



INDIAN JOURNAL OF
LEGAL REVIEW

VOLUME 5 AND ISSUE 5 OF 2025

INSTITUTE OF LEGAL EDUCATION



INDIAN JOURNAL OF LEGAL REVIEW

APIS – 3920 – 0001 | ISSN – 2583-2344

(Open Access Journal)

Journal's Home Page – <https://ijlr.iledu.in/>

Journal's Editorial Page – <https://ijlr.iledu.in/editorial-board/>

Volume 5 and Issue 5 of 2025 (Access Full Issue on – <https://ijlr.iledu.in/volume-5-and-issue-5-of-2025/>)

Publisher

Prasanna S,

Chairman of Institute of Legal Education

No. 08, Arul Nagar, Seera Thoppu,

Maudhanda Kurichi, Srirangam,

Tiruchirappalli – 620102

Phone : +91 94896 71437 – info@iledu.in / Chairman@iledu.in



ILE Publication House is the
**India's Largest
Scholarly Publisher**

© Institute of Legal Education

Copyright Disclaimer: All rights are reserve with Institute of Legal Education. No part of the material published on this website (Articles or Research Papers including those published in this journal) may be reproduced, distributed, or transmitted in any form or by any means, including photocopying, recording, or other electronic or mechanical methods, without the prior written permission of the publisher. For more details refer <https://ijlr.iledu.in/terms-and-condition/>

COMPARATIVE STUDY OF PREVENTIVE DETENTION AND HUMAN RIGHTS IN INDIA AND UNITED KINGDOM

AUTHOR – ARPIT KUMAR YADAV* & DR. JYOTI YADAV**

* STUDENT AT LL.M (CRIMINAL LAW) AMITY LAW SCHOOL, AMITY UNIVERSITY UTTAR PRADESH LUCKNOW CAMPUS

** ASSISTANT PROFESSOR AT AMITY LAW SCHOOL, AMITY UNIVERSITY UTTAR PRADESH LUCKNOW CAMPUS

BEST CITATION – ARPIT KUMAR YADAV & DR. JYOTI YADAV, COMPARATIVE STUDY OF PREVENTIVE DETENTION AND HUMAN RIGHTS IN INDIA AND UNITED KINGDOM, *INDIAN JOURNAL OF LEGAL REVIEW (IJLR)*, 5 (5) OF 2025, PG. 704-714, APIS – 3920 – 0001 & ISSN – 2583-2344.

ABSTRACT –

This research paper critically examines the legal frameworks governing preventive detention in India and the United Kingdom, focusing on the complex interplay between national security concerns and the protection of fundamental human rights. In both countries, preventive detention laws have evolved in response to threats like terrorism and political unrest. However, their implementation raises significant concerns regarding individual liberties, primarily the right to personal freedom, fair trial, and access to justice.

In India, preventive detention is governed by constitutional provisions, particularly Article 22, and is further reinforced by legislation such as the National Security Act (NSA) and the Unlawful Activities (Prevention) Act (UAPA). Despite the existence of safeguards like Advisory Boards, the Indian legal framework often faces criticism for misuse in politically motivated cases and lack of transparency.

Similarly, the United Kingdom's preventive detention laws, influenced by counter-terrorism measures, have raised critical human rights issues, especially related to indefinite detention without trial under the Terrorism Act (2000). The country's compliance with the European Convention on Human Rights has been challenged, particularly regarding the right to liberty and security.

This paper provides a comparative analysis of both legal systems, evaluating the strengths and weaknesses of their preventive detention laws and suggesting reforms to better protect human rights while addressing national security concerns.

Keywords: Preventive Detention, National Security, Human Rights, India, United Kingdom, Constitutional Provisions, National Security Act (NSA), Unlawful Activities (Prevention) Act (UAPA), Terrorism Act (2000), European Convention on Human Rights, Right to Liberty, Fair Trial, Political Unrest, Counter-Terrorism, Judicial Review, Safeguards, Legal Framework, Fundamental Rights, Indefinite Detention, Human Rights Violations.

1: Introduction

1.1 Overview of Preventive Detention

Preventive detention refers to the incarceration of an individual not for any specific criminal act already committed, but based on the

apprehension that they may commit an act prejudicial to public order, national security, or the maintenance of law and order in the future. Unlike punitive detention, which follows the commission of an offense and the due process of law, preventive detention is pre-emptive in

nature, operating on the presumption of potential threat rather than proven guilt. It allows the state to restrain a person to prevent possible harm to society or the state.

Historically, preventive detention has been justified on the grounds of national interest, particularly during times of war, insurgency, or terrorism. However, its discretionary and secretive nature makes it a controversial measure, often drawing criticism for undermining the principle of natural justice and the presumption of innocence¹³⁴³. The practice has evolved differently across jurisdictions, but a common thread remains: its challenge to individual liberty under the guise of collective security.

1.2 Importance of Human Rights Protection

The implementation of preventive detention must be carefully balanced with the protection of fundamental human rights, particularly the right to liberty, due process, and equality before the law. Human rights are intrinsic to human dignity and form the cornerstone of democratic governance. Arbitrary or prolonged detention without trial not only violates international human rights norms but also erodes public trust in legal institutions.

International instruments such as the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) emphasize the right to liberty and protection from arbitrary detention¹³⁴⁴. Similarly, in domestic legal systems, safeguards such as judicial review, access to legal counsel, and the right to be informed of the grounds of detention act as essential checks on executive overreach.

In preventive detention scenarios, these rights often face restrictions, making the need for constitutional and procedural safeguards even more critical. Therefore, the study of preventive detention must involve a parallel discussion on

the adequacy and effectiveness of human rights protections to ensure that the state's power is not misused under the pretext of national security.

1.3 Scope of the Study

This research paper undertakes a comparative analysis of the preventive detention frameworks in two common law jurisdictions—India and the United Kingdom. While both nations share historical legal traditions, their approaches to preventive detention have significantly diverged due to differences in constitutional structures, human rights obligations, and socio-political contexts.

India provides constitutional backing to preventive detention through Article 22 of its Constitution, supplemented by several legislative instruments like the National Security Act (1980) and the Unlawful Activities (Prevention) Act (1967). These laws have been frequently invoked in response to internal disturbances and threats to sovereignty. However, the lack of robust oversight mechanisms and frequent allegations of misuse have raised serious concerns about civil liberties¹³⁴⁵.

In contrast, the United Kingdom, especially in the post-9/11 era, has resorted to preventive detention under various counter-terrorism legislations, notably the Terrorism Act 2000 and subsequent laws. The UK's obligations under the European Convention on Human Rights (ECHR) have often brought its preventive detention measures under judicial scrutiny, particularly in cases involving indefinite detention without charge or trial¹³⁴⁶.

¹³⁴³ Basu, D.D., *Introduction to the Constitution of India*, LexisNexis, 2020.

¹³⁴⁴ United Nations General Assembly, *Universal Declaration of Human Rights*, 1948, Articles 9 and 10; *International Covenant on Civil and Political Rights*, 1966, Article 9.

¹³⁴⁵ Bhatia, Gautam. *Offend, Shock or Disturb: Free Speech under the Indian Constitution*, Oxford University Press, 2015.

¹³⁴⁶ *A v. Secretary of State for the Home Department* [2004] UKHL 56; See also: Liberty, "Counter-Terrorism and Human Rights", <https://www.libertyhumanrights.org.uk>

2: Preventive Detention in India

2.1 Legal Framework

2.1.1 Constitutional Provisions: Article 22 and Its Limitations

Article 22 of the Indian Constitution specifically deals with the rights of individuals who are arrested or detained. It provides a two-fold framework—one for punitive detention and the other for preventive detention. Clauses (1) and (2) of Article 22 protect individuals against arbitrary arrest and detention by ensuring 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 24 hours. However, clauses (3) to (7) carve out an exception for preventive detention, essentially diluting the safeguards offered under the first two clauses¹³⁴⁷.

Under preventive detention, the detainee may not be informed of the reasons for detention for up to five days (extendable to ten in exceptional cases), and no legal representation is guaranteed. Moreover, detention without trial can extend up to three months, which may be further extended with the recommendation of an Advisory Board¹³⁴⁸. This deviation from regular criminal procedure has raised serious questions about its compatibility with the principles of natural justice and fundamental rights.

2.2 Preventive Detention Laws in India

Several central and state laws in India permit preventive detention under various circumstances:

2.2.1 The National Security Act (NSA), 1980

The NSA empowers the central and state governments to detain individuals to prevent them from acting in a manner prejudicial to the security of the state, public order, or the maintenance of essential services. Detention can initially last for 12 days without obtaining the opinion of an Advisory Board and can be

extended up to 12 months¹³⁴⁹. The Act is criticized for vague definitions like "public order" and "security of the state", which give wide discretionary powers to the executive.

2.2.2 The Unlawful Activities (Prevention) Act (UAPA), 1967

Originally enacted to combat unlawful associations, the UAPA has evolved into India's principal anti-terrorism law. Amendments, especially those in 2004, 2008, and 2019, have given sweeping powers to law enforcement agencies, including detention without charge for up to 180 days¹³⁵⁰. The 2019 amendment allows individuals to be designated as terrorists without judicial trial, raising significant human rights concerns.

2.2.3 Other Preventive Detention Laws

- **The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988**
- **The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA), 1974**

These laws similarly permit detention based on suspicion and aim to tackle specific forms of crime that threaten national interest.

2.3 Judicial Pronouncements

2.3.1 *Gopalan v. State of Madras (1950)*

In this landmark case, the Supreme Court upheld the Preventive Detention Act, 1950, and interpreted the right to personal liberty narrowly, ruling that Article 21 must be read separately from Article 19¹³⁵¹. The majority supported the state's power to detain individuals without trial, reflecting a conservative approach toward civil liberties during the early years of the Republic.

2.3.2 *Kehar Singh v. Union of India (1989)*

Though primarily concerned with the exercise of the President's clemency powers under Article 72, this case emphasized that preventive

¹³⁴⁷ *The Constitution of India*, Article 22, Government of India.

¹³⁴⁸ Jain, M.P., *Indian Constitutional Law*, LexisNexis, 2018, p. 1154.

¹³⁴⁹ The National Security Act, 1980, Sections 3 and 13.

¹³⁵⁰ The Unlawful Activities (Prevention) Act, 1967, Section 43D.

¹³⁵¹ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27.

detention must be exercised with caution and under judicial oversight to prevent its misuse¹³⁵².

2.3.3 D.K. Basu v. State of West Bengal (1997)

This case laid down detailed guidelines to prevent custodial violence and abuse during arrest and detention. While not dealing exclusively with preventive detention, it reiterated that the right to life under Article 21 is sacrosanct and must not be infringed arbitrarily¹³⁵³.

2.4 Human Rights Impact

Preventive detention laws, by design, curtail fundamental freedoms guaranteed under Part III of the Constitution, particularly Articles 14, 19, 21, and 22. The prolonged detention without trial, non-disclosure of grounds, and restricted legal representation violate the principles of due process. These provisions often disproportionately affect marginalized communities and dissenters, thereby threatening democratic values and the rule of law¹³⁵⁴.

The practice has also been criticized by international human rights bodies. India's record under the International Covenant on Civil and Political Rights (ICCPR), especially Article 9, has faced scrutiny for allowing arbitrary detention without adequate judicial safeguards¹³⁵⁵.

2.5 Statutory Safeguards

To mitigate the risk of arbitrary detention, certain statutory safeguards exist:

- **Advisory Boards:** Comprising judges of High Courts, these Boards review detention orders after three months and decide whether the detention should be continued. However, their proceedings are not transparent, and their decisions are not subject to judicial appeal¹³⁵⁶.

- **Judicial Review:** Although courts can review preventive detention orders, their scope is limited to procedural lapses or non-application of mind. Substantive grounds of detention often escape scrutiny due to the wide discretion afforded to the executive¹³⁵⁷.

- **Chapter 3: Preventive Detention in the United Kingdom**

- **3.1 Legal Framework**

- **3.1.1 Common Law Principles**

- The United Kingdom does not have a codified constitution; rather, it relies on a combination of common law, statutory provisions, and constitutional conventions. The principle of habeas corpus, a cornerstone of common law, historically protected individuals from unlawful and arbitrary detention. It ensures that no person shall be deprived of liberty without a fair and legal justification, forming a fundamental safeguard against preventive detention¹³⁵⁸.

- However, in times of national emergency or threats of terrorism, Parliament has enacted legislation that derogates from these principles. The evolution of counter-terrorism laws in the UK represents a significant shift from common law protections toward more executive-centric powers in matters of national security.

- **3.2 Key Legislation on Preventive Detention**

- **3.2.1 Terrorism Act, 2000**

- The Terrorism Act, 2000, marked a substantial transformation in the UK's approach to terrorism. It introduced powers for the detention of terrorist suspects without charge for up to 14 days (originally 7 days, later increased). Section 41 of the Act authorizes the arrest

¹³⁵² *Kehar Singh v. Union of India*, AIR 1989 SC 653

¹³⁵³ *D.K. Basu v. State of West Bengal*, AIR 1997 SC 610.

¹³⁵⁴ Bhatia, Gautam. *The Transformative Constitution*, HarperCollins, 2019.

¹³⁵⁵ Bhatia, Gautam. *The Transformative Constitution*, HarperCollins, 2019.

¹³⁵⁶ NSA, 1980, Section 9.

¹³⁵⁷ *ADM Jabalpur v. Shivkant Shukla*, AIR 1976 SC 1207.

¹³⁵⁸ Walker, C. *Blackstone's Guide to the Anti-Terrorism Legislation*, Oxford University Press, 2009.

of individuals suspected of terrorism-related offenses without a warrant, and Schedule 8 governs the detention period, which can be extended with judicial approval.

• **3.2.2 Prevention of Terrorism Act, 2005**

• In response to the European Court of Human Rights judgment in *A v. Secretary of State*, the UK passed the Prevention of Terrorism Act, 2005. This law replaced indefinite detention with a system of **Control Orders**, allowing severe restrictions (like house arrest and electronic tagging) on individuals suspected of involvement in terrorist activities, even without trial. Though not technically detention, control orders imposed measures that were widely criticized for violating civil liberties.

• **3.2.3 Counter-Terrorism and Security Act, 2015**

• This Act introduced **Temporary Exclusion Orders (TEOs)**, allowing the government to bar British citizens suspected of terrorism abroad from re-entering the UK without state permission. It also extended surveillance and monitoring powers and enhanced executive control, leading to renewed concerns over individual freedoms and due process.

• **3.3 The European Convention on Human Rights (ECHR)**

• As a member of the Council of Europe, the UK is bound by the European Convention on Human Rights, incorporated into domestic law through the Human Rights Act, 1998.

• **3.3.1 Article 5 – Right to Liberty and Security**

• Article 5 safeguards against arbitrary arrest or detention and ensures individuals are informed of reasons for detention, have access to legal remedies, and are brought promptly before a court¹³⁵⁹.

• **3.3.2 Article 6 – Right to a Fair Trial**

• This Article guarantees the right to a fair and public hearing by an impartial tribunal. In preventive detention scenarios, the failure to provide access to evidence or legal counsel may amount to a breach of Article .

• **3.4 Judicial Decisions and Interpretation**

• **3.4.1 *Chahal v. United Kingdom (1996)***

• In this landmark case, the European Court of Human Rights ruled that even in matters of national security, states cannot detain or deport individuals where there is a real risk of torture or inhuman treatment. The Court emphasized that legal safeguards must remain inviolable, reaffirming the absolute nature of Article 3 of the ECHR.

• **3.4.2 *A v. Secretary of State for the Home Department (2004)***

• The House of Lords (now the Supreme Court) declared that the indefinite detention of foreign terror suspects without trial under the Anti-terrorism, Crime and Security Act, 2001 was incompatible with the ECHR. The ruling led to the repeal of those provisions and the creation of the Prevention of Terrorism Act, 2005¹³⁶⁰.

• **3.4.3 *Liberty v. Secretary of State for the Home Department (2017)***

• The Court of Appeal found that the UK's surveillance powers under the Investigatory Powers Act, 2016 breached the right to privacy under Article 8 and lacked adequate safeguards. Although not purely about detention, this case illustrates growing judicial activism in curbing executive excesses related to national security.

• **3.5 Human Rights Impact**

• Preventive detention measures in the UK have repeatedly drawn criticism for their potential to erode basic human rights. Laws allowing detention without trial,

¹³⁵⁹ European Convention on Human Rights, Article 5.

¹³⁶⁰ *A v. Secretary of State for the Home Department*, [2004] UKHL 56.

restrictions without charge, and surveillance without oversight undermine the presumption of innocence and the right to liberty. The impact is especially significant for minority communities, who often feel targeted under these laws.

- International human rights groups, including Amnesty International and Human Rights Watch, have expressed concerns over the disproportionate use of preventive measures and the weakening of judicial oversight. Furthermore, the UK's derogation from the ECHR in certain cases has raised questions about its commitment to upholding universal human rights standards¹³⁶¹.
- **3.6 Statutory Safeguards and Oversight Mechanisms**
- **3.6.1 Parliamentary Oversight**
- The UK Parliament has established **Intelligence and Security Committees (ISC)** that oversee security operations. Annual reviews of legislation like the Terrorism Act and the Counter-Terrorism Act provide a platform for critique and reform¹³⁶².
- **3.6.2 Judicial Review**
- Courts retain the power to review the legality of preventive detention measures. The *Belmarsh Detainee* cases exemplify how judicial scrutiny has been used to strike down disproportionate and unjust laws.
- **3.6.3 Independent Reviewer of Terrorism Legislation**
- A crucial safeguard in the UK legal system is the office of the **Independent Reviewer of Terrorism Legislation**, currently held by Jonathan Hall KC. This office provides annual reports and independent analysis of the operation, effectiveness, and implications of

counter-terrorism laws, contributing to transparency and accountability¹³⁶³.

4: Comparative analysis

4.1 Preventive Detention Frameworks in India and the UK

The legal frameworks for preventive detention in India and the United Kingdom reflect divergent constitutional philosophies and historical evolutions. India's preventive detention regime is enshrined in the Constitution itself, allowing for preemptive incarceration in the interest of state security and public order. Article 22(3)-(7) of the Indian Constitution provides for preventive detention, subject to procedural safeguards. Legislations such as the National Security Act, 1980 (NSA), and the Unlawful Activities (Prevention) Act, 1967 (UAPA) enable preventive detention for reasons of national security, public order, and terrorist threats.

In contrast, the UK follows a statutory model rooted in parliamentary sovereignty and common law. Preventive detention powers primarily emerge from the Terrorism Act, 2000, the Prevention of Terrorism Act, 2005, and the Counter-Terrorism and Security Act, 2015. These laws enable control orders, Terrorism Prevention and Investigation Measures (TPIMs), and temporary exclusion orders. The UK's legal system places greater reliance on judicial oversight and legislative scrutiny.

4.2 Human Rights Protections in Preventive Detention

4.2.1 Right to a Fair Trial

In India, Article 21 of the Constitution guarantees the right to life and personal liberty, interpreted to include a fair trial. However, preventive detention circumvents this guarantee, as detainees may not be charged or tried for specific offences¹³⁶⁴.

In the UK, the Human Rights Act, 1998 incorporates the European Convention on Human Rights (ECHR) into domestic law,

¹³⁶¹ Human Rights Watch, *United Kingdom: Events of 2018*, World Report 2019.
¹³⁶² Intelligence and Security Committee, Annual Reports, UK Parliament.

¹³⁶³ Independent Reviewer of Terrorism Legislation, <https://terrorismlegislationreviewer.independent.gov.uk>
¹³⁶⁴ Constitution of India, Article 21

specifically Article 6 which assures a fair trial. UK courts have invalidated provisions that fail to meet these standards¹³⁶⁵.

4.2.2 Right to Be Informed of Reasons for Detention

Article 22(5) of the Indian Constitution requires that detainees be informed of the grounds of detention and allowed to make a representation against it. However, the state can withhold information in public interest.¹³⁶⁶

In the UK, Article 5(2) of the ECHR mandates that everyone arrested be informed promptly of the reasons for their arrest.

4.2.3 Access to Legal Counsel

In India, detainees have limited access to legal counsel, especially during initial detention, and representation before the Advisory Board is not allowed.

In the UK, access to a lawyer is a fundamental right under Article 6 of the ECHR and is strictly enforced.

4.2.4 Judicial Review Mechanisms India provides for review by Advisory Boards under Article 22(4), composed of sitting or retired High Court judges. However, their findings are not subject to judicial scrutiny.

The UK offers more robust judicial review, including appeals to higher courts and review under the Human Rights Act, 1998.

4.3 Effectiveness of Preventive Detention

In India, preventive detention has been used extensively during communal tensions, elections, and civil unrest. However, critics argue that its effectiveness in curbing terrorism is debatable, with low conviction rates under UAPA highlighting misuse.

In the UK, while TPIMs and control orders are claimed to have disrupted terrorist plots, they have also been criticized for inefficiency and infringement of civil liberties.

4.4 International Standards and Compliance

India is a party to the International Covenant on Civil and Political Rights (ICCPR), which mandates prompt trial, legal counsel, and prohibition of arbitrary detention. However, India's preventive detention laws have often been criticized by UN bodies for non-compliance.

The UK, being a signatory to both the ICCPR and the ECHR, generally maintains compliance, though certain provisions under its counter-terror laws have drawn adverse remarks from the European Court of Human Rights.^{1367/1368}

5: Critical Evaluation

India

India's preventive detention framework, though constitutionally embedded under Article 22 of the Constitution, has attracted sustained criticism due to its frequent **misuse for political and social repression**. Laws such as the National Security Act (NSA), 1980, and the Unlawful Activities (Prevention) Act (UAPA), 1967 have been invoked in various cases where the national security threat has been ambiguous, and detention appears more preventive of dissent than violence.

The **lack of transparency in detention procedures** is another critical issue. The detained person may not be informed of the full grounds of arrest if authorities believe it is against public interest¹³⁶⁹. The constitutionally mandated Advisory Boards are not open to public scrutiny, and there is no obligation to disclose the proceedings, leading to secrecy and limited accountability.

While India justifies preventive detention as a **counter-terrorism mechanism**, critics argue it comes at the cost of **individual liberties**, particularly the right to life and personal liberty under Article 21. The Supreme Court in *A.K. Gopalan v. State of Madras* (1950) took a

¹³⁶⁷ . ICCPR, Articles 9, 14.

¹³⁶⁸ECHR, Articles 5, 6. 18. UN Human Rights Committee, "General Comment No. 35", 2014.

¹³⁶⁹ NSA, Section 8; The detainee can be denied full information if it is deemed against public interest.

¹³⁶⁵ Human Rights Act 1998, Schedule 1, Article 6.

¹³⁶⁶ . Constitution of India, Article 22(5).

narrow view of Article 21, though this was later broadened in *Maneka Gandhi v. Union of India* (1978), which emphasized that personal liberty must be protected through fair, just, and reasonable procedure¹³⁷⁰.

The increasing use of UAPA in recent years, even in cases involving civil protests or peaceful dissent, highlights a disturbing trend of **criminalizing opposition** under the guise of national security. These laws often allow prolonged incarceration without trial, conflicting with international human rights standards¹³⁷¹.

United Kingdom

The UK's preventive detention framework has evolved predominantly through anti-terrorism legislation in the post-9/11 era. Initially, the **Anti-Terrorism, Crime and Security Act, 2001** allowed the **indefinite detention of foreign nationals without charge or trial**, which was declared incompatible with the European Convention on Human Rights in the landmark case *A v. Secretary of State for the Home Department* (2004).

Though revised under the **Prevention of Terrorism Act, 2005**, introducing control orders and later *Terrorism Prevention and Investigation Measures (TPIMs)*, the criticism remained: the **detention-like restrictions lacked sufficient judicial oversight** and relied heavily on secret evidence, undermining fair trial rights.

Another challenge lies in the **disproportionate impact on Muslim communities**, which has led to feelings of alienation and profiling. The Prevent Strategy under the **Counter-Terrorism and Security Act, 2015** has been widely criticized for targeting Muslim students, community groups, and mosques, fostering a culture of surveillance rather than trust¹³⁷².

However, courts in the UK have played a more active role in ensuring **proportionality and necessity** in state actions. In *Chahal v. United*

Kingdom (1996), the European Court of Human Rights emphasized that deportation of individuals to torture-risk countries, even for national security, violates Article 3 of the ECHR¹³⁷³.

Balancing National Security and Human Rights

Both India and the United Kingdom face significant challenges in **reconciling national security imperatives with fundamental human rights**. In India, the **lack of meaningful oversight**, broad executive discretion, and vague definitions often result in detention laws being used as tools of repression rather than protection. In contrast, the UK has relatively **stronger institutional checks** through parliamentary and judicial oversight, though some provisions still violate rights guaranteed under international law.

Preventive detention, by its very nature, deviates from the traditional principle of **innocent until proven guilty**. Hence, **transparency, accountability, and limited use** must be at the heart of reforms in both countries. Judicial review must be made more robust, and laws must align more closely with international human rights obligations such as the **International Covenant on Civil and Political Rights (ICCPR)** and the **European Convention on Human Rights (ECHR)**.

Recommendations

In order to harmonize preventive detention regimes with **international human rights standards**, both India and the United Kingdom must undertake comprehensive reforms, focusing on transparency, accountability, and human dignity.

1. Enhanced Safeguards

- **India** should strengthen the **independence and functioning of Advisory Boards**, ensuring that detainees are given a real opportunity to challenge their detention.

¹³⁷⁰ *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27; *Maneka Gandhi v. Union of India*, AIR 1978 SC 597

¹³⁷¹ Amnesty International, *India: Dissent under Attack*, 2021 Report.

¹³⁷² Open Society Justice Initiative, *Eroding Trust: The UK's Prevent Strategy and its Impact on Muslim Communities*, 2016.

¹³⁷³ *Chahal v. United Kingdom*, App no. 22414/93 (ECHR, 15 November 1996).

- **Judicial review mechanisms** must be made more effective and time-bound, ensuring courts have meaningful oversight over executive decisions.
- **The UK** must reconsider the use of **closed material procedures** and allow greater access to evidence by the accused, thereby reinforcing fair trial rights under **Articles 5 and 6 of the ECHR**.

2. Transparent and Accountable Legal Processes

- Preventive detention procedures in both countries should be **open to periodic review**, with reports laid before their respective parliaments or legislative bodies to maintain democratic accountability.
- The **use of preventive detention must be time-limited and based on objective, verifiable threats**, not vague suspicions or political convenience.
- **Independent oversight bodies**, like the **Independent Reviewer of Terrorism Legislation in the UK**, should be strengthened and replicated in India.

3. Emphasis on Rehabilitation over Prolonged Detention

- Both India and the UK should explore alternatives to detention, such as **deradicalization programs, surveillance mechanisms, and community-based rehabilitation** for individuals deemed security risks.

Conclusion

This study undertook a comprehensive comparative analysis of the legal frameworks governing **preventive detention in India and the United Kingdom**, with a particular emphasis on the **intersection of national security and human rights**. Through historical context, legal scrutiny, and case law evaluation, several critical insights emerged:

In **India**, preventive detention is constitutionally sanctioned under **Article 22**, which carves out exceptions from basic criminal procedure guarantees for those detained preventively. Legislations such as the **National Security Act (NSA)** and the **Unlawful Activities (Prevention) Act (UAPA)** allow for detention without trial for extended periods. However, these laws have often been criticized for being vague, overbroad, and susceptible to **political misuse**, particularly against dissenters, journalists, and minorities. The opacity in procedures and the weak functioning of statutory safeguards, like **Advisory Boards**, amplify the threat to **fundamental rights**, particularly **personal liberty under Article 21**.

In contrast, the **United Kingdom**, though lacking a written constitution, operates within a robust legal system that integrates **statutory law, common law principles**, and obligations under the **European Convention on Human Rights (ECHR)**. UK preventive detention laws, especially under the **Terrorism Act 2000, Prevention of Terrorism Act 2005, and Counter-Terrorism and Security Act 2015**, have also drawn criticism for allowing **indefinite detention without charge**, particularly of foreign nationals. However, unlike India, **judicial and parliamentary oversight**, and the role of **independent reviewers**, provide comparatively stronger checks. The UK judiciary, especially the **House of Lords and the European Court of Human Rights**, has consistently asserted the principle of **proportionality and necessity**, limiting executive overreach.

Both jurisdictions face ongoing **tensions between safeguarding national security and upholding individual liberties**, especially in a post-terrorism global environment. The core issue remains the **lack of balance**—either in the form of insufficient safeguards (as in India) or in excessive reliance on secret evidence and blanket powers (as in the UK).

Bibliography

Books

1. **Gaur, K.D.** *Textbook on Indian Penal Code*, 5th ed., Universal Law Publishing, 2020.
2. **Kapoor, R.K.** *The Law of Preventive Detention in India*, 1st ed., Central Law Agency, 2017.
3. **Saksena, A.** *Preventive Detention in India: Legal and Constitutional Aspects*, 1st ed., Eastern Book Company, 2016.
4. **S. H. A. Rizvi** *Preventive Detention and National Security: A Comparative Analysis*, Routledge India, 2020.
5. **Norrie, A.** *Crime, Reason and History: A Critical Introduction to Criminal Law*, 3rd ed., Cambridge University Press, 2017.
6. **Harris, D.** *The Law of the European Convention on Human Rights*, 3rd ed., Oxford University Press, 2014.
7. **Glover, M., and O'Neill, M.** *Terrorism and the Law: A Global Approach*, Palgrave Macmillan, 2017.
8. **Clarke, R.V.** *Terrorism and Counter-Terrorism: The UK Experience*, Oxford University Press, 2016.
5. **Rowe, M., and Singh, S.** "Preventive Detention and its Impact on Minorities: A Case Study of the UK and India" *Journal of Comparative Politics*, 2020, Vol. 25, pp. 52-73.

Reports

1. **Amnesty International.** *India: Dissent under Attack – The Use of Preventive Detention to Target Activists and Political Opponents*, Amnesty International, 2021.
2. **Liberty UK.** *Control Orders and TPIMs Explained*, Liberty UK, 2020.
3. **Open Society Justice Initiative.** *Eroding Trust: The UK's Prevent Strategy and its Impact on Muslim Communities*, Open Society Foundations, 2016.
4. **Human Rights Watch.** *United Kingdom: Abuses in the Name of National Security*, Human Rights Watch, 2018.
5. **India's National Human Rights Commission.** *Report on Preventive Detention in India: Legal and Constitutional Framework*, NHRC, 2019.

Case Law References

Indian Case Law

1. **Basu, D.D.** "Preventive Detention and Human Rights in India: A Critical Analysis" *Journal of the Indian Law Institute*, 2018, Vol. 60, Issue 4, pp. 47-69.
2. **Urmila, J.** "The Right to Fair Trial and Preventive Detention in India" *Indian Journal of Constitutional Law*, 2021, Vol. 15, pp. 230-248.
3. **Lupton, T.** "Preventive Detention: A Comparative Legal Perspective" *International Journal of Human Rights and Law*, 2019, pp. 199-216.
4. **Mackenzie, G.** "Counterterrorism and Human Rights: Balancing Security in the UK" *Human Rights Review*, 2019, Vol. 20, Issue 2, pp. 101-124.
1. **A.K. Gopalan v. State of Madras**, AIR 1950 SC 27: The Supreme Court's interpretation of preventive detention under Article 22 of the Indian Constitution.
2. **Kehar Singh v. Union of India**, AIR 1989 SC 653: A case on preventive detention laws and the scope of judicial review.
3. **D.K. Basu v. State of West Bengal**, AIR 1997 SC 610: Landmark case on the rights of detained persons and preventive detention.
4. **Maneka Gandhi v. Union of India**, AIR 1978 SC 597: Expanding the scope of

personal liberty under Article 21 of the Indian Constitution.

UK Case Law

1. **A v. Secretary of State for the Home Department**, [2004] UKHL 56: A critical ruling on indefinite detention without charge and its incompatibility with the European Convention on Human Rights.
2. **Chahal v. United Kingdom**, App no. 22414/93 (ECHR, 15 November 1996): European Court of Human Rights case affirming the prohibition of deportation to torture risk countries.
3. **Liberty v. Secretary of State for the Home Department**, [2017] EWCA Civ 1086: Court of Appeal case analyzing the legality of counterterrorism measures.

International Treaties and Human Rights Instruments

1. **International Covenant on Civil and Political Rights (ICCPR)**, 1966, United Nations.
2. **European Convention on Human Rights (ECHR)**, 1950, Council of Europe, particularly **Articles 5** (right to liberty) and **6** (right to a fair trial).
3. **United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment**, 1984.
4. **Universal Declaration of Human Rights (UDHR)**, 1948, United Nations.
5. **International Convention on the Elimination of All Forms of Racial Discrimination (CERD)**, 1965, United Nations.