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# **NATIONAL SECURITY LAW:1980** **CRITICAL ANALYSIS UNDER THE LIGHT** **OF JUDICIAL DISCREPANCIES**

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## **ABSTRACT**

A person who is accused of committing a crime has a number of rights, including the right to legal representation and the right to prompt notification of the allegations; the ability to make a 24-hour appointment with a magistrate; the right to be presumed innocent unless and until proven guilty in a court of law; the right to "cross-examine any witnesses and question any evidence"; and many other rights. On the other hand, when it comes to matters concerning preventative detention, the NSA does not put any of these precautions into effect. The Preventive Detention Policy under the NSA has developed into an effective instrument for concealing deficiencies in the CJS and denying people their legal and constitutional rights, despite the fact that the NSA was initially intended to protect India's peace and order. The NSA defines preventative detention as the extrajudicial confinement of a person without a charge for up to a year without the requirement for that person to make an appearance in court in an endeavour to presumably prevent a future crime. Preventative detention is carried out in the name of ostensibly preventing a future crime.

This dissertation tries to examine and analyse the the extent of the NSA, 1980's arbitrary power-use provisions. In the framework of the Indian constitution, to investigate the NSA and the Cr.P.C., and to evaluate how essential it is to put an end to the infringement of individual rights. The purpose of this dissertation is to come at a decision about how these violations and the arbitrary exercise of authority need to be put to an end.

## INTRODUCTION

Laws in India that permit the imprisonment of someone without a trial in order to stop them from doing something that may endanger public order or national security are known as preventive detention laws. Various legislation in India controls the laws relating to preventative detention. These laws grant the government extensive authority to hold someone for a certain amount of time without a trial or charge who are regarded to be "a threat to public order or national security". Article 22 governs the rules pertaining to preventative detention in India.<sup>1</sup>

This article provides protection for those who have been detained or arrested. Therefore, Article 22 only applies after a person or organization has been arrested or imprisoned; it does not apply beforehand. It should be noted that in this case, Articles 21 and 22 complement one another effectively. A person may be held in one of two circumstances.

**Art. 22:** This article outlines the process for preventative detention while also protecting the lives and personal liberties of persons. This article states that no one can be imprisoned for more than three months without a court review and that no one can be detained without knowing the reasons why they are being held.

**Art. 22(2):** The state must permit a court review of the imprisonment within five weeks of the date of confinement, unless the prisoner is released earlier.

**Art. 22(3):** For instance, "when a state of emergency has been declared", this provision enables the detention of individuals without a court hearing.

**Art. 22(4):** This clause states that anybody detained in compliance with preventative detention laws has the right to legal counsel of their choice and the right to be informed of the circumstances behind their incarceration.

**Art. 22(5):** This provision mandates that the government maintain a record of every detention and present that document to both houses of Parliament.

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<sup>1</sup> The Constitution of India, art. 22

## National Security Act, 1980:

The CG and SGs are given the authority to create legislation pertaining to preventive detention through "Entry 9 of List I (the Union List) and Entry 3 of List III (the Concurrent List)", respectively. Therefore, it is obvious that the Constitution's framers felt it essential to specifically provide the Government the authority to create preventive detention statutes. "A police officer is authorized to arrest anyone without a warrant or a magistrate's order under Section 151<sup>2</sup> if the officer believes that an offense is likely to be committed that can only be stopped by such an arrest"<sup>3</sup>.

The NSA was enacted in 1980 with the intention of preserving the nation's law and order. It also permits the detention of any individual for preventative reasons for this purpose.

## Evolution of Preventive Detention Laws:

Understanding the historical background, as well as the purpose and driving force behind the legislation's initial enactment, is crucial. Its roots can be found in colonial governance. With the goal of enabling the British government to detain anybody without a trial in the name of defense and public order, Bengal Regulation III was first passed in 1818. The Rowlatt Acts of 1919 came next and generated a lot of controversy.

These actions led to the "Jallianwala Bagh massacre, which was then followed by a widespread demonstration as part of the non-cooperation movement"<sup>4</sup>. Our freedom warriors, who had suffered the most as a result of these atrocities in post-colonial independent India, did not think twice to grant preventive detention solemnity by passing the Preventive Detention Act, 1950. Immediately after it was passed, it was seldom ever utilized to keep the peace; rather, a political figure of the shrewdness of A.K. Gopalan was imprisoned.

The EIC Act, 1784,<sup>5</sup> which gave the government the right to hold anybody behaving in a way that was detrimental to the British interests and British properties, is where the history of preventive

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<sup>2</sup> The Cr.P.C., 1973, s. 151

<sup>3</sup> *Id.*

<sup>4</sup> *Supra* note 2

<sup>5</sup> The East India Company Act, 1784

detention legislation in India begins. The British employed preventive detention throughout the "two World Wars, and it was justified" as being required to handle unusual situations that resulted from the World Wars. Following the declaration of independence, the Preventive Detention Act of 1950 was established, giving the government exceptional authority to hold someone in custody in order to stop them from committing any crimes. It is important to note that the Preventive Detention Act's provisions served as a model for the majority of the NSA's provisions. This Act was still in effect in 1969.

Early acts of the legislation made it plain that its purpose was to stifle political opposition, and that tradition has been and continues to be maintained. The legislation was slated to expire on December 31, 1969 because it was only in force for a brief period of time. The contentious The country's then-Prime Minister, Ms. Indira Gandhi, signed the MISA, 1971, that gave the authorities unlimited power. When the administration of Indira Gandhi declared a state of emergency, it gained popularity. After the Janata Dal administration came to office in 1977 and defeated Indira Gandhi's Congress party, it eventually abolished the law. The NSA 1980 was passed by Indira Gandhi, who returned to office in 1980. No attorney, plea, or appeal is taken into consideration in these circumstances.<sup>6</sup>

## **NSA and Constitution:**

A person who is accused of a crime has a number of rights, including the right to legal counsel and the right to swift notification of the allegations; the ability to make a 24-hour appointment with a magistrate; the right to be presumed innocent unless and unless proven guilty in a court of law, the right to "cross-examine any witnesses and question any evidence", and many other rights. Contrarily, the NSA does not implement any of these safeguards in situations involving preventative detention.

Without being informed of the grounds for his or her arrest, a suspect or prisoner may be kept for up to 10 days. Nevertheless, the government may suppress evidence proving the imprisonment but not the justifications if it is necessary for the good of the public. Detainees are allowed to argue that extrajudicial confinement is unreasonable, but they are not allowed to confront the criminals who

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<sup>6</sup> NSA, *available at*: <https://www.legalserviceindia.com/legal/article-5623-national-security-acts-on-paper-v-s-reality.html> (Last Visited on March 01, 2023)

committed their crimes or the witnesses who testified in favour of their captivity.

India's constitution specifically permits preventative measures in normal circumstances and with little protections. Preventive detention practices like those employed by the NSA have been deemed wholly lawful by the SC on several occasions. The abuse of preventive detention, however, to mask CJS inadequacies and evade the "constitutional and statutory rights" granted to those convicted of crimes, is not addressed by these rulings.

## **JUDICIAL AND LEGISLATIVE DISCREPANCIES**

### **Introduction:**

Because they have been assigned the tough and sacred responsibility of safeguarding the law's eternality and its capacity to adapt and fulfill the varied needs of a changing society, the judiciary might be referred to as a living oracle of the law. This is why they are often referred to as an oracle of the law. A judge on the SC or the Court of Appeals, in line with our form of government, represents the Constitution in opposition to any arbitrary, illegal, or hastily carried out measures done by the legislative or executive branches.

A judge might be compared to that rare employee who is tasked with the duty of restricting the power, responsibility, and rights of her employer. In this case, the employee in question is the judge. In order to satisfy that commitment, which cannot be met by demonstrating subservience or submission, they are required to maintain their loyalty to both themselves and the Constitution, which they have taken an oath to protect.

According to them, the citizen and the government are both parties to a dispute that has to be resolved by the application of justice that is unbiased and fair. During the little more than 70 years that our nation has been in existence, a diverse group of individuals have held the position of judge with distinction and bravery.

In a democratic society, independent courts of law, which are guided by the constitutional order, are meant "to play a role in defending individual rights and acting as a check on the power of the

majority".<sup>7</sup>

The division of powers as embodied in the three pillars of democracy is very important to the achievement of justiciable ends. Because it is not directly elected by the populace and is not held accountable to it, the judicial system's primary responsibility should be to demonstrate more zeal and activity in the protection of people's rights, particularly those of the smallest and least popular minority groups.

Through the utilization of its judicial review function, which investigates the constitutionality of legislation, the Indian Constitution has conferred onto the judicial system (the Constitutional Courts) extensive jurisdiction to investigate, limit, and maintain a proper balance of executive power.<sup>8</sup>

The SC and HCs are authorized to hear petitions from individuals who come to them for assistance in upholding their constitutional rights,<sup>9</sup> and in response, the court may use powerful corrective powers.<sup>10</sup>

When we examine the past instances in which the court has exercised its jurisdiction, we discover that it has done so with vigor and that it has applied its power in a more pronounced manner ever since the early 1980s. Since the 1980s, public interest litigations (PILs) have been used to usher in a system in which constitutional courts use their power of judicial review to provide governments with precise instructions, influence policies, assess compliance, and occasionally even go so "far as to create de facto legislation".

During that moment, Hirschl was giving a presentation on constitutional politics at a seminar. He asserted that the unique authority that the Legislative Branch and the Executive Branch had formerly possessed to decide on a variety of issues has been replaced as a result of a shift in the constitutionalism that has taken place.<sup>11</sup>

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<sup>7</sup> *Supra* note 6

<sup>8</sup> The COI, art 13

<sup>9</sup> *Id.*, art. 32 & 226

<sup>10</sup> *Id.*, art 14

<sup>11</sup> Prof. Ran Hirschl, Editorial Comment (2007) 1 Indian Journal of Constitutional Law

institutional disagreements on who should keep the Constitution have arisen in India. When compared to this steadfast application of constitutional authority in such a wide variety of cases, we have noticed that India's higher judiciary has exhibited a greater degree of caution when weighing issues related to national security, even when it has been demonstrated that these issues result in widespread violations of the constitutional rights of individuals. In this particular instance, I've found that the courts routinely show a deferential demeanour toward the legislative branch and the executive branch by abstaining from entirely rejecting and repealing the act.

This is something that I've observed time and time again. The judicial branch has made an effort to avoid discussing the effects of the extensive legal provisions and has instead sought to determine whether or not the legislation contains any procedural constraints, avoiding to consider whether or not these controls are sufficient to address the need for which it was written. This is because the judiciary believes that discussing the effects of the extensive legal provisions would be inappropriate.

## **Invoking the Preventive Detention Act of 1950's limitations - The tragedy of A.K. Gopalan v. State of Madras:<sup>12</sup>**

This case originated from a petition Mr. A.K. Gopalan filed under article 32 challenging his confinement in the Madras jail. In his plea, he claimed that since December 1947, he had been continually detained under a variety of circumstances. In each of these instances, he had received a jail term, but the convictions had been overturned.

On March 1, 1950, he was once again issued with an order from the Madras SG under section 3(1),<sup>13</sup> while he was detained according to one of the orders of the Madras SG. He filed a petition with the court arguing that his detention was illegal because it infringed on his right to personal liberty.

He also disputed the legality of the order, arguing that it violated the constitution's provisions of articles 14, 19, and 21, and that the PD Act, 1950's provisions did not comply with article 22. Additionally, he questioned the order's validity "on the grounds that it had been issued with malicious intent". This was the first instance in which certain provisions of the Indian Constitution

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<sup>12</sup> *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27

<sup>13</sup> The Preventive Detention Act, 1950, s.3(1)

included in chapter III had been brought up for consideration.

The major debate centered on whether Art. 21 contemplated any method established by a law passed by the legislature or if the procedure just required fairness and reasonableness. The PD Act of 1950 or, for that matter, any legislation restricting an individual's personal liberty—was argued for by the appellant in an effort to persuade the SC that the courts had the authority to determine whether it is reasonable. The Appellant side made three arguments, which were as follows:

The term law in Article 21 refers to more than just established legislation; it also encompasses the “principles of natural justice.” As a result, a law that would rob someone of their life or personal liberty would not be legal unless it also took these values into consideration.

The legal expression technique enables the courts to determine whether the legislation satisfies the requirements of a reasonable procedure by introducing the American notion of procedural due process to India.

Because of this, in this case an effort was made to secure for a detainee more procedural rights than those that would have been provided to him in accordance with the applicable detention statute and Art. 22. However, the SC rejected each of these arguments, therefore the effort was in vain. It was decided that the Preventive Detention Act of 1950 did not violate the Indian Constitution.

The PD Act's Sections 14 and 12, however, were ruled to be unlawful and ultra vires. Following the severability principle, however, the Court declared that the constitutionality of Sections 14 and 12 of the PDA, 1950 did not impact the other sections of the Act, and therefore the Act as a whole was affirmed.

In this case, the Court upheld the imprisonment without a trial on the grounds that procedure established by law means law as passed by the State Legislature or by Parliament. The court declined to consider whether the process was proper and in keeping with natural justice principles.<sup>14</sup>

According to the majority in this decision, the word law in Article 21 cannot be interpreted to mean the principles of natural justice. These regulations were imprecise and ambiguous, and the

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<sup>14</sup> *Supra* note 6

Constitution could not be interpreted as establishing a hazy norm. The word law was never employed in the Constitution in the sense of natural justice or abstract law. Lex, not jus, was meant when the word law was employed. Therefore, the phrase procedure established by law would refer to the process outlined in an adopted statute.

Only Fazl Ali, J., disagreed with this position and claimed that as natural justice is a component of the law as a whole, Article 21 should be interpreted as such. The petitioners sought to connect Articles 21, 22, and 19 together. "The majority rejected the petitioners' attempt and noted that the term personal liberty in Article 21 had a broad meaning and, typically, if left alone, would cover not just freedom but also a variety of liberties protected by Article 19".

However, it must be assumed that Art. 19 covers the few listed special liberties. Similar to Art. 19, Art. 21 should be interpreted as eliminating freedom covered by Art. 19. Thus, a legislation restricting personal liberty had to adhere to Articles 20 to 22 rather than Article 19, and Article 19 could only be used when a law sought to directly limit a right stated in the article.<sup>15</sup>

Because of this judicial strategy, the freedoms guaranteed by Articles 21 and 19 are mutually incompatible, and their scopes cannot overlap. The minority, on the other hand, claimed that because Arts. 21 and 22 were governed by Art. 19(d), Art. 19(5) should be invoked to support the Act's reasonableness.

According to the U.S. Constitution, no individual may be denied their "life, liberty, or property without first receiving due process of law". It was argued that the phrase "procedure established by law in Art. 21" was synonymous with the American idea of procedural due process and that any law that affected someone's life or personal liberty should therefore be justiciable in order to determine whether they had the opportunity for a fair hearing. The SC, however, rejected this argument, saying that the lack of the phrase due process of law is sufficient evidence of the constitution's authors' divergent views from those of Americans.

Fazl Ali, J., on the other hand, disagreed with the consensus on this issue as well. According to his interpretation of Art. 21, the word "procedure established by law" implies procedural due process, which implies that no one may be sentenced without a hearing. So, the SC's decision was intended to

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<sup>15</sup> *Supra* note 6

take away someone's life or personal freedom:

- "There must be a law;
- It should law down a procedure;
- The executive should follow this procedure while depriving a person of his life or personal liberty"<sup>16</sup>.

The previous Chief Justice of India, K. Subba Rao, stated of this case that the majority of jurists believe it was ruled incorrectly. This judgment has received a great deal of criticism. It has effectively abolished "personal liberty, one of the most important fundamental rights".

### **In the case of Haradhan Saha v. State of West Bengal, the validity of the Maintenance of Internal Security Act, 1971, was contested:<sup>17</sup>**

The petitioner made this argument in reliance on article 32. The petitioners were held in violation of the Act for acting in a way that endangered the community's need for essential goods and services. In this case, the petitioner and his father had stockpiled food grains, he lacked the license required by the anti-hoarding control order, and he was likely to prevent or restrict the delivery of foodstuffs or rationed goods essential to the community. These factors led to the petitioner's detention.

In the other case, the petitioner and his associates had engaged a vehicle to smuggle 115 bags of rice wrapped in coal without a permit or other legal permission, in violation of a control order, and in an effort to frustrate the government's plan for food and procurement; as a result, they took actions that were detrimental to the upkeep of commodities and services that were crucial for the community. The petitioners contended that the Act violated Articles 14, 19, 21, and 22 and that the corresponding orders of custody had been issued for a collateral purpose.

The main legal arguments were that the legislation of preventative detention was illogical and, as a result, violated Articles 19 and 21. Additionally, the right to be heard was violated, and the Act failed to provide the proper procedure for putting Article 22(5) into practice. Additionally, it was claimed

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<sup>16</sup> K. Subba Rao, *Some Constitutional Problems* (University of Bombay, Bombay 1970)

<sup>17</sup> *Haradhan Saha v. State of West Bengal* AIR 1974 SC 2154

that because the Act permits discrimination, it violates Article

14. After carefully examining every section of the Act, the bench rejected every objection and determined that the Act is constitutionally sound.

Since natural justice values exist and are consistent with detention laws, the legislation cannot be seen as being illogical. According to the court, the MISA did not violate Article 19.

Considering that the Act that authorizes preventive detention may be judged in light of its reasonableness in light of Art. 19. It was acknowledged that Section 3 of the Act should be read in the context of other laws already in existence that address the different activities listed in Section 3. The clause permits the detention of people in order to stop behaviours that are prohibited by the clause or actions that are likely to happen.

The sole situation in which an exception could be made was as described in Art. 22's clauses (6) and (8), when it was not essential to reveal information that would be detrimental to the public interest. It was determined that certain sections could only be used since it is a regulation that a detainee has a right to know all the information on which the order of detention is founded or approved. In order to combat the greater evil of elements jeopardizing public safety, individual safety, and national security, the Constitution acknowledges rights under Article 19 and permits preventive detention.<sup>18</sup>

The court stated that it is unlikely that someone who is in detention will be free to migrate, gather, create organizations or unions, have the right to reside in any area of India, or enjoy the freedom of speech or expression. Therefore, a law that falls under the purview of Article 19 must be capable of being deemed reasonable in accordance with Article 19's clauses (2) to (5).

Art. 19 is where procedural reasonableness comes from. It was decided that when Art. 19 is applicable, natural justice principles should be taken into consideration while assessing whether a limitation is acceptable. The State and AB have a responsibility to look at a detainee's representation. Consideration should be given with seriousness and sufficiency. The court did point out that the

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<sup>18</sup> *Supra* note 6

necessity to review the proposal does not necessitate a face- to-face meeting or the disclosure of the parties' motivations.

There is no such thing as a universal standard or abstract standard of procedural fairness. The basis for determining whether a particular provision is reasonable depends on the type of right that was violated, the reason behind the restrictions that were put in place, the severity and immediate need of the wrong that was being attempted to be corrected, the disproportion of the imposition, and the circumstances that existed at the time.

Fairness entails not abusing one's discretion. Even though Art. 19 is assessed in light of "preventive detention, this does not change the standard of reasonableness that must be adhered to in light of preventive custody orders".

Article 22(5) discusses freedom and creating a representation. When articles (4), (5), and (6) of Article 22 are taken together, they result in a system that makes all information available to the Board and allows for representation. According to Article 22(5), detention-related legislation is necessary. Article 22, which details the substantive restrictions and procedural protections in such instances, contains the provisions of the Act. The principles of natural justice are included in both the Act and Art. 22 inasmuch as they are consistent with detention rules.

It was asserted that Section 8 of the Act, which requires the State to take representation into account, grants the detenu all of the rights protected by Art. 22(5). Due to the section's adherence to constitutional standards, the court determined that it fully complies with Art.

22(5). The government evaluates the representation in order to determine, in essence, if "the order is in accordance with the authority granted by the law". The Board, on the other hand, evaluates whether there is adequate basis for detention in light of the representation.

The authority may modify or remove the detention order anytime it deems proper, in accordance with Section 14 of the Act. Any such authority that belongs to the detenu carries with it the obligation to exercise it whenever and whenever necessary in light of new or evolving circumstances. This demonstrates that the authorities were permitted to take into account fresh information or altered conditions. It was determined that the MIS Act did not have any constitutional flaws for the aforementioned reasons.

## Contesting the NSA's limitations - The ongoing legacy of A.K. Roy v. UOI:<sup>19</sup>

The UOI was the respondent, while Mr. A.K. Roy, a Marxist member of parliament, was the petitioner. The National Security Ordinance, 1980's legality as well as some of its other provisions were contested, leading to an appeal to the SC under Article 32. The National Security Ordinance was created to make provisions for preventive detention in specific circumstances and for issues related thereto, and it went into effect on September 23, 1980. The preamble of the ordinance said that it was promulgated "because the President is satisfied that circumstances exist that need him to act immediately", even though the Parliament was not in session at the time. Mr. A.K. Roy was held under an ordinance issued by the DM of Dhanbad under the guise that he was engaged in actions that were detrimental to public order. The National Security Ordinance of 1980 was later changed into the NSA, and in the current case, both were contested as being unconstitutional for the following reasons:

- "The power to issue ordinance is purely an executive power and not a legislative power.
- Ordinance is not a law within the meaning of Art 21 and therefore no person can be deprived of his life or personal liberty by an ordinance.
- The CG's failure to bring into force section 3 (44th Amendment) Act which provided for better constitution of AB was malafide
- The procedure prescribed by the NSA does not comply with the principles of natural justice and thus violates Art. 21"<sup>20</sup>.

Justice Tulzapurakar concurred with Gupta J. on the second issue about the notification but upheld the ordinance as being legal. The majority concluded that the Act's provisions authorizing the detention of individuals on specific grounds for behaving in a way that jeopardizes the defense of India, the security of India, the security of the state, and to the relations with the foreign powers were not imprecise nor arbitrary.

Judge Gupta being the one exception, the majority of the court agreed that the ordinance constituted

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<sup>19</sup> *A.K. Roy v. UOI*, AIR 1982 SC 710

<sup>20</sup> *Supra* note 20

a law as defined by article 21. The "title of Chapter III of Part V", which read "Legislative Powers of the President," led the court to declare that the Constitution's provisions were unambiguous.

An Ordinance issued in accordance with Article 123 must have the same legal effect as an Act of Parliament, according to Article 123(2). According to Article 13(3), unless the situation calls for anything else, legislation encompasses, among other things, an ordinance. Law must encompass ordinance as well, even when the context would not otherwise demand it. Again, Article 367(2) (Interpretation) stipulates that any reference to Acts or law in the Constitution should be interpreted as a reference to ordinances. Only one conclusion can be drawn from these clauses: an ordinance is included in the definition of law in Article 21.

The subject of the president's satisfaction was brought up directly. However, the court refrained from making a merits decision for the following reasons:

- The Ordinance formed the basis for the challenge.
- An Act has taken the place of the Ordinance.
- In every given instance, the court will only make the necessary rulings.
- The evidence presented before the court was insufficient.

The arguments are not particularly convincing because it is clear that an ordinance would be superseded by an Act after only a short time. Conflicts in constitutional interpretation must be settled by the court since it is the ultimate interpreter of the Constitution. This is the first instance where the issue of the justiciability of presidential satisfaction has been brought up after R. C. Cooper and 44th Amendment.<sup>21</sup>

There have been several occasions when the SC has examined significant constitutional issues even when they were not technically necessary for its decision in the particular case at hand. Unfortunately, the SC in this instance took a judicial abstinence mentality and missed a wonderful opportunity to settle a significant constitutional issue.

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<sup>21</sup> *R. C. Cooper v. Union of India*, AIR 1970 SC 564

The Court issued a number of directives with a view to protecting the interests of the detainee held under the NSA while supporting the legality of the NSA and the Ordinance that came before it. The judge instructed:

- That the detainee's family members must be informed in writing of his incarceration and where he is being held as soon as possible.
- The detainee must be kept in his usual residence unless extraordinary circumstances call for a different location for confinement.
- The prisoner is entitled to his own "books, stationery, food, and visits from friends and family".
- He has to be separated from the other inmates.
- He should not be subjected to any punishment of this nature and should be treated with respect for human dignity in accordance with civilized standards.

However, Justice Gupta and Justice Tulzapurkar disagreed with the majority opinion in this case and sent the CG a writ of mandamus ordering it to implement the Amendment. The opposing view said that by failing to carry out the 44th Amendment Act's requirements, the CG had violated its constitutional duty; and the majority had given up the right to direct the government to do something. As a result, the petitioner's request to have the Board consider his submission in accordance with the criteria of the 44th Amendment Act was denied.

## **Naga Peoples' Movement of Human Rights v. UOI:<sup>22</sup> Contesting the legality of the Armed Forces Special Powers Act of 1958:**

In this instance, the AFSPA, 1958 and the ADRA, 1955 were contested due to alleged human rights abuses by military troops stationed in the disturbed regions. "The Armed Forces (Special Powers) Act, 1958 (as amended), passed by Parliament, and the Assam Disturbed Areas Act, 1955, passed by the State Legislature of Assam, both of which raise similar legal issues, were combined and heard in the current case on two major issues: the Legislative Competence of Parliament to enact the Central

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<sup>22</sup> *Naga Peoples' Movement of Human Rights v. UOI*, AIR 1998 SC 432

Both sides agreed that Parliament has the authority to deploy the armed forces to assist the civil government with regard to the first problem, which is the "legislative competence of Parliament to adopt the Central Act".

The statute adopted to help the civil administration by the deployment of the military forces cannot be interpreted as replacing or substituting the civil administration, the SC said, since "the word aid as employed in the provisions presupposes the continuous existence of an authority to be aided".

The court, however, found that the purpose of changing the word internal disturbance in Article 352 to armed rebellion was to limit the use of the emergency powers under Article 352 to only the more serious circumstances where there is a threat to the security of the country or a part of it due to war; exclude the use of emergency powers in cases of internal unrest when there is no exterior attack, armed revolt, or external assault.

This was done because, while the situation in the affected areas did not warrant such harsh measures, declaring an emergency under Article 352 would have had major consequences for the administrative and legislative authorities of the States as well as the Union. The CG was required to act in response to an internal disturbance in a State in light of Article 355. As a result, this legislation was not a use of the constitutional authority granted by Article 356. After addressing the legitimacy of enacting the Central Act, it was determined that it was neither fraudulent legislation nor an abuse of the legislative authority granted to Parliament.

On the second question, which concerned the legality of the Act's provisions, the court upheld its constitutionality for a number of reasons, some of which are listed below. First, there were no specific guidelines for declaring disturbed areas to be present.

In this particular case the court ruled that the Act clearly stated that in such a context, reference could be made to deleted Article 257A, which could be investigated because it provided information about the disturbance that would be necessary for the deployment of the Union's armed forces in order to use the Civil power.

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<sup>23</sup> *Id.*

According to the aforementioned clause, the GOI may use any of the Union's military forces to deal with any serious law and order issue in any State. Therefore, it may be argued that in order to designate a region as a disturbed area, there must be a serious breakdown of law and order.

The second argument was that Section 4 of the Central Act was unnecessary since it was argued that Sections 130 and 131<sup>24</sup> allowed for the employment of military troops to preserve public order, making Section 4 of the Act unnecessary. The court found that the Central Act had provisions for dealing with a different kind of situation, one in which all or part of the state was in a disturbed state and the civil power of the State was unable to handle it, necessitating the use of the armed forces of the Union to put an end to the disturbance. Therefore, it cannot be stated that the provisions of the CrPC are sufficient to address the issue.

Section 4 of the Act, which allowed the transfer of Special Powers to Non-Commissioned Officers, was also contested because of the possibility of abuse and misuse of the powers. The SC rejected the argument, saying that it was unfounded since people were ignorant of the position and duties of officers like havildars. The delegation of authority in accordance with Section 4 is deemed justifiable since the Havildar is not a junior official or an officer with a history of reckless behaviour in an army setup or settings that follow the army pattern.

The SC determined that the Act's provisions were intended to allow for the fair and effective use of force necessary to accomplish the goal. The Petitioners had contested the different sections of Section 4 as being arbitrary and unreasonable.

On the grounds that it enhances the likelihood of their violating human rights, Section 6 of the Act—which shields military personnel from prosecution—has been contested. In this instance as well, the SC rejected the petitioners' allegations, saying that the protection afforded under Section 6 cannot, in our judgment, be interpreted as conferring an immunity on the people exercising the authorities under the Central Act.

Only the CG's prior approval is provided for protection under Section 6 before a criminal investigation, lawsuit, or other civil procedure is launched against the individual in question.

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<sup>24</sup> The Cr.P.C., 1973, s. 130 & 131

Regarding such defense from prosecution, the clause is comparable to Section 197 CrPC, which deals with offenses allegedly committed by public employees while acting or pretending to act in the course of their official duties. This protection is only extended by Section 6 when a lawsuit or other legal action is commenced. However, judicial review was always an option if the government refused to give authorization.

The petitioners also argued that the State Act, which was nearly identical to the Central Act, was invalid, but the “Court” ruled that it is,

"In essence and substance, a law regarding the maintenance of public order enacted in the course of the State Legislature's exercise of the legislative authority granted to it under Entry 1 of List II"<sup>25</sup>.

Both the statement in Section 4 of the State Act, "or any officer of the Assam Rifles not below the rank of Havildar," and the expression in Section 5 of the same Act, "or any officer of the Assam Rifles not below the rank of Jamadar," have rightfully been declared illegal; since the "Assam Rifles are a part of the Union's military forces and the State Legislature" was not authorized to pass legislation affecting those forces while exercising its authority under Entry of List II, the matter was decided by the Delhi HC. On the grounds that they are incompatible with the provisions of the CrPC and the Arms Act, the other sections of "Sections 4 and 5 of the State Act are not subject to dispute under Article 254". The factors mentioned above that govern the use of the powers granted under Sections 3 to 6 of the Central Act will also be used when using the powers granted under Sections 3 to 6 of the State Act.

### **Kartar Singh v. State of Punjab:<sup>26</sup> Contesting the legality of the Terrorism and Disruptive Activities (Prevention) Act, 1985**

The SC affirmed the legality of the whole Act, with the exception of Section 22, which was invalidated. The SC argued in this case that it was necessary to create laws that differentiate between terrorists and regular criminals because numerous defenceless, innocent people— particularly the poor, politicians, and army personnel—are mercilessly shot and killed every day. Nobody can ignore

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<sup>25</sup> *Supra* note 6

<sup>26</sup> *Kartar Singh v. State of Punjab*, 1994 SCC (3) 569

the obvious truth and glaring facts by acting like an ostrich and ignoring the looming threat.

The SC emphasized the following factors in "upholding the constitutional validity of the Terrorist Affected Areas (Special Courts) Act of 1984, the Terrorists and Disruptive Activities (Prevention) Act of 1985, and the Terrorists and Disruptive Activities (Prevention) Act of 1987"<sup>27</sup>:

- In light of Article 248's legislative authority, the aforementioned special legislation may be covered under **“Entry 1 of List III”**. which is the Defense of India;
- The intent, scope, and results of terrorist or disruptive activities are all illegal. As a result, the Central and State Legislatures may each utilize the authority granted under Entry 1 of the “Concurrent List” to pass laws pertaining to such an activity.
- The new crime of terrorism is much more severe in nature, more devastating, and has far more hazardous effects. Public order is related to issues with law and order, but terrorism may be political in origin and include the use of force without cause, endangering the security and integrity of the State. No matter how it is supported, whether it is revolutionary, political, or even sponsored, terrorism cannot be categorized as a public problem.
- Numerous offenses involving economic offenses, violations of industrial activity, or violations of tax laws are sufficient evidence of this. The authors of the Constitution recognized this possibility and granted the state and federal legislatures the necessary authority to enact legislation in this area. Such a right entails the ability to define a crime and establish its penalties. Since disruptive or terrorist acts constitute crimes, both the Center and the States are authorized to enact legislation.
- The people who will be tried for the offenses listed in the TADA provisions belong to a separate class, and the process that will be used to try them for the serious and aggravated nature of their offenses is distinguishable from that used to try regular criminals. Therefore, the clauses do not violate Articles 14 and 21.

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<sup>27</sup> *Id.*

Even though the TADA's constitutionality was confirmed, the Apex court repeatedly warned that it should only be used in exceptional circumstances when regular criminal laws were inapplicable. The SC saw TADA as an extreme remedy to be reinstated in *Usmanabhai Dawood Bhai v. State of Gujarat*<sup>28</sup> when the police were unable to handle the matter under the regular criminal code. The goal was to offer specialized equipment to confront the rising threat of terrorism in various regions of the nation.

## **PUCL v. UOI:<sup>29</sup> Contesting the application of the Prevention of Terrorism Act, 2002:**

A civil society organization, PUCL, together with journalists and a member of parliament, Mr. Kuldip Nayar, collectively filed this case to challenge the constitutionality of several provisions of the PTA 2002. The claim that the Indian Parliament lacked the authority to make laws was made on the justification that the regulation of terrorist activities was under the purview of the State, which alone had the authority to do so. It was maintained that POTA comes, in essence and substance, under Entry 1 of List-II (States' List), namely, Public Order, which is a subject over which only States, and not the Center, are authorized to legislate. In rejecting the aforementioned argument, the Apex Court stated that a terrorist act affected India's sovereignty and integrity in addition to posing a law-and-order issue; such an act cannot be compared to a typical state-level law and order issue because it has an interstate, international, or cross-border nature; Fighting terrorism, both overt and hidden, is not a typical criminal justice endeavour.

Unquestionably, terrorism is a criminal offense, but it goes well beyond ordinary criminality. We require new tactics, techniques, "weaponry expertise, and, of course, new laws to confront terrorism. The Parliament determined that a new anti-terrorism law is necessary for a better future due to the aforementioned reasons". POTA is a prime example of this parliamentary resolution. The Apex Court concluded that the Parliament has full legislative authority to adopt POTA.

The petition also drew attention to many POTA provisions that broke both the letter and the spirit of

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<sup>28</sup> *Usmanabhai Dawood Bhai v. State of Gujarat*, (1988) 2 SCC 271.

<sup>29</sup> *People's Union of Civil Liberties v. Union of India*, (2004) 9 SCC 580

a few prior SC rulings. For instance, despite the SC's Constitution Bench's observation in the earlier case of Kartar Singh, where it was held that the word abets as used in TADA was vague and thus necessitated the requirement of intention or knowledge,<sup>30</sup> which provides that whoever abets a terrorist act would be punishable, fails to address to the requirements of the mens rea, a provision incorporated in POTA. This argument, however, was rejected.

Additionally, Section 4 of the POTA's legality was disputed. In this case, anybody found in a notified region with unlicensed weapons is automatically believed to have committed a terrorist act; in the past, however, such an offense would often only be subject to prosecution under the Arms Act. The PUCL petition notes that regardless of whether a person carrying such weapons has any connections to terrorists, an offense under the Arms Act has been filed under POTA in this case.

Then, section 7 of POTA was contested on the grounds that it would allow for draconian and unguided police action. Section 7 of POTA allows a police officer investigating a POTA that it would be considered and offense to attach or seize any property if he is satisfied that such property constitutes the proceeds of terrorism.

POTA's Sections 14 and 27 were contested as being in violation of Articles 20 and 21 of the Constitution. By claiming that Section 14 grants the investigating officer unrestricted authority to force anybody to provide "information if the investigating officer has cause to believe that information would be beneficial or relevant to the purpose of the Act, it was argued that Section 14 is not constitutionally legitimate". This clause, it was contended, is unchecked and open to abuse by the investigating officer; Because Section 14 violates Articles 14, 19, 20 (3), and 21,<sup>31</sup> "it does not even exclude journalists or attorneys who are required by their professional ethics to keep client information confidential". The SC rejected this argument.

The notice and de-notification of terrorist organizations are covered in Sections 18 and 19. According to a claim made, a schedule listing terrorist organizations' names has been issued under POTA Section 18(1) without any legislative declaration; that the Act does not contain any provisions for designating organizations as terrorist organizations; that the CG has unfettered and arbitrary power to add, delete,

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<sup>30</sup> The POTA, s. 3(3)

<sup>31</sup> The Constitution of India, 1950

or modify the schedule related to terrorist organizations under Section 18(2) of the Act; according to the Unlawful Activities (Prevention) Act of 1967, a group could only be declared unlawful if the Central Government had sufficient information to do so, and the declaration had to be made via notification with specific justifications.

Additionally, Section 19 gives the CG excessive authority when it comes to the appointment of Review Committee members, and there is insufficient representation of the judiciary. As a result, Articles 14, 19 (1)(a), 19 (1)(c), and 21 are violated by Sections 18 and 19.

The Apex Court rejected the aforementioned arguments and determined that these portions violated the Constitution on the following grounds:

The Constitution's Article 19(1)(c) promise that people have the freedom to organize associations or unions is subject to the limitation set out in Article 19(4). In order to protect India's sovereignty and integrity, the State may impose reasonable limits under Article 19(4). POTA was created to safeguard the same constraints set out in Article 19(4). As a result, Section 18 is constitutional.

According to Section 60, the head of the Review Committee must be or have served as a judge of a HC. Section 19 cannot be deemed unconstitutional by itself just because non-judicial members are present. Regarding the appropriateness of the limitation imposed by Section 18, it should be emphasized that the Central Government's belief determines whether to declare a group a terrorist organization.

The CGs decision must be justified as reasonable in light of the relevant information upon which it was based. Furthermore, the Review Committee's ruling binds the CG. "Given the nature of the law and the extent or existence of terrorism, it cannot be argued that Section 18 suggests an unreasonable restriction on a fundamental right guaranteed by Article 19(1)(c)". Instances where a person Professes, invite support, arranges, manages, or assists in arranging, managing, or addresses a meeting are covered by Sections 20, 21, and 22. The petitioners' argument that mens rea is required for the commission of offenses under these Sections was adopted by the Apex Court.

## Judicial Review of Detention Order:

When evaluating the grounds for contesting a preventative detention order, the court must take into account whether there is a reasonable relationship between the justifications for the detention order and the detention order actually imposed. It is not necessary that the reasons for detention be sufficient to justify detention, but the reasons must not be fictitious, misguided, or irrelevant.

In *Shafiq Ahmad v. DM, Meerut*,<sup>32</sup> There was a detention order issued on April 15, 1988. The period from April 15 to May 12, 1988, saw no effort at his capture. The government said that the delay resulted from the fact that from May to September 1988, maintaining peace and order was the exclusive responsibility of the whole police force. "The court refused to accept this as a valid or acceptable explanation for the delay, thus the detention order was removed"<sup>33</sup>.

The Court emphasized the significance of the procedural requirement under Article 22(4) and (5)<sup>34</sup> in *State of Punjab v. Sukhpal Singh*,<sup>35</sup> saying: Enforcing adherence to the required method effectively protects personal freedom. The safeguard against indiscriminate attacks on personal freedom in situations of preventative detention has historically been the observance of procedure. Without a question, social security is the main objective of the state, but a moral society also strives to accomplish other objectives. "In a society, there are other significant values. The right to one's own personal liberty is one of the most important and fundamental rights guaranteed by the Constitution, and it can only be limited by legislation"<sup>36</sup>.

In "*Pebam Ningol Mikoi Devi v. State of Manipur*",<sup>37</sup> the government of Manipur imprisoned a person under the NSA, 1980 on the grounds that he had links to the radical UNLF. He was found in possession of money that the commander of the Extremists had entrusted to him for extraction. The prisoner argued his position. The Manipur governor both denied it and said he had been arrested.

The SC ultimately heard a case challenging his imprisonment. The detention order was revoked as a

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<sup>32</sup> *Shafiq Ahmad v. DM*, AIR 1990 SC 220

<sup>33</sup> *Id.*

<sup>34</sup> The COI, art. 22(4) & (5)

<sup>35</sup> *State of Punjab v. Sukhpal Singh*, AIR 1990 SC 231

<sup>36</sup> *Id.*

<sup>37</sup> *Pebam Ningol Mikoi Devi v. State of Manipur*, Criminal Appeal No. 1849 of 2010

result of the SCs "ruling that the grounds for custody and the documents relied upon by the detaining authority have no probative value and are unrelated to the scope, purpose, and intent of the NSA". Preventive detention substantially impairs individual liberty. Documentation must be provided regarding the causes, goals, and conditions of such confinement. The courts will thus carefully scrutinize and review it.

## Latest Cases:

**Ranveer v. State Of MP:**<sup>38</sup> Using the authority granted to "him by virtue of Section 3(2) of the Act", the DM of Indore issued an order for the petitioner's imprisonment. The petitioner was informed of the reasons for his detention and given the opportunity to object to the order through a submission. The four criminal accusations that had been brought against the petitioner served as the foundation for the detention order. In order to challenge the detention decision, the petitioner went to the MP HC.

The petitioner said that "the detention order was made with an ulterior" purpose and that he had not been found guilty in any of the charges that had been filed against him. The replies argued that all the formalities had been followed.

The reason for the petitioner's imprisonment was explained to him, his family was made aware of the time and "place of his arrest, and the petitioner was told that he was entitled to appear before the AB". The petitioner's involvement in illegal activity that jeopardized public safety led to the detention order being issued.

The petitioner had been imprisoned only on the basis of rumors, the court concluded, and the offenses with which he was accused were bailable. According to the Court, a person may be detained if the executive thinks they would engage in actions that would be harmful to public order. Law and order are separate from public order; therefore, it would not be detrimental to public order if the individual's actions just upset one person and had no impact on the tranquillity of the community.

The court observed that a person cannot be detained only in the expectation that bail will be granted, the court said. While the accused is being held in custody, the concerned authority has the authority

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<sup>38</sup> Writ Petition No. 11538 of 2022

There must be sufficient reasons for the authorities to make the detention order, taking into account that the accused was already being held at the time the order was made. The DMs detention order was invalid, according to the High HC, and had to be overturned.

"Abhayraj Gupta v. Superintendent, Central Jail":<sup>39</sup> In this case, a murder inquiry led to the petitioner's detention. The PWD Office was the scene of the shooting event that claimed the victim's life. When the police attempted to take the petitioner into custody, he opened fire on them. The petitioner was then brought into prison. Based on the aforementioned instances, the DM issued "the detention order under Section 3 of the Act".

According to the detention order, the students of a college next to the PWD Office frightened as a result of the firing event, and their guardians voiced their worries to the college administration. According to Article 226, the petitioner had appealed to the HC and asked for the issuing of "writs of habeas corpus and mandamus" to instruct the appropriate authorities to release him from detention.

Although the reported event met the criteria for a law-and-order scenario, the public order was unaffected. Although the detention order was issued in January 2021, the fire event had occurred in December of 2019. As a result, the two were not close to one another. The petitioner was not given access to all of the information that the magistrate had used to make the detention decision. The petitioner did not get a copy of the AB's report. The petitioner was already detained when the detention order was issued, and he had not even asked for bail in connection with the third FIR that had been brought against him.

The Court stated that an act might be considered to disrupt public order if it causes dread, terror, or a sense of danger in the minds of community members. Any legal violation has an impact on order, but only if it also has an impact on the community or the general public. The HC referenced the "Sheshdhar Misra v. Superintendent, Central Jail, Naini" to assert that any murderous act that takes place in public and may be linked to one would not be deemed disrupting public order.<sup>40</sup>

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<sup>39</sup> E-Habeas Corpus Writ Petition No. - 362 of 2021

<sup>40</sup> H.C. Petn. Nos. 12438, 10159, 10256, 11151 and 12439 of 1984

It cannot be stated that its effects are so terrible and pervasive that they would slow down the pace of the neighbourhood. The Court emphasized that there was no evidence from the detention order to imply that the petitioner would violate public order if released on bail. It made no mention of the detainee's most recent behaviour that would have indicated that he might have committed activities resembling the claimed occurrence.

The detention order has no connection to the claimed event because it happened 14 months before the detention order. Furthermore, the petitioner was entitled to obtain all of the information used by the detaining authority, and the detainees had not received it. The court granted the writ petition after determining that the detention order was unjustifiable.

## Justifiable Preventive Detention:

Four topics deserve thorough explanation in order to comprehend the nature and validity of preventive detention legislation in India:

**The justifications for issuing detention orders:** Indian law allows for the detention of someone even when there is no suspicion of guilt in order to stop actions that harm "public order or national security. However, neither the Constitution nor the present preventive detention laws define the range of behaviours that are considered harmful to public order and national security, or the range of behaviours (or associations) that support the conclusion that a person is likely to commit such acts". Courts have looked at executive assertions of dangers to public order or national security in support of specific detention orders in light of this concern. Sadly, courts have not been able to establish a body of law that consistently gives these concepts any weight.

In "Ram Manohar Lohia v. State of Bihar",<sup>41</sup> the SC made an effort to "distinguish between the notions of security of the state, public order, and law and order." In a widely reported statement, "Justice Hidayatullah emphasized that only the most egregious of acts may merit preventative detention: Visualizing three concentric circles is necessary". Law and order are represented by the largest circle, followed by public order and state security with the smallest circle. It's simple to understand how a certain action may harm state security but not law and order, or how a certain action could affect both

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<sup>41</sup> AIR 1966 SC 740

but not the other.

**The foundation for legal detention orders being the subjective satisfaction of the detaining authority:** The NSA claims that executive officials have the authority to order someone's detention if they believe that doing so is necessary. Preventative detention is only permissible, according to this provision if there is any sort of threat to the nation's security. The SC ruled in "Anil Dey v. State of West Bengal"<sup>42</sup> that the courts cannot lift the cloak of the detaining authority's subjective satisfaction in order to assess its objective sufficiency, despite the fact that they cannot substitute their own judgment for that of the detaining authority by using an objective test to determine the necessity of detention for a specific purpose"<sup>43</sup>.

**The captives' procedural rights were as follows:** The Indian Constitution provides out a sophisticated structure of procedural rights in cases involving preventative detention. No one's personal freedom may be taken away from them, according to Article 21, if the process governed by law is followed. Everyone who is being held or arrested must be:

- Notified right away of the reason(s) behind their incarceration;
- Permitted to seek legal advice and have a lawyer represent them;
- Brought before a magistrate in accordance with Article 22 within twenty-four hours.

In "Wasi Uddin Ahmed v. DM, Aligarh",<sup>44</sup> it was observed that there should be right given to the detainee to represent himself. In the historic case of "A. K. Roy v. Union of India",<sup>45</sup> the SC was asked to make a determination about the legality of the NSA. There have been several situations where the NSA has come under fire. By depriving "prisoners their fundamental right to legal representation" at hearings before the AB, the NSA was charged with breaching the Constitution. "The Court determined that detainees do not have the right to be represented at these sessions, despite the fact that review by the AB of the matters and information utilised against the detainee is the only opportunity afforded

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<sup>42</sup> AIR 1974 SC 832

<sup>43</sup> *Supra* note 43

<sup>44</sup> AIR 1981 SC 2166

<sup>45</sup> AIR 1982 SC 710

to him for a fair and impartial appraisal of his case."<sup>46</sup>

## Conclusion:

Indian security laws now provide for minimal executive accountability measures. In any case, victims of rights abuses cannot be the driving force behind the "criminal prosecution of government personnel" who were acting within the scope of their security duties without clear national government authorization. The SC places great significance on the judicial review process's corrective and preventative capabilities. Despite the fact that most individuals cannot get this treatment.

Few people have the financial means to file a case with the SC or the HC in the state capital, paying the legal costs while the case moves slowly through the delays common in Indian courts. It may both prevent and remedy misuse if the executive's judgments are scrutinized earlier in the process. For instance, a judge's denial of the government's request to place someone in a preventative detention because the evidence is questionable saves the loss of liberty.

If the administration is forced to consistently report all preventative detention to the legislature, the government would very certainly come under scrutiny if the number of inmates increased suddenly or if many detainees belonged to a particular religious or ethnic group. Because they would be incorporated into specific decisions and govern the routine use of specific authorities, the checks and balances proposed in Section 6 are expected to be more effective than the existing arrangements. When a whole statute is under question, parliamentary discussion and judicial scrutiny err toward the superficial.

A significant step would be taken if one were to vote against or overturn a law, or even only a handful of its components. Even while it is obvious that courts and politicians have been hesitant to remove broad executive powers from security laws, it is probable that they will be more rigorous in their examination of specific judgements made in reliance on statutory authority.

It would be much simpler to determine whether or not these conclusions are rushed, prejudiced, or likely to foster systemic abuse if they were more thorough.

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<sup>46</sup> Preventive Detention: An overview, *available at*: <https://www.thelawbug.com/preventive-detention-an-overview/>  
(Last Visited on March 10, 2023)

If judges and lawmakers did not treat the individuals affected by a particular use of security authority as a hypothetical, they would be more likely to understand their interests, vulnerabilities, and rights. It would be easier to disagree with the government if decisions were more explicit and confined due to the increased level of specificity. If these proposals were implemented, political parties would be less inclined to try to impede votes or try to whip members of the legislature, which would open the door for the influence of smaller interest groups and individual conscience.

It won't be simple to reform India's security legislation, either substantively or procedurally because several basic security aspects have been included in multiple generations of laws. It will be easier to build support for policies that aim to better regulate executive authority as opposed to those that aim to fully eradicate it.

Once they are codified into law, reforms of this nature stand a good chance of gaining widespread support and being entrenched. The precedents established by the SC demonstrate that, despite the possibility that it may show respect to the executive branch, The court is hesitant to give up authority over security regulations.

The SC has decided to ignore claims made by the government during its examination of security laws that would have limited its authority over important executive tasks. Legislators are likely to be motivated to keep control over the reviewing and inspection procedures because of the inherent political competitiveness that comes with a democratic election system. Even if they are certain that laws should be passed to restrict individual liberties, opposing political parties are hesitant to embrace measures that might strip them of their power if these authorities are put in place.

The executive authorities make an effort to ensure justice in the use of discretion, even if these safeguards may not provide absolute protection against the exploitation of this provision. One of the most important protections offered by Article 22 is the prompt transmission of detention grounds given to to the “detenu” and the ability for detenu to "object to the detention order before the competent authority".

In addition, the Constitution calls for the prompt resolution of the detainee's complaint, and it mandates independent AB approval before a detainee may be held for a period longer than three months. With a few exceptions, the SC has traditionally taken a very strict stance against violations

of statutory and constitutional protections. It has also made it very plain that violations of any procedural protections will invalidate the detention order.

There has been discussion over the legislation governing preventative detention from the beginning. We have to recognize that the current administration shall have to hold a person who is harming the security of the nation and public services, Dr. B.R. Ambedkar remarked in the Constituent Assembly in response to this section.

He disagreed that under these circumstances, an individual's freedom should take precedence above the requirements of the state. According to Dr. B.R. Ambedkar, preventative imprisonment was vital to protect the nation's fledgling independence. It will only be used against those who oppose democracy.

The provisions for preventive detention were, however, opposed by a sizeable part of the constituent Assembly's members. It was originally said by H.V. Kamath that today is a day of sorrow and dishonor. God bless the Native Americans. These sections were also disputed by Pt. Thakur Dass Bhargava.

He referred to it as "The Crown of all our failures." Bakshi Tek Chand regarded the pre-emptive detention as a declaration of dictatorship and a breach of freedom. The following arguments might be made in opposition to the preventative detention provisions:

- Due to the size of India and the numerous separatist tendencies that endanger national security and integrity, a strict legal structure is required to prevent these initiatives.
- The number of people held in connection with these activities is not extremely high, and proper consideration is given before preventative custody.
- These kind of actions have a restraint effect on the antisocial and subversive components.
- The government should have strong legal authority to punish citizens who engage in hostile activity such as espionage, coercion, terrorism, etc.
- With the exception of the two years of emergency, Indian residents have long since enjoyed personal freedom.
- Such actions are necessary to combat antisocial elements like terrorist assaults on helpless civilians that claim many lives.

Undoubtedly, the NSA is necessary to safeguard the country from some anti-social groups abusing their democratic privileges. Questions concerning a clash between human rights and national security will inevitably come up at the same time. To strike a balance between the two is necessary.

The Act must adhere to the spirit of the Constitution, though, which is equally important. A relevant adjustment to the Act should be made in order to comply with the 44th Constitutional adjustment's directive, which reduced the maximum permitted time of detention without seeking the AB's opinion to 2 months. The Amendment should be granted proprio vigor effect in any case.

It is important to remember that Article 14 ICCPR stipulates that in cases of judicial miscarriage, the party who suffered harm must be compensated. It is crucial that the Government be forced to pay compensation to people who have been imprisoned under the Act and whose custody has afterwards been found to have been justified by spurious claims or hazy suspicions.

The courts must swiftly establish clear and specific principles to which preventive detention statutes must adhere. It is necessary to stop using ambiguous words like satisfaction when referring to the executive branch.

