Effectiveness of Preventive Detention in Safeguarding Public Order: A Critical Study

Aarti Chauhan, Dr. Manpreet Kaur

1.1 ABSTRACT

Preventive detention represents one of the most contested intersections between State power and individual liberty in India's constitutional scheme. Authorised as an exceptional measure, it permits the executive to restrain personal liberty without trial in order to forestall threats to public order, national security, and essential services. This study critically examines the effectiveness of preventive detention in safeguarding public order, while assessing whether its contemporary design and implementation maintain a constitutionally defensible balance with fundamental rights. Anchored in Articles 21 and 22 of the Constitution of India, the analysis situates preventive detention within the post–*Maneka Gandhi* rights jurisprudence that mandates fairness, reasonableness, and proportionality in all deprivations of liberty.

Using a doctrinal methodology, the study evaluates the statutory frameworks governing preventive detention, including the National Security Act, 1980, COFEPOSA, PITNDPS, and the Jammu and Kashmir Public Safety Act, alongside the preventive alternatives embedded in the Bharatiya Nagarik Suraksha Sanhita, 2023. Judicial interpretations on the meaning of public order, the limits of executive satisfaction, detention of persons already in custody, and the relationship between preventive and punitive processes are critically analysed to determine whether detention genuinely functions as a preventive tool rather than a substitute for ordinary criminal law.

The study argues that preventive detention can be effective in narrowly defined, time-sensitive contexts marked by imminent threats and specific intelligence, but its broader deployment raises serious concerns regarding overbreadth, opacity, and civil liberties. The absence of transparent, disaggregated data further undermines claims of efficacy. The paper concludes that preventive detention retains constitutional legitimacy only when used as a last resort, supported by strict procedural fidelity, meaningful oversight, and demonstrable inadequacy of less restrictive alternatives.

1.2 INTRODUCTION

Preventive detention occupies a singular place in India's constitutional order because it authorises a forward-looking restraint on liberty without the predicates of charge or trial. The device is justified as a hedge against grave risks to collective tranquillity, national security, and the continuity of essential services. The concept of public order sits at the core of this justification. Public order connotes the even tempo of community life and the stability of civic peace, positioned between ordinary law and order on the one hand and the security of the State on the other. This study asks whether preventive detention, as structured and practised in India, effectively safeguards public order in a manner proportionate to the liberties that it curtails. It frames the analysis within India's constitutional guarantee of personal liberty under "Article 21" and the special scheme for detention under "Article 22" and engages with the contemporary penal-procedural architecture post "Bharatiya Nyaya Sanhita, 2023" and "Bharatiya Nagarik Suraksha Sanhita, 2023". The method is doctrinal, anchored in constitutional text, statutes, and leading judgments, and supplemented by a policy lens that treats efficacy, rights-costs, and institutional design as co-equal concerns. The scope covers national laws such as the "National Security Act, 1980", "Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974", and "Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988", as well as the "Jammu and Kashmir Public Safety Act, 1978". The study is constrained by deficits in official, disaggregated detention statistics and the opacity that often surrounds detaining authority decisions, which complicates empirical claims about outcomes. The analysis proceeds in five arcs: constitutional and statutory foundations; doctrinal

evolution on the meaning of public order and the permissible reach of detention; an effectiveness assessment that treats prevention as a measurable hypothesis; a policy discussion on alternatives, safeguards, and regional co-operation; and a synthesis that responds to the central research question about whether the present design produces a defensible balance between order and liberty. References to "Article 22" and statutory maxima are made with precision, and the text maintains a distinction between the constitutional floor and the variable statutory ceilings that different enactments adopt.[1]

1.3 CONSTITUTIONAL AND STATUTORY FRAMEWORK

The legal basis for preventive detention rests on a narrow constitutional authorisation and a cluster of statutes that define risks, empower executive actors, and embed review mechanisms.

[1] Constitution of India, *available at:* https://legislative.gov.in/constitution-of-india/ (last visited on November 6, 2025).

"Article 22" allows laws that enable detention to prevent prejudicial acts and establishes minimum safeguards such as timely communication of grounds and a right to make a representation, while also recognising special departures from ordinary arrest-to-magistrate guarantees. Parliament and State legislatures have enacted subject-specific and region-specific laws to operationalise this power. Institutional checks operate through Advisory Boards staffed by present or former judges, through periodic maxima that cap detention, and through judicial review that scrutinises satisfaction, material relevance, and fidelity to procedural guarantees. Federal allocation assigns concurrent roles: Union legislation addresses smuggling, foreign exchange, and narcotics traffic; States deploy detention to manage public order and community peace. The post-2024 criminal procedure code, "Bharatiya Nagarik Suraksha Sanhita, 2023", also structures alternatives through "Chapter IX" on security for keeping the peace and "Chapter XI" on maintenance of public order and tranquillity, alongside "Chapter XII" on preventive action by police, which collectively can be read as less-restrictive levers around the preventive space.[2]

1.3.1 Articles 21 and 22

Personal liberty under "Article 21" carries a guarantee that any deprivation must follow a procedure that is just, fair, and reasonable, a standard crystallised after "*Maneka Gandhi v. Union of India*[3],. Within this framework, "Article 22(3) to 22(7)" sets a specific regime for preventive detention. The provision withholds certain ordinary arrest safeguards for detenus, but requires communication of grounds and the earliest opportunity to make a representation under "Article 22(5)". A temporal check appears in "Article 22(4)", which bars laws authorising detention beyond three months unless an Advisory Board opines that there is sufficient cause, or Parliament prescribes classes warranting longer periods. The Constitution (Forty-Fourth Amendment) Act sought to substitute a two-month threshold and modify the Board's composition, yet the relevant substitution remains unnotified, so the three-month default continues to govern. The rights architecture therefore blends a general fairness mandate under "Article 21" with a tailored framework under "Article 22" that legitimises prospective restraint only if built on accurate grounds, meaningful representation, and timely independent review.[4]

[2] The Constitution of India, *available at:* https://www.indiacode.nic.in/bitstream/123456789/19151/1/constitution_of_india.pdf (last visited on November 5, 2025).

[3] (1978) 1 SCC 248.

[4] Article 21 in Constitution of India, *available at:* https://indiankanoon.org/doc/1199182/ (last visited on November 4, 2025).

1.3.2 Legislative Sources

Four enactments structure much of the practice. The "National Security Act, 1980" permits detention to prevent acts prejudicial to national security, public order, or the maintenance of essential supplies and services, with a statutory ceiling of "Section 13" setting the maximum period at twelve months from the date of detention upon confirmation. The "Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974" targets smuggling and foreign exchange violations, with "Section 10" fixing a maximum of one year where "Section 9" does not apply, and up to two years for specified aggravated classes where "Section 9" applies. The "Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988" focuses on narcotics trafficking, with "Section 11" authorising detention for up to one year in ordinary cases and up to two years where a "Section 10" declaration applies. The "Jammu and Kashmir Public Safety Act, 1978" sets distinct maxima under "Section 18", allowing up to one year for public order and up to two years for security of the State. These enactments vary in their object clauses, the classes of detainable conduct, and reporting duties to the Union, but share common features around communication, representation, and Advisory Board review.[5]

1.3.3 Procedural Safeguards

Procedural fidelity sustains the constitutionality of preventive detention. Communication of the grounds must occur promptly and in a language understood by the detenu, enabling a purposeful representation to the detaining government. Under COFEPOSA, "Section 3(3)" specifies that communication should ordinarily occur within five days, extendable to fifteen for recorded exceptional reasons, a textual concretisation of "Article 22(5)". Advisory Boards must be constituted and receive references within periods set by statute; their opinions constrain continued detention beyond the initial window. The "National Security Act, 1980" codifies these steps, including constitution of Boards, reference, procedure, and action on reports. Judicial doctrine has read these statutory texts with rigor, insisting that non-supply of relied- upon documents, supply in an unintelligible form, or unexplained delays vitiate detention because they disable the constitutional opportunity to represent. The scheme, at least on paper,

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[5] The National Security Act, 1980, *available at:* https://www.mha.gov.in/sites/default/files/2022-08/ISdivII_NSAAct1980_20122018%5B1%5D.pdf (last visited on November 3, 2025).

seeks to balance secrecy where public interest requires non-disclosure with the detenu's capacity to answer the case.[6]

1.3.4 Federalism and Executive Roles

Union and State executives share roles with distinct emphases. District Magistrates and Commissioners of Police can pass orders under the "National Security Act, 1980", which lapse in twelve days unless approved by the State Government, while State Governments must report certain orders to the Centre within set timelines under sectoral laws such as COFEPOSA, reflecting layered accountability between levels of government. Under COFEPOSA and PITNDPS, State orders must be forwarded to the Central Government within ten days, calibrating Union oversight of matters affecting economic security and cross-border illicit traffic. At the State level, Home Departments scrutinise proposals, issue approvals, and process representations; Advisory Boards constituted under statute furnish independent opinions that cabin executive discretion. This dispersion of authority reflects a constitutional balance: States police public order, while the Union steers detention regimes linked to economic and cross- border harms and retains a reviewing gaze over State orders in these domains.[7]

1.3.5 Emergency Context and Fundamental Rights

Emergency-era experience casts a long shadow over detention law. The broad reading of executive power in "*ADM, Jabalpur v. Shivakant Shukla*[8], was later disavowed by the rights- affirming turn that places dignity and reasonableness at the centre of "Article 21". Privacy and informational self-determination, affirmed in "*K. S. Puttaswamy v. Union of India*[9], sharpen the proportionality lens through which detention-adjacent surveillance and data gathering may be

assessed. The constitutional text itself preserves the Advisory Board check even during emergencies and ties continued detention to independent scrutiny within a set outer limit. The Forty-Fourth Amendment's substitution to a two-month threshold has not been brought into force, so the three-month pre-Board ceiling remains the operative constitutional default. The

[6] The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974, *available at:* https://www.indiacode.nic.in/bitstream/123456789/15382/1/the_conservation_of_foreign_exchange_and.pdf (last visited on November 2, 2025).

[7] Ankit Ashok Jalan v. Union of India & Ors., Writ Petition (Criminal) No. 362 of 2019, Judgment, *available at:* https://api.sci.gov.in/supremecourt/2019/45322/45322_2019_6_1501_21324_Judgement_04-Mar-2020.pdf (last visited on November 1, 2025).

[8] (1976) 2 SCC 521.

[9] (2017) 10 SCC 1.

post-1978 jurisprudence and legislative revisions press toward a more exacting calibration of liberty and security than the deferential logic of the 1970s.[10]

1.4 DOCTRINAL EVOLUTION ON PUBLIC ORDER AND DETENTION

Judicial doctrine has refined the boundaries between punitive and preventive domains and clarified the proximity that conduct must bear to collective peace to justify detention. Courts have moved from formal deference to statutory text toward a requirement that procedures be fair, reasons be germane, and the link to future harm be live and proximate. The term public order has been placed within a graded taxonomy, with law and order at the base, public order in the middle, and the security of the State at the apex. The evolution also addresses executive satisfaction, identifying grounds for intervention where power is exercised on irrelevant material, with mala fides, or without application of mind. These standards seek to ensure that preventive detention remains exceptional, used to avoid imminent threats rather than to displace ordinary prosecution or to short-circuit bail by another name. The result is a jurisprudence that tests both the end asserted and the means adopted.

1.4.1 From a. K. Gopalan to Maneka Gandhi

Early decisions adopted a compartmentalised reading of fundamental rights, exemplified by "*A. K. Gopalan v. State of Madras*[11], which treated "procedure established by law" as exhausted by statutory compliance. The later shift, crowned by "*Maneka Gandhi v. Union of India*[12], re-read "Article 21" to require that the procedure itself must be fair, just, and reasonable, drawing in values of non-arbitrariness and rationality. That development transformed the review of preventive detention from a checkbox exercise into a substantive inquiry into fairness. Under this approach, communication of grounds, supply of relied-upon material, and timely consideration of representations are not mechanical steps but essential conditions for a meaningful chance to contest the detention. The fair-procedure canon then informs the reading of statutory clauses across regimes such as the NSA, COFEPOSA, and PITNDPS, reinforcing that the legality of detention turns on both the authorising text and the quality of executive decision-making.

[10] Part III: Fundamental Rights, *available at:* https://www.mea.gov.in/images/pdf1/part3.pdf (last visited on October 31, 2025).

[11] AIR 1950 SC 27.

[12] *Supra* note 3.

1.4.2 Public Order vs Law and Order

The public order category requires a demonstrable impact on the community's even tempo, not merely an infraction that concerns individuals or small groups. The gradation developed in "*Dr. Ram Manohar Lohia v. State of Bihar*[13], and

applied in "*Kanu Biswas v. State of West Bengal*[14], demands proximity to communal peace and a clear risk that activity will spill into societal disturbance. This filter matters because it separates detention-worthy risks from conduct better addressed by ordinary penal law. The standard insists on a discernible nexus between the alleged acts and public tranquillity. Statutory references to public order in the NSA and PSA must therefore be read with this constitutional gloss, requiring detaining authorities to articulate why asserted activities cannot be addressed through investigation, charge, and trial and why imminent disturbance to community life warrants a non-punitive, forward-looking restraint.

1.4.3 Subjective Satisfaction and Judicial Review

While the initial decision to detain is grounded in the authority's subjective satisfaction, courts review whether that satisfaction rests on relevant and cogent material, whether the authority applied its mind to the right question, and whether extraneous considerations crept in. "*Khudiram Das v. State of West Bengal*[15], remains a charter for this approach, recognising that subjective power is not immune from judicial control. Subsequent cases such as "*Additional Secretary to the Government of India v. Alka Subhash Gadia*[16], and "*Deepak Bajaj v. State of Maharashtra*[17], refine both the scope of pre-execution challenges and the forms of bad faith or jurisdictional error that justify intervention. The combined effect is to discipline discretion, ensuring that detention does not become a reflexive response to public disquiet but a measure reserved for concrete, imminent risks supported by reliable material.

1.4.4 Detention Alongside Criminal Prosecution

Preventive detention and criminal prosecution are distinct tracks, and both can proceed where the facts warrant, but the detention power cannot be used to sidestep a bail order or to nullify procedural protections attached to trial. "*Haradhan Saha v. State of West Bengal*[18], recognises

[13] AIR 1966 SC 740.
[14] (1972) 3 SCC 831.
[15] (1975) 2 SCC 81.
[16] 1992 Supp (1) SCC 496.
[17] (2008) 16 SCC 14.
[18] (1975) 3 SCC 198.

co-existence in principle, while "*Ramesh Yadav v. District Magistrate*, *Etah*[19], warns against using detention to short-circuit release on bail. The operative test is whether the asserted future risk is separate from, and not already neutralised by, the ongoing criminal process. If investigation, charge, and targeted bail conditions can adequately mitigate risk, detention sits on weak ground. Where networks, cross-border linkages, or continuing conspiracies present live threats not captured by the pending case, a parallel preventive response may still be justified.

1.4.5 Detention of Persons Already in Custody

When the proposed detenu is already in custody, courts require a clear finding of a real possibility of release and a live and proximate likelihood of future prejudicial acts. Decisions such as "*Pebam Ningol Mikoi Devi v. State of Manipur*[20], "*Huidrom Konungjao Singh v. State of Manipur*[21], and "*Rekha v. State of Tamil Nadu*[22], articulate this twin test. "*Union of India v. Dimple Happy Dhakad*[23], reiterates that the detaining authority must demonstrate awareness of custody, assess the probability of release, and explain why detention remains necessary. The requirement guards against using detention as an all-purpose fallback. It also demands that authorities ground their prognostication in fresh, proximate material rather than stale incidents whose live link has snapped with time or prosecutorial progress.

1.5 EFFECTIVENESS ASSESSMENT IN INDIAN PRACTICE

Effectiveness must be tested against outcomes that matter for public order, not merely against counts of orders passed. A principled assessment looks at whether detention measurably prevents repeat incidents, reduces the incidence or intensity of communal or organised violence, and neutralises networks whose tactics exploit bail and delay. It must

also weigh rights-costs: the opaque nature of the process, restricted access to counsel before Advisory Boards in some regimes, and the chilling effect on speech, association, and movement. Statutory ceilings differ across laws, so overbreadth analysis must be law-specific; empirical work requires granular data on grounds cited, documents supplied, representation timelines, and Board outcomes, much of which is not consistently disclosed. The ecosystem of alternatives under "BNSS" that enable early, targeted interventions is relevant because it

[19] (1985) 4 SCC 232.
[20] (2010) 9 SCC 618.
[21] (2012) 7 SCC 181.
[22] (2011) 5 SCC 244.
[23] (2019) 20 SCC 609.

provides a benchmark for whether detention was truly necessary or whether less-intrusive means were available and ignored.[24]

1.5.1 Defining Effectiveness Metrics

A defensible metric set begins with repetition and immediacy. If detention prevents a predicted flare-up during a sensitive period or halts a known pattern of smuggling that funds violence, then it serves its preventive object. Reduction in communal incidents and rioting in a locale during the detention window can be a second indicator, though attribution requires care. A third metric is network disruption, tested by whether associated actors change tactics or intensity. Timeliness also matters, as delays in issuance or communication can collapse efficacy while worsening rights-costs. On the process side, supply of relied-upon material in a language understood by the detenu, prompt consideration of representations, and documented reasons signal quality control and build legitimacy. The presence of viable less-restrictive alternatives under "BNSS" Chapters on security for keeping the peace and maintenance of public order should count against detention where those tools were plainly adequate but unused, given their capacity to address risks with targeted bonds and police preventive action.[25]

1.5.2 Necessity vs Sufficiency

Detention may be necessary in narrow bands of time where the threat curve is steep, intelligence specific, and ordinary law cannot respond with equal swiftness. Yet it is rarely sufficient by itself, because disorder has structural drivers that lie outside the control of a single detaining order. In communal flashpoints, policing posture, credible prosecutions for underlying crimes, and social peacebuilding are co-determinants. In smuggling and narcotics cases, border management, customs intelligence, and financial tracking must converge. Laws such as COFEPOSA and PITNDPS recognise this by building federal reporting and oversight, but the scale of incentive structures often outstrips one-off orders. The existence of tailored "BNSS" measures reshapes the necessity inquiry, since bonds, dispersal powers, preventive police action, and quick resort to ordinary process may address many situations at lower rights- cost, reserving detention for exceptional, time-critical threats.[26]

[24] The Bharatiya Nagarik Suraksha Sanhita, 2023, *available at:* https://www.indiacode.nic.in/handle/123456789/20099 (last visited on October 30, 2025).

[25] *Supra* note 24.

[26] Section 3. Power to Make Orders Detaining Certain Persons, *available at:* https://www.indiacode.nic.in/show-data?abv=CEN&actid=AC_CEN_2_2_00013_197452_1517807319869&orderno=3&orgactid=AC_CEN_2_2_00013_197452_1517807319869&sectionId=24807&sectionno=3&statehandle= 123456789%2F1362 (last visited on October 29, 2025).

1.5.3 Quality of Decision-Making

The integrity of a detention order depends on the specificity and contemporaneity of its grounds, the supply of all relied-upon documents, and compliance with communication and representation rights. Reliance on stale or extraneous material signals non-application of mind, while non-supply or unintelligible supply defeats the constitutional chance to represent. COFEPOSA's textual five-day outer limit, extendable to fifteen, anchors promptness and should guide analogous practice under other laws. Under the NSA, the architecture around constitution of Advisory Boards, reference timelines, and action on reports provides the scaffolding for accountability, while judicial review polices mala fides and relevance. Orders that transparently record satisfaction and material, and that acknowledge and answer exculpatory factors, better survive review and model legality. These process-quality markers are not formalities; they are the instruments through which the State demonstrates that a prior restraint on liberty rests on cogent, proportionate reasons.[27]

1.5.4 Outcomes in Judicial Review

Judicial oversight catches recurrent defects: delays in communication, non-supply or illegible supply of relied-upon documents, reliance on unrelated incidents, and perfunctory reasons. Quashment in such cases is not a leniency to risk, but a correction to protect the constitutional architecture that gives detention its limited legitimacy. The jurisprudence in "*Icchu Devi Choraria v. Union of India*[28], and "*Deepak Bajaj v. State of Maharashtra*[29], illustrates scepticism toward mechanical invocation of power. Courts also remind authorities that representations must be considered with urgency and that the decision must be communicated, because delay defeats the right itself. The feedback loop from these decisions should inform training, templates, and supervision, improving the front-end quality of orders and the State's ability to defend them. A mature system learns from repeated quashments by addressing the root causes rather than treating each as an isolated setback.

1.5.5 Sectoral and Regional Patterns

Use under COFEPOSA tends to track ports, logistics hubs, and border corridors where smuggling incentives are concentrated, while NSA practice clusters around periods of communal tension, threats to essential supplies, or localised security concerns. The "Jammu

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[27] *Supra* note 6.
[28] (1980) 4 SCC 531.
[29] *Supra* note 17.

and Kashmir Public Safety Act, 1978" exhibits a distinct pattern with its dual maxima for public order and security of the State and a long history of deployment across political and law- and-order contexts, a feature that invites regularised oversight. Data for rigorous comparisons remain thin; a standing obligation to publish disaggregated statistics on orders issued, grounds invoked, documents supplied, representations received, Board outcomes, and judicial results would enable a grounded evaluation. Until such transparency is institutionalised, policy claims about efficacy will remain contested, and anecdote will distort. Statutory structures already require reporting and review; extending this to public dashboards would impose discipline on discretion and inform legislative and executive audits.[30]

1.5.6 Impact on Civil Liberties

A preventive regime shapes the civic climate because it authorises restraint based on prediction. The chill on speech and association can be non-trivial where the boundary between public order and political dissent blurs, especially under broad formulations. Privacy interests are also engaged because detention proposals may rely on surveillance outputs or digital trails. The principles in "*K. S. Puttaswamy v. Union of India*[31], require necessity, suitability, and narrow tailoring when the State processes personal data to anticipate risk. The new data protection statute sets a baseline for lawful processing and legitimate uses, framing how agencies gather, assess, and store information in detention contexts. The constitutional requirement of fairness under "Article 21" remains the lodestar, demanding that even

where detention is justified on public order grounds, the State chooses means that are least rights-restrictive for the purpose and that respect informational self-determination at every step.[32]

1.6 ALTERNATIVES, OVERSIGHT, AND REGIONAL CO OPERATION

A calibrated architecture can reduce dependence on detention while improving security outcomes. The "BNSS" offers a suite of preventive tools: bonds for keeping the peace or good behaviour under "Chapter IX", dispersal and nuisance-control powers under "Chapter XI", and police-led prevention under "Chapter XII". These can be standardised through templates that capture risk indicators and proposed conditions. On the oversight side, reasoned orders that record material with precision, mandatory supply of every relied-upon document in an intelligible language, and accountable timelines for representation decisions strengthen

[30] The Jammu and Kashmir Public Safety Act, 1978, *available at:* https://www.indiacode.nic.in/handle/123456789/16496?view_type=browse (last visited on October 28, 2025).

[31] *Supra* note 9.

[32] The Digital Personal Data Protection Act, 2023 (No. 22 of 2023), *available at:* https://www.meity.gov.in/static/uploads/2024/06/2bf1f0e9f04e6fb4f8fef35e82c42aa5.pdf (last visited on November 5, 2025).

legality. Regional co-operation matters where drivers of disorder cross borders, whether through illicit finance, trafficking, or propaganda. SAARC and bilateral frameworks on mutual legal assistance and extradition complement domestic responses by aligning intelligence and evidence flows across jurisdictions. Training and institutional audits can close the loop, improving decision-quality and protecting liberty without compromising safety.[33]

1.6.1 Strengthening Safeguards

Safeguards gain force when they translate constitutional text into usable practice. Orders should show individualized assessment and avoid boilerplate. Every relied-upon document must be supplied in legible and translated form where needed, with proof of service. Communication of grounds must be prompt and intelligible, tracking COFEPOSA's concrete five-day outer limit as a benchmark for urgency. Advisory Boards should adopt hearing practices that allow detenus to be heard meaningfully, with reasoned opinions that address material points. The "BNSS" framework for public order provides an alternative that, when used well, reduces the need for detention by addressing risks through bonds and targeted conditions. Precision, timeliness, and transparency will reduce quashments and focus detention on genuinely exceptional cases where public order faces imminent jeopardy not otherwise containable.[34]

1.6.2 Procedural and Data Reforms

Standardised risk-assessment templates can discipline subjective satisfaction by requiring detaining authorities to document sources, timelines, corroboration, and less-restrictive alternatives considered. Legislatures can mandate that governments publish quarterly dashboards with counts of orders, grounds invoked, communication timelines, representation decisions, Advisory Board outcomes, confirmations, revocations, and judicial results, with jurisdictional and statute-wise disaggregation. Sunset or review clauses that trigger legislative reconsideration at fixed intervals would keep exceptional powers under periodic scrutiny. A uniform protocol for serving grounds and documents, including digital service with receipt trails where the detenu consents, would improve verifiability. A repository of anonymised Advisory Board opinions could guide consistency across districts and States and offer learning to first-time decision-makers, thereby raising the floor of practice and shrinking variance that fuels arbitrary impacts.

[33] *Supra* note 24.

[34] *Supra* note 6.

1.6.3 Calibrated Use vs Ordinary Law

A careful sequencing that prioritises ordinary legal tools preserves liberty without sacrificing order. "BNSS" "Chapter IX" authorises "Sections 125 to 129" for bonds to keep the peace or for good behaviour, while "Chapter XI" on maintenance of public order and "Chapter XII" on preventive police action supply dispersal powers, urgent nuisance control, and prevention of cognisable offences. These measures can be tailored and reviewed in open court, and breach triggers targeted consequences, creating a feedback loop that is both responsive and rights- respecting. Detention should be held back for moments when these calibrated tools cannot avert a serious, imminent threat. This approach is consistent with decisions such as "*Rekha v. State of Tamil Nadu*[35], and "*Haradhan Saha v. State of West Bengal*[36], which warn against converting detention into a substitute for ordinary process or a device to overcome bail.[37]

1.6.4 Regional Co Operation Lens

Public order threats often travel across borders in the form of illicit funds, contraband, or cross- platform propaganda. SAARC and bilateral frameworks on extradition, mutual legal assistance, and information sharing align with domestic goals by setting channels through which evidence, intelligence, and fugitives can be secured. COFEPOSA and PITNDPS already incorporate reporting and Union oversight features that mirror a national-regional linkage. Union-State coordination gains depth when paired with cross-border tasking, joint listings, and synchronized requests to foreign counterparts. Prevention improves when the State can disrupt supply chains and financing nodes that lie outside India's territory. Detention can then be reserved for the domestic operational nodes that pose immediate risks, while international cooperation chokes the pipeline that nourishes disorder, producing a more durable equilibrium between rights and security.

1.6.5 Training and Accountability

Capacity building for District Magistrates, Police Commissioners, and Home Department officials should cover doctrinal standards on public order, the live-link test, the custody-release matrix, and the demands of "Article 22(5)". Advisory Boards benefit from structured dossiers that present relied-upon material, translations, service proofs, and representations in an indexed form that shortens decision time without lowering fairness. Periodic audits by State legislatures

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[35] *Supra* note 22.
[36] *Supra* note 18.
[37] *Supra* note 24.

or designated committees can examine whether timelines were met, whether non-disclosure claims were sparingly used and recorded, and whether quashments led to corrective instructions. Templates built around the "BNSS" alternatives will guide officers to consider bonds and preventive measures before reaching for detention. An institutional culture that treats preventive detention as a last resort will lower misuse risk and improve the State's ability to defend necessary orders in court.

1.7 CONCLUSION

The constitutional architecture permits preventive detention as an exceptional instrument to protect public order, but it surrounds that permission with textual safeguards that must operate in fact, not just on paper. The doctrinal arc from "*A. K. Gopalan v. State of Madras*[38], through "*Maneka Gandhi v. Union of India*[39], and "*K. S. Puttaswamy v. Union of India*[40], has recast "Article 21" into a charter of reasonableness and proportionality that colours every preventive law. Statutes such as the "National Security Act, 1980" set a twelve-month ceiling under "Section 13", while COFEPOSA and PITNDPS calibrate maxima by gravity and embed concrete deadlines for communicating grounds, with COFEPOSA's "Section 3(3)" offering a five-day ordinary limit extendable to fifteen. The "Jammu and Kashmir Public Safety Act, 1978" preserves distinct maxima for public order and security of the State. These texts set the

formal frame; effectiveness turns on how faithfully authorities meet duties to communicate, to supply relied-upon material in an intelligible form, to consider representations with urgency, and to justify why less-restrictive "BNSS" options were insufficient. Courts have policed these demands and will continue to strike down orders that err on grounds like staleness, non- application of mind, and procedural lapses. On outcomes, detention can succeed where the risk curve is acute, intelligence is specific, and the threat's time window is narrow. It is less persuasive as a long-term response to structural disorder, where calibrated tools, credible criminal prosecutions, and social peacebuilding carry greater weight. A path forward keeps detention on a tight constitutional leash, requires authorities to record why alternatives under "BNSS" "Chapters IX, XI and XII" could not mitigate the risk, and institutionalises data transparency so that policy rests on evidence rather than anecdote. Regional co-operation through SAARC and bilateral instruments extends the prevention perimeter to supply chains and financing nodes beyond India's borders, reducing reliance on domestic detention as the

[38] *Supra* note 11.
[39] *Supra* note 3.
[40] *Supra* note 9.

primary lever. Measured against the constitutional demand for fairness and the statutory scaffolding of timelines and maxima, preventive detention can protect public order in defined, high-risk contexts, but its legitimacy depends on rare use, disciplined reasons, faithful procedure, and a demonstrable inability of ordinary law to achieve the same end with lower rights-costs. A system that invests in front-end quality, embraces "BNSS"-based alternatives, and reports outcomes openly will better secure community tranquillity while honouring personal liberty.[41]

[41] *Supra* note 5.

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