus succeeded in their challenges of detentions.

(b) Technology in Service of Detentions

At present most of the detenus are served with the detention orders, while they are in prison as undertrials. As the government has to approve them in 12 days, the chief minister delegates this power to the chief secretary[28] and prisons promptly inform the detentions to the latter, who approves and confirms within the stipulated time. The government achieves this feat using emails and radio messages. When it fails to approve, the detentions are revoked[29]. The detenus have a right to represent their cases to the district magistrate but detenus say they never sent a representation either to the magistrate or to the Advisory Board as they are not permitted any legal assistance.

(c) The Formation and Functioning of Advisory Board

[26] The GOs are two categories: Routine (RT) or Miscellaneous (MS). All detention orders come under the routine category. So exceptional are these detentions.
[27] This number includes the detentions from AP after its separation from Telangana and detentions from Telangana region before separation.
[28] Under Rule 22(a) of the Andhra Pradesh Government Business Rules: G.O.Ms. No. 334, General Administration (L&O) Department, dated 23-12-2014.
[29] On 16th day, the detention of Guddeti Ramanatha Reddy was revoked. Memo No. 1563070-GAD01-LOOACTS(PDAA)/27/2021/SC-1-A3: Govt of AP dated 25-11-2021.

The Act mandates the constitution of an Advisory Board with persons qualified to be appointed as judges of the High Court[30]. In 3 weeks, the cases have to be forwarded to the Board, seeking its opinion on the existence of sufficient reasons for his detention. But before the Board, the detenus cannot engage a legal practitioner to represent them[31]. The right without legal assistance is spineless as detenus are often semi-literates and from socially underprivileged backgrounds. Consequently, no one ever represented their cases nor does anyone know where the Advisory Board sits. On the basis of the Board's opinion very few detentions are revoked but most are confirmed for twelve months[32].

An Advisory Board without a specific term[33] was constituted in 2006. After 15 years, it was reconstituted in 2021 after the demise of two of its members [34]. The new Board consisted of two members including a chairperson. The High Court in *Bodde Lakshmi Devi, vs The State Of Andhra Pradesh,*[35] held it unconstitutional and consequently struck down 3 detention orders confirmed based on its opinion. It further held that the constitution of the Board as per the Article 22(4) is a pre-requisite for the validity of any detention order. It also warned the government that if it fails to constitute it within three months, the government shall be injuncted from passing any order of detention. However, the 7 more detenus, who could not knock on the doors of the High Court, remained in prison for 12 months.

Since the Board's proceedings are confidential, they cannot be accessed. It also services five other preventive detention laws[36] but none are detained under them. Its members are paid very little for hearing each case[37] and they operate from Hyderabad even after the bifurcation of state and shifting of the capital. Until March 2020, the detenus from the state were escorted to Hyderabad[38] and since Covid, proceedings have been held through video conference[39], further deteriorating its quality.

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[30] Subsection 1 and 2 of section 9 of the Act.
[31] Subsection 5 of section 11.
[32] Ibid, Section 13.
[33] G.O.Ms.No.251, General Administration (Law and Order. II) Department, The Government of Andhra Pradesh, Dt: 02.06.2006.
[34] G.O. Ms. No. 16, General Administration (SC. I) Department, Government of Andhra Pradesh, Dt: 18-02-2021. Justice TLN Reddy and Neeladri Rao died at 95- and 90-years respectively.
[35] On 16 August, 2021: https://indiankanoon.org/doc/4859313/
[36] Conservation of Foreign Exchange and Prevention of Smuggling activities Act, 1974, the Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, the National Security Act, 1980, the Andhra Pradesh Prevention of Dangerous Activities of Communal Offenders Act, 1984 and the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988.
[37] The chairperson and members are paid Rs. 1200 and Rs. 1000 per case respectively until 2021, when the fees were increased to R. 3000 and Rs. 2500 respectively. G.O. Ms. No. 16, See Supra note 34, Dt: 18-02-2021.
[38] G. O. Rt. No. 2394, See Supra note 34, dated: 26-10-2017.
[39] G.O. Rt. No. 1327, See Supra note 34: 24-08-2020.

Detenus and their family members say that they are permitted to speak for 3 to 5 minutes and then the police officer makes his case. The Board suggests they send their representations, if any. Moreover, the detenu cannot challenge that the Board has not considered his representation properly as its opinion is just meant for the government[40]. By any stretch of imagination this "mere pretence of procedure"[41] cannot be called giving reasonable opportunity before condemning a detenu. The Board is nothing but a political hideout from which it deprives the personal liberty of detenus.

3. Right to Representation in Practice

In this section, the practices of representation permitted to the detenu are described and their consequences are analysed. And then, to understand legality of detentions, they are analysed in the light of scope of the right to representation as established by the constitutional courts. The district magistrate informs the detenus that they can represent against detentions (i) to him or (ii) to the Advisory Board or (iii) to the Chief Secretary after confirmation of the detentions. He also informs them their right to be heard personally or through a friend but he cannot be an advocate. The prison officers[42] are informed that the detenus are not permitted to receive legal counsellors as visitors. However, they are not aware of detenus' right to take legal assistance under the Rules. Consequently, perhaps on the instruction from police, the prison officers prevent the detenus from signing the representations prepared by the advocates[43].

While practically denying the right, yet the state insists that the detenus must exhaust these remedies before moving the court. Insisting this, as recognized by Justice Chandrachud in *Mallada K Sri Ram v. State of Telangana*[44]of Supreme Court, is fatal to personal liberty, when there are prima facie reasons to believe that detentions are passed against wrong persons and for wrong purposes. This would result in incarceration of a person at least four months before he would receive any relief, if at all. Moreover, except under exceptional circumstances, the challenge to the detention orders is not maintainable at pre-detention stage in the High Courts and Supreme Court as settled in *Additional Secretary to the Govt of India v. Smt Alka Subhash Gadia*[45]. What appears to be a series of technical restrictions have the cumulative effect of total deprivation of the right to defend oneself and consequently of personal liberty.

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[40] Interview with D. Purnachandra Reddy (supra)
[41] The expression of Justice Fazl Ali in *AK Gopalan.*
[42] Discussion with the Prison Superintendent of Central Prison, YSR Kadapa District.
[43] D. Purnachandra Reddy (supra).
[44] 2022 SCC OnLine SC 424.
[45] 1992 Supp (1) SCC 496.

(a) Representations Rejected

The family members of some of the detenus send representations to the government. Since 2008, they made 64 representations but all of them were rejected. In 2021, the government rejected ten representations with a delay of 40 to 60 days. For instance, the detenu Bodde Sreenivasulu sent his representation on 25 May 2021, which the government rejected after two months. By then he suffered 5 months detention[46]. Similarly, Shaik Masthan's representation was rejected after more than two months[47]. 49 days after his representation, Golla Ramakrishna Yadav's petition was rejected[48]. Similarly, it rejected the representations of the detenus Shaik Sampathi Jakeer and Chimparthi Lal Basha after 65 days, who were already cut 4 months[49] in prison. But all their detentions were legalized based on the opinion of an unconstitutional Advisory Board discussed earlier.

Only 13 percent of total detenus could represent their cases to the government. All rejection orders uniformly say that the detention "was strictly according to the provisions of PD Act and the representation ……..has no merits and no truth in the contents of the petitioner and no further action is necessary on the petition and the detention of the detenu is essential for maintenance of public order"[50]. The High Court has dismissed several detentions on the grounds of unexplained avoidable delays in the consideration of the representations. Since these detenus could not move the court, they had languished a year in prison.

(b) Scope of Right to Representation

The superior courts have laid down the principles on the scope of the right to representation. In *P. Aruna Kumari V. State of Andhra Pradesh and Others*[51] the High Court held illegal the rejection of detenu's representation after 51 days of delay on the grounds of unexplained delay. The government argued that the case was not maintainable after confirmation of the detention. But the court held that the section 3 of the 1986 Act does not restrict the detenu's right to representation to any stage of the detention process. It further held that the right doesn't "gets extinguished once he is produced before the Advisory Board". Ruling that the detenu can invoke his right even after the confirmation of the detention, it held that the unexplained delay when

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[46] G.O.RT. No. 1231, See Supra note 34: Dated: 26-07-2021.
[47] G.O.RT. No. 1103, See Supra note 34: Dated: 29 -06-2021.
[48] G.O.RT. No. 637, See Supra note 34: Dated: 30 -03-2021.
[49] G.O.RT. No. 543 and 542: See Supra note 34: Dated: 23 -03-2021.
[50] G.O.Rt.No.543: See Supra note 34: dated 23-03-2021. This is the standard statement in para 3 of all the rejection orders.
[51] 2020 SCC OnLine AP 653.

personal liberty is at stake is bad in law. The decision is based on the principle laid down in *Mrs. U. Vijayalakshmi* v. *State of Tamil Nadu*[52] by the Supreme Court, which dismissed a detention on the grounds of delay of 6 days in considering the representation.

In *Mude Muni Kumari V. State of Andhra Pradesh*[53], the High Court observed that 54 days of unexplained delay in the disposal of the representation would be a breach of the Constitutional imperative. This is based on the verdict of the Supreme Court against in *K.M. Abdulla Kunhi and B.L. Abdul Khader* v. *Union of India*[54] where it struck down a detention order on this line of argument. Similarly in *C. Vallemma v. State of Andhra Pradesh*[55] and *M. Nirmalamma V. State of Andhra Pradesh*[56], the court allowed the writ petitions on this sole ground. In a series of judicial pronouncements[57], the apex court established the constitutional right to make representation under Article 22(5) and by necessary implication, also guaranteed the constitutional right to a proper and timely consideration of the representation. It further explained that the words "as soon as may be" in the Article 22(5), reflects the concern of the framers of the Constitution that the representation should be expeditiously disposed of with a sense of urgency without any avoidable delay and ruled its breach would render the continued detention impermissible.

(c) Limiting the Scope of Right to Representation

However, the apex court imposed a limitation on the stage of consideration of representation by the government. In *D. M. Nagaraja v. Govt. of Karnataka*,[58] while dealing with similar issue referred by the judgment of the Constitution Bench in *K.M.Abdulla Kunhi*, it held that the clause (5) of Article 22 does not mandate the government to consider the representation before confirming the detention order. It ruled that since the outer time limit prescribed for such confirmation is three months[59], under Article 22 (4), the state can entertain the representation only after its confirmation. This reconfirmed the 3 months of detention without any remedy from the courts. This had made the ruling in *K. M. Abdulla Kunhi*- the due consideration of detenu's representation under Article 22(5)- subjected to the Article 22(4). This has sealed the fate of

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52 (1995 SCC (Cri) 176.
53 2021 SCC OnLine AP 659.
54 (1991) 1 SCC 476.
55 2021 SCC OnLine AP 241.
56 2021 SCC OnLine AP 256
57 *Abdul Nasar Adam Ismail* v. *State of Maharashtra*: (2013) 4 SCC 435.
58 (2011) 10 SCC 215)
59 This is going back to the days of *AK Gopalan v. State of Madras and Union of India* (1950 AIR 27), wherein the majority held that "[R]eading Article 22 clauses (4) and (7) together it appears to be implied that preventive detention for less than three months, without an advisory board, is permitted under the Chapter on Fundamental Rights".

detenus at least for 3 months and set the practice of considering the representations after confirmation of the detentions, irrespective of when they submit their representation.

In conclusion, we can say that almost all rejection orders of representations would have been struck down by the superior courts, as they were all disposed of with months of delay without any explanation. However, the High Court itself takes at least 4 to 6 months to decide even the detention cases, resulting in a loss of 7 to 9 months of personal freedom. The scheme of the law, ultimately, ensures months of detention, even if every detention is challenged. The ruling in *Cherukuri Mani v. State of AP*[60] of the Supreme Court perhaps can force the government to review the detentions once in three months and create more opportunities for the detenus to defend themselves.

4. Field View: Grounding Detentions

As the publicly available detention orders barely reveal the grounds of detentions, extensive field visits were undertaken to meet ex-detenus, their families, lawyers and prison officers and police officers but some of them wish to remain anonymous.

As of June 2022, the following is the details of Detenus in three districts of Rayalaseema

S. No	Category of Offence the Detenus Accused of	No. Detenus
1	Theft and Smuggling of Red Sanders Trees	09
2	Bootlegging under AP Excise Act, 1968	35
3	NDPS Act, 1986	05
4	House Breaking under Section 445 of IPC	08
5	Murder and attempt to murder under Sec 302 and 307	05
6	Total Detenus from these districts	62

While the theft, dacoity, murder and attempt to murder are specifically covered by the detention Act, 1986, it does not cover the laws of Red Sander Trees, NDPS and section 445 of IPC. The courts have earlier refused to expand the scope of detention law beyond what is explicitly permitted. From this perspective, very few of the above detentions would stand the scrutiny of the courts. Hereafter, some of the detention orders by district magistrate collected from the field are examined against the legal standards set by the courts. However, while analysing the facts of

[60] (2015) 13 SCC722.

each case, the legal standards and concepts are only referred to but the relevant judgements of the court are discussed in a separate section.

(a) The Analysis of Detentions from the field

The family members of the detenus, Mekala Kalebu, Boya Kambagiri Swamy, Ramanje Naik, Shaik Vali Basha, V. Anjaneyulu, Kamageli Swamy, Koneti Chandra and Siva Shaker from Nellore and Rayalaseema region have been interviewed to understand the detention process. The police of Kavali town arrested Mekala Kalebu, aged 38 years, Yerukula Scheduled Tribe on charges of selling illicit liquor on 16 May 2022 and was released on bail on 19 May. On 28 May 2022, he was again arrested on the same charges by the police of Bitragunta but in three days the court granted him bail. While he was in jail, he was again produced before the same magistrate on a physical transit warrant for 3 cases of bootlegging. This ensured his imprisonment for two weeks. Meanwhile on 13 June 2022, the police have requested the district magistrate to detain Kalebu under the detention Act of 1986, which was promptly complied with on 20 June 2022. He was detained for 5 cases of bootlegging. The detention order[61] cites the reports of the medical officer on the ill effects of illicit liquor on the public and how the detenu is making easy money without taking the licence to sell the IML from the state government and acting in a manner prejudicial to the public order. The detention orders of Boya Kambagiri Swamy[62], Ramanje Naik[63], Shaik Vali Basha, Medasari Sivasankar[64] from other districts in 2022 are no different.

The police have taken some of them into custody from homes and informed them that they were being externed from their districts temporarily. They, like Kalebu, were all imprisoned earlier for one to two weeks for selling illicit liquor. They were made to sign 7 sets of detention orders and a picture of their families receiving a detention order was taken as a proof of serving the grounds of detentions. Under Article 22(5), the grounds of detention must be 'communicated' which means that sufficient knowledge of basic facts constituting the grounds should be imparted effectively and fully to the detenu in writing in a language which he

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[61] Rc.C1(Magl)/146/2022: In the Court of the District Collector and District Magistrate, SPS Nellore District: dated 20-06-2022.

[62] Proceedings of the Collector and District Magistrate, Nandyal District: dated 19-5-2022.

[63] Rc. No. MAGL1/184/2022: Orders of Detention: Office of the Collector and District Magistrate, Sri Sathya Sai district, Puttaparthy dated 2-6-2022.

[64] RC.No.MC1?1913/2022: Orders of Detention: Office of the Collector& District Magistrate, Ananthapuram District, dated 8-6-2022.

understands. The whole purpose is to enable him to make a purposeful and effective representation[65]. But families of detenus are clueless about the meaning of this ritual.

The families were not allowed to visit the detenus in prison, as the police want to first verify their antecedents. Neither the detention law nor rules sanction this power to the state. As the police take at least two months to verify them, until then communication between them is barred. As no notices before detention are permitted by law, the family members being clueless rush to the local lawyers but only some of them move the writ of habeas corpus later. It is difficult to estimate the exact number of detenus who could go to court. As a result of lack of communication, they fail to represent their cases before the government confirms the detention orders. In the past three years, only two prisoners have sent their representations from Kadapa Central Prison. The paper compliance that 'the contents are explained to the detenus in the language known to them' in every detention order serves no meaningful purpose.

In case of a successful challenge too, life is not easy for the detenus. They are released only if a hard copy of the judgment reaches the prison from the High Court, which usually takes one to three months. This is the case, when the detenus' families are illiterate and not in touch with their advocates. If they are educated and alert, they carry the advocates' copy of the judgment to the prison to get them released in a week or so. There are no explicit orders to the prison authorities to release them based on the judgements in the website of the court. For instance, the writ petition of detenu Koneti Chandra[66] was allowed on 22 June but he was released after a week when his advocate dashed a hard copy to the prison through his family members.

But in 2021, realizing the considerable delay in dispatching the hard copies of bails orders, the High Court ordered[67] the lower courts and police to consider the orders from its website for releasing the accused. A similar direction in relation to detention has to be given to the prisons. However, the detenus' families on their own may not be able to take the advantage of this direction, unless prisons act diligently and scrupulously.

(b) Grounds of Detentions Not Corroborated by Facts

Shaik Simpathi Jakeer and Shaik Simpathi Lal Basha were already in prison for 14 months by November 2020. In that month, the Magistrate of Kadapa issued two detention orders to

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[65] *Lallubhai Jogibhai Patel v. Union of India,* 1981 AIR 728.

[66] He and Angadi Srinivas Rao were released on the sole ground of non-consideration of their representations by the government: *Koneti Anjali v. State of Andhra Pradesh* in WP No. 10129/2022 and *Angadi Srinivas Rao v. State of Andhra Pradesh* in WP No. 7505/2022: High Court of Andhra Pradesh, dated 22 June 2022.

[67] Criminal Petition No. 3933/2021: AP High Court.

continue their incarceration[68]. They were accused of committing 10 offences of theft and smuggling of red sanders trees. Four of them were registered on the same day. Arrested for the first time in 2019, the police subjected them to 14 months of prison life, though they got bails in all cases. However, they filed no charge-sheets meanwhile. Yet, dissatisfied, using the power of preventive detention, they ensured the detention of the duo for one more year. The government as usual rejected their representations. They may deserve longer incarceration to deter them from offences. But the government invoked an exceptional measure of detaining, when they had already lost freedom for a year. Moreover, the assertion of the detaining authority that ordinary law does not have a deterrent effect reflects the non-application of his mind as they were arrested for the first time and not released earlier[69].

The offences registered against them are under sections of 379 and 307 of IPC and of AP Forest Act, 1967, AP Sandal Wood and Red Sanders Wood Transit Rules and Prevention of Damage to Public Property (PDPP) Act, 1984. Except sections 379 and 307, none of them were covered by the detention law. The offences of theft and attempt to murder by themselves cannot attract the detention law. The state must be able to prove the cumulative effect of different actions of a similar nature and arrive at a reasonable prognosis of future behaviour of the detenus. Preventive detention being a drastic measure, its application must be limited to specific cases or classes of cases and circumstances and it cannot be general. They must be so grave in nature that the state should be able to justify the exceptional measure of depriving liberty without trial. Consequently, on the grounds of invoking multiple and irrelevant laws, superior courts have struck down hundreds of such cases earlier. If these two had challenged their detentions, they would have been surely released by the High Court. But how many would be able to knock the doors of the High Court and Supreme Court?

(c) What is prejudicial to maintenance of public order?

Shaik Masthan of Railway Kodur of the district was arrested for the first time in December 2020 for the offence of felling and smuggling red sander trees. Just before his release on bail in February 2021, the government[70] detained him. The detention order accuses him of theft of Red Sander trees and smuggling them seven times in two years. It claims that he was causing 'great

[68] Ref: C1/542/M 2020 and Ref: C1/541/M 2020: Proceedings of the Collector and District Magistrate, YRS District, Kadapa: dated 17-11-2020.

[69] In WP No.44871, 44881, 45132,45211, the High Court of AP and Telangana considered it non-application of mind, when 4 were detained on the grounds of undeterring effect of the arrests under ordinary law, as they were arrested for the first time and unlikely to be released soon. Dated 20-06-2016.

[70] Ref: C1/23/M 2021: Proceedings of the Collector and District Magistrate, YRS District, Kadapa: dated 08-02-2021.

loss to national wealth', 'corroding the financial base of the state' and assaulting the police. On these 'grounds and circumstances', the government invoked the detention law. It claims that his activities fall under the definition of 'Goonda' under section 2(g) of the 1986 Act and under chapters XVII and XVIII of IPC. The general public, it maintains, are too terrorized to give evidence against the accused and he poses a threat to the lives of police and forest officials. Consequently, his presence is a threat to public order. All his offences, like in earlier cases, fall under the ambit of sections 147, 379 of IPC and forest Act, Red Sander rules and PDPP Act, 1984. It further maintains that activities of the accused are "disturbing the peace, social harmony and the health of the society" and he 'did not show any respect for Forest and Wildlife Law" and laments that "after getting released from jail he did not change his attitude and continued smuggling, which is prejudicial to the maintenance of public order".

Except the section 379 (theft) and 307 (attempt to murder) of IPC, none of the sections and statutes are covered by the Act of 1986. The alleged offences are certainly grave but the detention law does not contemplate them. In such cases, the High Court and Supreme Court have asked a basic question: Which one of these grounds the magistrate really relied upon for his subjective satisfaction? They also held that showing respect to the provisions of the laws, not covered by the detention law, is not the objective of the detention law. Since application is pending for bail before the court, there is no 'positive material' for "reasonable prognosis on the probable future behaviour of the accused" to arrive at the subjective satisfaction that he would resort to crime again. When some of the grounds are irrelevant, the courts have invariably struck them down. The sections 379 and 307 are of course relevant grounds to consider the accused as a "Goonda," yet the order did not explain how these activities lead to disruption of tempo of community life. The law does not recognize the failure to secure evidence from the public and the attempts on the life of the police as reasonable grounds for detention or as being prejudicial to maintenance of public order.

Similarly, the same magistrate also detained Gummalla Venkata Subbaiah[71] and Podamekala Venkatapathi[72] on the same day. They were charged with 8 to 10 offences under section 379 and 307 of IPC involving the theft and smuggling of red sanders trees. The magistrate claims murdering the police and forest officials during the theft as one of the grounds of their detention but no cases of murder under 302 of IPC is registered. This irrelevancy of ground would definitely knock the detention order off.

[71] Ref: C1/11/M/ 2021: Proceedings of the Collector and District Magistrate, See Supra note 70: dated 28-01-2021.
[72] Ref: C1/08/M/ 2021: Proceedings of the Collector and District Magistrate, See Supra note 70: dated 28-01-2021.

In all these detentions, there is a pattern of their justification: the activities are a threat to public order, peace, social harmony; the detenus have no respect for the statutes; they did not change their attitude after previous jail term. The same template of narrative interspersed with personal details of detenus can be seen in every detention order collected. They try to justify the detentions on the grounds of failure of pre-trial imprisonment to deter them from crime as if the successful prosecution, conviction and imprisonment are unnecessary.

(d) Detentions on Extraneous Grounds

Golla Ramakrishna Yadav faces a rowdy sheet from the police of Kurnool in 2021. Since 2015, 9 cases of cheating, forgery, land grabbing were registered against him under sections 420, 464, 466, 471, 477, 509, 506 r/w 34 of IPC. Earlier he was arrested and remanded to prison a few times. In January 2021, the government detained[73] him under detention law. He was described as a 'Goonda' and accused of ruining the lives of innocent people and disturbing the public order. It asserts that the accused "has no respect towards Law and Order and also towards Police or towards Hon'ble Courts and he is habituated to committing crimes". Ramakrishna's activities are 'resulting in headache to the police, innocent public and causing breach of public peace in Kurnool and surroundings". The magistrate further claims that since the cases are booked under the chapters XVI, XVII, XXII of IPC, he comes under the definition of 'Goonda' as provided in section 2(g) of AP Preventive Detention Act 1986.

However, sections 506 (criminal intimidation) and 509 (outraging modesty women) are the only sections of cases which are part of chapters XVII and XXII of IPC that define the word 'Goonda' under the section 2(g) of 1986 Act. Some of the offences alleged were two years older from the date of detention which makes the ground of detention 'not proximate and stale'. Lack of respect for 'law and order' and being a headache to the police and courts can be considered as ingredients of the concept of 'law and order' but not 'public order'. They make the grounds extraneous to the detention law. If challenged, this detention order would not survive the judicial scrutiny. This order is illegal and unconstitutional, yet the Advisory Board found sufficient reasons for detaining him[74].

(e) No Distinction between 'Law and Order' and 'Public Order'

[73] Rc. C1/44/M/2021, Proceedings of the Collector & District Magistrate, Kurnool District: IAS, dated 28-01-2021.
[74] G.O. Rt. No. 503, dated 18-3-2021, General Administration (Law and Order-II) Department, Govt of Andhra Pradesh.

Again, the magistrate of Kurnool, detained one Nukula Manohar Rao[75] in 2020. In two years, police registered 14 cases under sections 188 (Disobedience to order duly promulgated by public servant) and 273 (sale of noxious food or drink) of IPC; under the Food Safety and Standard Act of 2006 and the Cigarette and Other Tobacco Products Act-2003. The magistrate, based on the police report, alleges that the accused has been illicitly selling Gutka, Pan Masala and Khaini, but they are not banned. His order describes the detenu both as Bootlegger and Drug Offender. But the detention law defines the bootlegger as one who resorts to distilling, selling and distributing intoxicating drugs in contravention of any of the provisions of the Andhra Pradesh Excise Act, 1968 and it covers none of the above sections. The order points out that detenu's "activities are grossly damaging the health of the innocent youth and thereby disturbing the peace, tranquillity and social harmony in the society". And it concludes that "keeping in view of the public interest" he has to be detained. It further asserts that he managed to get the acquittals, threatening the witnesses and tampering with the evidence.

The material evidence indicates that the accused is creating nuisance and law and problem but warrants no drastic step of detaining him without trial nor the detention law contemplates to control such activities. The constitutional courts have distinctively defined the meanings of the words 'public interest', 'public order', 'law and order' and which of them demands the power of detention.

(f) The Prosecution is Time-Consuming: Not a Valid Ground

The district magistrate of Chittoor detained Mude Chandra Naik[76] in 2020. Possessing 4 to 20 litres of illicit liquor in 2019 and 2020 was the allegation against him but he was never prosecuted earlier. The magistrate says that "the process of prosecution of cases against him under the AP Prohibition Act, 1995 takes long time to have any desired impact on his clandestine bootlegging activities" but "he was causing wide spread danger to public health and creating feeling of insecurity among the general public of that locality". He further asserts detenu's "activities are badly affecting consumer's health, the financial status, social status of public and ultimately the public order". He admits bluntly that "to detect an offence while violating the law of the land, is a laborious process involving meticulous planning and hundreds of man-hours. Hence it is not possible to immediately prevent him from indulging in similar prejudicial activities to public health and order". And his order concludes that there is no other option except to invoke the

[75] Rc. C1/575/M/2020: Proceedings of the Collector & District Magistrate, Kurnool District: dated 7-08-2020.
[76] REV-CSEC0PDL(PRC)7/2/2020-D-TH(C7), REVENUE DEPARTMENT, Collector and District Magistrate, Chittoor: dated 13-08-2020.

extraordinary jurisdiction conferred on the Magistrate under section 3(1) of preventive detention Act, 1986.

Similarly, the same magistrate detained[77] Y. Deepak in 2020. The police booked three cases of distillation of illicit liquor against him under section 7(a) r/w 8(e) of A.P. Prohibition Act, 1995. Deepak's detention order too repeats the same grounds as that of the earlier: detecting their crimes is a laborious process, prosecution is time consuming, his activities affect the health of the people and hence prejudicial to maintenance of public order. The courts often stress that the executive and judicial decisions will be determined by the facts and circumstances of each case. But the police and magistrates have developed templates of narrations of detention.

No doubt the selling of spurious liquor might lead to deaths and affect the health of the people, creating law and order problems. Like all crimes, it ought to be addressed. But it is not clear, in the absence of any earlier arrests and prosecution, how it would lead to public disorder. This order is prima facie wrong. The magistrate completely fails to understand the purpose of preventive detention. In hundreds of cases, the constitutional courts have said that preventive detention cannot be invoked in aid and assistance to maintain the law and order. Since these reports are not available for public scrutiny, the police openly but callously express their preference for preventive detention - a short cut, rather than painstaking prosecution under ordinary law. Such statements indicate that the problem at hand is worse than that of law and order: their incompetence to prosecute in a time-bound manner. This can never be a ground for detaining a person without trial.

The detention orders label the detenus as 'Goonda', 'Drug Offender', 'Bootlegger' and habitual offender to invoke the detentions law but the material facts hardly substantiate the need for them. They claim the detenus threaten the witnesses and are not deterred by the sanctions of ordinary law. Of course, the preventive detention law is not meant to deter the habitual offenders, unless their activities create public disorder. In order to scrutinize these legal infirmities, it does not require great legal acumen but a familiarity with the fundamentals of constitutional law and few judgements of superior courts. It is difficult to believe these facts of prima facie illegalities have not come to the attention of the Advisory Board.

The Constitution prescribes grave circumstances and specific classes of cases, under which certain activities might become prejudicial to maintenance of public order. Preventive detention law should be limited to these conditions to make it less vague and less open to abuse. Even *Dr.*

[77] REV-CSEC0PDL(PRC)8/2020-D-TH(C7), REVENUE DEPARTMENT, Collector and District Magistrate, Chittoor: dated 18-08-2020.

Rammanohar Lohia v. Union of India[78] talks about the potentiality of an ordinary act of contravention of law, which under certain circumstances might create public disorder. But most of the detention orders analysed so far have no exceptional material circumstances which makes these offences exceptional to create public disorder. There are no grave circumstances[79] behind these offences, prevention of which cannot be delayed under normal course of prosecution. They indicate no rare conditions to justify the deprivation of precious personal liberty without trial. They provide no clues to understand what makes these offences dangerous to the public order.

Practically speaking, detenus remain in prison at least from 6 months to one year depending upon the time taken by the legal process. As the court does not entertain challenges to the detentions before their confirmation, a minimum of 3 months of incarceration is guaranteed. When a bench hearing the criminal matters also takes up the Habeas Corpus petitions, they are disposed of faster, whereas the docket of the chief justice court is clogged and slow. The mandatory appearance of Advocate General due to the issue of personal liberty being involved, too delays the process many times. The court generally grants four weeks to the state to respond but sometimes it generously allows adjournments. Many cases often become infructuous as they come for hearing after 12 months. Advocates say that most detentions if not all are challenged but almost all of them are quashed. Detentions in smuggling of red sander trees are occasionally upheld. A substantial number of detentions are quashed on the grounds of non-consideration of the representations by the government. It appears that the state does not sustain its initial interest in detentions, until it is challenged. It wants to detain them for a few months but if it cannot defend its decision, it does not care. But when the detenus fail to challenge or get caught in the clogged docket, then they lose freedom for a year - legal or illegal. This is a fertile ground for abuse of power of detention. Given the ordinary nature of contraventions against which detentions are invoked, detentions in future would be explosive if the state decides to amend the law like in Telangana.

5. Supreme Court on Practices of Preventive Detentions in AP

This section discusses the scope of the preventive detention Act of 1986 that came up for consideration before the Supreme Court. In all 14 cases came up before the apex court after 1986, of which 8 detentions were dismissed and two upheld. All four detention orders challenged after formation of Telangana were declared illegal. It justified two detentions: first, in

[78] 1966 AIR 740.

[79] The majority in *AK Gopalan* construed the word 'and' 'or' in order to delink the circumstances and classes of cases in which detentions can be invoked.

which detenu was part of a gang involved in destroying the red sanders trees and second, an accused consistently derailed the life in a housing colony by threatening citizens from buying and selling plots. In these cases, the court reiterated and elaborated the principles of interpretation of preventive detention provisions.

(a) The Scope of Power of Judicial Review

The challenge to two detention orders in the High Court and Supreme Court immediately after enforcement of the Act of 1986 began, contributed to defining the scope of the power of judicial review of detentions. *P. Sambamurthy v. State of AP.*[80] is the first case of detention which was challenged before the AP High Court and the Supreme Court. The detenu in this case had tried to secure his detention order and its grounds without surrendering. Directing the state to furnish the documents to him, the High Court issued contempt notice to the government for insisting his surrender first. A similar challenge was posed in *SMD Kiran Pasha v. State of AP*[81] . These two judgements were overruled later by a three-judge bench of the Supreme Court in *Smt Alka Subhash Gadia (supra)* but not before a division bench of the same court upheld these decisions of the High Court.

The fundamental question in these cases was whether the constitutional courts have the power of judicial review of detention orders before they are enforced. In *SMD Kiran Pasha* (supra), a member of Municipal Council refused to surrender but challenged the detention order before a single judge of the High Court. The court stayed his arrest but since the question of its maintainability was raised, the case was referred to a division bench. The latter found that there was no prima facie reason to intervene before his surrender. When this decision was challenged before the division bench of the Supreme Court, it allowed the writ on the grounds of the power of superior courts under 226 and 32 to intervene before the violation and after the violation of the fundamental rights. Elaborating on the expression 'enforce' in articles 226 and 32, the court felt that it is empowered to intervene to prevent the executive from arbitrarily exercising its power under Article 22. It held that the right of the detenu does not flow from Article 22 alone but also from articles 14, 19 and 21, enforcement of which falls within the scope of articles 226 and 32. The court, relying on the *Vedprakash Devakinandan Chiripal v. State of Gujarat*[82], which in turn relied on *A. K. Gopalan v. State of Madras*[83] and *Additional District Magistrate. Jabalpur v.*

[80] (1987) 2 SCC 362.
[81] *(1990)1 SCC 328.*
[82] (2 AIR) 1987 Guj 353.
[83] AIR 1950 SCR 88.

Shivakant Shukla[84], had taken the view that a writ of mandamus is maintainable when a detention order is passed by an incompetent person or when it is a mala fide or contrary to the procedure prescribed or when passed it against a wrong person.

Subsequent to this judgement, several high courts including that of Bombay in *Smt Alka Subhash Gadia (supra)*, had adopted this line of argument and entertained the challenges to detention orders before the detenus surrendered. Consequently, the apex court constituted a three-judge bench to consider the question and rule. It had considered the scope of the power of judicial review and speaking through Justice PB Sawant, it first held that even Articles 14, 19 and 21 don't explicitly prevent the state from arresting a person without first disclosing the grounds. However, Article 22 expressly permits the state to detain a person first without disclosing the grounds of detention. It also did not accept the contention that the grounds of detention should be served in advance before the surrender of the detenu to seek judicial review of the order as that amounts to by-passing the 'procedure established by law'. While personal liberty is sacrosanct, yet the responsible framers of the Constitution consciously inserted the Article 22, which deprives an individual of his personal liberty without first disclosing the grounds. However, it held that the Constitution does not place any restriction on the power of the judicial review of the superior courts and it is not circumscribed by the detention law. But this is guided by self-restraints, which defer the power of review until the arrest of the proposed detenu but it exercises its discretionary power at the pre-detention stage only in exceptional circumstances, when it is prima facie satisfied (i) that the detention order is passed under the irrelevant law, (ii) when it is sought to be executed against a wrong person (iii) it is passed under wrong purpose, (iv) it is passed on vague, extraneous and irrelevant grounds or (v) that the authority has no such power to pass the order. This judgment has settled the principle of maintainability of cases at pre-surrender stage only in exceptional circumstances. As a result, we find no detention order having been entertained at the pre-surrender stage after 1990.

(b) Proximity of Time and Offences Affects the Public Order

Commissioner of Police and others v. C. Anita[85] is another important case, in which the state challenged the decision of the High Court to set aside the detention on the grounds of lack of proximity of grounds. The detenu has been involved in 30 cases of threatening the buyers and sellers of plots in a housing colony for years. The old and recent cases of criminal intimidation have been cited as the grounds for his detention. The lack of proximity between one offence to

[84] (1976) 2 SCC 521.
[85] (2004) 7 SCC 467.

another in terms of time is generally considered stale, a sufficient reason for invalidating the detention. Consequently, the High Court considered that the offences had no proximity and live connection with one another and set the detention aside. However, the Supreme Court held that the grounds of detention are precise, pertinent, proximate and relevant. There was no vagueness or staleness in the detention order. The alleged activities of the detenu may not be proximate in terms of time but the potentiality of each of them can effectively disrupt the even tempo of the community. In any case perhaps there is a need for establishing a live connection between the proximity of the time and nature of activities as grounds and their effect in disrupting the public order.

The next most important case before the apex court is *Collector and District Magistrate and others v. S. Sultan*[86]. As per the detention order, the detenu was involved in the offences under chapter XVI, XVII and XXII of IPC and under Explosive Substances Act. While the provisions of IPC are covered by the section 2(g) of the detention law of 1986 and can be invoked to describe the detenu as Goonda, the provisions of Explosive Substances Act are not covered under the detention law. As such, the High Court held that some of the grounds are irrelevant and that the same vitiates the entire order. When the state challenged it, the apex court tried to test whether all the grounds were covered by the definition of the 'Goonda' and whether it affects public order. It held that the expression law and order is wider in scope as the contravention of law always affects order but public order has a narrower ambit. The public order could be affected only by such contravention which disturbs the smooth flow of community life. The distinction between the expressions of 'law and order' and 'public order' is one of the degree and extent of the reach of an offence: its potentiality to disturb the even tempo of community life, which makes it prejudicial to the maintenance of the public order. If it affects only a few individuals, it creates the problem of 'law and order' only. Its length, magnitude and intensity in erupting disorder should distinguish 'public order' from 'law and order". In this case, more than reiterating the concept of 'concentric circles' established in *Ram Manohar Lohia v. State of Bihar*[87], the court, relying upon *Kishori Mohan Bera v. State of W.B.*[88], *Pushkar Mukherjee v. State of W. B*[89]., *Arun Ghosh v. State of W.B.*[90], held that these fictional circles of 'law and order', 'public order' and 'security of the state' overlap depending upon the facts and circumstances of each case. While the distinctions limit the power of detention, the realignment and overlapping of these concepts

[86] (2008) 15 SCC 191.
[87] 1966 AIR 740.
[88] (1972) 3 SCC 845.
[89] (1969) 1 SCC 10.
[90] (1970) 1 SCC 98.

blurs the distinction and gives the latitude to the state sufficient to convert the exclusive contravention of law-and-order into one of public order. This room for transforming the question of 'law and order' into that of 'public order' perhaps created the justification for expansively amend and enlarge the scope of the 1986 Act in Telangana. The extensive invocation of the claims of threat to the security of state can also be understood in this context. The consequences of blurring the concepts of law and order and public order can be seen in wide invocation of detention laws across the country.

In *G. Reddeiah v. the Govt of AP and another*[91] the Supreme Court has re-established the principles it pronounced in case of Maintenance of Internal Security Act, 1971 in *Haradhan v. State of W. B.*[92]. First, the mere fact that the detenu is liable to be prosecuted under ordinary law is not a bar to detain him under preventive detention law. Second, the fact of registering FIR, arresting and enlarging on bail by the police also cannot restrict the district magistrate to issue detention orders. When the person is in judicial custody when the detention order is issued but not likely to be released for a fair length of time, then it is possible to say that the detaining authority has no satisfaction as to the likelihood of him indulging in activities leading to disrupt the public order. And also, a detention order while the prosecution being pending does not vitiate the order. Finally, it held that detention is only a precautionary measure based on a 'reasonable prognosis of the future behaviour of the person' based on the past conduct in the light of the surrounding circumstances. This is a subjective satisfaction of the detaining authority which should reflect in the detention order. In the instant case, the detenu was shown to have been involved in 8 offences of smuggling the red sanders wood and the district magistrate argued that deterring him under ordinary law is difficult and the detention order is valid. The court concurred with the subjective satisfaction and dismissed the appeal of the detenu. This judgment established the principle that preventive detention can prevail over the legal process under ordinary law, if the detaining authority subjectively satisfies itself the need for such a measure.

(c) The State wants a liberal Interpretation of the Interest of Public Order

As opposed to the *Haradhan v. State of W.B* (supra), where the court held that release of detenu under bail is no bar to detain him under preventive law, in *Banka Sneha Sheela v. State of Telangana*[93] the court held that a mere successful obtaining of anticipatory bails in 5 cases being real ground for detaining the person would make the apprehension of a threat to public order a make-believe

[91] (2012) 2 SCC 389.
[92] 2 (1975) 3 SCC 198.
[93] (2021) 9 SCC 415.

and completely absent. It further said a real apprehension of continued breach of law and order would only warrant the state to appeal for cancellation of bail but it certainly cannot be a springboard to move under preventive detention statute.

In this case, interestingly the state, relying on *Madhu Limaye*[94] argued that there is need for liberal interpretation of the scope of the expression "in the interest of public order". The court recalled the fact that this reference in the *Madhu Limaye* was in relation to the expression in the Article19(2) to 19(4) and was made in the context of challenge to the section 144. But in case of preventive detention, it is Articles 21 and 22 that are to be attracted but not Article 19. In the instant case, the court held that since preventive detention is a necessary evil to prevent public disorder, unless the facts of the case directly and inevitably lead to harm to the public, it cannot be invoked. There must be public disorder that would likely result from the past actions of the persons in order to claim that public order is disturbed. The state is free to pursue proper legal remedy against allegedly wrongful grant of anticipatory bail. Finally, it held that a successful securing of the anticipatory bails is not a justifiable ground for detaining a person.

(d) Where recourse to Ordinary law is sufficient, Detention is Illegal

In *Munagala Yadamma v. State of Andhra Pradesh*[95] *and Nageswara Naidu v. Collector and District Magistrate, Kadapa*[96]*,* the Supreme Court held that if ordinary law is sufficient to deal with the situation, recourse to preventive detention is illegal and hence set the detention orders aside. It relied upon its earlier verdict by a three-judge bench in *Rekha v. State of T. N*[97]. In these two cases, the government initiated the prosecution of the accused under the provisions of AP Prohibition Act 1995. Meanwhile the government detained the accused under the Act of 1986. It argued that the recourse to normal legal procedure would take more time and would not be an effective deterrent. When the order was challenged, the High Court accepted the contention of the government. But the apex court relying upon *G. Reddeiah v. the Govt of AP and Yumman Ongbi Lembi Leima v.State*[98] of Manipur held that the nature of the offences complained as bootlegging can be dealt with under ordinary laws and as such, the recourse to preventive detention is contrary to the Articles 19 and 21 of the Constitution. While agreeing that the government has been given the power to curb the most precious right of personal liberty under both ordinary laws as well as under preventive laws, it made it clear that in invoking the latter, the state must

[94] (1970) 3 SCC 746.
[95] 2012) 2 SCC 386.
[96] (2012) 13 SCC 585.
[97] (2001) 5 SCC 244.
[98] (2012) 2 SCC 176.

exercise due caution and it cannot be invoked as a substitute for ordinary law. It also held that the state cannot recourse to preventive detention law to absolve itself of investigation and perpetually imprison a citizen without trial.

(e) Detention Order for 12 Months is Illegal

Cherukuri Mani v. the State of AP[99] is an important judgment by the Supreme Court that is being ignored. In this case the court ruled on the period of detention the government can validly detain a person under Article 22. In this case the government issued a detention order for 12 months at a stretch[100]. The court, speaking through Justice Ramana, held that since a citizen is detained without trial and curtailed his personal liberty, it is necessary to review his detention from time to time. The proviso to the section 3(2) of the Act, 1986 mandates: "extend such period from time to time by any period not exceeding three months each, at any one time". And the court held that this limitation of three months is only a reflection of the mandate contained in the Article 22(4)(a) of the Constitution. Hence the government does not have the power to pass a detention order beyond the first spell of three months and it could not have directed the detention of detenu for a period of twelve months at a stretch. If the government intends to detain an individual for 12 months, there must be an initial order of detention for a period of three months and at least three orders of extensions for a period not exceeding three months each. This is a significant pronouncement which deters the government from detaining the citizens continuously for 12 months without a review from time to time. The court was categorial on its mandatory nature when it held that "when statute requires a thing to be done in a particular manner, it must be done in that particular manner or not at all". Relying upon this case, the apex court in *Lahu Shrirang Gatkal v. the State of Maharashtra*[101] also struck down a detention order which did not specify the period of detention. Disregarding this judgment, since 2014 the state of AP has issued 114 such detention orders. Since the inception of Act 1986, the governments of Andhra Pradesh and Telangana have been confirming hundreds of detentions for 12 months at a stretch.

(f) Weaponization of Preventive Detention

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[99] (2015) 13 SCC 722.
[100] G.O. Rt. No. 4803, dated 06-11-2013, General Administration (Law and Order-II) Department, Govt of Andhra Pradesh.
[101] (2017) 13 SCC 519.

In the latest judgement in *Mallada K Sri Ram v. the State of Telangana*[102] Justice Chandrachud has elaborately commented on the practices of preventive detention in Telangana. In this case he held that the alleged five FIRs against the detenu come under the realm of 'law and order. Reiterating the court's opinion, in *Banka Sneha Sheela* (supra) where it held that the reason for detention is not any apprehension of widespread public harm but successfully obtaining the bails, he held that the remedy the state has under ordinary law was to appeal against the bail orders. The mere successful obtaining of anticipatory bails cannot be a ground for detaining the detenu, in which case the ground for a threat to public harm is totally absent. The apprehension of an adverse impact to public order is a mere surmise, especially when there are no reports of public unrest. Even though the nature of the allegations is grave, "the personal liberty of an accused cannot be sacrificed on the altar of preventive detention merely because a person is implicated in a criminal proceeding". The court further held that the preventive detention power is exceptional and even draconian and the Article 22 is inserted to ensure that it does not devolve into an arbitrary exercise of state authority.

Interestingly, the court, understanding the delaying tactic of the state, refused to adjourn the case and asked the state defend its case on the basis of a counter filed in the High Court. While taking this decision the court held that "the liberty of the citizen cannot be left to the lethargy of and the delays on the part of the state". The state also argued that the detenu must move the Advisory Board as the writ petition is premature. But relying on *Arnab Manoranjan Goswami* v. *State of Maharashtra*[103] the court conceded that the ordinary procedural hierarchy in seeking remedies should be respected but the writ jurisdiction of the High Court under Article 226 extends to protecting the personal liberty, "when prima facie it appears that the instrumentality of the State is being weaponized for using the force of criminal law". The court strongly held that the High Court failed to grant the interim relief but the constitutional courts "must ensure that they continue to remain the first line of defence against the deprivation of the liberty of citizens" and "must always be mindful of the deeper systemic implications of our decisions".

Established a procedural hierarchy for seeking the protection for personal liberty, the State insists that the citizens should move the constitutional courts only after exhausting the remedies with the government. This makes it difficult for the detenu to seek a remedy before 6 to 8 months of incarceration. The virtue of judicial restraint might honour the *Lakshmana Rekha* between the state and the judiciary but it sacrifices the personal liberty of the citizens, when the

[102] 2022 SCC OnLine SC 424.
[103] (2021) 2 SCC 427.

state weaponizes its instruments against them. In this context, the above judgment is significant as it questions the detentions on substantial rather than on procedural grounds. In *Alka Subhash Gadia* the same court held that the superior courts should use their discretionary, extraordinary and equitable jurisdiction under Articles 226 and 32 sparingly. The sparing use of this power would be fatal to the personal liberty, when detentions are increasingly routine.

6. Defending the Detenu on Procedural Fairness

The High Court of Andhra Pradesh, however, has been granting relief to almost in every case, on the grounds of procedural fairness, which gives clues to understand the approach the court adopted. In 2021, it allowed all the ten writs challenging the detention orders.

(a) Positive Material a Must for Good Suspicion

In *Banavathu Chilakamma V. State of Andhra Pradesh*[104], the court, relying upon *Kamarunnissa v. Union of India*[105] held that there was no bar to pass a detention order even if the person is already in custody. Such order cannot be called in question on the ground that the proper course of the action was to oppose the bail. In *Ramesh Yadav v. District Magistrate, Etah*[106] the Supreme Court said that ordinarily a detention order should not be passed merely to pre-empt the release on bail in a case which can be dealt with under ordinary law. It reiterated a well settled principle that when a person is in custody, if the facts and circumstances of the case demand it, recourse to preventive detention is justified. But in the present case, the High Court invoked the triple test requirement settled in *Kamarunnisa* for preventive detention: (l) if the authority passing the order is aware of the fact that he is actually in custody; (2) if he has reason to believe on the basis of reliable material placed before him (a) that there is a real possibility of his being released on bail, and (b) that on being so released he would in all probability indulge in prejudicial activity; and (3) if it is felt essential to detain him to prevent him from so doing. In the instant case, it is held that there is no such material available, let alone consideration of the same by the detaining authority and hence it struck down the order.

In *Rishi Kumar Bhaskaran v. State of Andhra Pradesh*[107] the court held that there is no possibility of detenu being released as there is no bail application pending before the court. This fact implies that there is no probability of him indulging in offences disrupting the public order. Similarly, in

[104] 2021 SCC OnLine AP 1895.
[105] (pp.140-41, para 13) (reported in (1991) 1 SCC 128.
[106] (1985) 4 SCC 232.
[107] 2021 SCC OnLine AP 1896.

Karanam Janaki v. State of Andhra Pradesh[108] it held that in the absence of a pending application for bail of the accused, the court found there is no material to say there is immense possibility of his release and indulging in the illegal activities prejudicial to the public order. But one can observe that most detention orders, discussed above, invoke the possibility of release of the accused but not his probability of indulging in offences as the grounds of detention. On the basis of the possibility of release from the prison, the State automatically presumes the probability of him indulging in disruptive activities but the assumption does not flow from the first. In any case, the court has not been going into the nature of offences and their potentiality to disrupt public life. As a result, it has been dismissing the detentions on procedural grounds rather than the substantial grounds.

(b) One Irrelevant Ground Vitiates the Detention

In *Nukala Subhashini V. State of Andhra Pradesh*[109], the state produced two different kinds of detention orders before the court. The first order refers the bootlegging as the ground for detention, while the second described as the detenus as "drug offender'. 11 of the 14 instances of activities referred are covered by Food Safety and Standard Act of 2006, which does not fall under the definitions of 'Bootlegger' and "Drug Offender" in the detention Act, 1986. Therefore, the court held that the detaining authority has taken irrelevant grounds for detention and if one ground is irrelevant, the same would vitiate the detention as a whole. However, many offences of Bootlegging covered under the Act of 1986 will not automatically attract the detention law, unless they constitute positive material to arrive at the satisfaction that it would be a threat to public order.

(c) Grounds of Detention Must Be Pertinent, Precise and Proximate

In *Annam Venkatakrishnaraju V. State of Andhra Pradesh*[110] the police registered 12 different cases under IPC and Cigarette and Tobacco Products Act and termed the accused as 'Goonda'. The different offences are divergent grounds but to invoke preventive detention, the grounds must be pertinent and not irrelevant, proximate but not stale, precise and not vague. Relying on *Shiv Prasad Bhatnagar* v. *State of Madhya Pradesh*[111] of Supreme Court, the court held that irrelevance, staleness and vagueness are vices and any single one of them is sufficient to vitiate a ground of detention. Relying on *Prasad Reddy* v. *Collector and District Magistrate, Anantapur*[112] it ruled that

[108] 2021 SCC OnLine AP 1775.
[109] 2021 SCC OnLine AP 1038.
[110] 2021 SCC OnLine AP 355.
[111] (1981) 2 SCC 456.
[112] (2005) 3 ALT 487.

offences other than that of chapters XVI, XVII and XXII of IPC cannot be considered within the definition of 'Goonda' and as such, pointed out, the improbability of arriving at the subjective satisfaction by the detaining authority. It further cited *Thallapuneni Venkateswarlu* v. *Collector and District Magistrate, Cuddapah*[113] in which the detaining authority had considered offences under Forest Act in addition to section 379 of IPC but the former was not covered by the provisions of 1986 Act and consequently it was struck down.

(d) Public Order and Law and Order are Distinctive

In *Karanam Janaki v. State of Andhra Pradesh*[114], the district magistrate of Kurnool states the detenu is "a potential criminal as seen from his criminal history. He is acting prejudicial to the public order and has no respect towards law and is relapsing to recidivism". The court held that though the detention is passed to prevent activities prejudicial to maintenance of public order but the grounds of its invocation is a problem of law and order. Invoking preventive detention in aid of maintaining law and order vitiates the detention. Similarly, in *Guduru Pakkiramma v. State of Andhra Pradesh and Others*[115] the court felt that the detaining authority, in the similar circumstances as the above, could not make up his mind whether alleged activities affect the 'public order' or 'law and order and' and the detention order lacks clarity as to what necessitates the detention. It held that "in the absence of a positive conclusion that the activities of the detenu are prejudicial to 'public order', preventive detention laws cannot be made applicable to 'law and order' issues". Most of the cases analysed reflect these tendencies.

In Peddireddy Sireesha V. Collector and District Magistrate and Others,[116] the detaining order enlists 8 crimes under IPC and describe the detenu as a habitual offender and invokes the expression 'Goonda' from the Act of 1986. It states that to ensure a peaceful existence of the people in the Allagadda, detaining him is necessary. Relying on the judgement of the same court in *Vasanthu Sumalatha* v. *State of Andhra Pradesh*[117] the court held that neither "public peace" and "law and order" are grounds for detaining a citizen under the law. It further held that since "public order" has acquired a meaning distinct from "law and order" and as the government is not empowered to detain citizens on grounds that their activities are injurious to "public peace and law and order", his subjective satisfaction is based on extraneous and irrelevant considerations."

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[113] (2004) 5 ALT 250.
[114] 2019 SCC OnLine AP 52.
[115] 2019 SCC OnLine AP 117.
[116] 2019 SCC OnLine AP 57.
[117] (1) 2016 (1) ALT 738 (D.B.).

(e) No Detentions on Regulatory Provisions of Law

Dasa Kavitha v. State of A. P[118] is a very revealing case of laxity in using preventive detention law. The magistrate of Krishna district issued a detention order on the grounds of selling Gutka and Khaini under Food Safety and Standard Act but there is no complete ban on tobacco products. In writ petition No. 5421 of 2019, the High Court elaborately discussed a batch of 55 FIRs filed under COTPA Act, FSS Act and observed that these provisions of 153, 268, 272 and 273 of IPC were regulatory in nature and quashed them suggesting the government must focus on more serious criminal cases. Clearly the police disregarded this judgment and even invoked preventive detention law for their violation.

Conclusion

The responses of the Supreme Court and High Courts to the challenges of preventive detentions are interesting and even give a ray of hope. Asserting its power of judicial review of preventive detention even at pre-detention stage, the apex has held that it would like to exercise this discretionary power in rare cases. At the same time, it has narrowed down the power of preventive detention by building walls of limitations around the practices of detentions. It has tightened the grounds of detentions when it held that they cannot be general and vague but must be proximate, pertinent and specific in time and effect in relation to public order. A threat to public order from the activities of the accused must be imminent and mere seeking bails by themselves cannot be valid ground for detentions. They made it clear that when ordinary laws are sufficient, invoking the exceptional law is illegal, an abuse of the exceptional power. They also ruled that the subjective satisfaction or the jurisdiction of the suspicion by the executive must reflect the valid grounds of detention. The distinction between the concepts of 'law and order' and 'public order' has provided space to create these minute limitations after the 1980s. The courts approach can be summed up as that the state must use preventive detention as a necessary evil with great accountability.

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[118] 2020 SCC OnLine AP 1504.

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Data Availability Statement

Data derived from public domain resources: The data that support the findings of this study are available in National Crime Records Bureau, Government of Andhra Pradesh, library of legislative assembly of Andhra Pradesh, These data were derived from the following resources openly available in the public domain at https://ncrb.gov.in/en/crime-india-2019-0; https://goir.ap.gov.in/; http://www.scconline.com/DocumentLink/mhjA8x0S; **Error! Hyperlink reference not valid.**and https://ncrb.gov.in/en/prison-statistics-india. These sites provide basic data and accessible for public. The detenus were interviewed in person.

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