

# REFORMING PREVENTIVE DETENTION LAWS IN INDIA: A CONSTITUTIONAL AND HUMAN RIGHTS PERSPECTIVE

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## **Abstract:**

Preventive detention remains one of the most controversial features of the Indian constitutional framework, permitting 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 under Articles 21 and 22 recognizes preventive detention as an exceptional measure, its continued use through statutes such as the National Security Act, 1980 and various state-level preventive detention laws has raised serious constitutional and human rights concerns. The tension between individual liberty and state security lies at the heart of this debate. Judicial interpretation has oscillated between deference to executive satisfaction and protection of procedural safeguards, often limiting substantive review of detention orders. Critics argue that vague statutory language, broad discretionary powers, delays in communication of grounds of detention, and limited access to legal representation undermine the fundamental rights to equality, due process, and personal liberty. From an international human rights perspective, preventive detention regimes must satisfy strict standards of necessity, proportionality, and procedural fairness. This article examines the constitutional scheme governing preventive detention, analyses key Supreme Court judgments, and evaluates compliance with international human rights norms. It argues that meaningful reform requires narrowing statutory grounds, strengthening judicial oversight, ensuring transparency, and aligning domestic law with global human rights obligations. Reforming preventive detention laws is essential to preserving constitutional morality, safeguarding civil liberties, and maintaining democratic accountability in India.

**Keywords:** Preventive Detention, Article 22, Personal Liberty, National Security, Due Process, Human Rights Law.

## **1. INTRODUCTION**

Preventive detention occupies a paradoxical position within the Indian constitutional framework. On the one hand, the Constitution of India guarantees fundamental rights such as equality before the law (Article 14), protection of life and personal liberty (Article 21), and procedural safeguards upon arrest (Article 22). On the other hand, it expressly permits preventive detention, thereby authorizing the State to detain individuals without trial on the basis of anticipated threats to national security, public order, or the maintenance of essential services. This duality reflects the framers' attempt to reconcile the imperatives of state security with the protection of civil liberties in a newly independent nation confronting internal and external challenges. However, the continued expansion and use of preventive detention laws have raised profound constitutional and human rights concerns, particularly regarding arbitrariness, executive overreach, and the dilution of due process guarantees.

Preventive detention differs fundamentally from punitive detention. Whereas punitive detention follows conviction after a judicial determination of guilt, preventive detention is based on executive "satisfaction" that an individual may act in a manner prejudicial to public order or national security. The rationale is preventive rather than retributive. Yet, this very rationale poses constitutional challenges, as detention occurs without a formal charge, trial, or finding of guilt. Article 22(3)–(7) of the Constitution provides a special framework for preventive detention, permitting departure from certain procedural safeguards otherwise guaranteed to arrested persons. For example, a person detained preventively is not entitled to be produced

before a magistrate within 24 hours in the same manner as an ordinary arrestee, and the grounds of detention may be withheld in the public interest. The Constitution, however, requires communication of grounds “as soon as may be” and mandates review by an Advisory Board. These safeguards were intended as minimal checks against abuse, yet their practical effectiveness has been widely debated (Seervai, 1996).

Historically, preventive detention laws in India have their origins in colonial governance. The British administration enacted laws such as the Bengal Regulation III of 1818 and the Defence of India Act, 1915, enabling detention without trial to suppress dissent. These measures were used extensively against freedom fighters and political activists. Ironically, post-independence India retained and constitutionalized preventive detention, viewing it as necessary to preserve unity and security in a fragile political environment. The Preventive Detention Act, 1950, enacted shortly after the Constitution came into force, marked the first major post-independence statute permitting such detention. Although this Act lapsed in 1969, subsequent legislation such as the Maintenance of Internal Security Act (MISA), 1971, and the National Security Act (NSA), 1980, continued the preventive detention regime. Various states have also enacted specialized preventive detention laws targeting bootleggers, drug offenders, and persons deemed dangerous to public order.

The constitutional validity of preventive detention was first examined in *A.K. Gopalan v. State of Madras* (1950), where the Supreme Court adopted a narrow interpretation of Article 21, holding that “procedure established by law” meant any procedure prescribed by a validly enacted statute. The Court declined to import principles of natural justice or substantive due process into Article 21, thereby upholding the Preventive Detention Act, 1950. This formalistic approach significantly curtailed judicial scrutiny of preventive detention laws. However, the jurisprudential landscape shifted dramatically with *Maneka Gandhi v. Union of India* (1978), where the Supreme Court expanded the scope of Article 21 to require that any procedure depriving personal liberty must be “just, fair and reasonable.” This interpretation effectively infused substantive due process into Indian constitutional law and opened the door for greater scrutiny of executive detention (*Maneka Gandhi v. Union of India*, 1978).

Despite this doctrinal evolution, preventive detention continues to test the boundaries of constitutional morality and democratic governance. Critics argue that the preventive detention framework is susceptible to misuse, particularly in politically sensitive contexts. Empirical evidence suggests that detention orders are often issued on vague or repetitive grounds, with limited transparency and minimal accountability (Human Rights Watch, 2011). The reliance on executive satisfaction rather than judicial determination creates an imbalance between individual liberty and state power. Moreover, the burden of challenging detention frequently rests on the detainee, who may lack access to legal resources or timely information regarding the grounds of detention.

From a human rights perspective, preventive detention regimes must comply with international norms articulated in instruments such as the International Covenant on Civil and Political Rights (ICCPR), to which India is a party. Article 9 of the ICCPR guarantees the right to liberty and security of person and prohibits arbitrary arrest or detention. It requires that detainees be informed promptly of the reasons for their arrest and be entitled to judicial review. Although preventive detention is not per se prohibited under international law, it must satisfy strict standards of necessity, proportionality, and procedural fairness (United Nations Human Rights Committee, 2014). Concerns have been raised regarding India’s compliance with these standards, particularly in relation to prolonged detention without effective judicial oversight.

The tension between national security and civil liberties has become increasingly salient in contemporary India, where preventive detention laws are invoked in contexts ranging from terrorism to public protests. While the State possesses a legitimate interest in maintaining public order and security, constitutional democracy requires that such powers be exercised within clearly defined limits. The expansion of executive discretion without corresponding safeguards risks undermining the foundational principle that liberty is the rule and detention the exception. Reforming preventive detention laws is therefore not merely a policy preference but a constitutional imperative grounded in the values of equality, dignity, and rule of law.

This article examines the constitutional framework governing preventive detention and critically evaluates its compatibility with human rights standards. It argues that meaningful reform requires narrowing statutory grounds of detention, strengthening judicial review, enhancing transparency, and ensuring strict adherence to procedural safeguards. The introduction sets the normative context for analyzing the historical and judicial evolution of preventive detention in India, highlighting the enduring challenge of balancing security and liberty in a constitutional democracy.

## 2. HISTORICAL AND JUDICIAL EVOLUTION OF PREVENTIVE DETENTION JURISPRUDENCE IN INDIA

The historical development of preventive detention in India reveals a continuity of exceptional powers from colonial governance to post-independence constitutionalism. During British rule, preventive detention was employed as a tool of political control. Laws such as the Rowlatt Act, 1919, authorized detention without trial to curb nationalist movements, provoking widespread protest and resistance. These colonial precedents shaped the framers' debates in the Constituent Assembly, where preventive detention emerged as a contentious issue. While several members opposed its inclusion on the ground that it contradicted democratic ideals, others argued that the newly independent state required extraordinary powers to safeguard national security and maintain public order (Austin, 1999). The eventual incorporation of Article 22 reflected a compromise, embedding preventive detention within the constitutional framework while prescribing minimal procedural safeguards.

The Supreme Court's early jurisprudence adopted a deferential stance toward legislative and executive authority. In *A.K. Gopalan v. State of Madras* (1950), the Court upheld the Preventive Detention Act, 1950, rejecting the argument that preventive detention violated fundamental rights beyond Article 21. The majority treated each fundamental right as isolated and refused to interpret Articles 14, 19, and 21 as interconnected. This compartmentalized approach limited judicial review and allowed preventive detention laws to operate with minimal constitutional constraint. Justice Fazl Ali's dissent, however, advocated a more integrated reading of fundamental rights and foreshadowed later developments.

The Emergency period (1975–1977) marked a critical juncture in preventive detention jurisprudence. During this time, the Maintenance of Internal Security Act (MISA), 1971, was widely used to detain political opponents without trial. In *ADM Jabalpur v. Shivkant Shukla* (1976), the Supreme Court held that during a proclaimed Emergency, detainees could not seek judicial enforcement of the right to life and personal liberty. This decision, often regarded as one of the darkest moments in Indian constitutional history, effectively sanctioned executive excess and suspended judicial oversight. The subsequent constitutional and political backlash led to significant reforms, including the 44th Constitutional Amendment, which sought to strengthen safeguards against abuse of emergency powers (Austin, 1999).

The post-Emergency era witnessed a judicial renaissance characterized by expanded interpretation of fundamental rights. In *Maneka Gandhi v. Union of India* (1978), the Court overruled the narrow reasoning of *Gopalan* and established that any law depriving personal liberty must satisfy the test of fairness, reasonableness, and non-arbitrariness. This landmark judgment transformed Article 21 into a repository of substantive due process and provided a constitutional basis for scrutinizing preventive detention laws more rigorously. Subsequent cases, such as *Justice K.S. Puttaswamy v. Union of India* (2017), further reinforced the centrality of dignity, autonomy, and privacy within Article 21.

Despite doctrinal expansion, judicial review of preventive detention orders often remains limited to procedural compliance rather than substantive evaluation of executive satisfaction. Courts generally refrain from assessing the adequacy of material relied upon by the detaining authority, focusing instead on whether procedural safeguards—such as timely communication of grounds and Advisory Board review—have been observed. Critics contend that this approach insufficiently protects against arbitrary detention (Seervai, 1996). Moreover, delays in furnishing grounds of detention or in deciding representations can undermine the constitutional guarantee of effective remedy.

The National Security Act, 1980, continues to serve as the primary central legislation authorizing preventive detention. Various states have enacted additional statutes addressing specific categories of offenses. The cumulative effect of these laws is the normalization of preventive detention within the criminal justice system. While the judiciary has occasionally quashed detention orders for procedural irregularities, systemic concerns persist regarding transparency, accountability, and proportionality.

Internationally, preventive detention is viewed with caution and subject to stringent safeguards. The United Nations Human Rights Committee has emphasized that detention must not be arbitrary and must be subject to prompt judicial review (United Nations Human Rights Committee, 2014). Comparative constitutional jurisprudence in democratic societies reflects increasing reliance on due process and judicial oversight to prevent abuse. India's preventive detention regime, by contrast, retains broad executive discretion, raising questions about compliance with global human rights standards.

In conclusion, the historical and judicial evolution of preventive detention in India reveals a trajectory from colonial repression to constitutional accommodation, punctuated by episodes of judicial deference and later expansion of rights. While constitutional interpretation has evolved to strengthen due process and dignity, preventive detention laws continue to operate within a framework that prioritizes executive discretion. The challenge for contemporary constitutionalism lies in reconciling security imperatives with the fundamental commitment to liberty and rule of law. Meaningful reform requires aligning preventive detention jurisprudence with the expanded understanding of Article 21 and with India's international human rights obligations.

### **3. CONSTITUTIONAL DEFICIENCIES AND HUMAN RIGHTS CONCERNS IN PREVENTIVE DETENTION LAWS**

The constitutional validity of preventive detention laws in India must be examined against the expanded interpretation of fundamental rights developed through post-*Maneka Gandhi* jurisprudence. Although Article 22 of the Constitution explicitly authorizes preventive detention, this authorization cannot be interpreted in isolation from Articles 14, 19, and 21. The doctrine of integrated interpretation, firmly established in *Maneka Gandhi v. Union of India* (1978), mandates that any deprivation of personal liberty must satisfy tests of fairness, reasonableness, and non-arbitrariness. Yet, preventive detention statutes often operate within a framework that prioritizes executive discretion over substantive judicial scrutiny. This structural imbalance raises serious constitutional concerns regarding arbitrariness, proportionality, and effective remedy.

One of the most significant constitutional deficiencies lies in the reliance on "subjective satisfaction" of the detaining authority. Preventive detention laws such as the National Security Act, 1980 empower the executive to detain individuals if it is "satisfied" that such detention is necessary to prevent acts prejudicial to national security or public order. Judicial review of this satisfaction is generally limited to examining procedural compliance rather than assessing the adequacy or credibility of the underlying material. The Supreme Court has repeatedly held that courts cannot substitute their opinion for that of the executive in matters of preventive detention (*Khudiram Das v. State of West Bengal*, 1975). While this doctrine aims to respect separation of powers, it risks insulating executive decisions from meaningful constitutional scrutiny. The limited scope of review can enable misuse, particularly where detention is based on vague or repetitive grounds.

Another constitutional concern pertains to the communication of grounds of detention. Article 22(5) requires that the detaining authority communicate the grounds "as soon as may be" to enable the detainee to make a representation. However, the phrase "as soon as may be" has been interpreted flexibly, often permitting delays. Courts have quashed detention orders where unreasonable delay occurred (*Haradhan Saha v. State of West Bengal*, 1975), yet systemic delays persist. The withholding of certain facts in the "public interest" further restricts the detainee's ability to mount an effective challenge. Such limitations undermine the principle of *audi alteram partem* and weaken the procedural fairness envisioned under Article 21.

The Advisory Board mechanism, designed as a safeguard under Article 22(4), has also been criticized for lacking independence and transparency. Advisory Boards typically comprise sitting or retired judges who

review detention orders within a prescribed time frame. However, proceedings are conducted in camera, and detainees may not have full access to evidence relied upon by the State. The absence of robust adversarial procedure reduces the effectiveness of this safeguard. Critics argue that the Advisory Board often functions as a formalistic review body rather than a substantive check on executive power (Seervai, 1996).

From a human rights perspective, preventive detention raises concerns under international law, particularly Article 9 of the International Covenant on Civil and Political Rights (ICCPR). The United Nations Human Rights Committee has clarified that detention must not be arbitrary and must be subject to prompt judicial review (United Nations Human Rights Committee, 2014). The concept of arbitrariness extends beyond legality to encompass reasonableness, necessity, and proportionality. Preventive detention regimes must therefore demonstrate that detention is a measure of last resort and that less restrictive alternatives are unavailable. In practice, however, preventive detention in India is sometimes invoked in cases where ordinary criminal law mechanisms could suffice, raising questions about proportionality.

The principle of proportionality, now firmly embedded in Indian constitutional jurisprudence, requires that any restriction on fundamental rights pursue a legitimate aim, be suitable to achieve that aim, be necessary in the absence of less restrictive measures, and maintain a balance between rights and public interest (*Modern Dental College v. State of Madhya Pradesh*, 2016). Preventive detention laws often fail to meet this rigorous standard. The broad and undefined terms such as “public order” or “security of the state” allow expansive interpretation, increasing the risk of overreach. Moreover, repeated detention orders based on similar grounds may effectively circumvent the protections of criminal procedure, creating a parallel system of incarceration. Empirical studies and human rights reports have documented instances where preventive detention laws were used against political dissenters, protesters, or marginalized communities (Human Rights Watch, 2011). Such usage undermines democratic accountability and chills free expression under Article 19(1)(a). While the Constitution permits reasonable restrictions on free speech and assembly in the interest of public order, preventive detention without trial constitutes a severe encroachment on liberty that must be justified by compelling necessity. The potential misuse of preventive detention to stifle dissent is particularly troubling in a constitutional democracy committed to pluralism and rule of law.

The intersection of preventive detention with socio-economic vulnerabilities further exacerbates inequality. Detainees often lack adequate legal representation, financial resources, or awareness of their rights. The procedural complexity of filing habeas corpus petitions or representations before Advisory Boards places an onerous burden on individuals who may already be disadvantaged. The constitutional promise of equality before law under Article 14 is compromised when access to effective remedy depends on socio-economic status.

In sum, preventive detention laws in India exhibit structural deficiencies that challenge constitutional and human rights standards. Although judicial interpretation has expanded the scope of personal liberty, preventive detention remains an exception that frequently escapes rigorous scrutiny. The reliance on executive satisfaction, procedural opacity, and limited proportionality review raises serious concerns about arbitrariness and abuse. Aligning preventive detention with contemporary constitutional principles requires re-examining these deficiencies in light of expanded due process and international human rights obligations.

#### **4. THE CASE FOR REFORM: STRENGTHENING CONSTITUTIONAL SAFEGUARDS AND ALIGNING WITH HUMAN RIGHTS NORMS**

The need to reform preventive detention laws in India arises from the persistent tension between state security and individual liberty. While the Constitution authorizes preventive detention, it does not mandate its expansive or routine use. Rather, the framers envisioned it as an exceptional measure subject to strict safeguards. The evolution of constitutional jurisprudence—particularly post-*Maneka Gandhi*—demands that preventive detention laws be re-evaluated to ensure conformity with principles of fairness, reasonableness, and proportionality.

First, reform must address the breadth and vagueness of statutory grounds. Terms such as “public order” and “security of the state” should be narrowly defined to prevent arbitrary interpretation. Comparative constitutional systems emphasize clarity and precision in laws restricting liberty to ensure foreseeability and accountability. Narrowing statutory language would reduce the risk of misuse and align preventive detention with the constitutional mandate against arbitrariness under Article 14.

Second, judicial oversight must be strengthened. The doctrine of subjective satisfaction should not shield executive decisions from substantive review. Courts should apply proportionality analysis rigorously, assessing whether detention is necessary and whether less restrictive measures could achieve the same objective. The Supreme Court’s jurisprudence in cases such as *Puttaswamy* (2017) underscores that any intrusion into personal liberty must satisfy strict scrutiny. Extending this reasoning to preventive detention would reinforce constitutional accountability.

Third, procedural safeguards require enhancement. The communication of grounds of detention should be immediate and comprehensive, with limited exceptions. Detainees must have access to legal representation and sufficient time to prepare representations. Advisory Board proceedings should incorporate greater transparency and adversarial elements, ensuring meaningful review rather than formalistic endorsement. Strengthening procedural fairness would fulfill the constitutional promise of Article 21 and align domestic law with ICCPR standards.

Fourth, periodic legislative review of preventive detention statutes should be mandated. Sunset clauses, requiring renewal of detention laws after fixed intervals, would ensure democratic deliberation and prevent normalization of exceptional powers. Legislative oversight committees could examine patterns of detention and assess compliance with constitutional safeguards. Transparency in reporting data on preventive detention orders would enhance public accountability.

Fifth, greater emphasis should be placed on alternative security measures within the framework of ordinary criminal law. Preventive detention should be a last resort, invoked only when imminent threats cannot be addressed through standard legal processes. The availability of stringent bail conditions, surveillance measures subject to judicial authorization, and expedited trials can often achieve security objectives without indefinite detention.

Finally, aligning preventive detention with international human rights standards is imperative. As a State Party to the ICCPR, India is obligated to ensure that deprivation of liberty is not arbitrary and that detainees have access to effective remedy. Incorporating explicit proportionality standards into preventive detention statutes would demonstrate commitment to global human rights norms. Judicial training and sensitization regarding international standards could further strengthen rights protection.

Reforming preventive detention laws is not an exercise in weakening national security but in reinforcing constitutional democracy. A state secure in its constitutional values need not rely excessively on extraordinary powers. By narrowing statutory grounds, strengthening judicial oversight, enhancing procedural safeguards, and ensuring compliance with international norms, India can reconcile security imperatives with its foundational commitment to liberty and rule of law. The constitutional vision articulated in *Maneka Gandhi* and reaffirmed in *Puttaswamy* requires that preventive detention remain a carefully circumscribed exception rather than an entrenched practice. Meaningful reform will thus affirm that in a democratic society, liberty remains the rule and detention the carefully guarded exception.

## **5. COMPARATIVE PERSPECTIVES AND INTERNATIONAL HUMAN RIGHTS STANDARDS ON PREVENTIVE DETENTION**

A comprehensive reform of preventive detention laws in India requires engagement with comparative constitutional practice and international human rights standards. Preventive detention is not unique to India; many jurisdictions provide for temporary detention in exceptional circumstances involving terrorism, war, or threats to national security. However, the defining feature in constitutional democracies is the presence of

strict safeguards, narrow grounds, judicial authorization, and periodic review. The comparative experience demonstrates that while states may reserve extraordinary powers, they are increasingly subject to rigorous proportionality analysis and oversight to prevent abuse.

Under international law, Article 9 of the International Covenant on Civil and Political Rights (ICCPR), to which India acceded in 1979, guarantees the right to liberty and security of person and prohibits arbitrary detention. The United Nations Human Rights Committee has clarified in General Comment No. 35 that “arbitrariness” includes elements of inappropriateness, injustice, lack of predictability, and disproportionality (United Nations Human Rights Committee, 2014). Preventive detention must therefore meet strict standards of necessity and proportionality and must be subject to prompt judicial control. The Committee has emphasized that detainees must be informed of reasons for detention, have access to legal counsel, and be able to challenge the lawfulness of detention before a court. Prolonged or indefinite detention without meaningful judicial review violates Article 9, even where national security concerns are invoked.

Comparative constitutional jurisprudence reflects similar caution. In the United Kingdom, preventive detention measures under anti-terrorism legislation have been subjected to intense judicial scrutiny. In *A v. Secretary of State for the Home Department* (2004), the House of Lords held that indefinite detention of foreign nationals without trial under the Anti-terrorism, Crime and Security Act, 2001 was incompatible with the European Convention on Human Rights. The Court applied a proportionality analysis, holding that security concerns could not justify discriminatory or excessive deprivation of liberty. Similarly, in the United States, the Supreme Court in *Hamdi v. Rumsfeld* (2004) affirmed that even in matters of national security, detainees classified as enemy combatants are entitled to due process and the opportunity to challenge the factual basis of detention before a neutral decision-maker.

These comparative developments underscore a consistent principle: exceptional powers must be accompanied by exceptional safeguards. Judicial oversight must be real and effective, not merely procedural. Preventive detention regimes that rely heavily on executive satisfaction, limited disclosure of evidence, and non-adversarial review mechanisms are increasingly regarded as incompatible with modern constitutional standards. India’s preventive detention framework, while constitutionally authorized, appears comparatively broad and frequently invoked, raising concerns about normalization of emergency-like powers.

The European Court of Human Rights (ECtHR) has also articulated strict criteria for detention under Article 5 of the European Convention on Human Rights. In cases involving preventive or security-based detention, the Court has required clear statutory basis, foreseeability, necessity, and regular review. Indefinite detention without adequate judicial control has been consistently condemned. These principles align with India’s post-*Maneka Gandhi* jurisprudence, which mandates that any deprivation of liberty must be “just, fair, and reasonable.” The convergence between international human rights law and Indian constitutional doctrine provides a strong normative foundation for reform.

Another critical aspect of international standards concerns transparency and accountability. The United Nations Special Rapporteur on counter-terrorism and human rights has repeatedly stressed that preventive detention should not become a substitute for criminal prosecution and that emergency powers must not erode fundamental freedoms. Data collection, independent monitoring, and public reporting are essential mechanisms to ensure compliance. In India, limited publicly accessible data on preventive detention orders and their outcomes hinders effective oversight and scholarly evaluation.

Moreover, international human rights law emphasizes the principle of non-discrimination. Preventive detention measures must not disproportionately target specific communities or dissenting groups. Reports by civil society organizations have raised concerns about the use of preventive detention against marginalized populations or political activists (Human Rights Watch, 2011). Ensuring compliance with Article 14 of the Indian Constitution and Article 26 of the ICCPR requires vigilance against discriminatory application.

In light of these comparative and international standards, it becomes evident that India's preventive detention regime would benefit from recalibration. While national security remains a legitimate state objective, constitutional democracies increasingly insist that such objectives be pursued within a framework of accountability and proportionality. India's constitutional commitment to dignity, liberty, and rule of law provides both the authority and the obligation to align preventive detention practices with global human rights norms.

## 6. CONCLUSION AND REFORM-ORIENTED RECOMMENDATIONS

Preventive detention in India embodies a constitutional paradox: it is both authorized and constrained by the Constitution. Articles 21 and 22 recognize the necessity of exceptional powers in extraordinary circumstances, yet they also embody the foundational principle that personal liberty is central to democratic governance. The historical experience of colonial repression, the Emergency era, and contemporary security challenges demonstrates that preventive detention, while sometimes necessary, is inherently susceptible to misuse. The evolution of constitutional jurisprudence—from *A.K. Gopalan* (1950) to *Maneka Gandhi* (1978) and *Justice K.S. Puttaswamy* (2017)—has progressively strengthened due process and dignity. However, preventive detention laws continue to operate within a framework that often prioritizes executive discretion over substantive liberty.

Reforming preventive detention laws must begin with reaffirming the principle that detention without trial is an exception, not the norm. The first recommendation is statutory narrowing of grounds for detention. Vague expressions such as “public order” should be clearly defined to prevent expansive interpretation. Legislative precision enhances predictability and reduces arbitrariness, thereby fulfilling the constitutional mandate of Article 14.

Second, the doctrine of subjective satisfaction should be recalibrated through robust judicial review. Courts must apply proportionality analysis rigorously, examining necessity and availability of less restrictive alternatives. The incorporation of explicit proportionality standards into preventive detention statutes would harmonize domestic law with Article 21 jurisprudence and international human rights obligations.

Third, procedural safeguards must be strengthened. Immediate and comprehensive communication of grounds of detention, guaranteed access to legal counsel, and sufficient time to prepare representations are essential components of fairness. Advisory Board proceedings should adopt greater transparency and adversarial elements, ensuring meaningful scrutiny rather than formal endorsement of executive decisions.

Fourth, institutional oversight mechanisms should be enhanced. Regular legislative review, sunset clauses for preventive detention statutes, and mandatory publication of anonymized data regarding detention orders would foster democratic accountability. Independent monitoring bodies, possibly under the aegis of the National Human Rights Commission, could provide additional oversight.

Fifth, preventive detention should not displace ordinary criminal law mechanisms. The State must prioritize investigation, prosecution, and fair trial processes wherever feasible. Resorting to preventive detention only when strictly necessary would uphold the constitutional balance between security and liberty.

Finally, alignment with international human rights standards must guide reform. As a State Party to the ICCPR, India is obligated to ensure that detention is not arbitrary and that effective remedies are available. Judicial training, legislative reform, and executive accountability must collectively reinforce this commitment.

In conclusion, preventive detention laws in India require thoughtful recalibration to align with the transformative vision of the Constitution. Security and liberty need not be mutually exclusive; rather, enduring security is best secured through adherence to rule of law and respect for fundamental rights. By strengthening safeguards, narrowing executive discretion, and embracing proportionality and accountability, India can

reconcile preventive detention with its constitutional and human rights commitments. Such reform will affirm that even in times of uncertainty, constitutional democracy remains anchored in liberty, dignity, and justice.

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