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# Balancing Fundamental Rights and State Power: A Critical Study of Preventive Detention and Compensation for Wrongful Arrests in India

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## ABSTRACT

*The Indian Constitution enshrines a robust framework of fundamental rights designed to safeguard individual liberty and dignity. However, the State retains significant powers such as preventive detention that can restrict personal freedom in the interest of national security, public order, or the maintenance of law. This study critically examines the tension between these competing interests by exploring two interconnected legal domains: preventive detention and compensation for wrongful arrests. While preventive detention laws such as the National Security Act (NSA) and the Unlawful Activities (Prevention) Act (UAPA) are intended to pre-empt threats, their misuse has led to serious human rights concerns, including arbitrary arrests, prolonged detention without trial, and denial of legal remedies.*

*The second focus of this study is the judicial response to wrongful arrests and the mechanisms, or lack thereof, for compensation. Although Indian jurisprudence recognizes the right to compensation under Article 21 for unlawful detention, the absence of a uniform statutory framework leaves many victims without adequate redress. This paper analyses landmark Supreme Court judgments and international legal standards to evaluate the effectiveness of existing safeguards.*

*Through doctrinal analysis and case studies, this research argues that a disproportionate emphasis on state security without adequate accountability mechanisms undermines constitutional guarantees. It calls for the introduction of stronger judicial oversight, legislative reforms to limit the scope of preventive detention, and the establishment of a comprehensive compensation framework for victims of wrongful arrest and detention. The study aims to contribute to the ongoing discourse on harmonizing individual rights with the legitimate needs of state power in a constitutional democracy.*

**Keywords:** Preventive Detention, Fundamental Rights, Article 21, Wrongful Arrest, Compensation, National Security Act, UAPA, Constitutional Law, Human Rights, Judicial Oversight.

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## I. INTRODUCTION

### A. Background and context of preventive detention in India

Preventive detention in India has deep historical roots, originating in colonial-era laws such as the Bengal Regulation III of 1818, which allowed the British administration to detain individuals without trial. Despite India's transition to a democratic republic, the Constitution retained provisions for preventive detention under Article 22, permitting the state to detain individuals without formal charges or a trial for a limited period. The rationale was to enable swift state action against potential threats to national security, public order, or foreign relations. Over the years, various legislations—such as the Maintenance of Internal Security Act (MISA), the Terrorist and Disruptive Activities (Prevention) Act (TADA), and currently, the National Security Act (NSA) and the Unlawful Activities (Prevention) Act (UAPA)—have come under scrutiny for their potential misuse. Critics argue that these laws often bypass due process, enabling arbitrary detentions and the suppression of dissent. While the state justifies these powers as necessary to protect public interest, their use often leads to significant human rights violations. This context establishes the foundation for a critical inquiry into how preventive detention operates within India's constitutional framework, raising important questions about its compatibility with democratic principles and individual liberties.<sup>3</sup>

### B. Conflict between state security and individual liberties

A fundamental constitutional tension in India lies in balancing state security with individual liberties. The Constitution guarantees various rights, including equality before the law (Article 14), freedom of speech and expression (Article 19), and the right to life and personal liberty (Article 21). However, preventive detention laws—by permitting detention without trial based on suspicion—often prioritize state security over individual rights. This creates a constitutional paradox: the state, in its bid to protect the public, may itself become the violator of rights it is meant to uphold. In politically sensitive or communal contexts, preventive detention has frequently been used to silence dissent or control unrest, sometimes without substantial evidence or proper legal recourse.<sup>4</sup> The judiciary's limited scope for review in these matters, especially due to the "subjective satisfaction" of the detaining authority, further dilutes accountability. Such unchecked power threatens the constitutional promise of liberty and due process. While security is an essential function of the state, it must not come at the cost of eroding fundamental freedoms. This study seeks to interrogate this conflict, analysing how far

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<sup>3</sup> V.N. Shukla, *Constitution of India* 92 (Mahendra P. Singh ed., Eastern Book Company, Lucknow, 13th edn., 2021).

<sup>4</sup> H.M. Seervai, *Constitutional Law of India* 686 (Universal Law Publishing Co., New Delhi, 4th edn., 2013).

preventive detention measures conform to constitutional norms and whether adequate legal safeguards exist to protect individuals against misuse of power.

### **C. Research objectives and key questions**

This study aims to critically examine the legal and constitutional dimensions of preventive detention and the redressal mechanisms for wrongful arrests in India. The principal objective is to evaluate whether the existing framework effectively balances the need for state security with the protection of individual rights. Specific aims include analysing the evolution and application of preventive detention laws, assessing the adequacy of safeguards to prevent misuse, and evaluating the effectiveness of judicial remedies available to victims of wrongful detention.<sup>5</sup>

Key research questions include:

1. How is preventive detention legally justified within the Indian constitutional framework?
2. What are the implications of such detention for fundamental rights and human dignity?
3. Are existing legal and procedural safeguards sufficient to prevent abuse of power?
4. What remedies are available for individuals wrongfully arrested or detained?
5. Should India introduce a statutory compensation mechanism for wrongful detention?

By addressing these questions, the study seeks to uncover systemic issues within the preventive detention regime, assess judicial trends, and recommend reforms to align legal practice with constitutional values and international human rights standards.

### **D. Research methodology and scope of the study**

This research adopts a doctrinal legal methodology, focusing on the analysis of constitutional provisions, statutory frameworks, judicial decisions, and academic literature related to preventive detention and wrongful arrests in India. Primary sources include the Constitution of India—particularly Articles 21 and 22—along with relevant legislations such as The National Security Act (NSA) and The Unlawful Activities (Prevention) Act (UAPA).<sup>6</sup> Key Supreme Court and High Court judgments are examined to trace judicial trends and interpretations. Secondary sources such as law commission reports, legal commentaries, international human rights documents, and academic journals provide critical insights into the subject.

A qualitative approach is used to analyze selected case studies involving individuals affected

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<sup>5</sup> Basu, D.D., *Law of Preventive Detention in India* 45 (LexisNexis, New Delhi, 2nd edn., 2015).

<sup>6</sup> Rajeev Dhavan, “Preventive Detention and Judicial Review: A Functional Analysis” 28 *Journal of the Indian Law Institute* 135–162 (1986).

by preventive detention or wrongful arrest, illustrating how legal provisions are applied in practice. The scope is limited to the Indian context but incorporates comparative analysis from jurisdictions like the United Kingdom and the United States, to explore best practices and alternative models. The study also evaluates the absence of a statutory compensation mechanism in India and the judiciary's role in awarding compensation under Article 21.

While the research is limited by the lack of comprehensive official data on wrongful detentions, it aims to contribute meaningfully to legal scholarship and public policy by offering grounded recommendations for legal and institutional reform.

## **II. THE BEHAVIOURAL FOUNDATION OF LEGAL CHANGE**

### **A. Constitutional provisions (Article 22 & Seventh Schedule)**

Article 22 of the Indian Constitution is the primary provision governing preventive detention. While the Constitution guarantees several fundamental rights, Article 22 makes a critical distinction between punitive and preventive detention. Clauses (1) and (2) of Article 22 protect individuals from arbitrary arrest and ensure access to legal counsel and prompt judicial review in cases of ordinary arrest. However, Clauses (3) to (7) create exceptions for preventive detention, allowing the State to detain individuals without trial under certain conditions. A person can be detained for up to three months without consulting an Advisory Board of judges, and this period can be extended based on the Board's opinion.<sup>7</sup>

Further, Entry 9 of List I (Union List) and Entry 3 of List III (Concurrent List) in the Seventh Schedule grant both the Union and the States the authority to legislate on preventive detention. This dual legislative competence has led to the enactment of various central and state-level laws. While the framers of the Constitution included these provisions to ensure national security and public order, critics argue that Article 22 legitimizes a parallel system of justice that circumvents the due process norms guaranteed under Article 21. Thus, constitutional provisions themselves reflect a precarious balance between collective security and individual liberty, leaving room for legal and judicial scrutiny.<sup>8</sup>

### **B. Statutory basis: preventive detention laws (NSA, UAPA, State-specific laws)**

India has enacted several statutory frameworks for preventive detention, with the National Security Act (NSA), 1980, and the Unlawful Activities (Prevention) Act (UAPA), 1967, being the most prominent. The NSA empowers central and state governments to detain individuals

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<sup>7</sup> M.P. Jain, *Indian Constitutional Law* 1047 (LexisNexis, Gurugram, 8th edn., 2018).

<sup>8</sup> S.P. Sathe, "Civil Liberties and Preventive Detention" 20 *Journal of the Indian Law Institute* 335 (1978).

deemed a threat to national security or public order. It allows detention without charges or trial for up to 12 months, with limited judicial oversight. The detainee may not have access to full legal representation or the evidence against them, invoking concerns about transparency and fairness.<sup>9</sup>

The UAPA, originally introduced to curb unlawful associations, has evolved into a more stringent anti-terror law through multiple amendments. It allows detention for extended periods without formal charges and makes bail provisions exceptionally difficult. Though technically a penal statute, UAPA's procedural design often operates in a preventive manner, with individuals being incarcerated based on suspicion rather than proven guilt. Apart from central laws, several state-specific laws also govern preventive detention, such as the Goondas Acts in Tamil Nadu and Karnataka. These are often applied broadly, targeting petty criminals and habitual offenders, sometimes disproportionately. Critics argue that these laws are vague, overly broad, and susceptible to misuse—especially in politically or communally sensitive situations. While the state justifies their use on grounds of preempting threats, the lack of procedural safeguards, transparency, and time-bound judicial review has raised significant human rights concerns, necessitating stronger checks and reforms.<sup>10</sup>

### **C. Judicial trends: Supreme court and High Court rulings**

#### **1. Judicial deference to executive discretion**

Historically, Indian courts have shown significant deference to the executive in matters of preventive detention, especially during national emergencies or perceived threats to public order. Courts often rely on the principle of “subjective satisfaction” of the detaining authority, meaning that as long as the authority is satisfied that detention is necessary, courts are hesitant to intervene. This deference limits the scope of judicial review, especially when the government cites reasons related to national security or public interest. Although courts have occasionally emphasized procedural compliance (such as timely communication of grounds for detention), they rarely question the substantive justification of detention. This pattern has been criticized for enabling unchecked state power and compromising constitutional safeguards. However, there have been exceptions, particularly when procedural lapses are evident or when detentions are clearly arbitrary.<sup>11</sup> Yet overall, judicial reluctance to scrutinize the necessity or proportionality of detention undermines the principle of constitutional accountability.

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<sup>9</sup> K.D. Gaur, *Textbook on the Indian Penal Code* 48 (Lexis Nexis, New Delhi, 7th edn., 2020).

<sup>10</sup> Anjana Chatterjee, “Preventive Detention and Human Rights: A Critical Analysis of UAPA and NSA” 56 *Journal of the Indian Law Institute* 103 (2014).

<sup>11</sup> Durga Das Basu, *Constitutional Law of India* 1522 (Lexis Nexis Butterworths Wadhwa, Nagpur, 9th edn., 2013).

## 2. Landmark cases on arbitrary detention (e.g., ADM Jabalpur, A.K. Roy)

Two landmark Supreme Court cases illustrate the evolving judicial stance on preventive detention. In *ADM Jabalpur v. Shivkant Shukla* (1976), during the Emergency, the Court infamously ruled that the right to life under Article 21 could be suspended and that no remedy existed against unlawful detention. This judgment is widely criticized and was later overruled in *Puttaswamy* (2017) as a deviation from constitutional morality. In contrast, in *A.K. Roy v. Union of India* (1982), the Court struck a more balanced approach, recognizing the gravity of preventive detention but emphasizing procedural safeguards. It held that while preventive detention is constitutionally valid, it must not undermine the essence of liberty and due process.<sup>12</sup> The Court called for the minimum observance of fairness and reasonableness, especially in the communication of grounds and the role of the Advisory Board. These cases reflect the tension within the judiciary—between upholding state security measures and protecting individual freedoms.

### D. Safeguards against misuse: procedural requirements and limitations

To prevent abuse of preventive detention powers, the Constitution and statutes impose certain procedural safeguards, though critics argue they remain insufficient. Under Article 22(5), a detained individual must be informed "as soon as may be" of the grounds of detention and must be given the earliest opportunity to make a representation against it. However, the right to be informed is not absolute; information considered against public interest may be withheld, limiting the detainee's ability to respond effectively.<sup>13</sup>

An Advisory Board, comprising judges of a High Court, must review the detention within three months. Still, the hearings are often held in camera, without detainees or their legal representatives present, raising questions about fairness. Statutory laws like the NSA and UAPA also have internal review mechanisms, but these often function as mere formalities rather than robust checks. Courts have emphasized that any delay in providing grounds, failure to forward representations, or procedural lapses can invalidate detention. However, enforcement remains inconsistent. Moreover, detainees frequently lack access to timely legal aid, particularly in remote or underprivileged regions. Despite these safeguards, the lack of transparency, broad discretionary power, and limited judicial oversight have led to widespread misuse. Reforms are urgently needed to ensure that procedural protections are not merely symbolic but offer real and

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<sup>12</sup> Rajeev Dhavan, "The Supreme Court of India and Judicial Activism: Between Legitimacy and Populism" 33 *Journal of the Indian Law Institute* 393 (1991).

<sup>13</sup> J.N. Pandey, *The Constitutional Law of India* 254 (Central Law Agency, Allahabad, 52nd edn., 2015).

effective safeguards against arbitrary state action.<sup>14</sup>

### III. PREVENTIVE DETENTION VS. FUNDAMENTAL RIGHTS: A CONSTITUTIONAL DILEMMA

#### A. Article 21 (right to life and personal liberty) and its intersection with preventive detention

Article 21 of the Indian Constitution guarantees that no person shall be deprived of their life or personal liberty except according to a procedure established by law. This article forms the cornerstone of all fundamental rights and has been interpreted by the judiciary to encompass a wide range of civil liberties, including the right to fair trial, dignity, and protection from arbitrary arrest. However, preventive detention laws appear to stand in tension with this right, as they permit detention without trial, often based on mere suspicion, not evidence. Initially, the phrase “procedure established by law” allowed for narrow procedural compliance. However, following the landmark judgment in *Maneka Gandhi v. Union of India* (1978), the Supreme Court held that the procedure must be fair, just, and reasonable, thus expanding the scope of Article 21. Despite this progressive interpretation, preventive detention laws such as the NSA and UAPA continue to operate under older paradigms, where procedural justice is often bypassed under the pretext of urgency or national interest. This disconnect between constitutional ideals and statutory practice creates a paradox: while Article 21 ensures liberty, preventive detention legitimizes its suspension. The judiciary’s inconsistent approach to enforcing Article 21 protections in preventive detention cases further deepens this dilemma. This intersection requires urgent constitutional introspection to ensure that national security does not override individual dignity and due process.<sup>15</sup>

#### B. Due process vs. procedural protections: comparative perspectives

The Indian Constitution distinguishes between “due process of law” (as used in the U.S. Constitution) and “procedure established by law.” While the U.S. framework demands substantive and procedural fairness, India traditionally adhered to the narrower requirement of procedural compliance. However, post-*Maneka Gandhi*, Indian jurisprudence has increasingly aligned with substantive due process, emphasizing fairness, reasonableness, and non-arbitrariness. In comparative terms, the United States provides more robust safeguards against preventive detention. Under U.S. constitutional law, habeas corpus is a powerful remedy against

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<sup>14</sup> Niraj Kumar, “Procedural Safeguards Under Preventive Detention Laws: An Analysis” 45 *Journal of the Indian Law Institute* 127 (2003).

<sup>15</sup> Upendra Baxi, “The Little Done, the Vast Undone: Reflections on Reading the Supreme Court Today” 25 *Journal of the Indian Law Institute* 7 (1983).

unlawful detention, and individuals are entitled to a speedy trial, legal representation, and detailed access to charges.<sup>16</sup> Preventive detention is applied very narrowly and only in extreme national security cases, with strict judicial oversight. Similarly, in the United Kingdom, while preventive detention is permitted under special circumstances (e.g., terrorism-related cases), it is subject to rigorous parliamentary and judicial scrutiny. The detained individuals have access to courts, legal counsel, and often, independent commissions. In contrast, India's procedural protections under Article 22 for preventive detention—such as delayed access to grounds of detention and limited legal representation—are far weaker. Advisory Boards reviewing detention often operate with minimal transparency, and courts show significant deference to executive discretion. This comparative perspective highlights the need for reform in India's preventive detention regime to align more closely with international human rights standards and constitutional guarantees, ensuring that procedure is not a substitute for justice.<sup>17</sup>

### **C. Impact on freedom (Article 19) and right against arbitrary arrest (Article 22)**

Preventive detention laws also conflict with other fundamental rights, particularly Article 19 and Article 22. Article 19 guarantees citizens freedoms such as speech, assembly, movement, and association—rights that are often curtailed under the guise of maintaining public order. Preventive detention is frequently used against activists, journalists, or political opponents, effectively chilling dissent and undermining the democratic ethos. While Article 19 allows for reasonable restrictions in the interest of public order and security, preventive detention bypasses the requirement of judicial scrutiny and evidence-based justification, enabling broad and subjective interpretations.<sup>18</sup> This undermines the “reasonableness” test laid down by courts to safeguard fundamental freedoms. Article 22, on the other hand, is intended to offer protections against arbitrary arrest and detention. Clauses (1) and (2) guarantee the right to be informed of the reasons for arrest, to consult a lawyer, and to be presented before a magistrate within 24 hours. However, Article 22(3) explicitly excludes preventive detention from these protections, thus creating a constitutional exception that weakens safeguards against misuse. Although procedural safeguards like communication of detention grounds and Advisory Board review exist, they are often inadequate, delayed, or selectively applied. As a result, preventive detention laws have led to systematic erosion of civil liberties, disproportionately affecting marginalized communities. This ongoing conflict between preventive detention and fundamental rights raises

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<sup>16</sup> M.P. Jain, *Indian Constitutional Law* 1224 (LexisNexis, Gurgaon, 8th edn., 2018).

<sup>17</sup> Pranab Kumar Panday, “Preventive Detention and Constitutional Dilemma in India: A Comparative Analysis” 49 *Journal of the Indian Law Institute* 165 (2007).

<sup>18</sup> V.N. Shukla, *Constitution of India*, 300–305 (EBC Publishing, Lucknow, 13th edn., 2020).

critical questions about the true nature of freedom and justice in a constitutional democracy.<sup>19</sup>

#### **D. Public safety vs. individual rights: weighing the State's justifications**

The primary justification for preventive detention lies in the State's duty to ensure public safety, national security, and public order. Governments argue that preventive detention laws are necessary to neutralize imminent threats that cannot be addressed through regular criminal procedure due to urgency, lack of concrete evidence, or sensitive intelligence sources. However, this preventive logic often leads to pre-emptive injustice, where individuals are detained based on suspicion or profiling rather than concrete acts. While the need for rapid state response in cases of terrorism, communal violence, or organized crime is understandable, the lack of stringent checks opens the door to misuse and arbitrary action. Furthermore, the State's invocation of security concerns often lacks transparency and accountability.<sup>20</sup> Detaining authorities are rarely held responsible for wrongful detention, and affected individuals frequently have no recourse to compensation or rehabilitation. This unchecked power erodes the foundational principles of liberty and fairness enshrined in the Constitution. Balancing public safety with individual rights requires a proportionate and evidence-based approach. Instead of relying solely on preventive detention, the State should strengthen investigative capacity, expedite trials, and reinforce procedural fairness. Safeguards such as mandatory judicial review, time-bound representation, and post-detention remedies can help strike a better balance.<sup>21</sup>

### **IV. WRONGFUL ARRESTS AND THE RIGHT TO COMPENSATION**

#### **A. Legal basis for compensation (constitutional remedies, tort law)**

In India, the right to compensation for wrongful arrest or detention is not explicitly codified in statute but has evolved through constitutional interpretation and tort jurisprudence. The foundation lies in Article 32 and Article 226 of the Constitution, which empower the Supreme Court and High Courts to issue appropriate remedies—including monetary compensation—for the violation of fundamental rights under Article 21. These remedies are not merely declaratory but can be compensatory when personal liberty is unjustly curtailed by the State. From the perspective of tort law, wrongful arrest falls under the broader category of false imprisonment, where a person's liberty is restricted without lawful justification. In such cases, the aggrieved

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<sup>19</sup> Gautam Bhatia, "Freedom from Arbitrary Detention: A Fundamental Right?" 59 *Journal of the Indian Law Institute* 213 (2017).

<sup>20</sup> Durga Das Basu, *Commentary on the Constitution of India*, Vol. 3, 2462 (LexisNexis, Gurgaon, 9th edn., 2012).

<sup>21</sup> Ujjwal Kumar Singh, "Preventive Detention and the Democratic State: A Paradox Explored" 43 *Journal of the Indian Law Institute* 91 (2001).

party may seek civil damages against the detaining authority. However, suing government officials under tort law in India is rare, due to doctrines of sovereign immunity and procedural hurdles.

The Supreme Court, in several landmark judgments, has treated the violation of personal liberty not just as a moral wrong but a constitutional tort, giving rise to enforceable claims against the State. This evolving jurisprudence represents a shift from viewing compensation as a matter of benevolence or *ex gratia*, to recognizing it as a legal right arising from the breach of fundamental freedoms. Nonetheless, the absence of a comprehensive statutory framework or codified damages regime continues to impede consistent and predictable enforcement.<sup>22</sup>

### **B. Judicial activism in awarding compensation (e.g., Nilabati Behera, Rudul Sah)**

Judicial activism in India has played a crucial role in establishing the right to compensation for wrongful arrest and detention. In a series of progressive judgments, the Supreme Court and High Courts have held that monetary compensation can be awarded for the violation of fundamental rights, especially under Article 21.

The landmark case of *Rudul Sah v. State of Bihar (1983)*<sup>23</sup> was a turning point. The petitioner had been kept in jail for 14 years even after his acquittal. The Supreme Court awarded compensation, stating that the right to life includes the right to live with dignity, and unlawful detention is a direct affront to this right. This judgment marked the beginning of constitutional tort liability in India. The another seminal judgment, *Nilabati Behera v. State of Orissa (1993)*,<sup>24</sup> reinforced this principle. The petitioner's son died in police custody, and the Court awarded compensation, observing that the State is strictly liable for the custodial death of a citizen. The Court stressed that the payment was not a substitute for punitive action but a public law remedy for state-inflicted injury. These cases reflect the judiciary's proactive role in bridging the gap between abstract constitutional rights and tangible remedies. However, the reliance on judicial discretion, rather than a statutory entitlement, has made compensation unpredictable and inconsistent. Despite strong precedents, victims often face long delays and bureaucratic resistance, underscoring the need for institutionalizing compensation mechanisms through legislation or policy reform.

### **C. Challenges in enforcing compensation: institutional barriers and delays**

While Indian courts have recognized the right to compensation for wrongful arrest, enforcement

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<sup>22</sup> Upendra Baxi, "The Constitutional Right to Compensation for Wrongful Arrest: Emerging Judicial Trends" 38 *Journal of the Indian Law Institute* 155 (1996).

<sup>23</sup> (1983) 4 SCC 141.

<sup>24</sup> 1993 SCR (2) 581.

remains fraught with challenges. The absence of a statutory compensation framework means that victims must rely heavily on judicial discretion, which varies across cases and jurisdictions. This leads to inconsistent outcomes and legal uncertainty.<sup>25</sup> One of the biggest institutional barriers is the lack of accountability mechanisms within law enforcement agencies. Police officers who engage in unlawful arrests or detentions are rarely subject to departmental or criminal action, creating a culture of impunity. Internal inquiries are often delayed, and victims are forced to navigate complex and time-consuming legal procedures to secure redress. Further, delays in the judicial process can render compensation illusory. Victims often wait for years to receive judgments, and even after a favorable verdict, bureaucratic delays in disbursing compensation are common. State governments sometimes challenge compensation orders in higher courts, prolonging the victim's ordeal. There is also a lack of awareness among the public about their rights and the legal recourses available to them. Legal aid remains inadequate, especially for marginalized communities that are disproportionately affected by wrongful arrests.

Moreover, budgetary constraints and administrative reluctance often result in non-compliance with court orders. These systemic issues highlight the urgent need for a codified and time-bound mechanism for awarding and enforcing compensation, including fast-track procedures, fixed guidelines, and independent oversight bodies to ensure that constitutional remedies are meaningful and accessible.<sup>26</sup>

#### **D. Comparative analysis: compensation mechanisms in other jurisdictions**

A comparative analysis reveals that many democracies have statutory frameworks for compensating victims of wrongful arrest, reflecting a stronger commitment to accountability and human rights. In the United Kingdom, the Criminal Justice Act 1988 provides compensation for miscarriage of justice. The Home Secretary may award compensation to those who have been wrongfully convicted, with amounts determined based on length of imprisonment and loss suffered. While criticized for procedural stringency, the UK model at least offers a formalized path to relief.<sup>27</sup> In the United States, individuals can file civil suits under 42 U.S.C. §1983 for violations of constitutional rights by state actors, including wrongful arrests. Courts have frequently awarded significant damages for false imprisonment, police

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<sup>25</sup> Justice R.C. Lahoti, *Powers, Privileges and Immunities of Police Officers in India*, 211 (Eastern Book Company, Lucknow, 2nd edn., 2007).

<sup>26</sup> Anup Surendranath, "Constitutional Tort and the Right to Compensation: Indian Judicial Response and the Way Forward" 52 *Journal of the Indian Law Institute* 113 (2010).

<sup>27</sup> Clive Walker, "Miscarriages of Justice in Potentially Capital Cases," in *The Death Penalty: Beyond Abolition* 181 (Roger Hood ed., Oxford University Press, 1997).

misconduct, and denial of due process. Some states also have dedicated compensation statutes for wrongful incarceration, with fixed compensation rates. In Germany, the Federal Ministry of Justice operates a streamlined compensation scheme, under which victims of unjust detention are eligible for a fixed amount per day of imprisonment, with additional allowances for legal expenses and psychological harm.

Compared to these models, India's approach remains ad hoc and heavily reliant on litigation. The absence of a legislative scheme forces victims to undergo prolonged court battles, which is both emotionally and financially taxing. Learning from international best practices, India could benefit from establishing a comprehensive compensation statute, incorporating fixed rates, independent claims commissions, and timelines for resolution, thus transforming judicial precedents into systemic justice.<sup>28</sup>

## **V. CRITICAL EVALUATION: ACCOUNTABILITY, REFORM, AND THE WAY FORWARD**

### **A. Assessing the effectiveness of safeguards against abuse of power**

Despite constitutional and statutory provisions aimed at preventing the misuse of preventive detention and arbitrary arrest, their practical effectiveness remains questionable. Article 22 of the Indian Constitution and various procedural requirements under laws like the National Security Act (NSA) and Unlawful Activities Prevention Act (UAPA) are intended to act as safeguards. These include communication of detention grounds, advisory board reviews, and time-bound detentions. However, in reality, these safeguards are often circumvented or applied superficially.<sup>29</sup>

Judicial review, while theoretically robust, tends to defer excessively to the executive's subjective satisfaction. Courts are often reluctant to interfere in matters involving "national security" or "public order," which are vaguely defined and easily exploited. Advisory Boards, which are supposed to provide an independent check, often function without transparency and lack judicial independence.

Furthermore, mechanisms for accountability—such as departmental inquiries or criminal prosecution against erring officers—are rarely invoked. This fosters a culture of impunity, where misuse of power goes unpunished. The absence of a statutory framework for compensating victims and the lack of institutional support for challenging wrongful detentions

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<sup>28</sup> Kai Ambos, *Treatise on International Criminal Law: Volume II – The Crimes and Sentencing* 458 (Oxford University Press, 2014).

<sup>29</sup> A.G. Noorani, *Constitutional Questions in India: The President, Parliament and the States* 89 (Oxford University Press, 2000).

further weaken safeguards.<sup>30</sup>

Overall, the existing system is structurally skewed in favor of the state, making individual redress difficult and rare. Without independent oversight, meaningful enforcement of safeguards, and institutional accountability, these protective measures remain inadequate and ineffective in curbing the abuse of state power.<sup>31</sup>

### **B. Need for legislative and judicial reforms**

There is a pressing need for both legislative and judicial reforms to address the systemic flaws in India's preventive detention and arrest framework. Legislatively, India lacks a comprehensive and uniform law that sets clear standards for detention, procedural safeguards, and compensation. The existing patchwork of central and state laws—such as NSA and various state-specific detention statutes—should be revisited to harmonize them with constitutional values and international human rights norms. A robust reform agenda should include precise definitions of “public order” and “national security”, mandatory judicial oversight of detentions beyond a certain period, and transparent functioning of Advisory Boards with retired judges and independent members. Statutory limitations on the number of extensions and grounds for detention should be made non-negotiable.<sup>32</sup> Judicial reforms are equally critical. The Supreme Court in *Maneka Gandhi Vs. Union of India* (1978) Courts must move beyond passive oversight and adopt a more rights-centered approach. The principle of substantive due process should guide the review of preventive detention cases. Moreover, the judiciary should develop guidelines for proportionality, reasonableness, and accountability when determining the legality of detentions.<sup>33</sup> Introducing special fast-track benches for hearing preventive detention cases and wrongful arrest claims could reduce delays and improve access to justice. Additionally, training judicial officers on human rights jurisprudence and accountability norms will ensure better adjudication.

### **C. Strengthening remedies for victims of wrongful arrests**

The victims of wrongful arrest in India face a double injustice: the trauma of unlawful detention and the lack of adequate redress. Strengthening remedies requires both legal and institutional reforms to ensure swift, meaningful, and enforceable compensation. First, there must be a statutory right to compensation for wrongful arrest and detention.<sup>34</sup> A central law should define

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<sup>30</sup> Justice Malimath Committee Report on Reforms of Criminal Justice System Vol. I., (2003).

<sup>31</sup> Human Rights Watch, *Bound by Brotherhood: India's Failure to Enforce Police Accountability* (2016), available at [www.hrw.org](http://www.hrw.org) (last visited on June 10, 2025).

<sup>32</sup> National Security Act, 1980; M. P. Jain, *Indian Constitutional Law* 1305 (8th ed., LexisNexis 2022).

<sup>33</sup> (1978) 1 SCC 248.

<sup>34</sup> Dieter Grimm, *Compensation for Unlawful Detention in Germany: A Constitutional Perspective*, in *Comparative*

wrongful arrest, lay down eligibility criteria, and prescribe a uniform compensation structure, much like Germany's per-day compensation model. Such a statute should also empower independent commissions or ombudsmen to adjudicate claims. Second, police accountability must be institutionalized. Mechanisms such as the Police Complaints Authority (PCA), currently underutilized, should be made effective through legal empowerment, dedicated staff, and protection from political interference. Officers found responsible for mala fide arrests should face disciplinary and criminal consequences, including fines or suspension. Third, access to justice must be improved for vulnerable groups.<sup>35</sup> This includes expanding legal aid, ensuring timely access to legal counsel, and providing psychological and social support to victim's post-detention. Courts must be encouraged to award exemplary damages in cases of deliberate misuse, as a deterrent to future violations. Lastly, the judiciary should evolve a clear jurisprudential framework for constitutional torts, which standardizes compensation in public law remedies. Strengthening such remedies is essential not only for individual justice but also for restoring public confidence in the legal system.<sup>36</sup>

#### **D. Recommendations for balancing security and liberty**

Balancing national security and individual liberty is a complex but necessary task for any democratic state. In India, this balance has often tilted disproportionately in favor of the state, especially under preventive detention and anti-terror laws. To restore equilibrium, the following recommendations are proposed:

- a) Introduce comprehensive legislation that sets strict procedural and substantive safeguards for preventive detention. These should include mandatory judicial authorization, periodic review, and limits on the duration of detention without trial.
- b) Establish independent oversight bodies—such as human rights commissions or judicial panels—to monitor the implementation of preventive detention laws and ensure compliance with constitutional principles.
- c) Train police, prosecutors, and judicial officers on human rights standards, constitutional values, and proportionality tests. Implement a zero-tolerance policy for misuse of detention powers, including disciplinary action and criminal liability.

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*Constitutional Law* (Oxford University Press, 1st edn., 210 (2010).

<sup>35</sup> Law Commission of India, Report No. 277, *Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, August (2018).

<sup>36</sup> National Legal Services Authority (NALSA), *Access to Justice for Marginalized* (Annual Report 2021–22); Basu, D.D., *Law of the Constitution of India*, Vol. 2, p. 1362.

- d) Encourage courts to exercise active and consistent scrutiny of detention cases. The judiciary should not shy away from striking down arbitrary laws and awarding meaningful compensation to victims.
- e) Establish a fast-track compensation mechanism for wrongful arrests and ensure victims receive not just financial relief but also rehabilitation, including public apologies, legal aid, and support services.

## **VI. CONCLUSION**

This study critically examined the delicate balance between state power and fundamental rights in the context of preventive detention and wrongful arrests in India. The analysis reveals that while India's legal framework provides formal safeguards against arbitrary detention under Articles 21 and 22 of the Constitution, their practical implementation often falls short. Preventive detention laws such as the NSA and UAPA, though intended to ensure national security, are frequently misused, with vague definitions of "public order" and insufficient procedural oversight leading to a pattern of overreach by executive authorities. Judicial interpretations, although occasionally assertive in protecting liberties—as seen in *Rudul Sah* and *Nilabati Behera*—have largely been marked by judicial deference in preventive detention cases, especially during national emergencies or politically sensitive periods. This has weakened the impact of constitutional guarantees and diluted procedural protections. The study also highlights the lack of a robust, institutionalized compensation mechanism for victims of wrongful arrests. The compensation is often awarded at the court's discretion, leading to inconsistent outcomes and delayed justice. Victims face significant barriers in seeking redress, including limited legal awareness, procedural complexities, and state resistance. Furthermore, the absence of a unified legal framework for compensation, coupled with insufficient police accountability and ineffective oversight bodies, compounds the problem. These findings indicate a pressing need for structural and legislative reforms, judicial recalibration, and enhanced institutional safeguards to ensure that security imperatives do not override constitutional liberties.

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