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PREVENTIVE DETENTION LAWS – BALANCING SECURITY & HUMAN RIGHTS

AUTHORED BY - MONIKA SHARMA¹

“Those who deny freedom to others, deserve it not for themselves”

— Abraham Lincoln

Abstract

Preventive detention laws in India have been a subject of ongoing debate with proponents arguing for their necessity in maintaining national security, while critics highlight the inherent risk they pose to human rights and civil liberties. This research paper examines the legal framework and practical implications of preventive detention laws in India consequently focusing in their impact on human rights. The concept of preventive detention to protect the integrity and maintain law and order has often been stated as a necessary evil. Its the system that has been prevalent in Indian Criminal Justice system since British times. Through an analysis of various facets of the law of the land and international human rights standards this paper explores instances of human rights violations resulting from the implementation of preventive detention laws. The paper aims to decipher the law of the land vis-a-vis the blatant human rights violation under the garb of implementation of the said laws.

INTRODUCTION

Undoubtedly the most significant legal development of the past century was the formulation of universal international human rights norms.² Indeed, several international institutions and most national constitutions' have established the idea that everyone is entitled to a recognisable set of common legal guarantees. Every human being born on this earth is born free, autonomous, and equal in terms of respect and rights. Human rights are inherent rights that everyone have regardless of their nationality, age, gender, caste, or ethnicity. Human rights are necessary in the explanation of human life because they provide people with a fundamental assurance of living a reasonable and dignified life. Everyone has the right to personal liberty and security. No one shall

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² PAUL GORDON LAUREN, THE EVOLUTION OF INTERNATIONAL HUMAN RIGHTS: VISIONS SEEN (1998).

be detained or arrested indiscriminately. No one's liberty may be taken away unless and until the law establishes the grounds and method for doing so but sometimes laws are framed and misused so as to curtail the basic fundamental human rights . Preventive detention is one such concept & is used as a deterrent and does not correspond to an offence, whereas criminal processes are used to punish someone for an offence they committed.

The Indian Constitution expressly permits the Parliament to enact legislation allowing for preventative detention for reasons related to "state security, public order, or the maintenance of important supplies and services to the society." 'Preventive detention legislation must be studied with scepticism in the modern liberal-democratic era, where the right to personal liberty is nearly universally recognised as of paramount importance. They are a technique for holding people and restricting their freedom, not because they have been convicted or are being tried for a crime, but because they are suspected of doing anything that might jeopardise law and order.'³

The case of Justice K.S. Puttaswamy (Retd.) v. Union of India ⁴concerns privacy, or the right to be alone. It discusses how individuals' personal liberty in terms of privacy is expanding. The main difficulty with preventive detention is that detaining someone on suspicion of something is a complete breach of his basic right to liberty. Human rights activists in support of individual liberty and state exigencies on the other side have opposing viewpoints on preventive detention. This balancing act is critical because there is a need to sustain momentum between personal liberty on the one hand and the state's commitments to national security on the other. A Police Officer may detain a person without a Magistrate's order or a warrant if the officer suspects the person of committing a crime in order to prevent acts that endanger 'public peace and order' or 'national security.'⁵ If we go back in time in India, the current incarceration rules are very similar to those implemented by the British authority.

The Law on Preventive Detention is fundamentally distinct from arrest and incarceration in a conventional criminal jail, which is valid in both an emergency and a calm situation. Various protections are provided to the arrested person in the case of arrest and detention⁶ as per the Constitution, but such rights are not extended to the arrested detained under Article 22(3) due to

³Preventive detention laws in India a Tool for executive tyranny , Available at <https://www.theleaflet.in/preventive-detention-laws-in-india-a-tool-for-executive-tyranny/>

⁴ AIR 2017 SC 4161

⁵ Code of Criminal Procedure , 1972 , Section 151

⁶ Constitution of India , Article 22(1) , (2)

the statute of preventative detention. Although, Protections in line with preventative detention are provided in clauses (4) to (7).

WHAT IS PREVENTIVE DETENTION?

Detention, in its most basic meaning, implies restricting an individual's liberty without his or her knowledge.⁷ It can be both lawful and illegal. However, whenever it pertains to the state security and the good of society, a technical term has emerged: Preventive Detention.

Two Types of Detention:

1. Punitive - Detention as a penalty for a crime committed is known as punitive detention. It happens after a crime is committed, or after an attempt is made to commit an offence.

2. Preventive -Preventive detention refers to a person's confinement in anticipation of committing a crime or engaging in criminal activity. As a result, preventive detention is a measure done because the individual in question is suspected of committing a crime.

The term 'preventive' differs from the term 'punitive,' as Lord Finley stated in the case of R. v. Halliday⁸, stating that it is not a punitive but a preventive action. The concept of preventive detention existed all around the world, but there was no common definition for it. Preventive detention, to put it simply, is that a person is detained without being tried or convicted by a court based on a simple apprehension generated in the authority.

PREVENTIVE DETENTION LAWS IN INDIA

It is evident that preventive detention system has been deep rooted within our criminal justice system . It won't be wrong to say that the prevalence of Preventive detention laws in India post Independence has been one of the greatest examples of the fact that our country is still tied within the shackles of colonial legacy. The history and evolution of preventive detention can be studied as follows:

1. Bengal Regulation – 1818 –

It was one of colonial India's earliest preventive detention legislation. It allowed authority to place individuals "under personal constraint" despite the lack of "sufficient reason to commence any judicial procedure" in the name of maintaining state security. The 1818 law was eventually extended to all of India, and it was in effect until at least 1927. In pre-independence India, it was

⁷Meaning of Detention , Available at <https://www.merriam-webster.com/dictionary/detention>

⁸ [1917] UKHL 1

employed to detain persons with nationalist sympathies. All preventive detention laws in India are based on the same ideas of criminalising dissent and do not require suspicions to be proven to a standard of proof as in ordinary law.

2. Defence Of India Act 1939 –

The rule of the rules under the above said act provided for the provision of preventive detention if in respect of a particular person, there were satisfactory reasons to arrest him in order to prevent him from committing any act prejudicial to the defence and safety of the nation .This act lapsed in 1946 .

3. Preventive Detention Act 1950 -The Preventive Detention Act of 1950, passed shortly after India's independence, was the country's first preventive detention statute (PDA). PDA was only supposed to last a year, but it was extended until 1969.⁹ The Supreme Court upheld it in the well-known case of A.K Gopalan v. State of Madaras¹⁰, which is widely regarded as India's first fundamental rights case. PDA was enacted as a temporary solution to address situations of violence and displacement during India's division. The statute gave the government the power to hold anyone without prosecution for up to a year. Permanent preventative detention powers "needed closer study" before more permanent legislations could be implemented, the former Minister of Home Affairs said while introducing PDA as a temporary, twelve-month version.

4. The Unlawful Activities Prevention Act (UAPA) – UAPA was enacted in 1967 and is still in effect today. The Indian government complemented the PDA's preventative detention powers with the UAPA, which allowed it the authority to criminalise a wide range of actions deemed inconvenient by the government at the time. Bail is notoriously difficult to obtain under the UAPA. Without even submitting a charge sheet, an accused might be detained in detention for six months. Unlike the PDA, the UAPA did not include a periodic review clause, rendering it indefinitely effective until repealed by Parliament.

5. Maintenance of Internal Security Act (1971)- Although the PDA expired in 1969, the Maintenance of Internal Security Act (MISA) was passed barely two years after. The MISA's provisions were strikingly similar to the Preventive Detention Act's provisions. The MISA was likewise permitted to expire in 1978, following the infamous emergency of the mid-1970s, when

⁹ AGRAWAL R.K, THE NATIONAL SECURITY ACT 5-9 (2nd ed. 1993).

¹⁰ AIR 1950 SC 27

preventative incarceration was routinely utilised as a political weapon.

6. National Security Act 1980 - The National Security Act (NSA) allows the central government and state governments to use preventive detention in certain circumstances.¹¹ The central and state governments, as well as district magistrates and police commissioners, have the authority to detain any individual "in order to prevent him from acting in any manner prejudicial to" various state objectives such as national security and public order. NSA is a special law that was enacted in 1980 and is popularly known as the "no vakil, no appeal, no daleel" law (no lawyer, no appeal, no argument). Its preventive detention powers are similar to those of the PDA and MISA, and it is closer to UAPA in that it does not require a periodic review, despite grave human rights concerns. The law empowers the Central and State Governments to detain individuals for up to 12 months. A person can be detained for up to ten days under the Act without even being informed of the reason for the detention. The government is permitted to withhold information supporting the detention in the "interest of the public," and detainees are not permitted to consult with a lawyer during this time. NSA is one of the most draconian laws operating in the country, and is extremely susceptible to abuse.¹²

7. Conservation of Foreign exchange and Prevention of Smuggling Activities (COFEPOSA)- It was enacted in 1974, and under this Act, preventive detention in certain cases for the purposes of conservation and augmentation of foreign exchange, prevention of smuggling activities, and matters connected therewith, because violations of foreign exchange regulations and smuggling activities are having an increasingly destructive impact on the national economy, and thus a serious adverse effect on the Country's security

8. Unlawful Activities (Prevention) Act 2004, 2008, 2012, 2019 Amendments -POTA (Prevention of Terrorist Activities Act) was repealed in 2004 in response to public outcry over its misuse. However, in addition to repealing it, the government amended the 1967 UAPA to function as an omnibus preventive detention law. Following the November 26, 2008 terror attack in Mumbai, the UAPA was amended to include more provisions similar to POTA and TADA regarding maximum periods in police custody, incarceration without a charge sheet, and bail restrictions. The UAPA, like the NSA, has no sunset clause, which means that if the perceived

¹¹ National Security Act , 1980 , Section 3

¹²Arbitrary Arrests & Detention Violate Human Rights , Available at <https://lokraj.org.in/2020/11/06/arbitrary-arrests-and-preventive-detention-violate-human-rights/>

threat decreases, there is no need for the extraordinary legislation to continue.¹³ In August 2019, parliament passed an amendment to the UAPA that empowers the government to declare individuals as terrorists and gives the National Investigation Agency (NIA) new powers to take property obtained from terrorism proceeds.

THE GROUNDS OF PREVENTIVE DETENTION

AS PER NSA 1980

The Indian Constitution allows the government to pass preventive detention laws against its own citizens in the name of national security and "maintenance of public order," as per Entry 9 of List I and Entry 3 of List III. Before bringing a preventive detention case to the High Court, the government appoints a three-member Advisory Board chaired by a sitting High Court Judge to determine whether the detention is justified. However, the Board's proceedings are private, with the exception of the section of the report that expresses the Board's opinion.

The National Security Act of 1980 allows for detention without charge or trial for up to 12 months to prevent a person from "acting in any manner prejudicial to the defence of India, India's relations with foreign powers, or India's security" or "acting in any manner prejudicial to the security of the State or acting in any manner prejudicial to the maintenance of public order or acting in any manner prejudicial to the maintenance of supplies and services."

Even in the dearth of any alleged crimes, Indian law allows persons to be detained in order to prevent acts endangering "public order" and "national security." However, neither the Constitution nor current preventive detention legislation attempt to define the range of acts considered threatening to "public order" and "national security," or the range of acts (or associations) supporting the inference that an individual is likely to commit such acts. Of course, the lack of clear prohibitions prevents individuals from adjusting their behaviour to conform to the behavioural expectations of the prevailing regime. This shortcoming calls into question the legality of preventive detention. With this in mind, courts have scrutinised executive claims of threats to "public order" or "national security" in order to justify specific detention orders.

The Supreme Court sought to distinguish between the concepts "security of state," "public order," and "law and order" in *Ram Manohar Lohia v. State of Bihar*¹⁴. The Court concluded that acts

¹³ A brief history of India's National Security Laws , Available at <https://thewire.in/law/in-illustrations-a-brief-history-of-indias-national-security-laws>

¹⁴ A.I.R. 1966 S.C. 740

affecting only "law and order" without one of the other two categories could not be used to justify a detention order. The courts do not in general question executive determinations that alleged acts would or do threaten national security." As a consequence, jurisprudence has centred on the distinction between acts contrary to "public order" and acts contrary to "law and order."¹⁵

The Court's unwillingness to create precise, justiciable norms is reflected in these ambiguous phrasing.¹⁶ Indeed, the Court underlines time and again that "public order" rulings are extremely fact-specific and must be determined on a case-by-case basis.¹⁷ As a result of these developments, one critic believes that the terms "law and order" and "public order" under Indian preventive detention statutes "do not permit of any clear meaning." Even after so many years, it is impossible to say with certainty whatever illegal action will fall within the scope of the term "public order" because the courts have given such diverse interpretations.

The NSA gives executive officials the authority to issue detention orders "if satisfied that such an order is necessary with respect to any person." This clearly enables preventative detention if and only if the detaining authority is persuaded that the detention is required to avoid risks to public order or national security. Furthermore, according to the predominant legal opinion, the detaining authority's "subjective satisfaction" is a legislative need for the use of this jurisdiction. In *Anil Dey v. State of West Bengal*¹⁸, the Supreme Court held that the "veil of subjective satisfaction of the detaining authority cannot be lifted by the courts with a view to appreciate its objective sufficiency. In *Khudiram v. State of West Bengal*¹⁹, the Supreme Court held that courts are not required to investigate the adequacy or sufficiency of the grounds on which a preventive detention order was issued. They must limit themselves to determining whether a reasonable person could reach the same conclusion as the detaining authority based on the grounds of detention disclosed to the detainee.

RIGHTS OF THE DETAINEE

Article 22 states that all people arrested or detained must be

- (1) immediately informed of the reason for their detention;
- (2) allowed to consult and be defended by a lawyer; and

¹⁵ *Masood Alam v. Union of India*, A.I.R. 1973 S.C. 897

¹⁶ *Mustakmiya Jabbarmiya Shaikh v. M.M. Mehta, Commissioner of Police and Others*, 1995(3) SCC 237.

¹⁷ *State of Uttar Pradesh v. Hari Shankar Tewari*, A.I.R. 1987 S.C. 998.

¹⁸ AIR 1974 SC 832

¹⁹ AIR 1975 SC 510

(3) brought before a magistrate within twenty-four hours.²⁰

However, this progressive procedural rights regime does not apply in cases of preventive detention. Indeed, the Constitution states unequivocally that the rights enshrined in Articles 21 and 22 (1)-(2) do not limit Parliament's authority to enact preventive detention legislation.²¹ Such laws must, however, include certain minimal procedural safeguards. Article 22 (5) of the Constitution requires the detaining authority to communicate the grounds of the detention order to the detainee. As a result, the NSA requires that the grounds of detention be disclosed to the detainee as soon as possible, but no later than five days from the time of arrest. In accordance with Article 22 (5) of the Constitution, the NSA also requires that the detainee be given the earliest chance to make a representation against the order.' The act, however, does not require the detaining authority to disclose any information that it deems to be in the public interest to release.²² The Supreme Court held in *Abdul Karim v. State of West Bengal*²³ that the right under Article 22(5) to be informed about the reason for one's arrest as soon as possible and to make a representation against such order of detention is a valuable constitutional right and not a mere formality. The Supreme Court has also ruled that detainees must be informed of the reasons for their detention as soon as possible and without undue delay. It has been active in challenging any lax attitude of the State machinery in this regard, and has quashed detention orders if there was an unexplainable delay in supplying grounds forming the basis of subjective satisfaction of the detaining authority in passing the order of preventive detention.²⁴ In terms of the right to be represented by a legal practitioner, the State has the authority to deny that right to a preventive detainee under Article 22(3). Furthermore, express provisions, such as Section 11(4) of the NSA and Section 8(e) of the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, prohibit the detainee from appearing before the advisory board established under Article 22 through the use of a legal practitioner.

In *Sophia Gulam Mohd. Bhan v. State of Maharashtra*²⁵, the Supreme Court held that a detainee can make a representation against a detention order only if the grounds for the order are communicated to the detainee, the material on which the grounds are based is disclosed, and

²⁰ Constitution Of India 1950 , Article 22 Clause (1-2)

²¹ Constitution Of India 1950 , Article 22 (3)

²² Constitution Of India 1950 , Article 22 (6)

²³ (1969) 1 SCC 433,

²⁴ *Pritam Nath Hoon v. Union of India*, AIR 1981 SC 9 , *Mangalbai Motiram v. State of Maharashtra*, (1980) 4 SCC 470.

²⁵ , (1999) 6 SCC 593

copies of relevant documents are provided. The court quashed the detention order in the instant case due to the non-supply of relevant material upon which such detention order was made.

HUMAN RIGHTS & PREVENTIVE DETENTION

The ICCPR (The International Covenant on Civil and Political Rights) does not expressly prohibit preventive detention. Preventive detention is a permissible deprivation of liberty if it does not violate the ban on arbitrary arrest and detention in Article 9(1) of the ICCPR.

According to this Article, everyone has the right to liberty and personal security. No one shall be arrested or detained arbitrarily. No one shall be deprived of his liberty except on legal grounds and in accordance with legal procedure. Furthermore, anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him. Anyone arrested or detained on a criminal charge shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgement. Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful & Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation.

According to a structural analysis, the prohibition on arbitrary arrest and detention must have had a different meaning than the principle of legality, which protects unlawful arrest and detention. The Covenant is consistent as written if the prohibition on arbitrary detention (focusing on unlawful arrest and detention) and the principle of legality have distinct meanings (concerned with the protection from arbitrary laws in addition to unlawful acts)²⁶.

Preventive detention is not explicitly mentioned in international human rights law, and the prohibition on arbitrary arrest and detention does not preclude it. The fact that the authoritative international organizations have repeatedly refused to condemn the practise in unequivocal terms

²⁶ Laurent Jr Marcoux, "Protection from Arbitrary Arrest and Detention Under International Law" (2) 5 Boston College International And Comparative Law Review 345, 359 (1982).

suggests that preventive detention is not forbidden under the arbitrary arrest and detention provisions of the international human rights instruments. In fact, preventive detention was clearly contemplated by the General Comments of the Human Rights Committee on Article 9 of the ICCPR: Furthermore, if so-called preventive detention is used for reasons of public security, it must be governed by the same provisions, i.e. it must not be arbitrary and must be based on legal grounds and procedures. ²⁷That preventive detention is compatible with the right to personal liberty and security and does not violate the prohibition on arbitrary arrest and detention is supported by India's reservation to Article 9 of the ICCPR.²⁸

According to the Government of India, preventive detention laws under Article 22 of the Indian Constitution do not entail an arbitrary or unlawful deprivation of liberty. The Human Rights Committee confirmed in *Campora Schweizer vs. Uruguay* that Article 9(1) could be used in instances of preventive detention.²⁹

BLATANT USE OF PREVENTIVE DETENTION & HUMAN RIGHTS VIOLATION

Arbitrary use of preventive detention and human rights violations are inextricably linked to each other. In the recent times India has witnessed numerous infamous cases of preventive detention of political leaders, student activists, social workers etc. The Jammu and Kashmir Public Safety Act of 1978, which includes a provision for preventative detention, is one of the most often used pieces of legislation. According to figures from the central government, there have been 450 preventative detentions in Jammu and Kashmir since the repeal of Article 370³⁰.

When the nationwide Citizenship Amendment Act (CAA) protest took place in December 2019, the current regime imposed a high proportion of preventive detentions on the protestors. Only in December, when the CAA protest took place, were 5558 persons jailed in Uttar Pradesh for

²⁷ Human Rights Committee, General Comment 8, Article 9 (Sixteenth Session, 1982), UNDOC.HRI/GEN/1/Rev.1, 8 (1994).

²⁸ David H Bayley, "Preventive Detention in India": A Case Study in Democratic Social Control (1962) and Derek P Jinks, 'The Anatomy of an Institutionalized Emergency: Preventive Detention and Personal Liberty in India' (2001)

²⁹ David Alberto Campora Schweizer Vs. Uruguay, "Communication No. 66/1980 (15 March 1980), UN Doc.Supp.No.40 A/38/40), 117 (1983), [18.1]"

³⁰ 450 people continue to be under preventive detention in J&K, Available at <https://timesofindia.indiatimes.com/india/450-people-continue-to-be-under-preventive-detention-in-jk/articleshow/74673414.cms>

precautionary actions.³¹ Many of the captives are still incarcerated after a year. People were imprisoned under various laws that have preventative detention clauses in 2017: 67084, 2018: 98768, and 2019: 109912, according to data given by the central government. According to the Center for Law and Policy Research, the number of cases filed under the UAPA rose from 976 cases in 2014 to 1,182 cases in 2018. States and union territories with insurgent activity, including Manipur and Jammu and Kashmir, also saw an increase in the application of the UAPA. On April 10, authorities arrested pregnant student leader Safoora Zargar under the UAPA for allegedly conspiring to incite the Delhi riots. The Delhi High Court released her on June 23 after the central government did not object to her release. On September 13, former Jawaharlal Nehru University (JNU) student leader Umar Khalid was arrested under the UAPA for making a speech during anti-CAA protests.³²

The National Investigation Agency (NIA), India's main counter-terrorism agency, arrested seven human rights activists – Father Stan Swamy, Jyoti Raghoba Jagtap, Sagar Tatyaram Gorkhe, Ramesh Murlidhar Gaichor, Hany Babu, Gautam Navlakha, and Anand Teltumbde – for their alleged involvement in violence during the Bhima Koregaon celebrations near Pune in 2018. Those arrested had worked with marginalised groups, including Adivasi (Indigenous) communities, and had publicly criticised government policies. The government charged them with violating the Penal Code by "waging war against the country" and having ties to the banned Communist Party of India (Maoist). Many of those arrested were elderly and in poor health. They were, however, held in overcrowded jails where so many inmates either had tested positive for COVID-19 or died from it. Varavara Rao, an 80-year-old poet arrested in the Bhima Koregaon case in 2018, tested positive for COVID-19 while incarcerated in July. Nonetheless, the courts continued to reject the activists' bail requests. Recently in 2020, the UN High Commissioner for Human Rights also urged India to quickly release human rights defenders detained for protesting the CAA. The majority, however, stayed in confinement until the end of the year.³³

According to an Indian Express investigation, the Allahabad High Court quashed 94 detention orders out of 120 Habeas Corpus petitions challenging detention orders under the NSA between January 2018 and December 2020. In other words, 78.33 percent of all NSA detention orders

³¹Anti-CAA protests: 1,113 arrests, 5,558 preventive detentions, 19 dead in UP Available at <https://www.thehindu.com/news/national/anti-kaa-protests-1113-arrests-5558-preventive-detentions-19-dead-in-up/article30402858.ece>

³² 2020 Country Reports on Human Rights Practices: India, Available at <https://www.state.gov/reports/2020-country-reports-on-human-rights-practices/india/>

³³ INDIA 2020, Available at <https://www.amnesty.org/en/location/asia-and-the-pacific/south-asia/india/report-india/>

were found to be incorrect over a two-year period. This demonstrates that the constitutional safeguards provided to challenge illegal detention are ineffective, and in reality, the detainee is left to seek relief in such matters through the courts.³⁴

The UAPA is one of the main tools that the current administration has used to crush dissent on numerous occasions. The only issue with UAPA is that it has all the hallmarks of being abused by the government to quell protests. Furthermore, the UAPA gives police and state authorities a long period of time to investigate and prosecute the arrested person, which defeats the purpose of a speedy and fair trial. While 90 days are allowed for the investigation to be completed, a person can be detained for up to 180 days without even filing a chargesheet.³⁵

It is evident that the preventive detention regime in India has been indiscriminately used to crush the dissenting voice in the name of threat to national security and integrity. The Supreme Court has also said in a recent judgement For preventive detention there should be "public order" concern and not merely "law and order" problem.³⁶ It is very important to understand the indiscriminate and arbitrary use of the preventive detention laws is nothing but a grave Human Rights Issue.

The agonizingly long time it takes our legal system to dispose of these proceedings, combined with the lack of any redressal framework other than the filing of writ petitions for quashing of preventive detention orders, ensures the detainee's continued victimisation. Thus, the ultimate goal of the detainee's political or personal victimisation is served.

CONCLUSION

A developing country must protect its limited resources while also maintaining peace and order. Since independence, India has seen numerous insurgencies based on gender, class, race, religion, and other factors. Through the use of preventive detention methodology and national security legislation, India has been mostly successful in preserving its independence, dignity, and autonomy. The preventive detention laws are not entirely just and reasonable, and they require

³⁴ 94 out of 120 orders quashed: Allahabad High Court calls out abuse of NSA in Uttar Pradesh , Available at <https://indianexpress.com/article/express-exclusive/national-security-act-uttar-pradesh-police-detentions-cow-slaughter-ban-7260425/>

³⁵ UAPA and the growing crisis of judicial credibility in India , Available at <https://www.orfonline.org/expert-speak/uapa-growing-crisis-judicial-credibility-india/>

³⁶ Banka Sheela Sneha V State of Telangana , CRIMINAL APPEAL NO. 733 OF 2021

some changes or modifications to fit within the scope of the Right to Life and Liberty.

These laws give the state broad authority to limit citizens' freedoms without reasonable constraints. Any law that grants such powers has no place in the modern democratic system to which India must ascribe. Even if the concept of these laws becoming necessary for the prevention of any crime is accepted, the detainee must have more safeguards available to them. These safeguards must not only be theoretical, but also serve as effective barriers to any misuse. Despite everything, woefully The Preventive detention has to be regarded as a "necessary evil." In a country like India, where many subversive activities are carried out by our own citizens, the philosophy of Article 22 is still applicable today, similar to the conditions that existed in the country at the time of independence.

