
CONSTITUTIONAL VALIDITY OF PREVENTIVE DETENTION LAWS IN INDIA

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ABSTRACT

This paper emphasizes the legal framework, judicial application, and the constitutional validity of the preventive detention laws in India. Preventive detention is an imprisonment that is justified for non-punitive purposes, most often to prevent further criminal acts. Preventive detention sometimes involves the detention of a convicted criminal who has served their sentence but is considered too dangerous to release. Remand or pre-trial detention are sometimes considered a form of preventive detention.

This research paper delves into examining statutory provision, landmark judgements, the legal system and the constitutional validity of the laws that authorize preventive detention. This paper also addresses the persistent concerns regarding the misuse, lack of transparency, and the potential conflict with the fundamental rights, by critically analyzing and evaluating existing laws governing preventive detention, safeguards of those laws and identifying the gaps in implementation of those laws. It involves the study of the laws and provisions related to or governing the preventive detention act, the changes of those laws and provisions related to preventive detention and the Constitutional provisions that govern preventive detention. This paper involves an analytical and qualitative type of analysis.

Keywords: Preventive Detention, Constitutional validity, fundamental rights, personal liberty, Article 21, Article 22, Due process or procedure, safeguards and gaps in implementation.

Synopsis

The Constitution of India is the supreme legal document of India, and the longest written national constitution in the world. The document lays down the framework that demarcates fundamental political code, structure, procedures, powers, and duties of government institutions and sets out fundamental rights, directive principles, and the duties of citizens. It espouses constitutional supremacy and was adopted with a declaration in its preamble. The Indian Constitution aims to establish a Sovereign, Socialist, Secular, and Democratic Republic that secures justice, liberty, equality, and fraternity for all citizens of India

The Indian Constitution permits and governs the preventive detention under Article 22. This paper involves an analytical and qualitative type of analysis. This paper analysis the concerns regarding the misuse and lack of transparency with respect to the preventive detention by critically evaluating the existing laws and Constitutional provisions governing preventive detention.

Introduction

Preventive detention means the detention of a person without trial and conviction by a court. Its purpose is not to punish a person for a past offence but to prevent him from committing an offence in the near future. The detention of a person cannot exceed three months unless an advisory board reports sufficient cause for extended detention. The advisory board is made up of High Court judges or persons eligible to be appointed High Court judges. There are two types of detentions: Firstly, preventive detention is when a person is held in police custody only on the basis of a suspicion that they would conduct a criminal act or cause harm to society. The police have the authority to hold anyone they suspect of committing a criminal offence and also to make arrests without a warrant or a magistrate's authorisation in cognizable cases. Secondly, Punitive detention which means detention as a punishment for a criminal offence. The power of preventive detention can be exercised by the authorities on following grounds that is public order, foreign affairs, security of the state, law and order. The basis of detention is the satisfaction of the Executive of a reasonable probability of the likelihood of the detainee acting in a manner similar to his past acts and preventing him by detention from doing the same.¹

Article 22 of the Indian Constitution grants protection to individuals who are arrested or detained. It has two parts, the first part deals with cases of ordinary law, which includes

¹ *Preventive Detention*, WIKIPEDIA, https://en.wikipedia.org/wiki/Preventive_detention#India (last visited Mar. 13, 2026).

situations where an individual is detained as part of a criminal investigation and the second part deals with cases of preventive detention law, which pertains to the detention of individuals without a trial or conviction.

Historical Background

Preventive detention in India has their historical background in the British Government when it was used as a political weapon and a means of social control. The first significant example was the Defence of India Act, 1915 during World War I, which allowed for arrest without trial of anyone suspected of being anti-British. It paved the way for subsequent laws enabling suspicion-based detention, as per or no basis. However, this was not the only law as a systematic and longer-term preventive detention law came to be introduced in Bengal with the passing of Bengal Regulation III of 1818, which empowered the government to detain individuals indefinitely on mere suspicion of entering intent or threatening public peace. Though it was technically drafted to maintain public order, this law was used to crush political dissent and freedom fighters, beginning the process of sowing arbitrary state power in the Indian legal system.

After independence, the first legislation for preventive detention was the Preventive Detention Act, 1950 which provided for up to 12 months detention without trial. Even though initially put as a temporary measure, the law remained in effect and not repealed until 1969. Then follow-up legislations like the MISA (Maintenance of Internal Security Act) 1971, increased the powers of preventive detention by the State even further. MISA was used most infamously during the Emergency (1975–77) to silence political opponents and critics, and was thus prone to gross abuse. Thousands were locked up without trial in an act that was condemned both at home and abroad.²

The National Security Act (NSA) was enacted in 1980 soon after the repeal of MISA, and continues to be in place till date. It permits preventive detention based on airy charges like "acting in any manner detrimental to the interest of the state or the public order" and has drawn widespread criticism for allowing arbitrary detentions.

² Tangirala Jaya Prakash, *Preventive Detention in India: Historical Background and Contemporary Issues*, 5(1) SHODHKOSH: J. VISUAL & PERFORMING ARTS 3017 (2024), <https://doi.org/10.29121/shodhkosh.v5.i1.2024.5392>.

There are several other preventive detention laws, those are:

1. Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 - for smuggling & foreign exchange violations
2. Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 - for hoarding, black marketing, essential commodities
3. Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PIT NDPS Act) for preventing illicit trafficking in narcotic drugs and psychotropic substances. (It complements the punitive law Narcotic Drugs and Psychotropic Substances Act 1985, which punishes offences.)³

Research Objectives

- To analyse the Constitutional provision governing the preventive detention in India
- To analyse the judicial interpretation of the laws governing the preventive detention
- To identify and analyse the misuse and abuse of the preventive detention laws
- To evaluate the Constitutional validity of the preventive detention laws

Questions

- What are the laws governing the preventive detention in India?
- Are the preventive detention laws subjected to misuse or abuse by the authorities?
- How does the preventive detention laws impact the fundamental rights?
- To what extent does the preventive detention laws follow the procedural safeguards provided as under the Indian Constitution?
- What the challenges and criticism faced in the implementation of preventive detention

³ P.D. Singh, *Preventive Detention Laws in India—Global and Indian Perspective and Their Necessity*, LEGAL EAGLE WEB (Sept. 14, 2025), <https://legaleagleweb.com/articalsdetail.aspx?newsid=103>.

laws?

Scope

This paper critically examines the constitutional validity of the preventive detention laws in India. It focuses on the framework of the Indian Constitution that permits and governs the preventive detention laws. It also focuses on those laws which are enacted by the parliament that govern the preventive detention of persons. It focuses and analyses the provisions, judicial interpretation of these provisions and the amendment made with respect to these provisions.

Limitations

This paper relies on secondary data only and does not include field work. This paper only analyses, and is limited to Indian Laws i.e., the Indian Constitution and other laws related to preventive detention.

Methodology

This study uses analytical and doctoral research methodology, it analyses relevant legal provisions, Judicial application and case laws of this Chapter. The Study has gathered data from law repositories, reports and journal articles

Legal Framework

This section focuses on the legal provisions related to preventive detention under various legislations. This section is concerned with and mainly focuses on the provisions with respect to the preventive detention laws. These legal provisions related to preventive detention are defined under various legislation such as the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980, the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PIT NDPS Act) and it also includes the Indian Constitution.

The Indian Constitution under Article 22 provides protection from arrest and detention. It also embodies the rights available to a person who has been arrested or detained within its ambit. One particular portion of Article 22 deals with preventive detention as well under which the

government and the authorities have the power to detain a person if there are reasonable grounds to do so. Additionally, the Advisory Board is vested with the power to determine whether such arrest or detention is necessary.

Article 22 of the Indian Constitution states that:

“(1) No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty-four hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the magistrate and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses (1) and (2) shall apply—

(a) to any person who for the time being is an enemy alien; or

(b) to any person who is arrested or detained under any law providing for preventive detention.

(4) No law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless—

(a) an Advisory Board consisting of persons who are, or have been, or are qualified to be appointed as, Judges of a High Court has reported before the expiration of the said period of three months that there is in its opinion sufficient cause for such detention:

Provided that nothing in this sub-clause shall authorise the detention of any person beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7);
or

(b) such person is detained in accordance with the provisions of any law made by Parliament under subclauses (a) and (b) of clause (7).

(5) When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall, as soon as may be, communicate to

such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.

(6) Nothing in clause (5) shall require the authority making any such order as is referred to in that clause to disclose facts which such authority considers to be against the public interest to disclose.

(7) Parliament may by law prescribe—

(a) the circumstances under which, and the class or classes of cases in which, a person may be detained for a period longer than three months under any law providing for preventive detention without obtaining the opinion of an Advisory Board in accordance with the provisions of sub-clause (a) of clause (4);

(b) the maximum period for which any person may in any class or classes of cases be detained under any law providing for preventive detention; and

(c) the procedure to be followed by an Advisory Board in an inquiry under [sub-clause (a) of clause (4)].”⁴

Clause (1) and (2) of Article 22 of the Indian Constitution was also reiterated in the case “DK Basu vs State of West Bengal (1997)”. In view of the increasing incidence of violence and torture in custody, the Supreme Court of India in this case has laid down some specific requirements and procedures that the police and other agencies have to follow for the arrest, detention and interrogation of any person. Some of these are⁵:

- Police arresting and interrogating suspects should wear “accurate, visible and clear” identification and name tags, and details of interrogating police officers should be recorded in a register.
- A memo of arrest must be prepared at the time of arrest. This should have the time and date of arrest, be attested by at least one witness who may either be a family member of the person arrested or a respectable person of the locality where the arrest was made

⁴ *INDIA CONST.* (1950), https://www.indiacode.nic.in/bitstream/123456789/19150/1/constitution_of_india.pdf.

⁵ *D.K. Basu v. State of W.B.*, AIR 1997 SC 610 (India).

and should also be counter-signed by the person being arrested.

- The person arrested should be told of the right to have someone informed of the arrest, as soon as the arrest or detention is made.
- The person being arrested is to be presented before a magistrate within 24 hours of his arrest.

Clause (4) states that a person can be detained for a period of not more than 3 months and the detention period can be extended not beyond the maximum period prescribed by any law made by Parliament under sub-clause (b) of clause (7). It also states that the period of detention can also be extended by the Advisory Board which consist of persons who are, or have been, or are qualified to be appointed as Judges of High Court and the same cannot be extended more than the period prescribed by the Parliament. This maximum period differs according to different legislations that provides for preventive detention.

The Preamble of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 states that it is “An Act to provide for preventive detention in certain cases for the purposes of conservation and augmentation of Foreign Exchange and prevention of smuggling activities and for matters connected therewith.”

Section 3 of COFEPOSA act states that “The Central Government or the State Government, may, if satisfied, with respect to any person (including a foreigner), that, with a view to preventing him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or with a view to preventing him from— (i) smuggling goods, or (ii) abetting the smuggling of goods, or (iii) engaging in transporting or concealing or keeping smuggled goods, or (iv) dealing in smuggled goods otherwise than by engaging in transporting or concealing or keeping smuggled goods, or (v) harbouring persons engaged in smuggling goods or in abetting the smuggling of goods, it is necessary so to do, make an order directing that such person be detained.”⁶

Section 9 of COFEPOSA act states that “Notwithstanding anything contained in this Act, any person (including a foreigner) in respect of whom an order of detention is made under this Act

⁶ *Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, No. 52 of 1974, INDIA CODE*, https://www.indiacode.nic.in/bitstream/123456789/15382/1/the_conservation_of_foreign_exchange_and.pdf.

at any time before the [31st day of July, 1999], may be detained without obtaining, in accordance with the provisions of sub-clause (a) of clause (4) of article 22 of the Constitution, the opinion of an Advisory Board for a period longer than three months **but not exceeding six months** from the date of his detention, where the order of detention has been made against such person with a view to preventing him from smuggling goods or abetting the smuggling of goods or engaging in transporting or concealing or keeping smuggled goods.”

Section 10 of COFEPOSA act states that “The maximum period for which any person may be detained in pursuance of any detention order to which the provisions of section 9 do not apply and which has been confirmed under clause (f) of section 8 shall be **a period of one year** from the date of detention or the specified period, whichever period expires later and the maximum period for which any person may be detained in pursuance of any detention order to which the provisions of section 9 apply and which has been confirmed under clause (f) of section 8 read with sub-section (2) of section 9 shall be **a period of two years** from the date of detention or the specified period, whichever period expires later:

Provided that nothing contained in this section shall affect the power of the appropriate Government in either case to revoke or modify the detention order at any earlier time.”⁷

Therefore, from the texts of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 it can be inferred that a person can be detained without obtaining, in accordance with the Article 22(4)(a) of the Indian Constitution, the opinion of an Advisory Board for a period longer than three months but not exceeding six months from the date of his detention. It also states that a person can be detained for a maximum period of 1 year in pursuance of any detention order to which Section 9 of COFEPOSA act does not apply and a maximum period of 2 years in pursuance of any detention to which Section 9 of COFEPOSA act applies.

The Preamble of the National Security Act, 1980 states that it is “An Act to provide for preventive detention in certain cases and for matters connected therewith.”

⁷ *Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, No. 52 of 1974, INDIA CODE*, https://www.indiacode.nic.in/bitstream/123456789/15382/1/the_conservation_of_foreign_exchange_and.pdf.

Section 3 of NSA, 1980 states that “The Central Government or the State Government may, —
(a) if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India, or

(b) if satisfied with respect to any foreigner that with a view to regulating his continued presence in India or with a view to making arrangements for his expulsion from India,

it is necessary so to do, make an order directing that such person be detained.”

Section 13 of NSA, 1980 states that “The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 12 shall be twelve months from the date of detention:

Provided that nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time.”⁸

Therefore, from the texts of National Security Act, 1980 it can be inferred that a person can be detained for a maximum period of 12 months in pursuance of any detention order in accordance with the Article 22(4)(a) of the Indian Constitution i.e., the Advisory Board opinion suggests that detention is required for a period longer than three months.

The Preamble of the Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 states that it is “An Act to provide for detention in certain cases for the purpose of prevention of black marketing and maintenance of supplies of commodities essential to the community and for matters connected therewith.”

Section 3 of PBMSECA, 1980 states that “The Central Government or a State Government, may, if satisfied, with respect to any person that with a view to preventing him from acting in any manner prejudicial to the maintenance of supplies of commodities essential to the community and it is necessary so to do, make an order directing that such person be detained.”

Section 13 of PBMSECA, 1980 states that “The maximum period for which any person may be detained in pursuance of any detention order which has been confirmed under section 12,

⁸ National Security Act, No. 65 of 1980, INDIA CODE,
<https://www.indiacode.nic.in/bitstream/123456789/1758/1/198065.pdf>.

shall be six months from the date of detention:

Provided that nothing contained in this section shall affect the power of the appropriate Government to revoke or modify the detention order at any earlier time.”⁹

Therefore, from the texts of Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 it can be inferred that a person can be detained for a maximum period of 6 months in pursuance of any detention order in accordance with the Article 22(4)(a) of the Indian Constitution i.e., the Advisory Board opinion suggests that detention is required for a period longer than three months.

The Preamble of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PIT NDPS Act) states that it is “An Act to provide for detention in certain cases for the purpose of preventing illicit traffic in narcotic drugs and psychotropic substances and for matters connected therewith.”

Section 3 of PIT NDPS Act states that “The Central Government or a State Government, may, if satisfied, with respect to any person (including a foreigner) that, with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, it is necessary so to do, make an order directing that such person be detained.”¹⁰

Section 10 of PIT NDPS Act states that “Notwithstanding anything contained in this Act, any person (including a foreigner) in respect of whom an order of detention is made under this Act at any time before the [31st day of July, 1999], may be detained without obtaining, in accordance with the provisions of sub-clause (a) of clause (4) of article 22 of the Constitution, the opinion of an Advisory Board for a period longer than three months but not exceeding six months from the date of his detention, where the order of detention has been made against such person with a view to preventing him from engaging in illicit traffic in narcotic drugs and psychotropic substances, and the Central Government, is satisfied that such person engages or is likely to engage in illicit traffic in narcotic drugs and psychotropic substances into, out of,

⁹ *Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, No. 7 of 1980, INDIA CODE, https://www.indiacode.nic.in/bitstream/123456789/15394/1/blackmarketing_and_maintenance_of_supplies_of.pdf.*

¹⁰ *Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, No. 46 of 1988, INDIA CODE, <https://www.indiacode.nic.in/bitstream/123456789/1887/1/aA1988-46.pdf>.*

through or within any area highly vulnerable to such illicit traffic”

Section 11 of PIT NDPS Act states that “The maximum period for which any person may be detained in pursuance of any detention order to which the provisions of section 10 do not apply and which has been confirmed under clause (f) of section 9 shall be one year from the date of detention, and the maximum period for which any person may be detained in pursuance of any detention order to which the provisions of section 10 apply and which has been confirmed under clause (f) of section 9, read with sub-section (2) of section 10, shall be two years from the date of detention: Provided that nothing contained in this section shall affect the power of appropriate Government in either case to revoke or modify the detention order at any earlier time.”¹¹

Therefore, from the texts of the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 (PIT NDPS Act) it can be inferred that a person can be detained without obtaining, in accordance with the Article 22(4)(a) of the Indian Constitution, the opinion of an Advisory Board for a period longer than three months but not exceeding six months from the date of his detention. It also states that a person can be detained for a maximum period of 1 year in pursuance of any detention order to which Section 10 of PIT NDPS Act does not apply and a maximum period of 2 years in pursuance of any detention to which Section 10 of PIT NDPS Act applies.

Judicial Interpretation

A.K Gopalan vs State of Madras

The Court in this case gave a narrow interpretation of Article 21 of the Indian Constitution. The Court held that the procedure established by law means the procedure which is prescribed by any valid law and there is no such requirement or mandate that the law should be fair, just and reasonable.

The Court rejected the concept of “Due Process of Law” stating that the Indian Constitution deliberately used the phrase “procedure established by law”, therefore it is not necessary for

¹¹ *Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, No. 46 of 1988, INDIA CODE*, <https://www.indiacode.nic.in/bitstream/123456789/1887/1/aA1988-46.pdf>.

the law to follow due process. Due Process of law means that the procedure established by law should be fair, just and reasonable.

The Court also added that the rights guaranteed under Article 14, Article 19 and Article 21 are independent and mutually exclusive of each other. It means that a law affecting personal liberty under Article 21 need not to satisfy Article 14 or 19. The Court further added that Article 22 is a self-contained law and preventive detention is exclusively and specifically governed by Article 22. It means that if Article 22 requirements are satisfied, it is enough to make the detention valid. It need not to be in compliance with other fundamental rights i.e., Article 14, 19 and 21.

Maneka Gandhi vs Union of India

This case overruled the A.K Gopalan vs State of Madras case. The Court held that the “Procedure established by law” in Article 21 should be fair, just and reasonable. The Court incorporated the principle of “Due Process of Law” into the phrase “procedure established by law”. It means that any law that deprives any person of his life and personal liberty must satisfy the requirement of natural justice.

The Court also established an inter-relationship between Article 14, 19 and 21, which is called the “Golden Triangle of the Constitution”. The Court rejected the idea that they were a water tight compartment and mutually exclusive and held that they are interconnected. The Court also added that the law should impose reasonable restriction according to Article 19 and it should be non-arbitrary according to Article 14. This made a great impact on detention by mandating the preventive detention laws and the detention must be fair, just and reasonable.

Rekha vs State of Tamil Nadu

The Court in this case held that Preventive detention is repugnant to democratic ideas and personal liberty, therefore it should be used only in rarest cases. It also added that if the normal act can handle the situation, then it should be used instead of preventive detention laws, and the preventive detention law should be used only as a last resort.

The Court also distinguished between “Law & Order” and “Public Order”. The Court added that law and order affects an individual or a small group whereas public order affects the community at large, and preventive detention is only justified for public order. The Court

further added that the detention cannot be merely on a possibility of future crime, but there should be a real and proximate threat to the public order or national security. The Court also reiterated that the detention should be fair, just and reasonable as held in the “Maneka Gandhi vs UOI” case.

Wasiuddin Ahmed v. District Magistrate

The Court held that the ground of detention should be communicated to the detainee in accordance to Article 22(5) of the Indian Constitution, and it should be communicated in such a way that the detainee understands the grounds communicated. The Court also added that the grounds should be clear and specific and must not be vague and ambiguous. The Court also held that there should be no delay in the communication of the grounds. The Court further added that the preventive detention laws should strictly follow the procedural safeguards provided under Article 22, and also added that the safeguard under Article 22(5) is subjected to judicial review.

Challenges and Misuse of Preventive Detention

The system which preventive detention serves to protect against national security threats and public order disruptions faces misuse because authorities apply it in everyday situations. The laws become targets for abuse when authorities use them to solve minor problems.

Preventive detention functions as an exceptional tool which protects against major threats that endanger national security and disrupt public order. The authorities tend to use this power for purposes which go beyond what lawmakers originally intended. The laws which exist for serious emergencies get applied to regular situations which threatens both national security and the personal freedoms of citizens.

Preventive detention serves as a tool which authorities use for major security threats and public safety threats but they apply it incorrectly to typical criminal cases. The authorities treat small thefts together with local disputes and bootlegging activities and minor peace violations as threats to their public order system which traditional criminal law should handle. The courts have established through their rulings that "law and order" functions independently from "public order" which serves as the basis for preventive detention. The authorities create an unclear border which results in unlawful detention of people because the detention system

becomes uncontrolled.¹²

The Indian legal system defines public order and state security and preventive detention through broad terms which generate major constitutional conflicts. The undefined nature of these terms gives law enforcement agencies the ability to detain people without clear rules which results in random arrests that police forces might use to advance their political goals.

The imprecise terms allow the executive branch to interpret them through wide-ranging approaches. The authorities interpret these terms differently to establish detention practices which criminal law would normally handle. The use of detention becomes a major problem when authorities decide to imprison people who fight against politics or stage protests or who want to share their dissenting views. The absence of specific limits prevents people from identifying which dangers represent real threats and which ones serve administrative or political needs.¹³

The absence of clear information together with inadequate corrective measures makes the problem of abuse more severe. The judicial system faces obstacles when it attempts to review preventive detention because executive officials maintain authority to approve these detentions. The courts become involved at a stage when the detainee already experienced major restrictions on personal freedom and lost employment and destroyed their social standing so the legal solution becomes unattainable.

The practice of holding people against their will without proper justification stands as a major form of abuse. People often face detention because authorities make vague accusations which lack concrete supporting information. The legal system operates through a response system which generate orders based on historical patterns instead of showing actual future threats. Orders may be issued solely based on past behavior, political demonstrations, or typical law and order issues, which in other cases could be managed under standard criminal law. This transforms the preventive detention system into a disciplinary system which violates constitutional standards that is it shifts preventive detention from a protective measure to a

¹² *Abuse of Preventive Detention Laws*, DRISHTI IAS, <https://www.drishtiiias.com/daily-updates/daily-news-editorials/abuse-of-preventive-detention-laws/> (last visited Apr. 10, 2026).

¹³ Rekha V., *Preventive Detention and Violation of Human Rights with Special Reference to Tamil Nadu Act 14 of 1982: A Critical Analysis*, LAWCTOPUS, <https://www.lawctopus.com/academike/preventive-detention-and-violation-of-human-rights-with-special-reference-to-tamilnadu-act-14-of-1982-a-critical-analysis/> (last visited Apr. 12, 2026).

punitive one, which violates constitutional principles.

Another serious misuse lies in the non-communication or delayed communication of grounds of detention. Article 22 (5) mandates that the detainee must be informed of the grounds of detention as soon as possible to enable them to make an effective representation. However, in practice, authorities often supply grounds in an unclear, incomplete, or excessively technical manner, defeating the very purpose of this safeguard.

Preventive Detention is also misused through mechanical approval and prolonged detention. Detention authorities frequently act in a routine manner, without independent application of mind. Advisory Boards, which are meant to act as a safeguard against arbitrary detention, often function as rubber stamps, approving detention orders without rigorous scrutiny. This results in individuals being detained for long periods without trial¹⁴

In addition, preventive detention laws are misused to suppress political dissent and democratic freedoms. Journalists, activists, protestors, and opposition voices have at times been detained under preventive detention statutes for expressing views criticising government

The main problem with preventive detention laws exists because courts face difficulties when they attempt to monitor these laws effectively. The courts possess judicial review authority yet their actual power remains limited which enables unlawful detention practices to occur. The judicial system operates differently when it comes to criminal cases than it does in regular criminal cases because the law requires suspects to appear before a magistrate within one day while the court system actively monitors detention procedures. The executive branch maintains the highest authority when it comes to enforcing preventive detention laws. The courts maintain their focus on detention duration instead of assessing whether the detention process followed proper procedures. The Advisory Board receives approval before the grounds become official while the process requires organizations to communicate their grounds within the established timeframe. The court's restricted jurisdiction prevents it from offering effective protection to individual rights which results in weak personal liberty protection.¹⁵

¹⁴ D. Chauhan & S. Saxena, *Misuse of Preventive Detention Laws in India: A Constitutionality Analysis Under Article 22*, INDIAN J. L. & LEGAL RSCH., <https://www.ijllr.com/post/misuse-of-preventive-detention-laws-in-india-a-constitutionality-analysis-under-article-22> (last visited Apr. 14, 2026).

¹⁵ D. Chauhan & S. Saxena, *Misuse of Preventive Detention Laws in India: A Constitutionality Analysis Under Article 22*, INDIAN J. L. & LEGAL RSCH., <https://www.ijllr.com/post/misuse-of-preventive-detention-laws-in-india-a-constitutionality-analysis-under-article-22> (last visited Apr. 14, 2026).

While preventive detention is constitutionally sanctioned, its frequent misuse reflects a disturbing imbalance between state security and individual liberty. The arbitrary application, statutory violations, suppression of protest, and over-reliance on executive discretion have transformed preventive detention into a tool of abuse rather than necessity. Therefore, strict judicial scrutiny, accountability of detaining authorities, and adherence to legal protections are essential to prevent its misuse and to hold the principle and values of constitutional democracy.

Suggestions and Recommendations

- The legal framework of the preventive detention's laws should be reformed and made clear.
- The scope of Judicial review should be expanded. The Courts should look into the question of adequacy or correctness of the detention and not only examine whether procedural requirements have been followed.
- There should be stringent and regular scrutiny of the preventive detention cases by the Judiciary and also periodical judicial review on these cases.
- Introduction of stringent punishments and accountability for those executives who misuse the preventive detention laws.
- Proper compliance with the safeguards provided under Article 22 of the Indian Constitution for preventive detention.

Conclusion

Preventive detention remains one of the most controversial features of the Indian constitutional framework, reflecting a persistent tension between individual liberty and state security. The Indian Constitution through Article 22 establishes the foundation for these preventive detention laws as it allows authorities to detain people without holding trial or court proceedings yet provides specific procedural safeguards which must be followed. The National Security Act from 1980 and other various national, and state laws enable the executives to use these powers along with great discretion.

The challenges surrounding preventive detention laws include lack of transparency, excessive executive discretion, limited judicial oversight. The judicial system expanded the preventive detention legal framework and its procedural fairness through landmark cases like *A.K. Gopalan v. State of Madras* and *Maneka Gandhi v. Union of India* which set important legal precedents. The courts tried to harmonize and balance preventive detention with fundamental rights under Article 21 of the Indian Constitution through focusing on establishing due process and reasonable standards. However, judicial review often remains limited to procedural compliance rather than the fairness, reasonableness and correctiveness of the procedural safeguards.

The research highlights that preventive detention laws face a high risk of being exploited through misuse and wrongful application. The system shows multiple weak points because it allows people to get arrested without proper cause and grounds and it uses unclear criteria for detention which leads to arbitrary detention and its advisory board takes too long to review cases and instead of using such laws for genuine threats to public order and national security, they are used for *Malafide* purposes. This raise concerns as it violates basic human rights such as personal liberty, freedom of speech, protection against arbitrary arrest, and the right to protection from unlawful detention.

Although the Constitution provides safeguards which include detention authority to communicate the reasons for detention, detainee right to legal representation and the advisory boards to conduct review on these cases yet these mechanisms fail to work effectively and their implementation is inconsistent. Therefore, the procedural safeguards which are granted by the constitution grants procedural safeguards fail to provide protection to the detainee during the actual implementation and detention.

In conclusion, while preventive detention laws may be constitutionally valid and is necessary in certain contexts, their implementation and application require a stringent scrutiny and periodical judicial intervention. There must be an equilibrium between the protection of national security and fundamental rights of the detainee i.e., the fundamental rights of the detainee should not be infringed for the purpose of national security. Therefore, the legal framework should be reformed in such a way that the procedural safeguards are properly followed and implemented, it ensures transparency, the excessive discretion power of the executive is dealt with and narrowing the scope of application of preventive detention to major

and serious threats, in order to make preventive detention more meaningful and to avoid its misuse.