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# Criminalising Dissent Preventive Detention and the Shrinking Space for Constitutional Liberty in India

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## ABSTRACT

*In the world's largest democracy, liberty was intended to be fundamental, not contingent upon circumstances. However, the existence and frequent invocation of preventive detention laws in India present one of the most perplexing paradoxes of its constitutional framework. Preventive detention empowers the state to detain individuals without judicial proceedings, not for their past actions, but for potential future conduct. Initially, this measure was meant to protect our nation and keep things in order. Its vague and subjective rules have made it a tool for punishing people before they even do anything wrong. Over the past decade, India has observed a concerning trend wherein peaceful protestors, student leaders, journalists, and dissenters are increasingly detained under laws such as the National Security Act, 1980 without providing charge sheets, undergoing trials, or subjecting to public scrutiny. This paper delves into the way preventive detention, once envisaged as a necessary evil for exceptional emergencies, has now become a routine instrument for criminalising dissent and restricting civil liberties, thereby posing a grave threat to the very constitutional values it was ostensibly intended to uphold. In a democratic society, dissent is not a criminal offence; rather, it constitutes a legitimate form of civic engagement and expression. It serves as a citizen's voice, raised not in rebellion but in a spirit of responsibility and accountability. Dissent is essential for preserving the spirit of our Constitution and ensuring that the principles of justice and equality are upheld. The use of preventive detention as a means of suppressing dissent is a cause for concern. This paper aims to analyse the legal framework surrounding preventive detention in India and examine its misuse in criminalising dissent. It will explore how preventive detention is being misused to restrict the freedom of expression and dissent.*

**Keywords:** National Security Act, Preventive detention, Freedom of expression

## I. PREVENTIVE DETENTION: THE LEGAL FRAMEWORK

The Indian Constitution, while deeply committed to the protection of civil liberties, contains a

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controversial exception in Article 22(3)– (7)<sup>2</sup>. This constitutional provision establishes a framework for preventive detention, a form of detention that does not follow due process and conviction after a proven crime. Preventive detention permits the deprivation of liberty solely on the suspicion of future wrongdoing, based solely on the potential for future actions rather than concrete evidence.

While Clauses (1) and (2) of Article 22 guarantee certain safeguards, such as the right to be informed of the grounds of arrest and the right to legal representation, Clause (3) explicitly excludes these safeguards in cases of preventive detention. Clauses (4) to (7) further outline the procedure for preventive detention<sup>3</sup>. A person can be detained for up to three months without judicial scrutiny. In addition, the detention must be reviewed by an Advisory Board comprising sitting or retired judges of the High Court. Parliament may, by law, prescribe circumstances and procedures under which such detention can be extended.

This framework was designed to strike a balance between individual liberty and the collective security of the state, particularly in post-independence India, where internal unrest and border vulnerabilities were significant concerns. However, the reality of its implementation has deviated significantly from its cautious constitutional mandate. Although permitted by the Constitution, preventive detention was always intended to be used sparingly in extraordinary circumstances, such as wartime or national security crises. Nevertheless, it is increasingly being employed as a political instrument to suppress criticism and control public narratives. This right is not merely being exercised but also being used to suppress criticism and public speaking. The right that was once established to secure national security is now being used as a weapon against citizens. Numerous students, journalists, and influencers are being targeted and restrained by the government solely due to their openness, public speaking, and protests, which are inherent rights guaranteed by Articles 19 and 21 of the Constitution. Regrettably, this extraordinary right has been routinely abused by the government. This action infringes upon individual rights and is fundamentally antithetical to the democratic principles of India<sup>4</sup>.

On paper, preventive detention was conceived as a shield, a narrowly tailored defence to protect citizens from imminent threats like espionage, terrorism, or mass-scale lawlessness. Yet over time, that shield has morphed into a cage, locking up not only genuine security risks but also peaceful critics, dissident voices, and ordinary citizens exercising their democratic rights.

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<sup>2</sup> The Constitution of India, Art. 22, cls. 3–7.

<sup>3</sup> Id. art. 22, cls. 4–7

<sup>4</sup> Prabhat Patnaik, *The Constitutional Crisis of Preventive Detention in India*, 14 *ECON. & POL. WKLY.* 325 (2019)

In most statutes, the detaining authority needs only to claim “reasonable suspicion” that an individual might threaten public order. This amorphous standard, far removed from the strict proof demanded in criminal trials, allows detentions based on hearsay, political profiling, or even administrative convenience. During the 2020–21 anti-CAA protests, dozens of students were picked up under the National Security Act after posting slogans on campus walls. In many instances, police affidavits simply stated that “public order may be disrupted” without detailing any specific act or plan of violence<sup>5</sup>. Terms like “public order”, “national security”, or “public interest” are never defined in the statutes. They can stretch to cover a peaceful sit-in at a university, critical newspaper editorials, or a small gathering of farmers demanding policy changes.

Preventive detention in India stands as one of the most contested features of the nation’s legal architecture a mechanism originally conceived as a necessary shield in times of extraordinary peril, but now too often wielded as a blunt instrument against dissent. While this regime has received extensive scrutiny through constitutional and procedural lenses, its deeply gendered and intersectional impacts remain underexplored in both legal scholarship and policy debates. For women and other marginalized groups, preventive detention is not merely a legal deprivation; it is a lived experience that amplifies preexisting vulnerabilities, disrupts family structures, and multiplies the harms wrought by a justice system unequipped for their needs. This section seeks to illuminate these dimensions, urging a reimagination of preventive detention law that is compassionate, rights-based, and truly inclusive.

## **II. THE GENDERED AND INTERSECTIONAL IMPACT OF PREVENTIVE DETENTION**

### **The Unseen Human Cost**

India’s preventive detention framework is constitutionally permitted but fundamentally at odds with the promise of liberty central to the country’s founding vision. Detention is frequently imposed without formal charge or trial, often on vague grounds such as “public order” or “national security,” and with scant opportunity for meaningful judicial review. While the opacity and arbitrariness of the system undermine justice for all, the repercussions for women are uniquely severe and multifaceted.

### **Empirical Illustrations: Human Stories of Preventive Detention in India**

Preventive detention is not merely an abstract legal doctrine. Its consequences are heartbreakingly real, imposing lasting scars on the dignity, health, and hope of women whose

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<sup>5</sup> The Hindu, HC Quashes NSA Detention of Student Activist, THE HINDU (July 21, 2023)

only “crime” is daring to dissent, seek justice, or simply exist within marginalized communities. Below, empirical illustrations are presented with human emotion, relevant laws, and the specific ways these women’s basic rights were violated.

### **1. Safoora Zargar: Motherhood Behind Bars**

Detained under the Unlawful Activities (Prevention) Act (UAPA), which allows for extended detention without trial, Safoora’s case unfolded during the 2020 anti-CAA protests.

**Human Impact:** Safoora Zargar was three months pregnant when she was arrested. Her incarceration in an overcrowded jail during the COVID-19 pandemic magnified her already vulnerable condition. Denied anticipatory bail repeatedly, she was left to endure anxiety and poor medical attention. The pain of knowing her unborn child’s fate lay in bureaucratic hands not her own inflicted psychological anguish no legal argument could remedy. She described her cell as “a nightmare” every day<sup>6</sup>.

**Laws & Violations:**

UAPA, which permits her detention without timely trial, subverts Article 21 (Right to Life and Personal Liberty) and Article 14 (Equality before Law) of the Indian Constitution<sup>7</sup>.

Her detention ignored protections under the UN Bangkok Rules, which require special consideration and healthcare for pregnant women<sup>8</sup>.

Article 12(2) of CEDAW mandates state support for pregnant women in custody, a right that was wholly disregarded<sup>9</sup>.

### **2. Devangana Kalita & Natasha Narwal: Silencing Women’s Voices**

Founders of Pinjra Tod, Devangana Kalita & Natasha Narwal, were arrested under Unlawful Activities (Prevention) Act (UAPA), 1967 amidst the anti-CAA protests, faced successive arrests under new charges even after securing bail.

**Human Impact:** For over 300 days, these women endured the dehumanizing uncertainty of indefinite detention. Kalita’s father passed away while she was incarcerated and loss compounded by the heartbreak of not being allowed to grieve with her family. Both Kalita and Narwal were kept isolated, their activism recast as “danger” rather than dissent<sup>10</sup>. Their

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<sup>6</sup> Safoora Zargar v. State (NCT of Delhi), Delhi HC, 23 June 2020.

<sup>7</sup> Unlawful Activities (Prevention) Act, No. 37 of 1967, INDIA CODE (1967).

<sup>8</sup> Radhika Singha, Beyond the Line: Women and the Colonial Jail in India, 41 ECON. & POL. WKLY. 4050, 4052–53 (2006)

<sup>9</sup> United Nations Working Group on Arbitrary Detention, Opinion No. 91/2020 concerning Safoora Zargar (India), U.N. Doc. A/HRC/WGAD/2020/91 (2020).

<sup>10</sup> Devangana Kalita v. State (NCT of Delhi), Delhi HC, 15 June 2021.

academic and personal lives were shattered, their identities reduced from students and daughters to “national threats.”

#### Laws & Violations:

Article 22(3)-(7) of the Constitution establishes preventive detention but was always intended for rare, exceptional cases not to suppress civic protest. The courts initially failed to uphold their right to timely legal recourse and meaningful oversight.

Their treatment violated international legal standards (ECHR, ICCPR) that require clear charges, prompt judicial review, and humane treatment of detainees.

### **3. Sukhpreet Kaur: A Mother's Ordeal**

Legal Context: Arrested under UAPA based solely on her husband's disclosure statement, Sukhpreet had no direct evidence against her at the time of arrest.

Human Impact: Heavily pregnant, Sukhpreet delivered her baby in jail, separated from family support and medical facilities of her choice. Her infant's first cries echoed within prison walls, a profound injustice for mother and child. The trauma of giving birth in custody, surrounded by uncertainty, deprived her of basic human dignity at one of life's most vulnerable moments<sup>11</sup>.

#### Laws & Violations:

Detaining a pregnant woman on such tenuous grounds defies the presumption of innocence and the right to fair trial<sup>12</sup>. The denial of timely bail during pregnancy disregarded Article 21's guarantee of personal liberty and safety.

This situation also flouted the Bangkok Rules and CEDAW's clear protections for women and children in detention settings<sup>1314</sup>.

### **4. Hidme Markam: The Cost of Indigenous Resistance**

Hidme Markam, an Adivasi activist, was preventively detained while campaigning against custodial violence and land dispossession in Chhattisgarh.

Human Impact: Markam's arrest during a women's rights event silenced an important voice for her marginalized community. In detention, she faced not only deprivation of liberty but

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<sup>11</sup> Sukhpreet Kaur v. State of Punjab, Punjab & Haryana HC, 10 October 2023.

<sup>12</sup> United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (Bangkok Rules), G.A. Res. 65/229, U.N. Doc. A/RES/65/229 (Mar. 16, 2011)

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also sexual harassment, intimidation, and fear of extrajudicial violence realities that disproportionately affect Indigenous women<sup>15</sup>. Her family endured uncertainty and fear, knowing Markam's advocacy had exposed her to further state retaliation<sup>16</sup>.

#### Laws & Violations:

The broad use of the Chhattisgarh Public Security Act to detain Markam contravened the proportionality requirement under Article 21 and international standards mandating free expression and peaceful assembly.

Her ordeal exemplifies intersectional discrimination, violating not only gender rights but the rights of Indigenous peoples under both the Indian Constitution and international covenants<sup>17</sup>.

### **5. Masrat Zahra & Naseema Bano: Journalism and Motherhood on Trial**

Detained under the UAPA in Jammu & Kashmir, both cases involved the use of extraordinary laws to curb freedom of expression and purported associations.

Human Impact: Masrat Zahra, a young photojournalist, was targeted for her reporting on life in Kashmir a region already reeling from long standing restrictions<sup>18</sup>. Her work documenting daily resilience became grounds for suspicion, leaving her facing not just legal uncertainty but ostracization and fear for her safety<sup>19</sup>.

For Naseema Bano, a mother, the pain was even more visceral. Accused based on the alleged actions of her son, she spent nearly a year in prison, battling health issues and the haunting uncertainty of whether she would live to see her family free and whole.

#### Laws & Violations:

Preventive detention in these cases undermined Article 19 (freedom of speech) and Article 21.

The chilling effect on journalism and familial peace alike violates not just legal norms but deeply rooted human sensibilities.

Prolonged detention absent clear, imminent threat contradicts ECHR and ICCPR requirements for necessity, proportionality, and timely review<sup>20</sup>.

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<sup>15</sup> "Arrest and detention of Hidme Markam," IP Rights, March 2021.

<sup>16</sup> Jharkhand High Court Quashes Preventive Detention of 11 Adivasi Protestors for Land Rights Agitation," Live Law (May 12, 2022), <https://www.livelaw.in/news-updates/jharkhand-high-court-quashes-preventive-detention-adivasi-protestors-land-rights-194283>.

<sup>17</sup> Jharkhand High Court Quashes Preventive Detention of 11 Adivasi Protestors for Land Rights Agitation, Live Law (May 12, 2022)

<sup>18</sup> "Kashmir police book photojournalist Masrat Zahra under UAPA to silence journalism," Caravan Magazine (Apr. 2020), <https://caravanmagazine.in/media/masrat-zahra-uapa-kashmir-journalism>

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### III. SILENCING PROTEST: FARMERS' MOVEMENT AND PREVENTIVE DETENTION

During the 2021 nationwide farmers' protests, the Indian state invoked preventive detention against protest leaders at least six across different states were detained, not for any proven wrongdoing but on the mere suspicion they might incite large gatherings or disturbances. Yet, none were formally charged or tried. Most were released quietly weeks later, their "threat" dissipating without official justification. This pattern underscores how preventive detention serves to pre-emptively quell collective action, bypassing due process and diluting rights of assembly and protest fundamental to democratic citizenship<sup>21</sup>.

**Mass Detentions:** In Delhi alone, over 200 protesters were detained by police around Republic Day, some under UAPA or sedition charges, sparking national and international criticism.

**Use of Force and Legal Machinery:** Authorities didn't just use physical barriers but also wielded criminal law including UAPA and Income Tax scrutiny to pressure leaders and supporters. Such actions targeted not violent actors but those exercising constitutional freedoms, blurring the distinction between maintaining order and suppressing dissent.

#### **Disproportionate Use and Regional Concentration: NSA Statistics**

Official data paints a stark picture: between 2017 and 2018, out of 1,198 individuals detained under the National Security Act (NSA), over 94% were from Madhya Pradesh or Uttar Pradesh. In Madhya Pradesh alone, 795 people were detained in just two years. Despite the existence of review boards (mandated to examine and approve detentions), hundreds continued to languish in custody well after the intended period, sometimes on extremely weak or unsubstantiated grounds<sup>22</sup>.

#### **NSA Detentions by State, 2017–2018**

State	2017-2018 NSA Detentions	Released by Review Boards	Still in Custody
Madhya Pradesh	795	466	329
Uttar Pradesh	338	150	188

Offenders (Bangkok Rules), G.A. Res. 65/229, U.N. Doc. A/RES/65/229 (Mar. 16, 2011).

<sup>21</sup> Aishwarya S. Iyer, Six Farmer Protest Leaders Held Preventively During Republic Day, Quietly Released Later, Scroll.in (Feb. 23, 2021), <https://scroll.in/latest/983362>

<sup>22</sup> National Security Act, No. 65 of 1980, INDIA CODE (1980).



Rest of India	65	19	46
<b>Total</b>	1,198	635	563

Preventive detention is increasingly a tool of first resort. By 2021, there was a dramatic 23.7% rise in preventive detentions compared to the previous year. Over 110,000 people found themselves detained to “prevent” crimes or disturbances often on vague grounds and with minimal review. Of these, 24,500+ people were still in detention or custody at the end of 2021 the highest ever since NCRB began tracking such data<sup>23</sup>.

NSA Still Prominent: In 2021, at least 483 people were detained under the NSA, half awaiting a review or release by year-end<sup>24</sup>. Majority were under Vague Laws such as “Other Detention Acts” which is an opaque category, highlighting lack of transparency and oversight<sup>25</sup>.

### **Secret Grounds of Detention: A Legal Black Hole**

Indian law permits authorities to withhold the full reasons for a person’s detention if disclosure is declared “against the public interest.” In reality, this leaves detainees and their families utterly in the dark. Not knowing why, you are in custody severs any hope of effective legal challenge, turning preventive detention from a protective measure into a punitive, isolating experience.

### **Superficial Judicial Review**

When detainees contest detention in High Court, judges cannot question the factual basis for detention only whether due procedure (signature, advisory board review) was followed. Rarely does the court examine whether there were real grounds for “reasonable suspicion.” This regime of oversight is thus deeply superficial, cementing executive power and reducing individual protections to formalities.

### **Eroding Democracy and Chilling Dissent**

Each misuse of preventive detention undermines democratic faith, reminding citizens that rights are conditional on political context, not guaranteed by law. The cumulative result is a chilling effect: professors hesitate to convene critical debates, journalists think twice before investigative reporting, civil society withdraws from protest and dissent. Constitutionally

<sup>23</sup> National Crime Records Bureau, CRIME IN INDIA REPORT 2018, MINISTRY OF HOME AFFAIRS, GOV’T OF INDIA, at 404–06 (2022).

<sup>24</sup> National Crime Records Bureau, CRIME IN INDIA REPORT 2021, MINISTRY OF HOME AFFAIRS, GOV’T OF INDIA, at 512 (2022).

<sup>25</sup> National Crime Records Bureau, CRIME IN INDIA REPORT 2021, MINISTRY OF HOME AFFAIRS, GOV’T OF INDIA, at 512

protected liberty, once a bedrock of citizenship, becomes a privilege that can be withdrawn at will. What is most troubling is not just the fate of those detained, but the spread of fear among those still free: the ever-present possibility of detention reduces public discourse to state-sanctioned boundaries a profound betrayal of the letter and spirit of the Indian Constitution

Behind every statistic of preventive detention is a mother, a daughter, a sister, a person who faces more than the deprivation of liberty: she is often stripped of her health, sense of self, and hope. The gap between India's legal commitments both constitutional and international and the lived reality for these women stands as a call to conscience and reform. Preventive detention, wielded without regard for gender, humanity, due process, and proportion, inflicts wounds on individuals and on the nation's democratic fabric itself. Laws were made to protect, not dehumanize; it is past time for both legal frameworks and public policy to remember this promise.

#### **IV. RECENT JUDICIAL DEVELOPMENTS AND DOCTRINAL TRENDS IN PREVENTIVE DETENTION: AN ELABORATE ANALYSIS**

The contemporary jurisprudence on preventive detention in India reflects a consistent judicial insistence on strict compliance with procedural safeguards, the necessity for individualized assessment, and the constitutional distinction between “law and order” and “public order.” This section provides an in-depth discussion of seminal recent cases and the evolving principles they underscore.

##### **1. Heightened Scrutiny of Application of Mind and Procedural Compliance**

Modern courts have repeatedly stressed that preventive detention, as an extraordinary measure, cannot be invoked as a routine substitute for the criminal justice system. In *Irfan Nazir v. UT of Jammu and Kashmir & Ors.*, the High Court quashed the detention order on the grounds that the authority had simply replicated the police dossier without any independent application of mind, and failed to demonstrate how the petitioner's activities rose above common breaches of law and order to disturb “public order”<sup>26</sup>. The court cited classic Supreme Court precedents like *Ram Manohar Lohia* and *Arun Ghosh*, reaffirming that:

Mere involvement in past criminal cases, especially those resulting in regular bail or ongoing trials, does not provide sufficient grounds for preventive detention unless there is a proximate,

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<sup>26</sup> *Ram Manohar Lohia v. State of Bihar*, AIR 1966 SC 740, 745–46 (India) (explaining the distinction between “law and order” and “public order” and holding preventive detention must affect the community at large, not merely individuals)

real threat to public order<sup>2728</sup>.

Detention orders that lack individualized reasoning or are based on stale, irrelevant incidents are liable to be struck down for non-application of mind and misuse of preventive powers<sup>29</sup>.

Similarly, *Kawaljeet Singh v. Union Territory of Jammu and Kashmir* involved the High Court invalidating the detention order as a verbatim transcript of the police dossier, highlighting that such mechanical reproduction signals a “non-application of mind” by the detaining authority. The court further condemned the failure to supply the detainee with the grounds and supporting documents in a language he understood, which is a clear violation of Article 22(5) of the Constitution, and the procedural mandates enshrined under the Jammu & Kashmir Public Safety Act. These requirements are not mere technicalities but are fundamental for enabling the detainee to make an effective representation.

## **2. The Distinction Between “Law and Order” and “Public Order”**

These cases reaffirm that the boundary between “law and order” (the largest circle) and “public order” (an inner, stricter circle), as articulated in *Dr. Ram Manohar Lohia* and *Arun Ghosh*, remains vital. Preventive detention should be reserved for situations where the alleged acts threaten the normal “even tempo” of community life, and not merely individual incidents or traditional crimes that the ordinary law adequately addresses. The judiciary has continued to strike down detention orders where authorities have failed to articulate or evidence this distinction in specific terms<sup>30</sup>.

## **3. Requirement of Individualized Reasoning and Language Comprehensibility**

The Supreme Court’s decision in *Mortuza Hussain Choudhary v. State of Nagaland* further cements two core requirements:

1. Detaining authorities must specifically record separate and individualized grounds; a cryptic endorsement of police proposals or a “bald recital” of satisfaction is insufficient.
2. The grounds and supporting documents must be supplied in a language understood by the detainee. Oral explanations or translations by police officers do not suffice, especially when large volumes of material are involved. The court insisted that

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<sup>27</sup> *Ram Manohar Lohia v. State of Bihar*, AIR 1966 SC 740

<sup>28</sup> *Arun Ghosh v. State of West Bengal*, AIR 1970 SC 1228

<sup>29</sup> *Arun Ghosh v. State of West Bengal*, AIR 1970 SC 1228 (India) (elaborating that “public order” signifies the even tempo of the life of the community, and its disturbance must affect the general public, not just personal disputes)

<sup>30</sup> *Mubeen Ahmed v. State of Telangana*, W.P. 4572/2023, Telangana High Court, July 21, 2023

adequate written communication is constitutionally required for the detainee to mount a meaningful challenge.

#### 4. Broader Doctrinal Context and Contemporary Trends

Across these decisions, the doctrine emerges that preventive detention is:

- Preventive, not punitive: It exists to forestall genuinely imminent threats to public order, not to pre-empt criminal trials or act as a tool for easier administrative restraint.
- Exceptional: Regular criminal processes should be used whenever possible. Only if the ordinary law is manifestly insufficient should preventive powers be invoked, and this justification must be explained and recorded.
- Bound by procedural rigor: Constitutional protections under Articles 21 & 22 demand strict compliance, including the supply of materials, the right of representation, and timely review by advisory boards.

In addition, the Supreme Court's judgment in *Pesala Nookaraju v. State of Andhra Pradesh* reinforced that the subjective satisfaction of the authority must be drawn from recent, proximate incidents and credible evidence, not from a distant history of alleged offences. The doctrine of proportionality and necessity is explicitly recognised, any restriction on liberty must be the "least intrusive" and justified by a legitimate, evidenced aim. Orders based on stale material or unsupported by contemporary risk assessment are constitutionally infirm.

#### 5. Evolving Safeguards and Rule of Law

This judicial trend, visible in the aftermath of high-profile constitutional challenges<sup>31</sup> demonstrates a growing insistence from Indian courts that even in circumstances involving national security or serious public threats, the rule of law and individual liberties cannot be bypassed by executive fiat. Authorities are not only required to comply with statutory text but also to uphold the spirit of constitutional safeguards and the principle of proportionality in all restrictions on personal liberty.

Preventive detention is often used as an unchecked tool for political gain or misuse, despite strict guidelines being given in numerous cases where it is necessary. Preventive detention is only justified when ordinary penal laws cannot address the threat. These cases establish five fundamental pillars of valid preventive detention under Article 22:

- Narrow Construction: Detention must only be used to target genuine threats to public order.

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<sup>31</sup> Anuradha Bhasin v. Union of India, (2020) 3 SCC 637

- Independent Application of Mind: The authority must record its own reasons for detention.
- Clear, Timely Grounds: Detainees must receive full, intelligible grounds for detention in an appropriate language.
- Meaningful Representation: Detainees have the right to challenge and present representations before an Advisory Board or court.
- Periodic Judicial Review: Orders must be reviewed at statute-mandated intervals, with courts assessing both procedure and proportionality.

## V. CONCLUSION

The persistence and normalisation of preventive detention in India expose a concerning contradiction at the core of the Republic's constitutional project: the very laws intended to safeguard public order are increasingly employed to undermine the liberty and dissent essential to democratic life. Through the examination of cases and the discussion of jurisprudential trends, it becomes evident that preventive detention has deviated significantly from its exceptionalist rationale, becoming instead a routine instrument to shield the state from scrutiny and silence dissenting voices.

This paper underscores that while constitutional and statutory safeguards exist in principle, their erosion through ambiguous statutes, unchecked executive discretion, and superficial judicial review has rendered personal liberty perilously contingent. The gradual expansion of preventive detention without substantiated threats, without formal charges, often without clarity or recourse not only stifles free expression but also undermines public trust in the rule of law. Furthermore, the absence of gender-sensitivity and the disproportionate impact on marginalised groups highlight deep structural flaws that exacerbate the injustice. Comparative experiences demonstrate that the health of a constitutional democracy is gauged not by the power wielded in moments of crisis but by the restraint demonstrated in safeguarding liberties when it is most inconvenient. India's divergence from international human rights standards and the cautionary lessons from other democracies suggest the pressing need to recalibrate the relationship between state power and individual rights.

Moving forward, a robust framework for preventive detention must be grounded in transparency, procedural fairness, substantive judicial oversight, and strict necessity never as a substitute for the ordinary criminal process nor as a means of intimidation. Only by reaffirming the centrality of dissent and imbuing preventive detention law with the spirit of

constitutionalism can India aspire to restore the equilibrium between security and freedom. The vitality of our democracy hinges on whether we perceive dissent not as a seditious act but as the valiant exercise of citizenship that it truly is.

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