STUDY NOTES · BASIC CONCEPT

All about Preventive Detention, Peace Bonds and the Constitutional Right to Protest

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What is preventive action in law?

Preventive action refers to legal measures intended to prevent an anticipated offence, disturbance or breach of peace. It differs from ordinary criminal prosecution, which generally seeks to establish whether an offence has already been committed and whether the accused is legally responsible.

For example, if authorities receive credible information that a gathering may lead to violence, they may take legally authorised preventive measures. Such action must be based on the applicable law and cannot be justified merely by the fact that a person criticises the government.

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Preventive action versus punitive action

Basis	Preventive action	Punitive action
Main objective	Prevent an anticipated breach of peace or other legally specified harm	Respond to an offence alleged to have been committed
Timing	Before the anticipated harm occurs, or to prevent its recurrence under applicable law	Following alleged criminal conduct
Nature	Risk prevention, subject to statutory conditions	Criminal investigation, prosecution and adjudication
Standard of decision	Depends on the specific preventive provision and proceedings	Criminal guilt must be established under applicable criminal-law standards

Basis	Preventive action	Punitive action
Possible outcome	Conditions, security bonds or other legally authorised measures	Acquittal or conviction and, where applicable, sentence
Safeguard	Statutory procedure, opportunity to contest the action and judicial review where available	Fair trial, legal representation, evidence and appeal rights

Important: Preventive proceedings are not exempt from constitutional safeguards. The government cannot use preventive powers arbitrarily or simply label an ordinary disagreement as a threat to public order.

What is a peace bond?

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A peace bond is a legally required undertaking to maintain peace or good behaviour under the relevant statutory framework.

Depending on the law and circumstances, an authority may require a person to execute a bond, sometimes with sureties, to address a legally recognised risk of disturbance.

A bond is not the same as a conviction. It is a preventive legal mechanism.

What happens if a peace bond is allegedly breached?

A breach may trigger further proceedings or consequences specified by the applicable law. The authority must still establish the legal basis for its action and follow the prescribed procedure.

In the CJP case, the magistrate reportedly considered the alleged breach of bonds furnished on 11 October relevant to the risk of further disturbance. The defence disputed the handling of the proceedings. The allegations and the legality of the action must be assessed through the appropriate legal process.

Relevant constitutional provisions

The case is significant because it raises questions about the relationship between public order and fundamental rights.

Provision	Constitutional guarantee	Relevance
Article 14	Equality before the law and equal protection of laws	Prevents arbitrary and discriminatory state action
Article 19(1)(a)	Freedom of speech and expression	Protects political criticism and expression
Article 19(1)(b)	Right to assemble peaceably and without arms	Protects peaceful assembly, subject to constitutional restrictions
Article 19(2)	Permits reasonable restrictions on speech on specified grounds	Includes public order among the grounds for restrictions
Article 19(3)	Permits reasonable restrictions on peaceful assembly in the interests of public order and the sovereignty and integrity of India	Provides the constitutional basis for certain assembly restrictions
Article 21	Protection of life and personal liberty	Requires legally justified restrictions on liberty
Article 22	Safeguards relating to arrest and detention	Provides protections, with important distinctions depending on the form of detention

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What is the difference between public order, law and order, and security of the State?

These terms are related but have distinct legal meanings. The distinction is important in constitutional law because different grounds may justify different restrictions.

Concept	Broad meaning	Example
Law and order	General maintenance of peace and enforcement of law	A local dispute or isolated unlawful incident
Public order	Disturbances affecting the community or public tranquillity more broadly	Widespread violence or a serious disturbance of public peace
Security of the State	Threats to the security and stability of the State at a much higher level	Serious threats involving the State's security

Who is an Executive Magistrate?

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An Executive Magistrate performs specified functions under criminal-procedure and other applicable laws. These functions may include preventive measures intended to maintain public peace.

An Executive Magistrate is institutionally distinct from a Judicial Magistrate, who exercises judicial functions within the criminal justice system.

Executive Magistrate	Judicial Magistrate
Performs executive and preventive functions assigned by law	Exercises judicial powers assigned by law
May deal with certain proceedings concerning security for keeping peace and public order	Handles specified criminal proceedings, including remand and other judicial matters within jurisdiction
Functions under the relevant statutory and administrative framework	Functions within the judicial hierarchy
Must comply with legal limits and procedural safeguards	Must comply with legal limits, fair-trial principles and procedural safeguards

The case reports describe proceedings before a Special Executive Magistrate. It is therefore important not to assume that every order in the matter is equivalent to a conviction or sentence by a regular criminal court.

The exact legal character of the proceedings must be determined from the applicable statutory provision and the order itself.

Judicial custody versus preventive detention

The terminology used in news reports can sometimes obscure important legal distinctions.

Judicial custody ordinarily refers to custody authorised by a competent judicial authority in criminal proceedings. Preventive detention, in its constitutional sense, refers to detention intended to prevent specified future conduct under a separate legal framework.

The CJP reports describe custody ordered in preventive proceedings by a Special Executive Magistrate. The precise classification and legal consequences depend on the order and the statute under which it was made.

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Basis	Judicial custody in criminal proceedings	Preventive detention in the constitutional sense
Primary purpose	Custody during criminal proceedings, subject to the applicable law	Prevent specified future conduct
Legal basis	Criminal-procedure and other applicable laws	Specific preventive-detention legislation
Article 22 framework	Ordinary arrest and detention safeguards apply, subject to statutory provisions	Article 22 contains separate provisions and safeguards for preventive detention
Guilt	Custody does not itself establish guilt	Preventive detention is not a criminal conviction
Review	Subject to applicable remand, bail, appeal and judicial-review mechanisms	Subject to statutory and constitutional safeguards applicable to preventive detention

The word “preventive” does not automatically mean that a case falls under the constitutional provisions specifically governing preventive detention. The relevant law and the actual nature of the order matter.

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023

The Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023 replaced the Code of Criminal Procedure, 1973, subject to the applicable commencement and transitional provisions.

It contains provisions concerning preventive action to maintain peace and good behaviour.

For UPSC purposes, Section 126 of the BNSS concerns security for keeping the peace in other cases. Other provisions deal with related procedures, inquiries and orders. The precise provision invoked in an individual case must be checked against the actual order.

The broader principle is that preventive powers are statutory powers. Authorities must act within the scope of the provision, comply with procedural requirements and respect constitutional protections.

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What are sureties, and why do they matter?

A surety is a person who undertakes legally specified responsibility in support of another person's compliance with conditions imposed under a relevant legal process.

Sureties may be required in bail proceedings or other proceedings where the law permits a bond supported by a guarantor.

In the CJP case, reports indicate that the magistrate rejected the sureties submitted on behalf of the two leaders and directed the production of alternative guarantors. Their lawyers challenged the handling of the matter.

A surety should not be treated as a mere formality. The authority must apply the relevant legal criteria and avoid arbitrary or discriminatory decisions. At the same time, the exact requirements depend on the type of bond and the statutory framework involved.

Proportionality: How much restriction is justified?

The doctrine of proportionality is central to assessing restrictions on fundamental rights.

It asks whether a state measure is justified in relation to the legitimate objective it seeks to achieve and whether it imposes an excessive burden on rights.

In a protest-related case, the analysis may include:

1. Legitimate aim: Is the action intended to prevent violence or a genuine threat to public order?
2. Rational connection: Is the measure reasonably connected to that objective?
3. Necessity: Could the objective be achieved through a less restrictive measure?
4. Balancing: Is the benefit of the restriction sufficient to justify its impact on liberty and democratic freedoms?

For example, a specific restriction on entry into a sensitive area may be more proportionate than a blanket prohibition on all peaceful demonstrations across a city, depending on the circumstances and applicable law.

The correct outcome is fact-specific. Public authorities must justify restrictions rather than rely solely on broad assertions of public order.

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Important Supreme Court judgments

Case	Year	Significance
Maneka Gandhi v. Union of India	1978	Established that a procedure affecting personal liberty must satisfy constitutional requirements of fairness, justness and reasonableness
K. S. Puttaswamy v. Union of India	2017	Recognised privacy as a fundamental right, subject to constitutional limitations
Anuradha Bhasin v. Union of India	2020	Examined restrictions on communication services and emphasised proportionality and review of restrictions
Mazdoor Kisan Shakti Sangathan v. Union of India	2018	Examined the balance between the right to protest and the rights of other residents and users of public spaces

These judgments help aspirants understand that fundamental rights must be balanced with legitimate public interests through constitutional standards rather than arbitrary executive discretion.

Democratic dissent and the role of the State

Democratic dissent includes criticism, peaceful demonstrations, public campaigns and other forms of political expression. It allows citizens to communicate grievances, demand accountability and influence public policy.

The State also has a duty to protect public safety, prevent violence and ensure that public spaces remain accessible to different groups.

The challenge is to reconcile these responsibilities.

State responsibility	Democratic safeguard
Maintain public order	Restrictions must have a lawful basis
Prevent violence	Peaceful expression should not be treated as violence
Regulate public spaces	Rules should be clear, fair and consistently applied
Enforce preventive conditions	Proceedings must follow prescribed procedures
Protect officials and citizens	Threats and intimidation should be addressed through lawful means
Ensure compliance	Decisions should be reasoned and open to appropriate review

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The principle is not that protest must always be permitted without conditions. It is that restrictions should be justified, proportionate and consistent with the Constitution.

Quick revision table for UPSC Prelims

Concept	Key point
Preventive action	Intended to avert a legally recognised risk before harm occurs
Peace bond	A legally required undertaking to maintain peace or good behaviour

Concept	Key point
Article 19(1)(a)	Freedom of speech and expression
Article 19(1)(b)	Right to assemble peaceably and without arms
Article 19(2)	Permits reasonable restrictions on speech on specified grounds
Article 19(3)	Permits reasonable restrictions on peaceful assembly on specified grounds
Article 21	Protection of life and personal liberty
Article 22	Safeguards concerning arrest and detention, with distinctions for preventive detention
BNSS Section 126	Security for keeping the peace in other cases
Executive Magistrate	Exercises specified executive and preventive powers under law
Proportionality	A restriction must be justified and proportionate to its legitimate objective
Social accountability	Citizens can question public authorities and demand explanations
Judicial review	Courts examine the legality and constitutionality of state action within their jurisdiction

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