

# INTERNATIONAL JOURNAL FOR LEGAL RESEARCH AND ANALYSIS



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Peer Reviewed

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# **A CRITICAL ANALYSIS OF THE GUJARAT PREVENTION OF ANTI-SOCIAL ACTIVITIES ACT, 1985**

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## **Abstract**

This paper critically examines the Gujarat Prevention of Anti-Social Activities Act 1985, a preventive detention law that has drawn widespread scrutiny for its broad scope and potential for misuse. While originally enacted to curb anti-social elements, the Act's vague definitions of "dangerous person" and "public order," coupled with its absence of minimum safeguards, have enabled authorities to detain individuals arbitrarily, often without adequate justification. The research highlights how the expansion of the act through amendment in 2020—extending its ambit to cyber offences, money lending disputes, and sexual offences—has intensified concerns by duplicating existing penal provisions while undermining fair trial rights. Through an analysis of statutory provisions, judicial pronouncements, and case studies, this paper reveals recurring patterns of abuse, where courts have repeatedly invalidated detention orders on grounds of arbitrariness and violation of constitutional protections. The study argues that preventive detention under PASA erodes fundamental rights, particularly the presumption of innocence and the right to dignity, while serving as a tool for executive overreach. It concludes by underscoring the urgent need for greater judicial vigilance, public awareness, and policy reform to prevent the continued misuse of such draconian legislation in a democratic society.

## **1. Introduction**

Gujarat's legislative assembly has been adopting some laws at an alarming rate in recent years, allegedly in an effort to make society safer and fight with anti-social forces. An Ordinance to broaden the scope of the Gujarat PASA Act, 1985 was promulgated in September 2020. Betting, cyber offences, money lending offences, and sexual offences are among the crimes covered by the Act. This was later approved in October of 2020.

The Gujarat High Court has repeatedly admonished the state's police and detention authorities against abusing PASA Act, which has been in effect for almost three and a half decades.

Multiple FIRs made against a person, even though some of these FIRs dated from several years earlier, was one pattern of misuse and continuous imprisonment using this statute in various situations. In one example, it was discovered that the several claims on which the individual was imprisoned were all bogus, yet he was nonetheless detained despite the Police admitting this in a report.

The Act has a history of being abused. No 'hardened criminal' or persistent offender has ever been convicted under this Act, and the conviction has never been affirmed by constitutional courts. Even as the High Court once again testifies to its widespread misuse, the narrative of abuse continues. Gujarat currently has the second highest number of detenués, following Tamil Nadu<sup>1</sup>

The detention of an innocent person on the basis of a simple (often unverified) allegation that they are "suspected of being a threat to public order" has resulted in the incarceration of thousands of civilians, some of whom, even if they have committed an offence, deserve the basic right to a fair trial before even being held for such extended periods of time.

The value of a person's personal liberty cannot be measured in terms of financial recompense. Under the core principles of due process, which are uncompromising for any democracy governed by the Rule of Law, law enforcement authorities are only allowed to restrict a person's freedom if they comply with the law's due process requirements.

Fundamental rights are significantly harmed when laws like Gujarat PASA act allow unrestricted powers to these agencies to curtail liberty, only to be restored by a High Court ruling years later, through which period the individual has already been incarcerated for a significant amount of time, although being blameless. When it comes to preventative detention legislation, the notion of "innocent until charged guilty" is entirely undermined, especially when they are applied arbitrarily. Furthermore, an individual labelled as an "anti-social element" has already harmed his or her image in the community. Their right to live with dignity, as guaranteed by the Indian Constitution, has been violated, with no repercussions for the law enforcement agency responsible. This research paper seeks to critically analyse the provisions of Gujarat Prevention of Anti-Social Activities Act, 1985 with its loopholes which is the source

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<sup>1</sup> Dr. Murali Karnam and Natasha Singh, Gujarat's Prevention Detention Law is a free pass for police to act without evidence, The Wire, 5<sup>th</sup> November 2021.

of misuse by authorities. It claims that expanding the scope of an instrument that has been arbitrarily used to preventively hold people makes it more vulnerable to abuse by providing the authorities more opportunity to detain people. It further claims that the provisions in the Act do not provide for adequate protections of the fair trial rights of accused individuals, hence increasing its tendency to be exploited. Further it also tries to study the pattern of misuse of this act by authorities in recent past and stand of Gujarat High Court on it.

## **2. Analysis of crucial provisions of the Act**

The legislation became effective in 1985. Offenders which can be prosecuted under this act are defined in very broad manner and their definitions are open to several interpretations. They include "cruel person," "dangerous person," "property grabber," and "unauthorised structure."

"cruel person" is someone regularly commits, seeks to commit, or abets the commission of an offence punishable under section 8 of the Bombay Animal Preservation Act, 1954, either alone or as a member or leader of a syndicate.

A "dangerous person" is someone who regularly commits, attempts to commit, or abets the commission of any of the offences punishable under Chapter XVI or Chapter XVII of the Indian Penal Code, or any one of the offences punishable under Chapter V of the Arms Act, 1959, either alone or as a member or leader of a syndicate.<sup>2</sup>

The government can issue a detention order against anybody for "acting in any way injurious to the maintenance of public order,"<sup>3</sup>. Again, the definition of public order is broad and ambiguous: the Act explains public order as being hindered if any of the offenders' actions cause or are likely to cause any harm, danger, alarm, or feeling of insecurity among the general public or any section thereof, or if (there is) a grave or widespread danger to life, property, or public health.<sup>4</sup>

Section 5 of legislation specifies site and circumstances regarding detention, implying that a prisoner can be held indefinitely for the purposes of maintenance, discipline, and punishment for violations of discipline, as described in the order.

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<sup>2</sup> Section 2(c) of the Gujarat PASA Act, 1985

<sup>3</sup> Section 3 of the Gujarat PASA Act, 1985

<sup>4</sup> Explanation to Section 3(4) of the PASA Act

Section 6 specifies that if a detention order is issued on numerous reasons, each basis will be treated separately in the order. This implies that even if the court finds all but one of the grounds to be unclear or defective, the detention order will be upheld since the one justification remains. If an individual detained under a detention order "is thought" to have absconded or is hiding, the relevant authority has the ability to seize or sell his property inside the State.

From the date of the detention order, the detaining authority has up to 7 days to communicate the grounds of custody to the detainee, and any details that are against the "public interest" may not be given. If the inmate desires to represent himself, although without legal counsel, the state government has up to three weeks to deliver the order to the Advisory Board for hearing. After then, the Advisory Board has seven weeks to submit its findings to the government from the day of arrest.

Except for the Board's view, the whole report will be kept secret. The Board has the authority to confirm detention for up to one year. The same individual may be held again if the detention order is repealed or expires. Provided, however, that in the event that no new facts emerge after the expiration or revocation of the earlier detention order issued against such person, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall not exceed twelve months from date of detention under the previous detention order.

The Act was amended in 2020 to include cyber offences, which meant that anybody who committed an offence under the IT Act 2000 could be prosecuted under Gujarat PASA Act. Now this act also covers money lending offences, such as those employed by money lenders which intimidate or commit violence to get money from the customers. It will also include sex offenders that might encompass anybody who commits sexual offences as outlined by the IPC, 1860. Offences which are included in this act are already illegal under various laws, thus there are existing penalties in place. However, the expanded scope of the act would allow the police to hold anybody on suspicion of committing any of these crimes without due process.

### **2.1. Absence of minimum protection**

The Prevention of Anti-Social Activities Act is a potentially deadly instrument in the hands of authorities since it provides for up to a year of preventative imprisonment for a variety of offences. Section 3 gives the state government the authority to issue orders detaining anybody

who may act in a way that is "prejudicial to the maintenance of public order."

Many legislation, similar in nature of Gujarat's PASA, make the criterion of being a habitual offender clear and provide requirements for who can be labelled a habitual offender. The term "habitual" is defined as "actions or omissions performed regularly, persistently, and often with a thread of continuity connecting together comparable repetitive acts or omissions but must not include isolated, separate, and different acts or omissions" under a Rajasthan's legislation. The Supreme Court has defined "habitually commits" as a series of continuous acts that must be repeated and persistent, rather than singular or isolated acts. The requirement that the perpetrator be a repeat offender serves as a precaution to prevent first-time or isolated offenders from being arrested. There are no such safeguards under the PASA Act. Section 3 of the law that allows the executive to hold criminals do not specify that the detainees must be "habitual" offenders, possibly permitting the executive to imprison offenders with no prior criminal history. Section 2, which specifies some offences for which offenders may be held without charge, uses the term "habitual" in just a handful of them. The lack of such protections broadens the scope of detention under the PASA Act while also making it a simple instrument for abuse.

## **2.2. Justification for order of detention**

In **Rekha v. State of Tamil Nadu**<sup>5</sup>, the Supreme Court discussed when may a detention order be issued? It was decided that preventative detention orders would be ruled unconstitutional if criminal procedures would suffice to address the accused conduct. If an individual is typically liable to be tried or is being tried for committing an offence under any other criminal provision, but the penal law is inadequate to cope with the circumstance, the act enabling preventive detention may be used. The detainee in this instance was arrested for selling outdated drugs with forged labelling. The court ruled that the detention order was unconstitutional and that the crime may be prosecuted under the Indian Penal Code and the Drugs and Cosmetics Act.

In **V. Shantha v. State of Telangana**<sup>6</sup>, the Court overturned a man's detention order under the Telangana Prevention of Dangerous Activities of Bootleggers, Dacoits, Drug Offenders, Goondas, Immoral Traffic Offenders, and Land Grabbers Act, 1986, for selling seeds to farmers that failed to yield crops and caused them loss. The detenu's actions were illegal under the Indian Penal Code of 1860 and the Seeds Act of 1966. Rekha and Munglal were used by

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<sup>5</sup> 2011 (5) SCC 244

<sup>6</sup> Criminal Appeal No. 965 of 2017 (Arising Out of SLP (Crl.) No. 3651 of 2017)

the court to overturn the detention order. It also slammed the authorities' abuse of statutory power, stating that "the mere invocation of the terms "goonda" or "prejudicial to public order" cannot be enough cause to activate the draconian powers of preventative detention." While the detention orders were unwarranted in *K. Suguna v. State of Telangana*<sup>7</sup>, the Court gave the justification that the charges against the accused were serious, but they related to theft, which could be prosecuted and punished through regular criminal statutes.

The majority of the provisions of the PASA Act are penalised under other laws. Offenses already punishable under the Gujarat Prevention of Gambling Act, 1887, the Information Technology Act, 2000, the Gujarat Money Lenders Act, 2011, the Protection of Children from Sexual Offenses Act, 2012, and the Indian Penal Code, 1860 have been added to the list of offences for which detention orders may be issued. The inclusion of these offences under the PASA Act is clearly superfluous, as anyone who commits these crimes would normally face standard criminal charges.

### **3. Misuse of PASA Act and stand of Gujarat High Court**

Despite the fact that courts have limited its scope and advised states to exercise caution when using preventative detention statutes, the PASA Act appears to have been widely applied. Many rulings involving detentions under the PASA Act demonstrate authorities' lack of thinking in holding people under the PASA Act. In ***Abdul Razzak Nannekhan Pathan v. Police Commissioner, Ahmedabad and Anr.***<sup>8</sup>, the court condemned the authority's inability to exercise their thoughts, ruling that the imprisonment was based on unclear and immaterial reasons, violating Article 22(5) of the Constitution. Courts have invalidated detention orders where the grounds for custody are unclear.

Detention orders have indeed been issued also when only FIRs have been filed, spurring the Gujarat High Court to strike down the order and command the authority to reveal on oath if they were conscious of Supreme Court judgments pertaining to detention of persons under the PASA Act and whether there was subjective satisfaction available to them based on such established principles of law..

According to a report in Times of India, 228 people have been jailed under PASA and 48 have

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<sup>7</sup> Writ Petition No.24441 of 2019

<sup>8</sup> 1989 AIR 2265

been expelled from the city boundaries in the 31 days after the declaration of general elections in 2019. "Premvir Singh, the ASP of special branch, stated that 49,423 people had been held and 6,866 arrest warrants had been issued."<sup>9</sup> It's unclear when these figures were collected. There's also a danger that the current administration may utilise a flawed, harsh law to indiscriminately target demonstrators and political rivals. Due process, which is essential for restoring balance in an unequal relationship between the state and its citizens, has been followed to the letter here.

In **Yasin v. State of Gujarat**<sup>10</sup>, Three FIRs were filed against a detainee, leading to his detention. On March 10, 2021, the High Court invalidated Yasin Jalali's detention order under the PASA Act while observing that, "The detaining authority fell in error in treating the activities of the petitioner as prejudicial to the maintenance of the public order. The difference between 'the law and order' as 'the public order' needs to be kept in mind". The court further observed that while the detention order stated that the activities of the petitioner create a sense of alarm and feeling of insecurity in the minds of public at large, the usage of these words was more "in the nature of rituals rather than with any significance to the alleged activities of the petitioner". Jalali was detained in January and his detention order was quashed in March, which means that he was incarcerated for 2 months before being released when his detention was deemed to be illegal.

In **Rohitbhai Lakshmanbhai Luni v. Commissioner of Police, SURAT & ORS.**<sup>11</sup>, When one Shakeel Kureshi was labelled a "dangerous person" under the legislation in a private disagreement between two parties, the High Court highlighted the police's widespread abuse of the statute. "Such techniques ought to be addressed in the bud," the court said. This court has taken note of widespread PASA abuse. This is one of those instances where, with the help / threat of PASA, the police authorities take on the task of settling financial transactions / disputes between the parties."

Kureshi was detained by the detaining authority, as stated in its March 9 order. As a result, he filed a case at the High Court to prevent it from being implemented. If such a detention order is issued, the Court indicated that it will not be carried out for a month. In this instance, the

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<sup>9</sup> Sanchita Kadam, Gujarat's PASA Act: A long running saga of misuse and abuse, CJP, 11th, May 2021

<sup>10</sup> SCA NO. 2371 of 2021

<sup>11</sup> SCA No. 1911 of 2021

petitioner was prevented from being held based on inadequate reasons and in a matter of private disagreement, where detention is not justified at all, as the court also emphasised.

In **Dimple v. State of Gujarat**<sup>12</sup>, Dimple Patel, the petitioner, was regarded a dangerous person since two FIRs had been filed against her, and the detention order was likewise warranted on those grounds. The court noted in its ruling dated February 24, 2021 that it had read both FIRs and found that "the detaining authority erred in considering the petitioner's acts as harmful to the preservation of the public order." It's important to remember the difference between 'law and order' and 'public order.' The order was found unsustainable by the court, and it was quashed.

Patel was held for two months, from December 2020 to February 2021, when the court ordered her release. She was held only because she was the subject of two FIRs and was considered a "dangerous person." She was wrongfully held under the assumption of being a menace to public order before any of these FIRs could even reach the court for trial.

In **Amitkumar Rameshbhai Patel v. State of Gujarat and Ors**<sup>13</sup>, on August 18, 2021, the Gujarat High Court barred the state government from obtaining PASA detention orders against three businessmen accused of violating GST legislation. The Finance Department did not answer to the court's question on when PASA may be used, and the tax department told the court that no plans to detain them had been made thus far. The court denied the "sword" of imprisonment hang over the accused, and thereby barred the government from issuing detention orders in such circumstances.

In **Karansingh Chetansingh Vaghela v. State of Gujarat**<sup>14</sup>, The Gujarat High Court overturned a detention order issued under the Prohibition Act, stating that a single offence does not qualify a person as a bootlegger under PASA. The court pointed out that there is just one FIR linked to prohibition violations, and that "by no stretch of the imagination can we hold that such instances may designate a person as a bootlegger." The court found that the detaining authority failed to prove that the appellant-claimed detenu's antisocial conduct had or are likely to have a negative impact on the preservation of public order.

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<sup>12</sup> SCA No. 593 of 2021

<sup>13</sup> R/Special civil application n0. 6465 of 2021

<sup>14</sup> R/SPECIAL CIVIL APPLICATION NO. 6853 of 2021

In **Dilip Bhavanishankar Yadav v. State of Gujarat**<sup>15</sup>, Detention of Mr. Dilip Yadav was invalidated by the Gujarat High Court. The Court held that "Unless and until the material is there to make out a case that the person has become a threat and menace to the Society so as to disturb the whole tempo of the society and that all social apparatus is in peril disturbing public order at the instance of such person, it cannot be said that the detenu is a person within the meaning of section 2(b) of the Act,"<sup>16</sup>

After hearing the contentions of petitioners the Court further said, "Simplicitor registration of FIR/s by itself cannot have any nexus with the breach of maintenance of public order and the authority cannot have recourse under the Act and no other relevant and cogent material exists for invoking power under section 3(2) of the Act."<sup>17</sup>

It ruled that detaining authority's subjective satisfaction was unlawful, illegitimate, and not in compliance with the law. It held that preventive detention was unworkable because the offences charged in the FIR had no influence on public order and that other applicable criminal statutes were sufficient to deal with the issue. The aforementioned decision was based on a Supreme Court ruling in the matter of **Pushker Mukherjee v. West Bengal**.<sup>18</sup>

#### **4. Conclusion**

The Gujarat PASA Act, which allows for flagrant disrespect of the accused's right to a fair trial, has the potential to be severely abused. When imposing detention orders, the Supreme Court has emphasised the importance of exercising prudence. It has also been decided that preventative detention orders cannot be used as a substitute for the regular law and cannot relieve the investigative agencies of their normal investigative duties. However, it is not uncommon for police to use preventative detention legislation to detain offenders in order to avoid the investigation process.

This act's most recent modification is pouring fuel to the flames. State can utilise it to silence dissident voices, as it has in the past. It can target several people who are running online campaigns against state and its acts. Gujarat's use of the detention statute has gone beyond any

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<sup>15</sup> 2022 SCC OnLine Guj 409

<sup>16</sup> SCA No. 19820 of 2021

<sup>17</sup> SCA No. 19820 of 2021

<sup>18</sup> 1970 AIR 852

logical limitations. The administration appears indifferent with the court's decision, and hence the trend of arbitrary detention has continued. Despite the fact that the court has frequently invalidated the detention orders, it appears that it has only done so in response to the arbitrariness, rather than addressing the essence of the legislation and the established practise under it. The trend is clear: ordinary suspects are frequently imprisoned under this harsh rule, and their detentions are summarily dismissed, often after lengthy delays. It is sad state of democracy and people must stand against these kinds of draconian laws to save the voice of dissent and protect the rights of citizens. It seems that that there is no other way to prevent this situation except people's awareness and pressure on state to erase these kinds of laws.

