
PREVENTIVE DETENTION: WHETHER A THREAT TO DUE PROCESS OF LAW

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ABSTRACT

This research study analyses the complex relationship between the controversial topic of preventive detention (PREVENTIVE DETENTION) and the complexities of the Due Process of Law (DUE PROCESS OF LAW). Although the concept of Due process of Law has not been blatantly stated in the Indian Constitution, it is of stout importance to contemplate that the Performance of due process of law has evolved and has started to have a deep impact in Indian jurisprudence. Therefore, abiding by the procedure established by law alone shall not be enough, considering the constant developments in the concept of Due Process of Law.

This study begins with a thorough content examination of the connotation and evolution of Due Process of Law, post which there shall be a deep analysis of different precedents set by multiple case laws concerning Due Process. Thereafter, discrete developments in the concept of Preventive Detention shall further comply with the Preventive Detention Act, 1950, Unlawful Activities Prevention Act, 1954, and a few other State legislatures' statutes. This perusal shall navigate the route to understand the key relations between the two.

This study in particular shall evaluate the concepts of 'DUE PROCESS OF LAW' and 'PREVENTIVE DETENTION' for the correlative functioning of the two in the jurisprudence of multiple States. The provision of 'Preventive Detention' shall be considered as a big bane as it violates due process, but the same can be looked at as a boon when stipulated in the long run. Therefore, the findings of the study shed light on the dynamic interplay between the two and further provide insight into the political rhetoric that is involved in the same, where special emphasis shall be laid on the Maintenance of Internal Security Act, 1971.

Keywords: Preventive Detention, Due Process of Law, Political rhetoric, Constitution, Procedure established by Law.

EVOLUTION OF DUE PROCESS OF LAW IN INDIA:

It is indisputable that 'DUE PROCESS OF LAW' is extremely important in one's individual life because it directly impacts what the government can and cannot do with one's rights. The doctrine of Due Process of Law may not be present in its literal sense per se, but its application is seen time and again in multiple precedents. Historically, the descent of the expression 'due process of law' is traced to the expression 'per legem terrae', meaning, law of the land used in Magna Carta of England, 1215, chapter 39, which promised that "no freeman shall be arrested or imprisoned or disseized, or outlawed or exiled or in any way molested"¹;

In order to understand the evolution of Due process in India, it is supreme to analyse the three case laws. Firstly, In *AK Gopalan V. State of Madras*² in 1950, it was nowhere specifically stated that the due process of law would be taken into account and only the phrase 'procedure established by law' was in practice, here with it is apposite to recall Justice H.R. Khanna's timeless dissent from the other six judges of the bench wherein he deliberated that "the history of personal liberty is largely the history of insistence upon procedure." By this statement, he essentially meant that the concept of personal liberty has dwelled into existence due to the provision of 'Due Process of Law', therefore, both procedures established by law and Due process of law are highly interconnected to each other³.

Secondly, In *Menaka Gandhi V. Union of India*⁴ The test of reasonableness was introduced by the Supreme Court of India and, for the first time, brought into the limelight the concept of 'Due process of Law' wherein there is a check that is established on the arbitrariness of the legislature. There was another important thing that was held supra, that is the Article 14 of the Indian Constitution, i.e., popularly referred to as the 'Right to Equality', not only provides for equality but also provides for Right against Arbitrariness', from which it can be efficiently implied that traces of 'Due Process of Law' have been in minds of the constitutional drafters right from 1950⁵. Therefore, from this case law, it can be clearly

¹ K.K. Nigam, *Due Process of Law: A Comparative Study of Procedural Guarantees Against Deprivation of Personal Liberty in the United States and India*, 4 J. Indian L. Inst. 99 (1962).

² *A.K. Gopalan v. State of Madras*, A.I.R. 1950 S.C. 27.

³ H.R. Khanna, *Neither Roses Nor Thorns* (Eastern Book Co. 2010).

⁴ *Maneka Gandhi v. Union of India*, (1978) 1 S.C.C. 248

⁵ Zia Mody, *10 Judgements That Changed India* (Shobhaa Dé Books 2013).

inferred that there is a presence of 'Due Process of Law' in the Constitution of India in an indirect sense.

"Due process of law," according to Justice Curtis, "generally includes actus, reus, judex, regular allegations, opportunity to answer, and a trial according to some settled course of judicial proceedings⁶.

Back in 1947, Justice Felix Frankfurter of the US Supreme Court advised one of the chief architects of India's constitution, Sir Benegal Narsing Rau, to delete the words "Due Process of Law" considering the fact that the Indian Constitution was only a developing document and in its implementation be considered only a new born fetus, therefore it would become rigorous for the courts to constantly re interpret the constitution time and again⁷.

Similarly, in March 1947, Dr. B.R. Ambedkar, a product of Columbia Law School himself, had drafted a provision for the Indian Constitution which was very similar, if not identical, to the Due Process clause of the 14th Amendment of the United States Constitution. It read: "Nor shall any State deprive any person of life, liberty and property without the due process of law."⁸

From the above averments, it can be proven that the constitutional makers always wanted to implement 'Due Process of Law' in the regularities of the court's functioning. As there has been constant progress in the Indian Judiciary, the functioning of the Due Process of Law has been correlative to that of the term 'Procedure established by Law'.

PREVENTIVE DETENTION AND ITS CONTROVERSIES

Popular movies about prison life, like *The Shawshank Redemption*, often include a famous portrayal of a scene wherein there is a young offender, about to be released, has an interview with the warden, who is, naturally, tough but kind and wants the prison inmates to come clean and be less deterrent to society once released. The warden tells the con that he has paid his debt to society, that his slate has been wiped clean, and that he can and should lead a good life when released. The message that the warden conveys is usually inspirational

⁶ Isaac Franklin Russell, *Due Process of Law*, 14 Yale L.J. 322 (1905).

⁷ Sujit Choudhry, Madhav Khosla & Pratap Bhanu Mehta eds., *The Oxford Handbook of the Indian Constitution* (Oxford Univ. Press 2016).

⁸ *The Indian Journal of Political Science*, Vol. 52, No. 3 (July–Sept. 1991).

and motivating. Let us suppose that the prisoner is in for Armed robbery and just when this speech is over the inmate is about to be released, he says to the warden that he is going to get back to the same old neighborhood and do all the similar things that he was already doing before being arrested, still the warden is left with no choice other than tell the inmate again not to conduct any such activity but to release him as per the orders that he has received from the top authorities. For that sole reason, there is an infamous phenomenon called Preventive Detention. Wherein, although the offence is not yet committed, the person who says that he would do such a thing in the future shall be further detained for the cause that he shall commit similar offences that he had already committed prior.⁹ It could be famously said that it is a situation wherein a person may be detained without sufficient evidence and on a mere suspicion.¹⁰

In the above-stated instance, the prisoner was preventively detained because he had a history of similar offences in the past, but in India, it is not always the case, i.e., a person can be arrested even without a background check on their prior history but based on their past activities, interactions, and intentions. The best example to understand this perspective is the News Click issue of 2023 wherein the said television channel was accused and then convicted of having received funds from the Chinese communist party to spread pro-China propaganda. The managing partner of that institution was preventively detained, although there was no history of criminal record against the institution or any member of the institution; there was an arrest that took place.¹¹

One other important aspect that needs to be elucidated is that the freedoms that are guaranteed under Article 19 are not absolute but subject to reasonable restrictions that can be imposed by law made by the state for the purposes mentioned in clauses (2) to (6) of Article 19. The term 'Reasonable restriction' includes total prohibition. The best way to interpret this cycle of rights and duties is by contemplating Hohfeld's theory of Jural relations. Hohfeld proposes that the term rights must be confined to only that which exists corresponding to a duty. Rights and duties are correlated concepts, and when a right is infringed, there is always a duty that has been violated¹². Therefore, according to him, the

⁹ Stephen J. Morse, *Blame and Danger: An Essay on Preventive Detention*, 76 B.U. L. Rev. 113 (1996).

¹⁰ Priti Saxena, *Preventive Detention and Human Rights* (Deep & Deep Publ'ns 2007).

¹¹ *What Is NewsClick? A Look at India's Media Crackdown*, Al Jazeera (Oct. 4, 2023), <https://www.aljazeera.com/news/2023/10/4/what-is-newslick-a-look-at-indias-media-crackdown> (last visited July 15, 2024).

¹² *Theory of Jural Relations* (C.S.J.M. Univ. Gyan Sanchay), <https://gyansanchay.csjmu.ac.in/wp->

right that is being provided to a person is always bound by an opposite duty, which could be explained as, if you have a right, you also have a correlating duty not to infringe others' rights, and that is exactly where the reasonable restrictions elucidated in the Constitution become operative.

Usually, reasonable restrictions can be imposed on this right for the interests of sovereignty and integrity of India, security of the State, friendly relations with foreign nations, public order, decency or morality, contempt of court, defamation, incitement to an offence, or the sovereignty and integrity of Parliament. Therefore, 'Preventive Detention' can also be implemented to protect the following.

Another vital saying that is rightly applied herein is that "Your right to swing your arms ends just where the other man's nose begins." Which fundamentally means that you have the right to live your life as you see fit, providing it doesn't impact on anyone else's life.

PREVENTIVE DETENTION ACT, 1950

This act was essentially implemented because of the fact that India was a newly born nation and it would be extremely difficult for the cabinet to deal with internal and external disturbances. Section of the Act in itself clarifies the extent of the Act, i.e., it shall cease to have effect from the 31st day of December, 1969¹³.

Governments are the creation of the people's will, and therefore any attempt to subvert such Governments is no longer a patriotic duty as in the days before the achievement of independence, but on the contrary, an act of treason and disloyalty to the nation. Further, there are political groups active in the country that no longer believe in the creed of non-violence and whose declared policy appears to be to do whatever lies in their power to subvert the People's Government established under the law of the land¹⁴.

In such a case, therefore, it has become necessary, however abhorrent and extraordinary the legislation may be to prevent individuals and groups from acting in a manner prejudicial to the maintenance of law and order, or to the maintenance of Essential Supplies and Services required by the nation or to the continued existence of the Constitution adopted by the

content/uploads/2022/04/Theory-of-Jural-Relations.pptx (last visited July 17, 2024).

¹³ Preventive Detention Act, No. 4 of 1950, § 1(3), Acts of Parliament, 1950 (India).

¹⁴ J.K. Mittal, *Nehru and Objectives Resolution: A Historical Perspective*, 32 J. Indian L. Inst. 1 (1990).

nation. It is necessary, of course, that due safeguards should be adopted to see that the maximum protection is given to an individual against whom action is taken. For this purpose, it has been made possible, if the person so desires, for him to appear in person before the Advisory Board, challenge the material put before him and argue his case¹⁵.

The averments above prove the fact that the purpose and the reasoning of the statute were just, fair, and equitable, i.e., it is fully satisfactory of the 'Due Process of Law'; beyond this point comes into the picture the prospect of political rhetoric. Wherein, multiple leaders who simply opposed the existing government would be booked under the 'Preventive Detention Act of 1950'¹⁶.

Additionally, the period of detention that was stipulated by the Act was for twelve months according to Section 11A of the Act¹⁷. This limitation was, per se, very appropriate, but was indeed too long. As has been stated by the Article 22(4) of the Constitution¹⁸ mentions that only three months shall be deemed fit in case of preventive detention.

One other arbitrary function of the Act was that the reason for the preventive detention was not told to the person arrested if the reasoning was violative of the Public Order¹⁹. There was an immediate need that arose, which was to have empathy for the persons detained because there is an obvious need for them to know the reason.

UNLAWFUL ACTIVITIES PREVENTION ACT, 1967²⁰

Under the UAPA, there is usually a longer period for investigation of the case, and an accused is eligible to apply for bail only after six months, which is too lengthy a process as we have seen in multiple cases. One such popular case is the Father Stan Samy Case²¹, which is illustrated hereunder: -

¹⁵ Supra 13

¹⁶ Granville Austin, *Working a Democratic Constitution: The Indian Experience* 287–94 (Oxford Univ. Press 1999).

¹⁷ Preventive Detention Act, No. 4 of 1950, § 11A, Acts of Parliament, 1950 (India).

¹⁸ India Const. art. 22, § 4.

¹⁹ Preventive Detention Act, No. 4 of 1950, § 7(2), Acts of Parliament, 1950 (India).

²⁰ Unlawful Activities (Prevention) Act, No. 37 of 1967, India Code (1967).

²¹ *Stan Swamy v. National Investigation Agency*, Crim. Appeal, Bombay High Court (2021) (unreported). *Stan Swamy v. National Investigation Agency*, Crim. Appeal, Bombay High Court (2021) (unreported).

The Stan Swamy Case: -

Father Stan Swamy is an adult citizen of India. He is the founder of Bagaicha, an organization dedicated to empowering the Adivasi and Moolvasi communities. He was one of the leading tribal rights activists in Jharkhand and has written and researched extensively on issues of caste, religion, land rights, and people's struggles. He was arrested simply arrested under the UAPA on the basis that he was somehow related to the Communist Party of India (Maoist) and that he was allegedly involved in the Bhima Koregaon incident. He died during his prison without even receiving any evidence against him. So far there have been 3000 Adivasi youth, who are often mistaken for Naxalites or Maoists, which was the sole reason why Father Stan Swamy was protesting²².

This in itself shows how the UAPA is used as a tool to punish the innocent, the death of Father Stan Swamy is a "state-sponsored institutional murder" is what some people alongside the entire left wing of the country say because allegedly the NIA or the government can easily keep this UAPA tag on anybody if they find that s/he may be a threat to the government in the future²³. Even Washington Post and other Western media made it clear with shreds of evidence how the Indian Government used Trojan malware to keep fake mail in Swamy's account²⁴. This acts a shame to the entire Nation wherein preventive detention is utilized for utter political agendas.

Beyond all of this, no bail is given to any person unless the court decides that there is no prima facie case²⁵. In furtherance, there is no assessment of evidence at the bail stage to decide this²⁶. Considering all of this, it can be noted that the right to a speedy trial is also violated. This could also be inferred from the Stan Swamy Case or the YouTuber Savvukku Shankar Case²⁷ who was only released from Preventive Detention on an interim order by the Supreme Court very recently.

²² *Joint Statement on the Death of Human Rights Defender Father Stan Swamy*, Int'l Comm'n of Jurists (July 6, 2021), <https://www.icj.org/joint-statement-on-the-death-of-human-rights-defender-father-stan-swamy/>

²³ *His Death an "Institutional Murder", "Indifferent Courts" Responsible: Stan Swamy's Family, Friends*, New Indian Express (July 6, 2021), <https://www.newindianexpress.com/nation/2021/jul/06/his-death-an-institutional-murder-indifferent-courts-responsible-stan-swamys-family-friends-2326288.html> (last visited July 3, 2026).

²⁴ Titto Varghese & Akhila Joseph, *Human Rights & Indian Judiciary: Implications from Stan Swamy's Death*, 11 JETIR, no. 1, at f219 (2024).

²⁵ *Unlawful Activities (Prevention) Act*, No. 37 of 1967, § 43D(5), India Code (1967).

²⁶ *National Investigation Agency v. Zahoor Ahmad Shah Watali*, (2019) 5 S.C.C. 1.

²⁷ *A. Shankar @ "Savukku" Shankar v. State of Tamil Nadu*, H.C.P. No. ____ of 2024 (Mad. H.C. Aug. 9, 2024) (unreported).

The Supreme Court has acknowledged this fact and has stated that the bar against bail would melt down if there is no speedy trial as has been observed in a plethora of cases. The Delhi High Court has similarly raised the question of how long a trial under the UAPA could be²⁸. This is relevant because there are many who have been acquitted after they spent many years in jail.

MAINTENANCE OF INTERNAL SECURITY ACT, 1971²⁹

Although this legislation was repealed by the legislative through the 42nd Amendment³⁰, this act played a vital and major role in the journey of 'PREVENTIVE DETENTION' in India. This statute was used in an extremely dirty manner by the political decision-makers of the nation. It was used as a tool to detain multiple political opponents of the Indian National Congress at the time whilst the arrest of multiple Leaders including Jayaprakash Narayan, Atal Bihari Vajpayee, Chandra Shekhar, Devi Lal, George Fernandes, M. Karunanidhi, M. K. Stalin, T. R. Baalu, Jai Kishan Gupta (one of the longest MISA detainee from Delhi), Mulayam Singh Yadav, Lalu Prasad Yadav, Santosh Bharti, thrice (1973 - 74 - 75), Sharad Yadav, twice (1973–75), Vijay Rupani, Charanjeet Bhatia, Choudhary Mir Singh philanthropist from Munirka, Delhi, Dr. Satpal Kapoor, Sonapat (Hr.), N. Azu Newmai, one of the leaders of UDF, a regional political party of Nagaland were all arrested without even providing them without proper pieces of evidence.³¹

It was said by Indira Gandhi herself during the proclamation of emergency "My father was a statesman; but, I'm a political woman. My father was a saint, and I'm not"³². This sentence that was uttered from her mouth is in itself very offensive to the sentiments of the general public and led to a disruption in the public order, but the MISA, 1971 did not operate on her but any truth-speaking activities and political opponents. This remembrance elucidates the purpose of the MISA, 1971 per se, i.e., to eliminate all sorts of tensions that were faced by Indira Gandhi's political regime.

²⁸ Union of India v. K.A. Najeeb, (2021) 3 SCC 713.

²⁹ Maintenance of Internal Security Act, No. 26 of 1971, India Code (1971).

³⁰ The Constitution (Forty-second Amendment) Act, No. 101 of 1976, India Code (1976).

³¹ *List of People Who Had Been Imprisoned Under MISA During the Emergency Period from 1975 to 1977*, Akola District, Government of Maharashtra, <https://akola.gov.in/notice/list-of-people-who-had-been-imprisoned-under-misa-during-the-emergency-period-from-1975-to-1977/> (last visited July 20, 2024).

³² Oriana Fallaci, *Indira's Coup*, N.Y. Rev. Books, Sept. 18, 1975, <https://www.nybooks.com/articles/1975/09/18/indiras-coup/>

It is stated to date that it is one of the darkest periods of Indian history by various people, and it also resulted in receiving ill international comments through international organisations like the United Nations³³.

As per Sub Clause 9 of Section 16 of the Act³⁴, 'any person against whom an order of detention has been issued shall not be entitled the reason or ground of his detention, or disclosure of any document related to that. This escalates the arbitrariness of the act.

The most common case with respect to this statute was the ADM Jabalpur V. Shivkant Shukla³⁵ which is most popularly known as the 'Habeas Corpus Case', briefly speaking, there were three contentions that were laid down by the petitioner in the case which were as follows: -

- First, the emergency provisions applied during an emergency give power to the executive to exercise complete discretion over the state affairs, because during the emergency the considerations of the state assume absolute importance.
- The second contention was that the state shall not release the detenue even if the advisory board believes that there lies no sufficient reason to detain. The detention is maintained under pursuance of violation of Art. 22. The writ of Habeas Corpus shall not be enforced even after considering Ar.22 to be a fundamental right itself. The right to move a court for enforcement of a right under Article 19 has now been suspended by the President under an order issued under Article 359(1).
- Suspending an individual's right to move any court to enforce the right to life and personal liberty under Art. 21 is a constitutional mandate and cannot be implied as an absence of the Rule of Law³⁶.

All of these contentions were quashed by the Supreme Court on the basis that the provisions of moving a writ petition to the High Court and Supreme Court are not legally valid during the time of an emergency. Thus, the judgment of ADM Jabalpur v. Shivakant Shukla is significant from the point of view that it had certain loopholes that needed to be rectified

³³ Amnesty Int'l, *Annual Report 1976–1977* (1977).

³⁴ Maintenance of Internal Security Act, No. 26 of 1971, § 16(9), India Code (1971).

³⁵ *Additional Dist. Magistrate, Jabalpur v. Shivkant Shukla*, (1976) 2 S.C.C. 521, A.I.R. 1976 S.C. 1207.

³⁶ 1976 AIR 1207

later on, like Art. 21 was misinterpreted in its true sense. The judgment opened way to further developments and many other leading cases.

The Maintenance of Internal Security was rightfully quashed and nullified³⁷ by the later government after the emergency when it came to power but what came after was the National Security Act of 1980 which still prevails.

NATIONAL SECURITY ACT, 1980³⁸

The National Security Act was passed in the year 1980 to maintain law and order in the country. For this purpose, it also authorises the preventive detention of any person. The act mainly operates with respect to defence, security, public order, and services essential to the community. The government, whilst implementing the act, felt that the administrative actions would be dealt with more effectively and the administrative authorities would be handicapped if it were not for preventive detention.

There was a major attack that was released against the NSA, in 1980, and the regular practice of 'Preventive detention' in the case of *AK Roy V. Union of India*³⁹ The main argument was that the validity of the act itself is impermissible under the Indian Constitution, and the provisions of the act are vague and can be comprehended by the 'Whim and Caprice' of the detaining authority.

Although the validity of the act was upheld by the constitutional bench constitution Justice Chandrachud, who was the former Chief Justice. The 44th Amendment⁴⁰ was constituted wherein the rigour of 'Preventive detention' was liberalised, but Section 3 of the Act⁴¹ was conferred with even greater powers, which turned out to be even more fatal.

Considering that 'Preventive detention' is such a sensitive issue, as was stated in the case of *Rekha v. State of Tamil Nadu*,⁴² it must be mandatory that provisions concerning 'Preventive detention' be rigid and firm; they cannot be vague or indecisive.

³⁷ Maintenance of Internal Security (Repeal) Act, 1978, No. 26 of 1978, India Code (1978).

³⁸ National Security Act, No. 65 of 1980, India Code (1980).

³⁹ *A.K. Roy v. Union of India*, (1982) 1 S.C.C. 271.

⁴⁰ The Constitution (Forty-fourth Amendment) Act, No. 98 of 1978, India Code (1978).

⁴¹ *National Security Act*, No. 65 of 1980, § 3, India Code (1980).

⁴² *Rekha v. State of Tamil Nadu*, (2011) 5 S.C.C. 244.

The NSA, 1980, leaves the impression of a large umbrella to cover a plethora of cases or offences that are not included as commission, which is defined in the previous acts. In such scenarios, the powers vested in the government are unlimited and uncontrolled causing irreparable damage to the framework of citizens' liberties⁴³. This concept in its entirety goes against the jurisprudence of Human Rights.

It also involves a ton of politics behind its creation, as the Maintenance of Internal Security Act was repealed by the then newly formed Janata Party Government in 1977, and when the Indira Gandhi-led Congress rose back to power in 1980, they initiated this campaign for Preventive Detention through the National Security Act of 1980.

PREVENTIVE DETENTION IN OTHER COUNTRIES

Australia: Australian legislation permits preventive detention in various situations. For instance, the law mandates the detention of asylum seekers in Australian waters or land until their asylum status is confirmed⁴⁴.

Canada: Individuals labeled as dangerous by the judiciary face a potentially endless period of detention, but it completely prohibits Arbitrary Arrests⁴⁵.

Costa Rica: The 1998 criminal procedure code in Costa Rica permits a standard pretrial "preventive prison" or remand of up to a year for individuals deemed a "flight risk." However, if the case is considered complex, the remand can extend to three years and three-and-a-half years without a conviction. As of May 2013, over 3,000 people were awaiting trial⁴⁶.

Denmark: Danish law allows for the detention of individuals for up to 16 years without court involvement or compensation for wrongful arrest. This is particularly relevant in the context of the ongoing gang conflict in Copenhagen between first-generation gangs and second-generation youth groups, with some suggesting an extension of the current six-hour limit to several weeks⁴⁷. Before the Copenhagen Climate Council, a new emergency

⁴³ Saxena, *supra* note 10.

⁴⁴ Migration Act 1958 (Cth) (Austl.).

⁴⁵ *R. v. Le*, 2019 SCC 34,

⁴⁶ *Q Costa Rica*, Q COSTA RICA, <https://qcostarica.com/> (last visited July 25, 2024)

⁴⁷ Criminal Code Act No. 1260 of Oct. 23, 2018 (Den.).

legislation was introduced, permitting police to detain individuals for up to 12 hours without charging them with a crime.

Malaysia: The Internal Security Act, 1960 (ISA), established a preventive detention law following Malaysia's independence from Britain in 1957. This law enabled detention without trial or criminal charges under specific, legally defined conditions. The ISA was frequently used against terrorist activities and individuals seen as threats to national security. In September 2011, the Prime Minister of Malaysia, Najib Razak, announced plans to repeal and replace the ISA with two new laws. On April 17, 2012, the Security Offences (Special Measures) Act, 2012, received approval from the Malaysian Parliament and was given royal assent on June 18, 2012, and gazetted⁴⁸.

South Africa: During the era of Apartheid, the South African Government utilised preventive detention laws to target political adversaries. This included, notably, the Terrorism Act of 1967, which empowered police commanders to detain terrorists or individuals with information on terrorist activities without a warrant.

United Kingdom: Previously, England and Wales had provisions, introduced by the Labour Government in 2003, aimed at managing dangerous offenders similar to Canada's approach. However, the Legal Aid, Sentencing, and Punishment of Offenders Act, 2012⁴⁹, abolished the concept of imprisonment for public protection without a replacement. Offences committed before the Act's enactment may still lead to detention under this law.

In **Colombia**, a detained suspect must appear before a judge within thirty-six hours of arrest, which is the latest point at which he may be informed of the charges that he faces.⁵⁰ Similarly, in **France, Greece and Norway**, the latest point at which a detained individual may be informed of the totality of the charges against him is at his first hearing before a judicial authority, which in all instances occurs within a maximum of three days after the individual's initial arrest.

All of these averments specify to us that 'Preventive Detention' is a critical phenomenon that it is necessary for the well-being of a nation, because it is quite unmistakable that every

⁴⁸ *Federal Government Gazette*, June 22, 2012 (Malay.).

⁴⁹ Legal Aid, Sentencing and Punishment of Offenders Act 2012, c. 10 (U.K.).

⁵⁰ Constitution of Columbia, Article 28

country has its own set of problems, and Preventive Detention acts as an important factor to curb those problems. Rather, it is consequential to implement 'Preventive Detention' in a stoutly careful manner and in accordance with the 'Due Process of Law'.

HOW PREVENTIVE DETENTION AFFECTS HUMAN RIGHTS

Anteriorly, it has been deeply and thoroughly discussed about how there is an ample presence of provisions for Preventive Detention to be made possible in India. Moreover, it is abundantly common to notice when these provisions are misused to curb some exceedingly fundamental aspects of the law prevailing in the land. It has been widely accepted that Preventive Detention, in most circumstances, when wrongfully exercised, violates Article 19 (1)(b) of the Constitution, which allows for the free movement of citizens throughout India. This was recognised in the case of *AK Gopalan V. State of Madras*⁵¹ as well, but was implemented to its core belief.

Although there have been feigning efforts by the authorities to curb the violation of human rights, it only seems like an impossible task to actually do so. Preventive Detention has been recognised to be violative of the entire International Bill of Human Rights per se, which includes UDHR (Universal Declaration of Human Rights)⁵², ICCPR (International Covenant on Civil and Political Rights)⁵³ and International Covenant on Economic, Social and Cultural Rights (ICESCR). There is a plethora of provisions in all these statutes that indicate against the use of Preventive Detention. However, there is still a presence of fundamental subjects like the Principle of National Sovereignty, Obligations Erga Omnes and Jus Cogens, which would on any day override the provisions of Human Rights because, as has been widely said and accepted that it is important to protect the rights of an entire society rather than protecting the rights of a single individual.

CONCLUSION

According to John Stuart Mill, "Liberty consists in what one desires", but the liberty must be thus far limited that he must not make himself a nuisance to other. It is a very well understandable nuance that Man is a rational being who has desires to conduct many things

⁵¹AK Gopalan, Supra Note. 2.

⁵² Universal Declaration of Human Rights, G.A. Res. 217 (III) A, U.N. Doc. A/810 (Dec. 10, 1948).

⁵³ International Covenant on Civil and Political Rights, Dec. 16, 1966, 999 U.N.T.S. 171.

but considering that we live in a civil society, his desires have to be controlled, regulated, and reconciled⁵⁴.

When there is excessive consideration given to the topic of ‘Due Process’, it has been quite flamboyantly defined in the case of *State V. Green* by the Supreme Court of the United States. ‘Due Process of Law implies and comprehends the administration of laws equally applicable to all under established rules which do not violate Fundamental principles of Private rights⁵⁵. Additionally, according to the Black’s Law Dictionary of 1961, “Due process of Law has been defined as Fundamental Fairness and substantial Justice”⁵⁶.

Before dwelling upon whether Preventive Detention is a boon or a bane, it is overwhelmingly important to state that preventive detention is a necessity and that its presence is vital in a diverse country like India. Although multiple political agendas take filthy advantage of it, it has come to the rescue of the sovereignty and integrity of the nation in multiple scenarios.

To conclude, it is extremely important to state that there is an immediate need for a newer legislation that contains all the nuances of Preventive Detention wherein all the facets like the reasons of the detainment, time periods of the detainment, roles and powers of the detaining authority, and similar provisions are clearly illustrated. Furthermore, it is an urgent need for the Lok Pal, Lok Yuktas and other Vigilance commissions to function to the fullest of their capabilities to curb the dirty rhetoric that is plotted behind the screen of Preventive Detention.

⁵⁴ John Stuart Mill, *On Liberty* 15 (Elizabeth Rapaport ed., Hackett Publ’g Co. 1978).

⁵⁵ 232 S.W.2d 897 (1950)

⁵⁶ *Due Process of Law*, Black’s Law Dictionary (11th ed. 2019).