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CONSTITUTIONAL IRONIES: HOW INDIA'S SAFEGUARDS SANCTION PREVENTIVE DETENTION

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ABSTRACT
Preventive detention is an extraordinary constitutional exception that allows the State to curtail personal liberty without trial, on the mere apprehension of potential harm. Article 22 of the Indian Constitution, ostensibly introduced as a safeguard for detained individuals, paradoxically legitimizes this mechanism. This article critically examines the structural irony within Article 22, particularly clause (7), which empowers Parliament to prescribe conditions for extended detention beyond three months without mandatory judicial scrutiny by an Advisory Board.

The article explores the colonial origins of preventive detention in India and the Constituent Assembly's compromise in granting it constitutional sanction despite its conflict with the foundational values of liberty and due process. Special focus is placed on the 44th Constitutional Amendment Act of 1978, which sought to reduce the maximum period of preventive detention without Advisory Board review from three months to two months—yet remains unimplemented to this day. This legal inaction underscores a broader democratic failure to prioritize individual liberty in the face of executive convenience and national security narratives.

Through an analysis of constitutional text, case law, parliamentary practice, and international standards, the article argues that preventive detention in India has evolved into a normalized governance tool, often misused against political dissenters and vulnerable communities. The article concludes by advocating for immediate implementation of the 44th Amendment, judicial reinterpretation of Article 22 in harmony with Article 21, and structural reforms to align India's preventive detention regime with constitutional morality and global human rights obligations.

INTRODUCTION
The principle that a person's liberty can be curtailed only after the commission of a crime and through the due process of law lies at the heart of modern criminal jurisprudence. In most democratic systems, this process entails two foundational elements—*actus reus* (the guilty act) and *mens rea* (the guilty mind). Preventive detention, however, stands in stark contrast to this bedrock principle. It permits the State to detain an individual not for what they have done, but for what they might do in the future. Such power, extraordinary in scope, is typically reserved for times of grave emergency. Yet in India, preventive detention has been normalized—and worse, constitutionalized.[1]

Article 22 of the Indian Constitution, rather than purely shielding individual liberty, embeds within itself a contradiction. Clauses (1) and (2) provide procedural safeguards to arrested persons, such as the right to be informed of the grounds of arrest and to consult a legal practitioner.[2] But Clause (3) summarily removes these protections in cases of preventive detention.[3] Most troublingly, Clause (7) of Article 22 goes a step further by giving Parliament the unchecked power to legislate not only the duration of preventive detention but also the procedure to be followed for reviewing such detentions—without any constitutional standard to guide this discretion.[4]

The irony is striking: a constitutional safeguard, in theory designed to protect liberty, is deployed to authorize its suspension.

This article seeks to interrogate this legal paradox. It contends that Clause (7) of Article 22, by granting excessive and unguided power to Parliament, undermines the foundational promise of liberty enshrined in Article 21 of the Constitution. More disturbingly, even the attempt to reform this structure through the 44th Constitutional Amendment Act, 1978—which sought to reduce the permissible period of detention without

[1] Ratanlal & Dhirajlal, The Indian Penal Code 25 (36th ed. 2022) (discussing *actus reus* and *mens rea* as essential components of criminal liability).

[2] INDIA CONST. art. 22, cls. (1)– (2).

[3] INDIA CONST. art. 22, cl. (3).

[4] INDIA CONST. art. 22, cl. (7).

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Advisory Board review from three months to two—has remained unenforced for over four decades.[1] The result is a structural failure: a dormant safeguard and an active threat to civil liberty, enshrined side by side within the constitutional text.[2]

This research adopts a doctrinal and historical-analytical approach, drawing upon constitutional debates, judicial pronouncements, and comparative jurisprudence. It examines the colonial legacy of preventive detention, the contradictory vision of the Constituent Assembly, and the judiciary's shifting postures on liberty versus national security. Special attention is paid to the unimplemented reforms of the 44th Amendment, and how their dormancy contributes to the persistence of unchecked executive detention power in India.[3]

In doing so, this article hopes to illuminate how a constitutional democracy may—through its own legal architecture—legitimize authoritarian tools. The central thesis is that the preventive detention framework, as constitutionally protected under Article 22(7), reflects a deliberate legislative compromise that continues to haunt the democratic promise of the Indian Republic.[4]

CONSTITUTIONAL GENESIS OF PREVENTIVE DETENTION

The roots of preventive detention in India run deep, far beyond the framing of the Constitution. Its origins lie firmly embedded in colonial governance, where control, not liberty, was the State's organizing principle. Perhaps the earliest and most infamous example is the Bengal Regulation III of 1818, which empowered the British East India Company to detain individuals indefinitely without trial, merely on suspicion that their activities were prejudicial to "public tranquility."[5] Similar regulations followed in the presidencies of Madras and Bombay, creating a consistent and draconian framework across British India.

With the advent of the First World War, colonial anxieties deepened. The Defence of India Act of 1915 was passed, drawing from the British Defence of the Realm Act and granting sweeping powers to detain individuals on vague grounds of public safety.[6] However, the watershed moment came with the Rowlatt Act of 1919, which allowed for detention without trial and barred judicial review altogether.[7] These laws not only bypassed the ordinary criminal justice system but also normalized the idea that detention could occur in anticipation of crime, rather than in response to it.

Regrettably, this legacy did not end with independence. On the contrary, it was absorbed into the Indian constitutional framework with surprising ease. The turmoil of Partition, the influx of refugees, communal riots, and threats to nascent national integrity were cited as justifications for retaining preventive detention laws in independent India.[8] Thus, even before the Constitution was fully enacted, the Preventive Detention Act of 1950 was already on the legislative agenda.

During the Constituent Assembly Debates, preventive detention provisions came up under the draft Article 15A, which would later become Article 22. The debates were intense but not evenly matched. Some members, such as Prof. K.T. Shah, warned that embedding preventive detention in the Constitution would give the State legal tools to suppress dissent and curtail civil liberties, especially in peacetime.[9] He described it as a betrayal of the very ideals the freedom movement had fought for.

Yet, these concerns were largely set aside by the majority of the Assembly. Alladi Krishnaswami Ayyar defended the clause, arguing that preventive detention was a "necessary evil" to safeguard the integrity of the State during its fragile formative years.[10] He believed that without such powers, the State could not deal with subversive elements who sought to undermine it from within.

[1] The Constitution (Forty-Fourth Amendment) Act, 1978, § 3.

[2] Abhinav Sekhri, Article 22 – Calling Time on Preventive Detention, 9 Indian J. Const. L. 177, 185–88 (2020).

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

[4] International Covenant on Civil and Political Rights, art. 9(1), Dec. 16, 1966, 999 U.N.T.S. 171.

[5] Bengal Regulation III of 1818, Preamble.

[6] Defence of India Act, 1915, § 2(1)(f).

[7] Anarchical and Revolutionary Crimes Act, 1919 (commonly known as the Rowlatt Act), §§ 17–18.

[8] Granville Austin, The Indian Constitution: Cornerstone of a Nation 45–49 (1966).

[9] Constituent Assembly Debates, Vol. VII, 42–45 (Prof. K.T. Shah's speech on preventive detention).

[10] Constituent Assembly Debates, Vol. IX, 1541–1532 (Alladi Krishnaswami Ayyar).

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Similarly, Dr. B.R. Ambedkar, though visibly uneasy about the implications of preventive detention, justified its inclusion by invoking the practical necessities of post-Partition India. He famously remarked: "I don't think the exigency of the liberty of an individual shall be above the interests of the State."[1] Such statements reflect the realpolitik that guided the Constitution's birth—a time when idealism often yielded to the urgent needs of nation-building.

What makes this even more paradoxical is that many members of the Constituent Assembly had themselves been victims of colonial preventive detention laws. Yet, driven by the fear of disintegration and the need to maintain order in a newly independent and deeply divided land, they institutionalized a mechanism they had once resisted.

The Architecture of Article 22: Between Safeguard and Subversion

The drafters of the Indian Constitution attempted a delicate balancing act in Article 22. On the one hand, they embedded certain rights and procedural safeguards for individuals arrested under ordinary law. On the other, they carved out an extensive exception to these very protections in the case of preventive detention. The result is a provision that appears, on its face, to protect personal liberty but simultaneously creates a constitutional basis to suspend it. In effect, Article 22 reflects the inherent tension between liberty and security**,** law and discretion**,** safeguard and subversion.

A. Clauses (1)– (2): Procedural Safeguards for Arrested Persons

Clauses (1) and (2) of Article 22 reflect familiar due process protections. They ensure that any person who is arrested under ordinary criminal law must be:

- Informed of the grounds of arrest "as soon as may be",
- Allowed to consult a legal practitioner of their choice, and
- Produced before a magistrate within twenty-four hours of arrest.[2]

These clauses echo the safeguards found in many constitutional democracies and are complemented by provisions in the Code of Criminal Procedure, 1973, such as Sections 41D and 303.[3] Taken together, they form the procedural backbone of India's commitment to protecting civil liberties.

B. Clauses (3)– (6): The Preventive Detention Exception

However, this commitment begins to unravel in Clause (3), which effectively states that none of the above protections apply to individuals who are preventively detained.[4] In other words, the right to be informed of the grounds of arrest, the right to legal counsel, and the right to be produced before a magistrate—none of these are available to someone detained in anticipation of a crime rather than for an act already committed.

Clause (4) attempts to place a limit on this sweeping power by stipulating that no preventive detention can exceed three months, unless an Advisory Board—comprising judges of a High Court—reviews the case and approves further detention.[5] While this appears to be a check on executive discretion, it is often more symbolic than substantive. In practice, Advisory Boards rarely overturn detention orders, and proceedings before them are held in-camera, offering little transparency or accountability.[6]

Clauses (5) and (6) require that the detenu be informed of the grounds of detention "as soon as may be" and that they be allowed to make a representation against it.[7] However, the State is allowed to withhold any facts it considers "against the public interest" from being disclosed to the detainee.[8] This creates an opaque standard that renders meaningful representation nearly impossible, as the very material needed to challenge the detention

[1] Id. at 1500 (Statement by Dr. B.R. Ambedkar).

[2] INDIA CONST. art. 22, cls. (1)– (2).

[3] Code of Criminal Procedure, 1973, §§ 41D, 303.

[4] INDIA CONST. art. 22, cl. (3).

[5] Id. cl. (4).

[6] Abhinav Sekhri, Article 22 – Calling Time on Preventive Detention, 9 Indian J. Const. L. 177, 186–88 (2020).

[7] INDIA CONST. art. 22, cl. (5).

[8] Id. cl. (6).

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may be conveniently withheld. The Supreme Court has tried to temper this opacity, ruling that vague or irrelevant grounds can invalidate detention, but the subjective satisfaction of the detaining authority remains largely unreviewable.[1]

C. Clause (7): A Constitutional Escape Hatch

Perhaps the most troubling part of Article 22 is Clause (7). It empowers Parliament to:

1. Authorize preventive detention beyond three months without referring to an Advisory Board,
2. Prescribe the maximum period for which a person may be detained, and
3. Define the procedure to be followed by Advisory Boards.[2]

This clause essentially delegates unchecked power to the legislature, allowing it to dilute or bypass the already minimal safeguards provided under Clause (4). No clear constitutional limits are set on how long a person can be detained or under what procedure the Advisory Board must operate. As a result, different preventive detention statutes—like the National Security Act, 1980, or Jammu and Kashmir Public Safety Act, 1978—prescribe detention periods that range from several months to a year, often with renewable orders.[3]

The judiciary has offered little resistance to this delegation of discretion. Courts have typically shown deference to legislative wisdom and executive judgment in matters of national security. There is no binding judicial standard that reviews the reasonableness of detention periods or ensures uniformity across statutes. This makes Clause (7) the constitutional escape hatch that enables Parliament to legislate liberty away under the veneer of constitutional legitimacy.

The Unimplemented Reform: 44th Constitutional Amendment Act, 1978

In the aftermath of India's Emergency (1975–1977), the nation witnessed an intense reckoning with the Constitution's role in facilitating authoritarianism. Civil liberties had been suspended, thousands were detained without trial, and preventive detention laws were widely misused to suppress dissent. This dark chapter in India's democratic history spurred the need for constitutional introspection and reform. It was in this climate that the 44th Constitutional Amendment Act of 1978 was passed by Parliament—an attempt to reclaim the constitutional promise of liberty that had been so thoroughly undermined.[4]

Among its key provisions, the Amendment sought to reduce the maximum period of preventive detention without Advisory Board approval from three months to two months**.**[5] This was not merely symbolic. It aimed to ensure that any prolonged curtailment of liberty would require at least a minimal form of independent judicial scrutiny, thereby acting as a deterrent to arbitrary executive action.

Yet, more than four decades later, this important reform remains a dead letter in the Constitution.

Despite being passed by both Houses of Parliament and receiving presidential assent, the provision under Article 22(4), as amended, was never brought into force by a government notification—a requirement under Article 368(2) of the Constitution.[6] As a result, the original position under Article 22, which permits preventive detention up to three months without Advisory Board approval, remains operational.

This non-implementation presents a peculiar constitutional problem. The very machinery that allows the Constitution to evolve—Article 368—has been used here to stall that evolution. By failing to notify the amendment, successive governments have effectively nullified the will of Parliament without repeal, debate, or judicial review.[7] This raises an unsettling question: Can Parliament or the executive evade constitutional duties simply by choosing not to act?

[1] Hansmukh v. State of Gujarat, AIR 1981 SC 28 (holding that vague grounds make representation ineffective).

[2] INDIA CONST. art. 22, cl. (7).

[3] *generally* National Security Act, 1980, § 13; Jammu and Kashmir Public Safety Act, 1978, § 18.

[4] Granville Austin, Working a Democratic Constitution: The Indian Experience 350–54 (2000).

[5] The Constitution (Forty-Fourth Amendment) Act, 1978, § 3.

[6] INDIA CONST. art. 368(2) (providing that an amendment shall come into force only upon such date as the President may appoint).

[7] Abhinav Sekhri, Article 22 – Calling Time on Preventive Detention, 9 Indian J. Const. L. 177, 190–92 (2020).

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The Indian Constitution provides no fixed timeline for bringing an amendment into force once it has received assent. While this gives the executive some flexibility, it also opens the door to constitutional manipulation. This is especially problematic in cases like the 44th Amendment, which was passed precisely to prevent future abuse of power.

This is not an isolated instance. There are other constitutional amendments which, although enacted, have never been implemented. For example, Article 16(4A), inserted to enable reservations in promotions for Scheduled Castes and Scheduled Tribes, required enabling legislation and judicial interpretation to give it real effect.[1] Similarly, Article 371J, granting special status to parts of Karnataka, remained dormant for years before being activated.[2] But the non-enforcement of the 44th Amendment's preventive detention clause stands apart in gravity—it deals not with benefits or status, but with core individual liberty**.**

Scholars have long argued that this silence on implementation is itself a constitutional failure.[3] The Supreme Court, for its part, has generally refrained from issuing directives to notify or implement amendments, citing separation of powers. However, this judicial deference has come at the cost of constitutional completeness. When crucial amendments aimed at restoring liberty are indefinitely postponed, the Constitution becomes text without teeth.

The tragedy of the 44th Amendment is not just in its non-enforcement, but in its quiet burial. It represents a collective institutional abdication—of Parliament, of the Executive, and to some extent, of the Judiciary. In theory, the Indian Constitution contains a course-correction to the excesses of preventive detention. In practice, the original excesses remain untouched, while the correction sits idle in legal limbo.

Constitutional Irony in Practice: Preventive Detention as a Tool of Routine Governance

What was once justified as an exceptional measure for exceptional times has now become a normal feature of India's law enforcement apparatus. Preventive detention—originally framed as a protective tool to safeguard the State from grave threats—has evolved into a mechanism of routine governance, used frequently in peacetime to suppress dissent, target minorities, and detain protesters. This shift reveals the stark irony embedded in the Indian legal framework: laws constitutionally sanctioned to preserve liberty are now deployed to curtail it with alarming regularity.

Today, preventive detention laws like the National Security Act, 1980 (NSA), and Jammu and Kashmir Public Safety Act, 1978 (PSA) are routinely invoked not against terrorists or saboteurs, but against journalists, students, activists, and ordinary citizens who voice disagreement with the government.[4] In Uttar Pradesh alone, over 1200 people were reportedly detained under the NSA between 2018 and 2020, often for reasons as minor as alleged cow slaughter or involvement in protests.[5] Similarly, in Jammu and Kashmir, the PSA has long served as a blunt instrument of control, allowing detention up to two years without trial under vaguely worded grounds such as "threat to public order."[6]

These statistics do not represent isolated abuses—they reflect a systemic reliance on preventive detention as an administrative shortcut. Rather than conducting proper investigations, gathering evidence, and securing convictions through the normal criminal justice process, authorities often resort to preventive detention as a matter of executive convenience. It saves the State the burden of proving guilt while placing the individual in a legal limbo with almost no recourse.[7]

[1] *generally* M. Nagaraj v. Union of India, (2006) 8 SCC 212.

[2] Shankaragouda Patil, Article 371J: A Toothless Provision, The Hindu (Aug. 12, 2013), https://www.thehindu.com.

[3] Gautam Bhatia, The Unfulfilled Promise of the 44th Amendment, Indian Const. Law & Philosophy (2021), https://indconlawphil.wordpress.com.

[4] *generally* National Security Act, 1980; Jammu and Kashmir Public Safety Act, 1978.

[5] Aman Saxena, Over 1,200 Detained Under NSA in UP in Two Years, Times of India (Aug. 15, 2020), https://timesofindia.indiatimes.com.

[6] Amnesty International India, Tyranny of a 'Lawless Law': Detention Without Charge or Trial under the J&K PSA, 1978 (2011).

[7] Abhinav Sekhri, Preventive Detention and the Fiction of "Administrative Necessity", The Leaflet (Sept. 5, 2020), https://theleaflet.in.

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This erosion of liberty is not just practical but also deeply constitutional. As earlier chapters have shown, Article 22, particularly Clause (7), enables this abuse by insulating preventive detention laws from meaningful scrutiny, both judicial and legislative. And since many of these laws are couched in the language of "national security" or "public order," they receive a degree of judicial deference that further undermines accountability.

The result is a constitutional paradox: in a democracy built on the ideals of freedom and due process, the very architecture designed to uphold liberty has become the legal foundation for its denial. Courts often echo the refrain that preventive detention is not punitive, but preventive—yet this semantic distinction has little meaning to a person who remains imprisoned without charge or trial for months, or even years.[1]

The Supreme Court has occasionally intervened in extreme cases, holding that vague grounds of detention or procedural lapses invalidate detention orders.[2] But such interventions are reactive and rare. The overarching legal and constitutional framework continues to favour the State's power to detain over the individual's right to liberty.

This misuse of preventive detention laws also violates India's international obligations. Under the International Covenant on Civil and Political Rights (ICCPR), to which India is a party, the right to liberty and the right to be informed of reasons for arrest are non-derogable, even during emergencies.[3] Yet Indian law permits the continued detention of individuals on grounds the State can choose not to disclose at all.

The Way Forward: Constitutional and Legislative Recommendations

If the Constitution is to remain a living document that upholds liberty and dignity, then the existing framework of preventive detention—particularly under Article 22—demands urgent repair. The legislative and judicial complacency that has allowed preventive detention laws to drift from "exceptional safeguard" to "routine governance tool" must give way to active constitutional reform. This chapter outlines a path forward grounded in legality, reasonableness, and human rights.

1. Immediate Enforcement of the 44th Constitutional Amendment

The most direct and overdue reform is the notification and enforcement of the 44th Constitutional Amendment Act, 1978, which reduced the maximum period of preventive detention without Advisory Board review from three months to two.[4] Its continued dormancy—despite having passed Parliament and received presidential assent—is an affront to both the Constitution and the will of the people it represents.

There is no justification, constitutional or moral, for keeping this provision in abeyance while preventive detention is regularly invoked in peacetime against citizens. Its enforcement would be a modest but meaningful step toward reviving judicial oversight and signaling that the Constitution cannot be selectively applied.[5]

2. Amend Article 22(7): Limit Parliament's Unfettered Discretion

Article 22(7), as currently drafted, hands Parliament a blank check. It allows the legislature to:

- Extend preventive detention beyond three months without advisory review,
- Determine the maximum duration of such detention, and
- Define the procedure of review.

Such wide discretion, especially in a domain as sensitive as deprivation of liberty, is inherently dangerous.[6]

This provision must be amended to include explicit constitutional constraints, such as:

- A mandatory Advisory Board review for all detentions extending beyond two months, irrespective of statute,

[1] A.K. Roy v. Union of India, AIR 1982 SC 710 (distinguishing preventive detention from punitive imprisonment but upholding its constitutionality).

[2] Rekha v. State of Tamil Nadu, (2011) 5 SCC 244 (quashing detention on grounds of vagueness); *also* Dr. Ram Manohar Lohia v. State of Bihar, AIR 1966 SC 740.

[3] International Covenant on Civil and Political Rights, arts. 9–10, Dec. 16, 1966, 999 U.N.T.S. 171

[4] The Constitution (Forty-Fourth Amendment) Act, 1978, § 3.

[5] Gautam Bhatia, The Unfulfilled Promise of the 44th Amendment, Indian Const. L. & Phil. (2021), https://indconlawphil.wordpress.com.

[6] INDIA CONST. art. 22, cl. (7).

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- Legislative guidelines that specify the circumstances under which detention can be extended, and
- A constitutional mandate that all preventive detention laws pass the test of proportionality and reasonableness, as laid down in *Modern Dental College v. State of Madhya Pradesh* and later affirmed in *K.S. Puttaswamy v. Union of India*.[1]

This would prevent Parliament from diluting safeguards through ordinary legislation and ensure that fundamental rights cannot be overridden by expedience.

3. Judicial Reinterpretation: Harmonizing Article 22 with Article 21

While legislative reform is necessary, judicial action is equally vital. Courts must reinterpret Article 22 in light of evolving constitutional jurisprudence—especially the expanded understanding of Article 21 post-*Maneka Gandhi*, which introduced substantive due process.[2]

Article 22 should no longer be treated as an independent and self-contained code, as held in *A.K. Gopalan*, but rather as a provision that must coexist with the broader rights to life and personal liberty.[3] Judicial scrutiny of preventive detention laws must be heightened, with courts examining not only procedural compliance but also the necessity, proportionality, and fairness of detention orders.

Moreover, constitutional courts should give greater weight to international human rights norms, particularly the International Covenant on Civil and Political Rights, which mandates strict safeguards against arbitrary detention.[4] The Indian judiciary has historically used international law to interpret domestic rights expansively, and this tradition must continue in the context of preventive detention.

4. Periodic Parliamentary Review of All Preventive Detention Laws

Finally, Parliament must take institutional responsibility for laws passed in its name. Preventive detention statutes should not remain frozen in time. Instead, they must be subject to periodic review—preferably every five years—to assess:

- Their continued necessity,
- Patterns of misuse,
- Compatibility with constitutional values.

Such reviews could be conducted through a Parliamentary Standing Committee on Civil Liberties, drawing input from jurists, civil society, and law enforcement. Transparency and public reporting should be made mandatory.[5]

By embedding a culture of deliberative oversight, Parliament can move from being a passive enabler of executive detention to an active defender of democratic rights.

CONCLUSION

When the Constitution of India was drafted, preventive detention was included with hesitation and caution—an exception carved out in response to the turmoil of Partition and the early fragility of the Republic. It was meant to be a rare measure, invoked only in the most extreme circumstances to protect the sovereignty and security of the State. Yet over time, this extraordinary provision has evolved into a routine tool of governance.

At the heart of this transformation lies Article 22. Designed as a safeguard, it paradoxically legitimizes the very abuse it sought to prevent. Through vague language and unbridled legislative discretion—particularly in Clause (7)—it provides a constitutional shield for laws that allow detention without trial, without adequate review, and without meaningful procedural protection. The failure to implement the 44th Constitutional Amendment, which sought to reduce the initial period of preventive detention without advisory review from three months to two, only deepens this contradiction.[6]

[1] Modern Dental College and Research Centre v. State of Madhya Pradesh, (2016) 7 SCC 353; *also* K.S. Puttaswamy v. Union of India, (2017) 10 SCC 1.

[2] Maneka Gandhi v. Union of India, AIR 1978 SC 597.

[3] A.K. Gopalan v. State of Madras, AIR 1950 SC 27 (rejecting harmonious construction of fundamental rights).

[4] International Covenant on Civil and Political Rights, arts. 9–10, Dec. 16, 1966, 999 U.N.T.S. 171.

[5] Shubhankar Dam, Parliamentary Accountability in India: An Evaluation, 2 Indian J. Pub. Admin**.** 155 (2006).

[6] The Constitution (Forty-Fourth Amendment) Act, 1978, § 3.

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Preventive detention, once a wartime exception, is now regularly used in peacetime—often not against those posing real threats to national security, but against citizens expressing dissent, challenging authority, or belonging to marginalized communities. It is no longer a legal last resort, but an administrative shortcut.[1]

This reality calls for urgent constitutional correction. The unused reforms of the 44th Amendment must be enforced. The unchecked power given to Parliament under Article 22(7) must be revisited and restructured with clear limits and safeguards. More importantly, courts must rise above their historically deferential stance and embrace their role as active guardians of personal liberty. Article 22 must be interpreted in harmony with the broader guarantees of Article 21, which places the dignity and freedom of the individual at the center of constitutional life.

The preservation of liberty is not the responsibility of the judiciary alone. It also requires legislative accountability and political will. Parliament must actively review and reassess the need for preventive detention laws, ensure their compliance with constitutional values, and uphold the principle that no person should be imprisoned without just cause.

The irony of Article 22 lies in the fact that a provision introduced to prevent arbitrary state action has become the constitutional foundation for it. The time has come to confront this irony—not just with critique, but with reform. Only then can India claim to be a democracy where liberty is not merely promised, but meaningfully protected.

[1] Amnesty International India, Tyranny of a 'Lawless Law' (2011); Abhinav Sekhri, Article 22 – Calling Time on Preventive Detention, 9 Indian J. Const. L. 177 (2020).