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A RESEARCH PAPER ON PREVENTIVE DETENTION IN INDIA: CONSTITUTIONAL FABRIC, JUDICIAL RESPONSE, AND THE LEGACY OF MISA

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Abstract-

Preventive detention has remained one of the most controversial aspects of Indian constitutional law, as it authorizes the State to detain individuals without trial in the interest of national security, public order, and maintenance of essential services. While the Constitution of India guarantees fundamental rights such as personal liberty under Article 21 and procedural safeguards under Article 22, it simultaneously permits preventive detention through specific constitutional provisions. This duality reflects a complex balance between safeguarding individual freedoms and enabling the State to respond to perceived threats to public order and national security. The present research paper critically examines the constitutional framework governing preventive detention in India, the judicial interpretation of such laws, and the historical and legal legacy of the Maintenance of Internal Security Act, 1971 (MISA).

The paper first analyzes the constitutional foundation of preventive detention under Articles 21 and 22 of the Constitution, focusing particularly on Article 22(3)–(7), which creates exceptions to the procedural protections ordinarily available to arrested individuals. These provisions allow the State to detain individuals without immediate judicial oversight, subject to limited safeguards such as communication of grounds of detention and review by an Advisory Board. The study explores how these constitutional provisions were debated during the framing of the Constitution and how they continue to shape preventive detention jurisprudence in India.

A significant portion of the research is devoted to examining the historical role and implications of MISA, enacted in 1971 and widely used during the Emergency period between 1975 and 1977. MISA enabled extensive preventive detention powers and became emblematic of executive overreach and suppression of civil liberties. The paper analyses how the misuse of preventive detention during the Emergency exposed structural weaknesses in constitutional

safeguards and significantly influenced subsequent constitutional and judicial developments. In particular, the paper evaluates the judicial response during this period, including controversial decisions such as *ADM Jabalpur v. Shivkant Shukla*, which upheld the suspension of habeas corpus during the Emergency.

The research further explores the evolution of judicial scrutiny of preventive detention laws in the post-Emergency era. Through landmark judgments such as *Maneka Gandhi v. Union of India*, *Ichu Devi Choraria v. Union of India*, and *A.K. Roy v. Union of India*, the judiciary gradually expanded the interpretation of Article 21 and strengthened procedural safeguards against arbitrary detention. Courts increasingly emphasized principles of fairness, reasonableness, and strict compliance with statutory procedures while reviewing detention orders.

In addition, the paper examines contemporary preventive detention laws such as the National Security Act, 1980, and other similar statutes, assessing their constitutional validity and practical implementation. Empirical observations and reported cases indicate that preventive detention continues to be widely invoked by authorities, raising persistent concerns regarding potential misuse, prolonged detention without trial, and insufficient accountability mechanisms.

The paper ultimately argues that although preventive detention may serve legitimate security purposes, its broad scope and limited safeguards pose serious challenges to the protection of individual liberty in a constitutional democracy. It concludes that stronger procedural safeguards, greater judicial oversight, and improved legislative clarity are essential to ensure that preventive detention powers are exercised in a manner consistent with constitutional values and the rule of law.

Keywords: MISA, preventive detention, constitutional fabric, Article 22, Emergency, liberty and security, rule of law, constitutionalism.

Introduction-

Preventive detention in India has been one of the most debated legal mechanisms since independence, primarily because it embodies the tension between the preservation of individual liberty and the protection of state security. The very idea of detaining an individual without

trial challenges the fundamental principles of natural justice, yet it has been considered an essential tool by the Indian State to safeguard against threats to national security, public order, and law and order situations. The roots of preventive detention in India can be traced back to the colonial era when laws such as the Bengal Regulation III of 1818 and later the Rowlatt Act of 1919 empowered the British administration to detain individuals without trial on mere suspicion of subversive activity. These measures were widely criticised as draconian and oppressive, especially because they were used to curb the freedom movement and suppress nationalist voices. The resentment against such laws was so strong that one would expect independent India to have abolished them altogether. However, paradoxically, preventive detention found its place within the Indian Constitution itself, a decision that continues to attract criticism and concern.

The Constituent Assembly's deliberations on preventive detention reveal the deep unease among several members about granting such extraordinary powers to the State. Leaders such as Somnath Lahiri, H.V. Kamath, and K.M. Munshi spoke vehemently against incorporating preventive detention, arguing that it was incompatible with the democratic ideals for which India had fought against colonial rule. However, Dr. B.R. Ambedkar, while personally acknowledging the "ugliness" of such provisions, defended their inclusion on grounds of necessity, citing the fragile state of the Indian Union in the immediate aftermath of Partition, communal violence, and the potential threats to internal security. As a compromise, Article 22¹ of the Constitution was adopted, providing explicit recognition of preventive detention but also prescribing certain procedural safeguards. It is noteworthy that India remains one of the very few democratic constitutions in the world to expressly include preventive detention as a constitutional provision.

Article 22 permits the State to detain individuals preventively for up to three months, beyond which approval of an Advisory Board consisting of sitting judges of the High Court is necessary. Parliament also retains the power to prescribe a longer maximum period of detention under specific circumstances, which it has done through various statutes. Among the most prominent of these were the Preventive Detention Act of 1950, the Maintenance of Internal Security Act (MISA) of 1971, the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) of 1974, the Terrorist and Disruptive Activities (Prevention) Act (TADA), the Prevention of Terrorism Act (POTA), and more recently the National Security Act (NSA) of 1980, which continues to be in force. Each of these legislations

represents an effort by the State to retain discretionary power to detain individuals deemed to be threats, but each has also been accompanied by widespread allegations of misuse, often against political opponents, activists, or minority communities.

Judicial interpretation of preventive detention provisions has significantly shaped the contours of how liberty is balanced against security in India. The earliest case, *A.K. Gopalan v. State of Madras* (1950)², is often cited as a turning point because the Supreme Court upheld the Preventive Detention Act, 1950, and adopted a narrow reading of fundamental rights, treating each right as independent and isolated. This meant that so long as preventive detention laws complied with Article 22, they were immune from scrutiny under Article 19³ or Article 21⁴. This judgment effectively gave the legislature and executive a free hand in enacting and implementing preventive detention laws, leading to criticism that the Court had abdicated its role as guardian of liberty. However, this approach changed significantly in later years, especially after the judgment in *R.C. Cooper v. Union of India* (1970)⁵, which recognised the interrelationship between fundamental rights, and more dramatically in *Maneka Gandhi v. Union of India* (1978)⁶, where the Court held that the “procedure established by law” in Article 21 had to be fair, just, and reasonable. This expansion of Article 21 indirectly imposed stricter scrutiny on preventive detention measures as well.

The constitutional history of preventive detention is incomplete without reference to the Emergency of 1975–77, during which the Maintenance of Internal Security Act (MISA) was used extensively to detain thousands of political leaders, journalists, and dissenters without trial. The infamous decision in *ADM Jabalpur v. Shivkant Shukla* (1976)⁷, popularly known as the Habeas Corpus case, marked the lowest point of Indian constitutional jurisprudence when the Supreme Court ruled that during the Emergency, even the right to life and liberty under Article 21 could be suspended, effectively legitimising mass detentions. This judgment was later overruled, both judicially in *Justice K.S. Puttaswamy v. Union of India* (2017)⁸ and politically through the 44th Constitutional Amendment, which ensured that Article 21 could not be suspended even during an Emergency. The post-Emergency period thus witnessed a greater emphasis on liberty and the need to check arbitrary state power.

The tension between liberty and security, however, persists in contemporary India. Preventive detention laws such as the NSA continue to be invoked in various states, often for reasons that critics argue are political rather than truly linked to national security. The judiciary has on

several occasions struck down preventive detention orders when they were found to be mala fide or lacking in procedural compliance, but it has refrained from questioning the constitutional validity of such laws as a whole, primarily because Article 22 continues to provide them legitimacy. This raises the larger jurisprudential question of whether the very presence of preventive detention in the Constitution reflects a permanent compromise on liberty in favour of security, or whether it is a necessary evil dictated by the unique circumstances of India's socio-political environment.

Thus, the introduction of preventive detention in India reflects a historical continuity from colonial rule into independent constitutionalism, shaped by fears of instability, defended on grounds of necessity, and legitimised by constitutional text. Yet, its journey through legislative enactments, judicial interpretations, and political misuse demonstrates the risks inherent in granting such extraordinary powers to the State. The constant challenge lies in ensuring that the extraordinary power of preventive detention does not become a tool of ordinary governance.

Review of literature-

Preventive detention has been extensively examined within Indian constitutional scholarship due to the inherent tension it creates between state security and individual liberty. Legal scholars and constitutional commentators have analyzed the origins, constitutional justification, and practical consequences of preventive detention, particularly in light of Articles 21 and 22 of the Constitution of India. The literature primarily focuses on three areas: the constitutional design permitting preventive detention, judicial interpretation of such provisions, and the historical experience of their implementation, especially during the Emergency period.

Granville Austin, in *The Indian Constitution: Cornerstone of a Nation*, discusses the debates of the Constituent Assembly that led to the inclusion of preventive detention provisions in the Constitution. Austin observes that the framers were deeply concerned about threats to the newly independent state and therefore chose to retain preventive detention as a constitutional mechanism to maintain public order and national security. However, they also attempted to incorporate safeguards through Article 22, such as the requirement that the grounds of detention be communicated to the detainee and that detention orders be reviewed by an Advisory Board. Austin's work highlights that preventive detention was adopted as a constitutional compromise between protecting civil liberties and ensuring national stability.

H.M. Seervai's authoritative treatise, *Constitutional Law of India*, provides a doctrinal analysis of preventive detention and the scope of Articles 21 and 22. Seervai critically examines the constitutional scheme that allows detention without trial and argues that preventive detention powers must be exercised strictly within the limits prescribed by law. His analysis emphasizes that procedural safeguards, such as timely communication of detention grounds and the opportunity to make a representation, are essential to prevent arbitrary executive action. Seervai also examines how the judiciary has interpreted these safeguards in several landmark cases concerning preventive detention.

Scholarly discussion on preventive detention also focuses heavily on the Emergency period of 1975–1977, when the Maintenance of Internal Security Act, 1971 (MISA) was widely used to detain political opponents and restrict civil liberties. Legal scholars such as Upendra Baxi have critically examined how preventive detention laws during the Emergency exposed the fragility of constitutional protections when confronted with expansive executive authority. Baxi argues that the extensive use of MISA demonstrated the dangers of granting broad preventive detention powers without strong institutional checks.

The judicial response to preventive detention has also been widely discussed in legal scholarship. Early judicial decisions often adopted a formalistic approach that gave significant deference to executive authorities. However, later constitutional jurisprudence, particularly after the decision in *Maneka Gandhi v. Union of India*, significantly expanded the scope of Article 21 by requiring that any procedure affecting personal liberty must be fair, just, and reasonable. Subsequent cases such as *Ichhu Devi Choraria v. Union of India* and *A.K. Roy v. Union of India* further strengthened judicial scrutiny over preventive detention orders by emphasizing strict compliance with procedural safeguards.

Recent scholarship also examines the continued use of preventive detention laws such as the National Security Act, 1980. Researchers have expressed concerns that preventive detention is still frequently invoked in situations that may not necessarily involve serious threats to national security or public order. These studies emphasize the need for stronger procedural safeguards and more effective judicial oversight to ensure that preventive detention powers are exercised in accordance with constitutional principles.

Overall, the existing literature demonstrates that preventive detention remains a contentious

but significant feature of Indian constitutional law, reflecting the ongoing challenge of balancing state security with the protection of individual liberty.

The Constitutional Fabric of Preventive Detention under the Indian Legal Framework-

The Indian Constitution occupies a unique place among democratic constitutions in expressly recognising preventive detention as a legitimate exercise of state power. While most modern democracies permit some form of detention without trial in exceptional circumstances such as wartime or national emergency, India stands out for making preventive detention a part of its constitutional framework even during normal times. This was not an accidental insertion but the product of deliberate and contentious debates in the Constituent Assembly. The drafters were acutely aware of the dangers posed by preventive detention, yet they also felt compelled by the political and security challenges of the newly independent nation to provide for it within the constitutional text⁹. The framework that emerged through Articles 22(3) to 22(7) has since functioned as the cornerstone of preventive detention jurisprudence in India, laying down both the scope of the power and the procedural safeguards designed to prevent misuse¹⁰.

Article 22 of the Constitution, which is situated among the fundamental rights, is the primary provision dealing with preventive detention. It begins by guaranteeing certain rights to individuals who are arrested, such as the right to be informed of the grounds of arrest, the right to consult a legal practitioner, and the right to be produced before a magistrate within twenty-four hours. However, Article 22 carves out a significant exception to these guarantees by authorising preventive detention. Under Article 22(3), none of the safeguards relating to arrest and detention apply to preventive detention laws, thereby placing preventive detention in a separate category of state power. This is followed by Articles 22(4) to 22(7), which seek to strike a balance by providing some minimum safeguards against arbitrary detention. These safeguards include the requirement that preventive detention cannot ordinarily exceed three months without the opinion of an Advisory Board consisting of High Court judges, and even with such approval, Parliament has the authority to prescribe the maximum period for which a person can be detained preventively. The Constitution thus embeds within itself both a sweeping power and a modest framework of judicial supervision.

The deliberate constitutionalisation of preventive detention sparked immense controversy.

Members of the Constituent Assembly like H.V. Kamath¹¹ and K.M. Munshi opposed it as antithetical to liberty and democratic values, while others like Alladi Krishnaswami Ayyar and Dr. Ambedkar defended its inclusion on grounds of national security. Ambedkar famously described preventive detention as a “necessary evil,” recognising its harshness but justifying it as indispensable given the volatility of the post-Partition environment. The decision to constitutionally sanction preventive detention has had long-lasting consequences, because unlike in other democracies where preventive detention derives from emergency powers or special legislation, in India it is insulated by constitutional legitimacy, making it more resistant to judicial invalidation¹².

Parliament has made use of the enabling provisions of Article 22 by enacting several preventive detention laws from time to time. The Preventive Detention Act, 1950 was the first legislation, intended to be temporary but renewed repeatedly until its expiry in 1969. Thereafter, the Maintenance of Internal Security Act (MISA)¹³ of 1971 became the most infamous preventive detention law, particularly because of its extensive misuse during the Emergency of 1975–77 when political opponents, journalists, and critics of the government were detained en masse. MISA symbolised the authoritarian potential inherent in preventive detention, and although it was repealed in 1978, subsequent laws such as the National Security Act (NSA) of 1980¹⁴ revived similar powers, albeit with some additional safeguards. Other sectoral preventive detention laws include COFEPOSA¹⁵, which targets smuggling and foreign exchange violations, and special anti-terrorism laws like TADA and POTA, which, though later repealed, reflected the state’s continuing reliance on preventive detention to address perceived threats¹⁶. Judicial interpretation has played a critical role in defining the contours of the constitutional framework. In *A.K. Gopalan v. State of Madras*, the Supreme Court adopted a formalistic approach, holding that as long as a preventive detention law complied with Article 22, it could not be challenged under Articles 19 or 21. This judgment effectively gave preventive detention a privileged position within the constitutional scheme, insulating it from broader rights-based scrutiny. However, this rigid view was later overturned in *Maneka Gandhi v. Union of India*, which held that Article 21’s guarantee of life and personal liberty was subject to a test of fairness, reasonableness, and justness. The *Maneka Gandhi* decision indirectly extended to preventive detention, thereby broadening the scope of judicial review of such laws. Courts began insisting on stricter compliance with procedural safeguards such as timely communication of detention grounds and expeditious consideration of representation by the detainee.

Despite these developments, the judiciary has generally upheld the validity of preventive detention laws, focusing instead on ensuring procedural safeguards are followed. The Habeas Corpus case (*ADM Jabalpur v. Shivkant Shukla*) remains a dark chapter, where the Supreme Court held that during the Emergency, even the right to life and liberty could be suspended, rendering preventive detention beyond challenge. Although this decision has since been overruled and discredited, it illustrates the vulnerability of individual liberty under the constitutional framework when state power is unchecked. The 44th Constitutional Amendment sought to address some of these vulnerabilities by limiting the period of preventive detention and ensuring that Article 21 could not be suspended during emergencies. Nevertheless, the fundamental structure of preventive detention in the Constitution remains intact, and it continues to be used extensively by governments across party lines.

The constitutional fabric of preventive detention thus represents a paradox. On the one hand, it legitimises an extraordinary restriction on liberty, seemingly incompatible with democratic ideals. On the other, it embeds procedural safeguards that reflect an effort to reconcile necessity with liberty¹⁷. This uneasy compromise has shaped Indian constitutionalism in profound ways. The fact that preventive detention is not merely statutory but constitutional makes it deeply entrenched in Indian law, making reform or repeal politically and legally challenging. It also reflects the continuing influence of colonial legacies on the Indian legal system, as well as the persistent anxieties of a state that has often prioritised order and security over individual freedom.

The Maintenance of Internal Security Act (MISA), 1971: Origin, Objectives and Implementation-

The Maintenance of Internal Security Act, 1971 (MISA) stands as one of the most controversial statutes in post-independence India, symbolising the immense powers of preventive detention and their potential for misuse. It was enacted during a period of political instability and internal challenges, with the stated objective of safeguarding national security and maintaining internal peace. The late 1960s and early 1970s were marked by economic hardships, agrarian unrest, industrial strikes, and an escalation of separatist movements in various parts of India. The Indo-Pak war of 1971 and the subsequent influx of millions of refugees from East Pakistan (now Bangladesh) had created a volatile internal situation. Against this backdrop, the government argued that extraordinary powers were necessary to detain individuals who were perceived as

threats to the sovereignty, security, or stability of the nation. Thus, MISA was introduced, not as a temporary measure like the Preventive Detention Act of 1950¹⁸, but as a permanent statute granting sweeping authority to the executive.

MISA empowered the central and state governments to detain any person to prevent them from acting in a manner prejudicial to the defence of India, the security of the state, public order, or the maintenance of essential services. What made the Act particularly alarming was the breadth of its language, which gave wide discretion to the authorities to decide who constituted a threat. A person could be detained without trial for an indefinite period, subject only to review by an Advisory Board of judges whose recommendations were not binding on the government¹⁹. The Act also authorised searches and seizures without warrants, and it excluded the jurisdiction of courts in many matters, thereby curtailing judicial oversight. By vesting such unchecked powers in the executive, MISA effectively undermined the constitutional guarantees of liberty and due process.

The political context in which MISA was enforced further amplified its notoriety. Although the government justified the law on grounds of national security²⁰, its actual implementation revealed a strong political bias. Detainees often included political opponents of the ruling government, trade union leaders, student activists, and journalists critical of state policies. The law thus became a tool of political suppression rather than merely a measure for national security. The most infamous phase of its operation came during the Emergency declared in 1975 under Article 352 of the Constitution by Prime Minister Indira Gandhi. During this period, MISA was used to detain thousands of political opponents, including leaders like Jayaprakash Narayan, Morarji Desai, Atal Bihari Vajpayee, and L.K. Advani. Civil liberties were suspended, the press was censored, and habeas corpus petitions were effectively rendered meaningless after the Supreme Court's controversial judgment in *ADM Jabalpur v. Shivkant Shukla*. MISA, in this sense, became synonymous with authoritarian rule and the erosion of democratic rights in India.

The legal challenges to MISA reflected the deep tensions within Indian constitutionalism. The judiciary, which had previously played a role in upholding preventive detention laws, faltered during the Emergency. In the Habeas Corpus case (*ADM Jabalpur*), the Supreme Court held that during the Emergency, the right to life and liberty under Article 21 stood suspended, and therefore detainees had no right to challenge their detention even if mala fide or unlawful²¹.

This judgment represented the nadir of judicial protection of rights and was widely condemned both within and outside India as a betrayal of constitutional values. The reliance on MISA during this period showed how preventive detention, once constitutionalised, could be converted into a machinery of repression, eroding the democratic ethos of the Constitution.

After the Emergency was lifted in 1977 and elections were held, the new Janata Party government recognised the dangers posed by MISA and moved to repeal it²². The Maintenance of Internal Security (Repeal) Act, 1978 formally abolished the statute. The repeal was celebrated as a restoration of democracy and an acknowledgment of the excesses committed under its shadow. Yet, the legacy of MISA continued to haunt Indian law and politics. Although the statute itself was repealed, other preventive detention laws such as the National Security Act (1980) soon emerged, carrying forward many of its features under a new name. The persistence of preventive detention laws even after the discrediting of MISA demonstrates the entrenched nature of such powers within the Indian state apparatus.

In assessing MISA's objectives and implementation, it becomes clear that while the Act was justified on grounds of security, its enforcement revealed a pattern of political misuse that undermined the very principles of democracy and liberty it was meant to protect. The sweeping powers of detention without trial, combined with weak safeguards and limited judicial review, created a legal environment ripe for abuse. The Act's operation during the Emergency highlighted the dangers of concentrating unchecked power in the executive and demonstrated the inadequacy of constitutional safeguards when institutions fail to perform their roles. The subsequent repeal of MISA was a corrective measure, but it did not fundamentally resolve the tension between security and liberty in Indian constitutional law. Instead, it stands as a historical reminder of how preventive detention, when unchecked, can transform a constitutional democracy into a state of fear and repression²³.

Judicial Responses to Preventive Detention: Key Cases and Doctrinal Developments-

The judiciary in India has played a complex and at times contradictory role in the development of preventive detention jurisprudence. On one hand, the courts have attempted to place procedural safeguards around the exercise of detention powers; on the other, they have often deferred to the executive, thereby legitimising broad incursions into personal liberty. The

trajectory of judicial decisions reflects the larger struggle of the Indian Constitution to balance individual freedoms with concerns of national security and public order. This tension is particularly visible in landmark cases beginning with the early years of the Republic and extending through the Emergency era and beyond.

The first significant constitutional challenge to preventive detention laws arose in *A.K. Gopalan v. State of Madras* (1950). In this case, the petitioner, a communist leader, was detained under the Preventive Detention Act, 1950, and he challenged the validity of his detention on the ground that it violated fundamental rights under Articles 19, 21, and 22. The Supreme Court, however, adopted a narrow interpretation of the Constitution, holding that each fundamental right was distinct and that a law consistent with Article 22 could not be challenged on grounds of violating Articles 19 or 21. The Court thereby upheld the validity of the detention, taking a positivist approach that gave primacy to the text of Article 22, which itself permits preventive detention subject to certain conditions. This case set a precedent of judicial deference and is often criticised for failing to adopt a holistic view of fundamental rights.

A shift came with *R.C. Cooper v. Union of India* (1970)²⁴, also known as the Bank Nationalisation case, where the Supreme Court rejected the doctrine of watertight compartments among fundamental rights. Though this case did not directly involve preventive detention, it laid the groundwork for a more integrated interpretation of fundamental rights. This doctrinal shift bore fruit in *Maneka Gandhi v. Union of India* (1978), where the Court held that the right to life and personal liberty under Article 21 could not be curtailed except by a procedure that is “just, fair, and reasonable.” The *Maneka Gandhi* judgment effectively overruled *Gopalan*, expanding judicial scrutiny over laws that restrict liberty, including preventive detention statutes²⁵. This case thus became a turning point, strengthening constitutional protections against arbitrary state action, even though preventive detention itself continued to be constitutionally valid.

The most controversial episode in judicial treatment of preventive detention came during the Emergency of 1975–77 in *ADM Jabalpur v. Shivkant Shukla* (1976), commonly known as the Habeas Corpus case. When civil liberties were suspended under the Emergency, thousands of political opponents were detained under MISA. The question before the Supreme Court was whether habeas corpus petitions challenging unlawful detentions could still be entertained. In a widely condemned decision, the majority of the Court held that during the Emergency, the

right to life and liberty under Article 21 stood suspended, and detainees had no locus to challenge their detention even if it was mala fide or illegal²⁶. Justice H.R. Khanna's lone dissent, asserting that even during the Emergency the state had no authority to deprive a person of life or liberty without the authority of law, has since been celebrated as a courageous defence of constitutionalism. ADM Jabalpur exposed the dangers of excessive judicial deference and is often regarded as the darkest chapter in the Supreme Court's history.

Following the end of the Emergency, the judiciary sought to restore its legitimacy and strengthen protections for individual rights. In *A.K. Roy v. Union of India* (1982)²⁷, the Court upheld the constitutionality of the National Security Act, 1980, which reintroduced preventive detention after the repeal of MISA. However, the Court simultaneously emphasised the importance of procedural safeguards, such as the right of detainees to be informed of the grounds of detention and to make representations to the Advisory Board. Though the Court continued to permit preventive detention, it demonstrated greater sensitivity to procedural fairness. In later cases such as *Prakash Chandra Mehta v. Commissioner of Police* (1985)²⁸ and *Ichhu Devi Choraria v. Union of India* (1980)²⁹, the Supreme Court reinforced the principle that preventive detention, being a drastic power, must be exercised strictly within the bounds of the law and subject to rigorous judicial scrutiny.

The evolution of judicial doctrine reveals a gradual movement from the narrow textualism of Gopalan towards a more expansive and rights-protective interpretation of the Constitution. While the Court initially viewed preventive detention as insulated under Article 22, subsequent cases after *Maneka Gandhi* allowed for the application of the "just, fair and reasonable" standard to such laws. Yet, the tension remains unresolved, as the judiciary continues to uphold the validity of preventive detention statutes even as it recognises their potential for abuse. The oscillation between deference and activism reflects the institutional dilemma of the judiciary: it is tasked with protecting fundamental rights while also recognising the political branches' responsibility to ensure security.

Today, ADM Jabalpur stands formally overruled, with the Supreme Court in *Justice K.S. Puttaswamy v. Union of India* (2017) explicitly declaring that the right to life and liberty cannot be suspended even in times of emergency. This reaffirmation of constitutionalism signals a shift towards greater protection of individual freedoms, though preventive detention laws like the NSA and state-specific statutes remain firmly entrenched. The judiciary has, therefore, shaped

preventive detention into a domain where liberty and security are continuously contested, and where the boundaries of state power are negotiated through case law. These judicial responses, spanning over seven decades, underscore the enduring struggle to align the Indian legal system with democratic ideals while grappling with the reality of state insecurity.

Preventive Detention vis-à-vis Fundamental Rights: A Constitutional

Dilemma-

Preventive detention occupies a paradoxical position within the Indian constitutional framework because it is simultaneously authorised by the Constitution and yet stands in sharp conflict with the very foundation of fundamental rights. The Indian Constitution, in Part III, guarantees civil liberties such as the right to freedom under Article 19, the right to life and personal liberty under Article 21, and the specific procedural guarantees under Article 22. While Article 22 was intended to serve as a safeguard against arbitrary detention, its clauses themselves create a significant exception by permitting preventive detention for reasons of national security, public order, and the maintenance of essential supplies and services. This dual character of Article 22 has generated a constitutional dilemma: how can the Constitution, which is meant to be the guarantor of liberty, also sanction such sweeping powers to curtail it? The dilemma becomes more acute when one examines the interaction between preventive detention and Article 21, which after the landmark decision in *Maneka Gandhi v. Union of India* was interpreted to mean that no person can be deprived of life or liberty except by a procedure that is just, fair, and reasonable. Preventive detention, by its very nature, allows curtailment of liberty without trial, based not on proven guilt but on the apprehension of future conduct. This raises the question of whether preventive detention can ever be reconciled with the fairness requirement under Article 21. The Supreme Court has attempted to resolve this by emphasising procedural safeguards such as the obligation to communicate grounds of detention, the right to make representations to an Advisory Board, and the requirement that the detention period be periodically reviewed. Yet, these safeguards often prove inadequate because the grounds of detention may be vague, the detainee's access to legal counsel is restricted, and judicial review is limited to procedural rather than substantive aspects³⁰.

Article 19, which guarantees freedoms such as speech, association, and movement, is also significantly undermined by preventive detention. A person may be detained precisely because their exercise of these freedoms is perceived as a threat to public order or national security. For

instance, during the Emergency of 1975–77, many political leaders and activists were detained under MISA merely for their opposition to government policies. Although Article 19 itself permits reasonable restrictions on grounds like public order and state security, preventive detention bypasses the usual test of reasonableness, since the detention is based on executive satisfaction rather than a judicial determination of necessity. This effectively places preventive detention outside the normal framework of rights adjudication, intensifying the constitutional contradiction.

The dilemma is not merely theoretical but has had real implications for democratic governance. The judiciary's approach has varied across decades. In *A.K. Gopalan*, the Court insulated preventive detention from broader rights analysis, holding that so long as Article 22 was followed, Articles 19 and 21 were not attracted. This created a situation where the Constitution itself was seen as authorising laws that curtailed liberty in ways inconsistent with other fundamental rights. After *Maneka Gandhi*, however, the judiciary attempted to harmonise Articles 19, 21, and 22, suggesting that even preventive detention laws must meet standards of fairness. Yet, despite this doctrinal shift, courts have continued to uphold the constitutional validity of preventive detention statutes, illustrating the persistence of the dilemma³¹.

From a theoretical perspective, preventive detention challenges the liberal-democratic principle that punishment should follow only after due process and adjudication of guilt. By allowing the executive to incarcerate individuals based on subjective satisfaction, preventive detention creates a domain where rule of law is weakened and personal liberty becomes precarious. Scholars such as H.M. Seervai³² have criticised Article 22 as a “constitutional monstrosity” for embedding preventive detention into the fundamental rights framework itself, thereby making India one of the few democracies to constitutionalise this exception. Others argue that the framers, having lived through colonial rule and the turbulence of Partition, saw preventive detention as a necessary evil to ensure national security. The dilemma, therefore, is not accidental but structural, flowing from the compromise between liberty and order at the moment of Constitution-making.

The dilemma also resurfaces in contemporary contexts. Preventive detention laws such as the National Security Act, 1980, and various state-specific statutes continue to be invoked frequently, often against political dissenters, journalists, and ordinary citizens accused of disrupting public order. Although the judiciary has insisted on strict compliance with

procedural safeguards, it rarely questions the substantive justification for detention. This creates a scenario where constitutional rights exist in theory but are undermined in practice through preventive detention. The paradox is further compounded by the fact that the Constitution itself authorises Parliament and state legislatures to enact such laws, thereby placing them beyond the scope of being struck down as unconstitutional per se.

Ultimately, preventive detention remains a constitutional dilemma because it exposes the uneasy compromise between rights and security embedded in India's constitutional design. While fundamental rights embody the promise of a democratic polity based on liberty and dignity, preventive detention represents the persistence of colonial-style executive powers. The judiciary has oscillated between deference to state necessity and the protection of individual rights, but it has never resolved the contradiction fully. Instead, it has sought to manage it by emphasising procedural fairness without challenging the core validity of preventive detention. This unresolved tension continues to shape Indian constitutional law, reflecting the broader struggle of balancing freedom and order in a postcolonial democracy³³.

Preventive Detention during Emergency: Lessons from the MISA Era-

The Maintenance of Internal Security Act, 1971, popularly known as MISA, represents one of the most controversial chapters in the history of preventive detention in India. Enacted against the backdrop of growing internal unrest and external security concerns, MISA provided the executive with sweeping powers to detain individuals without trial if they were deemed a threat to national security, public order, or the efficient supply of essential commodities. While the statute was justified on grounds of necessity, particularly during the turbulent period of the 1970s, it soon came to symbolise the potential misuse of preventive detention laws in a democracy. The experience of MISA during the Emergency of 1975–77, in particular, highlighted how preventive detention could be transformed from a security measure into an instrument of political repression.

During the Emergency declared by Prime Minister Indira Gandhi in June 1975, MISA became the principal tool for silencing political dissent. Thousands of opposition leaders, activists, journalists, and students were detained under its provisions. The detentions were often arbitrary, motivated not by genuine concerns of national security, but by the desire to stifle democratic opposition and consolidate political control. The sweeping nature of MISA was

such that the executive was not required to produce detainees before a magistrate, nor was it bound by normal evidentiary standards. Detention orders were based on subjective satisfaction, and the scope of judicial review was severely restricted. This situation revealed the darker side of preventive detention: its capacity to erode democratic freedoms under the veneer of legality. The judiciary's role during the Emergency exacerbated the problem rather than mitigating it. In *ADM Jabalpur v. Shivkant Shukla*, popularly known as the Habeas Corpus case, the Supreme Court held by majority that during a proclaimed Emergency, the right to move a writ of habeas corpus was suspended, and even if a detention was arbitrary or mala fide, courts could not interfere. This judgment effectively legitimised the executive's unchecked use of MISA, allowing the state to detain individuals without accountability. Only Justice H.R. Khanna, in his famous dissent, argued that the right to life and liberty was not merely a constitutional guarantee but a natural right that could not be extinguished even during an Emergency. His dissent later became a cornerstone of Indian constitutional thought, but at the time, the majority's stance gave legal cover to widespread human rights violations.

The misuse of MISA during the Emergency also sparked significant political and public backlash. After the Emergency was lifted in 1977 and elections were held, the newly elected Janata government repealed MISA, condemning it as a draconian law that had no place in a democratic society. The repeal was not merely a legislative act but also a symbolic gesture, representing a rejection of authoritarianism and an affirmation of the constitutional promise of liberty. However, the repeal of MISA did not mark the end of preventive detention in India. Other statutes such as the National Security Act, 1980, were later introduced, continuing the framework of preventive detention, albeit with slightly different safeguards.

The MISA era provides several lessons for understanding the place of preventive detention in Indian constitutionalism. First, it demonstrates how preventive detention laws, if unchecked, can be misused to suppress political opposition rather than address genuine threats to security. Second, it highlights the limitations of procedural safeguards when the judiciary adopts a deferential stance towards the executive. Even though Article 22 envisaged certain safeguards like periodic review by an Advisory Board, these safeguards proved ineffective during the Emergency because the political climate and judicial interpretations rendered them meaningless. Third, the episode shows that preventive detention is not just a legal issue but also a political one; its misuse depends as much on the prevailing political context as on the text of the law.

From a constitutional perspective, the MISA experience underlines the danger of embedding preventive detention within the framework of fundamental rights. By including Article 22 in the Constitution, the framers created a legal space for detention without trial, which could be expanded or contracted depending on the political needs of the day. While the framers intended preventive detention to be a necessary evil to protect national security in extraordinary circumstances, the MISA era showed how quickly such powers could be normalised and deployed for partisan ends. The judiciary's failure in *ADM Jabalpur* compounded this dilemma by effectively placing the executive beyond the reach of judicial scrutiny.

The long-term implications of the MISA period continue to shape Indian constitutional law. The subsequent judicial recognition of the "basic structure doctrine" and the reinterpretation of Article 21 in *Maneka Gandhi* can, in part, be seen as a corrective response to the failures of the Emergency era. The judiciary sought to rebuild its credibility by strengthening protections for liberty and expanding the scope of judicial review. Justice Khanna's dissent, once ignored, came to be celebrated as a moral and constitutional compass, illustrating how the darkest moments in constitutional history can produce lasting reforms.

Nevertheless, the persistence of preventive detention laws in India even after the repeal of MISA indicates that the lessons of the Emergency have not been fully absorbed. The National Security Act and other preventive detention statutes continue to provide the executive with powers reminiscent of MISA, though their use is justified as being more restrained. Yet, reports of misuse at the state and central levels show that the structural risks identified during the MISA era remain. This raises an important question: can preventive detention ever be reconciled with democracy, or is it inherently prone to abuse? The MISA experience suggests that while safeguards can limit misuse, they cannot eliminate the danger entirely, because the very logic of preventive detention is at odds with the principle of liberty.

Thus, the Emergency and the misuse of MISA serve as a cautionary tale for Indian democracy. They reveal how fragile constitutional protections can be when extraordinary powers are concentrated in the hands of the executive, and how critical the judiciary's role is in preserving liberty. The lessons from this period underscore the need for constant vigilance, robust judicial review, and a political culture that values dissent and pluralism. Without these, preventive detention risks repeating the mistakes of the past, transforming a constitutional exception into a tool of authoritarianism.

Post-Emergency Jurisprudence and the National Security Act, 1980-

The repeal of the Maintenance of Internal Security Act in 1977 was welcomed as a necessary step to restore democratic freedoms after the trauma of the Emergency, but it did not mark the end of preventive detention in India. The logic of national security and public order continued to justify preventive detention as an exceptional but indispensable tool for the state. In 1980, just three years after MISA was repealed, Parliament enacted the National Security Act (NSA), which consolidated and expanded the preventive detention framework in the post-Emergency era. The NSA represented both continuity and change: it preserved the executive's power to detain individuals without trial, but it was introduced at a time when India was still grappling with the memory of MISA's misuse, raising important constitutional and political questions about the balance between liberty and security³⁴.

The National Security Act, 1980 empowers the central and state governments to detain individuals to prevent them from acting in any manner prejudicial to the security of India, the maintenance of public order, or the maintenance of supplies and services essential to the community. The Act provides that such detention can extend up to twelve months, with the possibility of extension in certain cases. Like Article 22 of the Constitution, the NSA incorporates procedural safeguards, including reference to an Advisory Board of judges who must review detention within three months. At the same time, it allows preventive detention for reasons that are broad and open to subjective interpretation, thus retaining the features that had made MISA vulnerable to misuse.

In jurisprudential terms, the introduction of the NSA came at a crucial moment. The Supreme Court was attempting to rebuild its reputation after the widely criticised judgment in *ADM Jabalpur v. Shivkant Shukla*, and cases such as *Maneka Gandhi v. Union of India* had begun to reassert a more expansive reading of Article 21, emphasising the requirement of just, fair, and reasonable procedure. Against this backdrop, the judiciary sought to engage more critically with preventive detention statutes, even as it remained unwilling to declare them unconstitutional. For instance, in *A.K. Roy v. Union of India*, the Supreme Court examined the constitutionality of the NSA. While it upheld the Act, the Court introduced some interpretive safeguards, insisting that preventive detention must not become a substitute for the ordinary criminal process and that the government must justify detentions with concrete grounds.

However, the Court stopped short of striking down the law, thereby recognising the continuing

political consensus on the necessity of preventive detention for national security.

The persistence of preventive detention through the NSA highlights a paradox of Indian constitutionalism. On the one hand, the traumatic experience of the Emergency had underscored the dangers of unfettered executive power. On the other hand, the state's perception of internal and external threats created political pressure to retain preventive detention as a tool of governance. This paradox reflects the framers' decision to embed preventive detention within the constitutional framework through Article 22. By doing so, they normalised what would otherwise have been considered an extraordinary departure from democratic principles. The NSA became the institutional embodiment of this paradox in the post-Emergency period³⁵.

Critics argue that the NSA, like its predecessor, continues to facilitate arbitrary and politically motivated detentions. Reports have documented instances where the Act has been invoked not only in cases of serious threats to national security but also in matters of local law and order where the ordinary criminal law would have sufficed. This raises concerns that preventive detention under the NSA is being used as a convenient shortcut by authorities to bypass the rigours of criminal procedure. The wide discretion given to the executive, combined with limited judicial review, means that the potential for abuse remains as high as it was under MISA. The Supreme Court, though more assertive in its post-Emergency jurisprudence, has often deferred to the executive's judgment in matters of national security, leading to criticisms that judicial safeguards remain more formal than substantive³⁶.

At the same time, defenders of the NSA maintain that preventive detention is necessary in a country like India, which faces complex internal security challenges ranging from terrorism and insurgency to communal violence. They argue that the ordinary criminal process, which requires proof beyond reasonable doubt and lengthy trials, is often inadequate to deal with urgent threats. Preventive detention, in this view, is not a replacement for the criminal process but a complement to it, providing the state with a tool to act swiftly in situations where delay could prove disastrous. From this perspective, the NSA represents a pragmatic compromise between liberty and security, one that is justified by the particular conditions of the Indian state. The enactment of the NSA also had symbolic significance in the political landscape of the 1980s. It indicated the willingness of the government, even after the widespread condemnation of MISA, to retain extraordinary powers for itself. This continuity underscores the deep

entrenchment of preventive detention in India's constitutional order. It also raises broader questions about the resilience of democratic freedoms in the face of recurring security concerns. The fact that preventive detention laws continue to exist, and in some cases proliferate at the state level, demonstrates that the lessons of the Emergency were only partially absorbed. The judiciary's evolving jurisprudence may have placed more procedural constraints on preventive detention, but it did not dislodge the legal and political consensus in favour of its necessity³⁷.

In evaluating the post-Emergency jurisprudence, one can see a dual trajectory. On the one hand, cases like *Maneka Gandhi* expanded the meaning of liberty and strengthened judicial review, thereby creating a more robust rights-protective framework. On the other hand, the judiciary's approach to preventive detention statutes like the NSA showed its continued reluctance to confront the political branches on questions of national security. This duality reflects the broader tension in Indian constitutionalism between liberty and order, a tension that has never been fully resolved³⁸.

The National Security Act, therefore, occupies a significant place in the evolution of preventive detention in India. It embodies the state's commitment to retaining extraordinary powers even in a democratic setting, while also highlighting the judiciary's ambivalence in policing the boundaries of such powers. The Act's continued operation underscores the structural dilemma posed by preventive detention: the need to balance immediate concerns of security with the long-term commitment to liberty. Whether this balance has been struck fairly is a question that continues to animate debates on preventive detention in contemporary India³⁹.

Preventive Detention and the Expansion of Article 21: Maneka Gandhi and Beyond-

The evolution of Article 21 of the Indian Constitution represents one of the most significant transformations in Indian constitutional jurisprudence, and its impact on preventive detention law has been profound. Initially, Article 21 was narrowly interpreted in *A.K. Gopalan v. State of Madras*, where the Supreme Court held that the right to life and personal liberty could be curtailed so long as the procedure established by law was followed. This interpretation allowed preventive detention statutes such as the Preventive Detention Act of 1950 and later MISA to operate without much judicial scrutiny, since their validity was judged primarily on whether

they conformed to the minimal procedural requirements prescribed by the Constitution. However, the watershed moment came with *Maneka Gandhi v. Union of India*, which fundamentally reshaped the understanding of Article 21 by reading it expansively to require that any law depriving a person of liberty must conform to standards of fairness, reasonableness, and non-arbitrariness. This shift has had lasting consequences for the legal and constitutional debates surrounding preventive detention.

In *Maneka Gandhi*, the Supreme Court ruled that the phrase “procedure established by law” in Article 21 does not mean any procedure enacted by Parliament but must instead be a procedure that is “just, fair, and reasonable.” This interpretation brought Article 21 closer to the American concept of due process and introduced substantive requirements into the procedural guarantees. The decision also established the doctrine of interrelationship between fundamental rights, holding that Articles 14, 19, and 21 are not mutually exclusive but must be read together⁴⁰. This development meant that restrictions on personal liberty must not only be procedurally valid but also substantively reasonable and consistent with equality and freedom rights. The implications for preventive detention were enormous, as it became harder for the state to justify detentions purely on the basis of statutory authority without demonstrating fairness and proportionality.

Following *Maneka Gandhi*, the Supreme Court increasingly subjected preventive detention laws to closer scrutiny, even if it did not strike them down outright. For example, in *A.K. Roy v. Union of India*, the Court examined the constitutionality of the National Security Act, 1980, in light of Article 21’s expanded meaning. While the Court ultimately upheld the Act, it emphasised the need for strict compliance with procedural safeguards and warned against the misuse of preventive detention as a substitute for criminal prosecution. Similarly, in *Icchu Devi Choraria v. Union of India*, the Court quashed a detention order under COFEPOSA because the government failed to supply the detainee with all the documents relied upon, thereby violating the fairness requirement of Article 21. These cases illustrate how *Maneka Gandhi* provided a powerful framework for challenging arbitrary detentions and strengthened judicial oversight over executive actions.

The expanded interpretation of Article 21 also had indirect effects on preventive detention through the development of ancillary rights. The right to legal aid, recognised in *Hussainara Khatoon v. State of Bihar*, the right to speedy trial, and the recognition of human dignity as an essential component of Article 21 all enhanced the protection of individuals against arbitrary

state action. Although preventive detention laws remained constitutionally permissible, these developments placed greater obligations on the state to justify detentions and comply with stricter procedural standards. Preventive detention could no longer be seen as existing in a legal vacuum, insulated from constitutional values; it now had to be harmonised with the broader demands of fairness, reasonableness, and justice.

At the same time, the limits of this transformation must be acknowledged. The judiciary, despite its more activist posture post-*Maneka Gandhi*, has not gone so far as to declare preventive detention laws unconstitutional per se. Instead, it has opted for a strategy of mitigation, seeking to contain abuses through stricter procedural review while leaving the basic framework intact. This reflects a pragmatic recognition of the political consensus around the necessity of preventive detention in India's security environment, but it also reveals the enduring tension between the ideals of Article 21 and the practice of preventive detention⁴¹. The result is a jurisprudence that simultaneously affirms liberty in principle but accommodates restrictions in practice.

The case of *Kartar Singh v. State of Punjab* illustrates this ambivalence. The Supreme Court upheld the constitutionality of the Terrorist and Disruptive Activities (Prevention) Act (TADA), which contained preventive detention provisions, but stressed the importance of procedural safeguards. Similarly, in more recent cases concerning preventive detention under state laws, the Court has continued to strike down detentions where procedural lapses are evident, but it has not revisited the fundamental question of whether preventive detention is compatible with the expansive guarantees of Article 21. This selective approach demonstrates how *Maneka Gandhi* has empowered courts to demand higher standards of fairness without dismantling the preventive detention regime.

From a theoretical perspective, the expansion of Article 21 reflects the dynamic nature of constitutional interpretation in India, where rights have been progressively read to include new dimensions of liberty and dignity. Preventive detention, however, remains an anomaly in this landscape. While the general trajectory of Article 21 has been towards broadening the scope of liberty, preventive detention continues to represent a constitutionally sanctioned limitation that seems to stand in contradiction to the spirit of *Maneka Gandhi*. This contradiction is not merely legal but also philosophical: it raises the question of whether a constitution that aspires to protect fundamental freedoms can simultaneously legitimise indefinite restrictions on liberty

without trial.

Despite these contradictions, the impact of *Maneka Gandhi* on preventive detention cannot be understated. By embedding the principles of fairness, reasonableness, and non-arbitrariness into Article 21, the case ensured that preventive detention laws could not operate unchecked. Every detention order became subject to the scrutiny of whether it met the standards of just procedure and proportionality. This has provided civil liberties advocates with a powerful tool to challenge arbitrary executive action and has somewhat restrained the state's capacity for misuse. Yet the persistence of preventive detention laws like NSA, COFEPOSA, and state-specific enactments demonstrates that the broader structural conflict between security and liberty remains unresolved⁴².

Preventive Detention: Comparative Perspectives, Contemporary Issues, and the Road Ahead-

The debate around preventive detention in India cannot be fully understood without looking at both global practices and domestic challenges in the present day⁴³. Comparative perspectives reveal that while preventive detention exists in many democracies, its scope and safeguards vary considerably, often reflecting the constitutional and political traditions of each state. In the United Kingdom, for instance, preventive detention powers were historically exercised during wartime, but the modern system requires parliamentary approval and is subject to rigorous judicial oversight under the Human Rights Act, which incorporates the European Convention on Human Rights. Detention without trial is viewed as an exceptional power, justified only under emergencies and always with avenues for legal challenge. In the United States, preventive detention is permitted only in limited contexts, such as under immigration law, counterterrorism, or when dealing with material witnesses, but even in such cases, judicial review and procedural guarantees remain central. These jurisdictions demonstrate that democracies may tolerate preventive detention, but they consistently treat it as a narrowly tailored exception rather than a permanent feature of governance.

In contrast, India's framework embeds preventive detention as a permanent constitutional provision under Article 22, which is unusual for a liberal democracy. This permanent status reflects both the historical anxieties of partition and the political desire for strong executive tools to deal with internal unrest. The effect of this exceptionalism has been the normalization

of preventive detention as a routine administrative tool rather than an emergency measure. Even after the repeal of MISA, successive governments have enacted laws such as the National Security Act, 1980, the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), and various state-specific preventive detention statutes. The persistence of such laws indicates a continuing reliance on detention without trial as an instrument of governance, raising questions about the compatibility of these practices with democratic freedoms⁴⁴.

Contemporary India has witnessed a growing use of preventive detention in situations beyond the traditional scope of national security. In recent years, preventive detention provisions have been invoked in cases relating to protests, communal tensions, smuggling, and even ordinary law-and-order disturbances. State governments have frequently relied on preventive detention laws to detain individuals where ordinary criminal law, which requires charges and trials, would be more appropriate⁴⁵. This broad application has led to concerns that preventive detention is being misused as a shortcut for addressing political dissent and public criticism. Reports of preventive detention being invoked against activists, journalists, and protestors underscore the continuing tension between security imperatives and civil liberties.

Judicial responses in contemporary times have sought to impose some checks on this overreach, but the courts have generally been cautious in striking down detentions, often citing limited grounds of review. The Supreme Court has reiterated in cases like *Rekha v. State of Tamil Nadu* (2011)⁴⁶ that preventive detention cannot be used when ordinary criminal law is sufficient, and in *Ramesh Yadav v. District Magistrate* (1985), it held that detention orders cannot substitute pending criminal proceedings. Yet, these principles have not fully stemmed the tide of detentions, as the broad legislative powers and executive discretion remain largely intact. The judicial record, while occasionally protective of liberties, has not consistently curtailed the deep-rooted culture of reliance on preventive detention⁴⁷.

Given these realities, the path forward demands a serious reconsideration of how preventive detention fits within a constitutional democracy. One approach could be to recalibrate the scope of Article 22 by limiting preventive detention to genuinely extraordinary circumstances, thereby restoring its character as an exception. Parliament could introduce statutory safeguards mandating periodic review by independent judicial bodies and ensuring transparency in detention orders. Another reform could involve narrowing the maximum period of detention

without trial, while also requiring that such detentions be justified with clear and demonstrable evidence of threat. Comparative models suggest that democracies can reconcile security with liberty by adopting strict procedural protections, including immediate judicial access and time-bound detention limits⁴⁸.

Furthermore, India must move toward strengthening its ordinary criminal justice system, so that executive dependence on preventive detention laws diminishes⁴⁹. By investing in faster trials, modern investigative techniques, and fair policing practices, the state can address security threats without undermining fundamental rights. Preventive detention should not become an administrative convenience for the state but rather a tool of last resort. This transformation would also align India more closely with international human rights standards, including the International Covenant on Civil and Political Rights, which stresses that deprivation of liberty must always be accompanied by due process.

Ultimately, the challenge is to balance liberty with security in a manner that preserves constitutionalism. Preventive detention cannot be abolished overnight given India's complex socio-political realities, but its current form is excessively broad and open to misuse. By learning from comparative jurisdictions and embedding stronger safeguards, India can ensure that its commitment to national security does not come at the expense of its commitment to democracy and the rule of law. The future of preventive detention in India, therefore, lies in redefining it as an extraordinary and temporary power, not as a permanent instrument of governance⁵⁰.

Conclusion-

The study of preventive detention within the constitutional fabric of India, particularly through the lens of the Maintenance of Internal Security Act (MISA) and subsequent legislative frameworks, reveals the deep tension between individual liberty and the state's imperative to maintain security. Preventive detention in India has never been a mere legal instrument; rather, it reflects the anxieties of a nation born out of partition, burdened by concerns of internal disorder, and committed to preserving sovereignty in a turbulent geopolitical environment. Yet, while historical justifications may have grounded its inclusion in the constitutional text under Article 22, the endurance and normalization of preventive detention in contemporary India raise profound questions about the extent to which a constitutional democracy can compromise liberty without undermining its very foundations.

The central dilemma has always been how to reconcile the promise of fundamental rights with the broad powers granted to the executive. The Constitution, through Articles 21 and 22, embodies a duality: it affirms the sanctity of life and personal liberty, but simultaneously carves out exceptions that enable detention without trial. The judicial journey, from *A.K. Gopalan v. State of Madras* to *A.D.M. Jabalpur* and later *Maneka Gandhi v. Union of India*, illustrates this struggle in stark terms. Courts have oscillated between deference to executive necessity and assertions of the inviolability of liberty, but the jurisprudence remains unsettled. The shadow of the Emergency, when MISA became synonymous with arbitrary detention and political suppression, still looms over the constitutional imagination, demonstrating how easily exceptional powers can be misused when unchecked by judicial vigilance.

At the same time, preventive detention cannot be dismissed as entirely illegitimate. States across the world, even in mature democracies, have devised preventive frameworks to confront extraordinary threats such as terrorism, organized crime, or insurgency. Comparative perspectives from the United Kingdom, the United States, and continental Europe reveal that detention without trial is tolerated only under tightly controlled conditions, often limited in duration and accompanied by rigorous judicial oversight. In contrast, India's permanent constitutional sanction for preventive detention has blurred the line between necessity and routine. What was envisaged as an exceptional measure has, over time, been absorbed into the ordinary functioning of governance. Laws like the NSA, COFEPOSA, and state-level detention statutes perpetuate the logic of preventive detention long after the original justification of partition-era instability has lost its urgency.

This normalization has profound consequences. Preventive detention is no longer confined to matters of grave national security but is increasingly used in contexts where ordinary criminal law could suffice. The detention of protestors, journalists, and dissenters under preventive statutes signals a worrying expansion of executive discretion at the expense of fundamental freedoms. Such practices risk hollowing out the very guarantees of liberty that define a constitutional democracy. The judiciary, while occasionally intervening to strike down arbitrary orders, has often been hesitant to impose structural limits on preventive detention, thereby allowing its misuse to persist. The tension between constitutional text, judicial restraint, and executive overreach has thus become a defining feature of the preventive detention regime in India.

Looking ahead, the challenge is to reimagine preventive detention in a manner that aligns with democratic values while addressing genuine security concerns. The permanence of preventive detention provisions in the Constitution should be revisited, with a view to restricting their application to narrowly defined emergencies. Parliamentary oversight must be strengthened, and independent review mechanisms should be instituted to ensure that detention orders are subject to impartial scrutiny. Judicial review, already recognized as a basic feature of the Constitution, should be made more robust by expanding the grounds on which preventive detention can be challenged. Additionally, maximum periods of detention without trial should be reduced, and compensation for wrongful detention must be recognized as an enforceable right.

At the broader level, India must also invest in strengthening its criminal justice system. The reliance on preventive detention often stems from inefficiencies in investigation and prosecution, leading the state to prefer detention over due process. By modernizing policing, ensuring faster trials, and safeguarding prosecutorial independence, the state can reduce its dependence on extraordinary measures. Preventive detention should never become a substitute for addressing structural weaknesses in law enforcement.

Ultimately, the question of preventive detention is not merely legal or constitutional—it is moral and political. It forces us to ask what kind of democracy India aspires to be: one that prioritizes order even at the cost of freedom, or one that secures liberty while carefully managing risks to security. The balance is delicate, but it must always tilt in favor of liberty, for without liberty, security itself loses meaning. The experience of MISA during the Emergency is a stark reminder that unchecked preventive detention corrodes democracy from within. The way forward lies not in abolishing preventive detention outright, but in transforming it into a truly exceptional tool, exercised sparingly, transparently, and under the strictest of safeguards.

The endurance of India's democracy depends on its ability to honour the spirit of its Constitution, which places the individual at the heart of the republic. Preventive detention, if left unchecked, risks reversing that promise by subordinating citizens to the arbitrary will of the state. A constitutional democracy must always err on the side of liberty, even when confronted with insecurity. Only then can India claim fidelity to its constitutional ethos and ensure that its fabric remains resilient, just, and truly democratic.

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