

## **Illegal Detention in India: A Threat to Personal Liberty and Rule of Law**

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### **Abstract**

Illegal detention in India poses a significant threat to the fundamental rights of personal liberty and the rule of law, both of which are enshrined in the Indian Constitution. Despite constitutional safeguards under Articles 21 (right to life and personal liberty) and 22 (protection against arbitrary arrest and detention), instances of unlawful imprisonment, prolonged custody without trial and the misuse of preventive detention laws continue to undermine democratic principles. The classic example of the breach of the above mentioned principle of liberty is the case of *Umar Khalid*.<sup>1</sup> In which the accused has been under detention without any trial.

This study seeks to critically examine the prevailing legal framework governing detention in India, with particular reference to judicial pronouncements addressing instances of custodial violence and abuse of power.

The study also proposes viable reforms with a view to ensuring greater accountability, adherence to the rule of law and the effective protection of fundamental human rights guaranteed under Part III of the Constitution.

**Keywords:** Illegal detention, Fundamental Rights, Custodial Violence, Judicial Accountability  
“Injustice Anywhere Is a Threat to Justice Everywhere”

Martin Luther king Jr.

### **1. Introduction**

#### **1.1 Illegal Detention**

Illegal detention is defined as the unlawful custody or constraint of a person without the authority of law, a valid warrant, or reasonable cause. It typically involves:

- Arrests without adherence to procedural safeguards,
- Detentions without informing the accused of the charges,
- Failure to produce the detainee before a magistrate within the stipulated time and
- Prolonged custody without trial or charge sheet.

In *Joginder Kumar v. State of Uttar Pradesh*<sup>2</sup> The Supreme Court emphasized, “No arrest can be made merely because it is lawful for the police officer to do so. The existence of the power to arrest is one thing; the justification for the exercise of it is quite another.”

Thus, any deprivation of liberty must not only be sanctioned by law but must also be reasonable, fair and necessary.

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<sup>1</sup> <https://www.amnesty.org/en/latest/news/2022/03/india-denial-of-bail-to-umar-khalid-big-blow-to-the-right-to-peaceful-protest/>

<sup>2</sup> (1994) 4 SCC 260

It frequently entails holding people for longer periods of time than is legally authorized without bringing them before a magistrate, arresting them without adequate evidence or due process. Such actions not only violate constitutional rights but also constitute serious human rights breaches, undermining the essential values of justice, fairness and accountability.

The Indian judiciary has often chastised police officers' abuse of authority and emphasized the importance of rigorous respect for procedural protections during arrest and imprisonment. Landmark decisions such as *DK Basu v. State of West Bengal*<sup>3</sup> (1997) established precise standards to prohibit custodial mistreatment and arbitrary imprisonment. Nonetheless, accusations of unlawful imprisonment, custodial torture and harassment continue to emerge, underscoring the disconnect between legal norms and real behavior on the ground.

Illegal imprisonment is not only a legal issue but also a sociopolitical one, reflecting long standing concerns such as a lack of police accountability, ineffective enforcement mechanisms and low public understanding of rights. Vulnerable groups in society, such as the poor, minorities and marginalized communities, are frequently the most impacted and are subjected to arbitrary measures with no effective legal remedies.

### **1.2 Personal Liberty in a democracy**

The concept can be traced in the theory of **John Locke**, which is presented in his book, *Two Treatises of Government* (1689). The concept of John Locke is one of the landmark concepts which are the main foundation of the development of constitutional democracies protection that ensures the understanding of property, liberty and life and liberty which includes personal liberty.

However, In India with the correlation of the above mentioned concept we can understand the concept, Personal liberty forms the bedrock of the constitutional democracy. **Article 21 of the Indian Constitution** guarantees that, *“No person shall be deprived of his life or personal liberty except according to procedure established by law.”*

This has been expansively interpreted by the judiciary in *Maneka Gandhi vs Union of India*<sup>4</sup>, where the Supreme Court held that, *“The procedure must be ‘right, just and fair’ and not arbitrary, fanciful or oppressive.”*

Liberty ensures dignity, due process and access to justice. Illegal detention, by contrast, represents an abuse of state power and a breakdown of the rule of law, eroding the very democratic values enshrined in the constitution.

### **1.3 Objectives and Scope of the Study**

This article critically explores the issue of unlawful imprisonment in India, its influence on human liberty and the rule of law and the judiciary's role in protecting basic rights. It also looks at important statutory provisions, analyzes major case laws and makes recommendations for revisions to provide better accountability and civil rights. In a democratic society regulated by the ruler of law, defending every individual's Dignity and freedom is not just a constitutional but also a moral obligation.

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<sup>3</sup> (1997) 1 SCC 416

<sup>4</sup> (1978) 1 SCC 248

This paper explores:

- The legal framework governing detention in India.
- Judicial interventions and their limitations.
- Systemic issues contributing to illegal detention.
- Draconian Impact on Marginalized Groups.
- Recommendations for legal and institutional reforms.

## 2. Legal Framework on Detention in India

“The constitution is not a mere lawyers document, it is a vehicle of life and its spirit is always the spirit of age.”

Dr. B. R. Ambedkar (In constituent Assembly)

### 2.1 Constitutional Safeguards

The notion of constitutional protection is the foundation of every democratic society based on the rule of law. Constitutional safeguards are protections and guarantees contained in a country's constitution to assure people's fundamental rights and freedoms, maintain the balance of power and defend the values of justice, equality and liberty. These protections are intended to prevent the state from using arbitrary authority, defend minority interests and preserve the Constitution's fundamental framework. Constitutional protections, such as basic rights, judicial scrutiny, separation of powers and provisions for emergency situations, protect against oppression, discrimination and the abuse of authority.

The Constitution of India provides robust safeguards to protect individuals from illegal detention and arbitrary arrest, reaffirming their commitment to the ideals of liberty, dignity and the rule of law. These safeguards are primarily found in **Part III of the Constitution**, which guarantees Fundamental Rights to all citizens and non citizens.

- **Article 21 – Protection of Life and Personal Liberty**

Article 21 of the Constitution declares that “*No person shall be deprived of his life or personal liberty except according to procedure established by law.*” This article is the cornerstone of constitutional protection against illegal detentions.

Initially, the phrase “procedure established by law” in **A.K. Gopalan v. State of Madras**<sup>5</sup> was interpreted narrowly, allowing any procedure passed by legislature to be valid. However, in the landmark judgment of **Maneka Gandhi v. Union of India**<sup>6</sup>, the Supreme Court transformed the landscape, “*The procedure must be right, just and fair and not arbitrary, fanciful, or oppressive.*”

This interpretation aligned Article 21 with Articles 14 and 19, ensuring that detention must be procedurally and substantively fair. In **Sunil Batra v. Delhi Administration**<sup>7</sup>, the court held that solitary confinement without procedural safeguards was a violation of Article 21.

Thus, Article 21 is not merely a formal guarantee of liberty, but a living right that encompasses:

- Dignity of the individual

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<sup>5</sup> (1950) SCR 88

<sup>6</sup> (1978) 1 SCC 248

<sup>7</sup> (1980) 3 SCC 488

- Protection from custodial violence
- Right to legal aid and speedy trial<sup>8</sup>

Therefore, the term "*procedure established by law*" interpreted to mean a **fair, just and reasonable** procedure, thereby ensuring that any deprivation of liberty must pass the test of legality and fairness. Arbitrary detention or arrest without due process is a direct violation of Article 21.

- **Article 22 – Protection Against Arrest and Detention in Certain Cases**

Article 22 specifically deals with safeguards in cases of arrest and detention. It provides the following rights.

- **Right to be informed** of the grounds for the arrest.
- **Right to consult and be defended by a legal practitioner** of choice.
- **Right to be produced before a magistrate** within 24 hours of arrest.
- **Protection against detention beyond 24 hours** without the magistrate's approval.
- **Preventive Detention Laws**

Article 22 distinguishes between:

- **Clause (1) and (2):** Applicable to general arrests under ordinary criminal law
- **Clause (3)– (7):** Special provisions for preventive detention

**Rights guaranteed under clauses (1) and (2):**

- Right to be informed of the grounds of arrest
- Right to consult and be defended by a legal practitioner of choice
- Right to be produced before a magistrate within 24 hours
- Prohibition against detention beyond 24 hours without judicial sanction

In **Mohd. Sukur Ali v. Assam**<sup>9</sup>, the Court observed that denial of the right to a lawyer at the time of interrogation is a violation of Article 22(1).

**Preventive Detention (Clauses 3–7)**

While preventive detention laws are constitutionally valid, they significantly dilute the above rights:

- A person can be detained without trial for up to 3 months.
- Beyond that, an Advisory Board (comprising High Court judges) must approve the detention
- Detainees must be informed of the grounds of detention, unless doing so would be against public interest
- Detainees are not entitled to legal representation before the Advisory Board

This legal architecture has been frequently criticized for violating international human rights norms. In **A.K. Roy v. Union of India**<sup>10</sup>, the Court upheld preventive detention but admitted the potential for executive overreach and minimal safeguards.

<sup>8</sup> Hussainara Khatoon v. State of Bihar, AIR 1979 SC 1369

<sup>9</sup> (2011) 4 SCC 729

<sup>10</sup> (1982) 1 SCC 271

### **Tensions with Fundamental Rights**

Preventive detention laws are in conflict with Articles 14, 19 and 21. The lack of:

- Timely judicial review
- Effective remedy
- Transparency in detention orders

makes them antithetical to constitutionalism. Even though courts have occasionally intervened they have often deferred to the state's "subjective satisfaction."

### **Limited Scope of Judicial Review**

Preventive detention laws in India significantly limit judicial oversight, as courts are restricted from assessing the sufficiency of detention grounds and may only examine procedural compliance and the absence of malafide intent. This narrow scope undermines the effectiveness of habeas corpus as a remedy. Despite the presence of constitutional and statutory safeguards, illegal detention remains prevalent due to weak enforcement of procedures, lack of police accountability, broad executive discretion and constrained judicial review. The following section analyzes how the Indian judiciary has responded both effectively and inadequately to these challenges in its effort to uphold personal liberty and curb custodial abuse.

## **2.2 Statutory Provisions**

### **2.2.1 BNSS (Bhartiya Nagarik Suraksha Sanhita), 2023**

The BNSS outlines procedural safeguards for preventing illegal detention. Its key provisions are as follows

#### **A. Arrest Procedures (Sections 35 to 62)**

- Section 35: police may arrest without a warrant only if there is a reasonable complaint, credible information, or suspicion of a cognizable offense.
- Section 43: Limits the use of force during an arrest.
- Section 46: Prohibits unnecessary restraint of an arrested person.
- Section 47: Requires that the police inform the detainee of the offense and their right to bail.

Violation of these provisions can render the arrest unconstitutional, as held in *Arnesh Kumar v. State of Bihar*<sup>11</sup>, which directed police not to arrest routinely under Section 498A IPC without justification.

#### **B. Time Bound Judicial Oversight**

- Section 50: Restricts police custody beyond 24 hours without magistrate approval.
- Section 187(2): Mandates judicial remand if investigation is incomplete; maximum detention
  - Ninety days for offenses punishable by death/life imprisonment.
  - Sixty days for other offenses.
  - Beyond this, the accused must be released on the bail if charges are not filed<sup>12</sup>.

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<sup>11</sup> (2014) 8 SCC 273

<sup>12</sup> Rakesh Kumar Paul v. State of Assam, (2017) 15 SCC 67

### *C. Remedies Against Prolonged Detention*

- Section 478: Allows release on bail if under trial detention exceeds half the maximum sentence for the offense.
- Section 528: Empowers the High Court to intervene and quash proceedings if they constitute abuse of process or involve illegal detention under their inherent powers.

Despite these safeguards, police often violate procedures, especially in cases involving marginalized groups or political dissenters.

The Supreme Court of India in the recent landmark judgments retreated the concept of illegal detention with the infra mentioned case laws

In **Prabir Purkashyastha Vs State (NCT of Delhi)**<sup>13</sup> 15 May, 2024, the Supreme Court held that the arrest and police remained of Mr. Purkashyastha under UAPA were illegal for failing to serve the written ground of arrest a requirement under article 22(1), section 43B one of UAPA at both the arrest and demand order directed his release upon furnishing bail bond

In **Pankaj Bansal Vs UOI**<sup>14</sup> 2023, the Supreme Court ruled that under PMLA the director of enforcement must inform the detainee in writing of the specific grounds of arrest as per 19(1) as soon as possible noncompliance render the arrest illegal and void.

#### **2.2.2 Bhartiya Nyaya Sanhita (BNS), 2023**

Several BNS sections penalize misuse of authority The Key provisions are as follows

- Section 258: Illegal confinement by a public servant
- Section 120(1) and 120(2): Voluntarily causing hurt to extort confession
- Section 127(2): Punishment for wrongful confinement

In **Sheela Barse v. State of Maharashtra**<sup>15</sup>, the Court condemned custodial torture and directed that legal aid and interviews must be facilitated for female prisoners to avoid abuse.

### **2.3 Preventive Detention Laws**

India's preventive detention statutes have frequently drawn criticism for bypassing judicial scrutiny, enabling political misuse and lacking procedural rigor.

#### **2.3.1 National Security Act (NSA), 1980**

The NSA allows detention for up to 12 months to prevent acts prejudicial to national security or public order. The detainee may not be informed of the grounds if the state believes it would harm public interest.

Used frequently against:

- Political protestors (e.g., during anti CAA protests)
- Journalists and activists (e.g., detention of Imphal based journalist Kishore Chandra Wangkhem, 2018)

The National Security Act (NSA), 1980, has been widely criticized for enabling preventive detention without meaningful judicial oversight. Vague terms like “public order” allow broad interpretation, often leading to misuse against political dissenters and marginalized

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<sup>13</sup> 2024 INSC 414

<sup>14</sup> (2023) INSC 866

<sup>15</sup> (1983) 1 SCC 378



communities. The absence of bail provisions and the secrecy surrounding detention orders further erode constitutional safeguards under Article 21. This makes the NSA a potent tool of executive overreach, undermining the rule of law.

### **2.3.2 Unlawful Activities (Prevention) Act (UAPA), 1967**

Designed to curb terrorism and unlawful activities, but widely criticized for:

- Restrictive bail provisions under Section 43D(5)
- Long pre trial incarceration without formal charges (e.g., Bhima Koregaon accused)

In *NIA v. Zahoor Ahmad Shah Watali*<sup>16</sup>, the SC held that courts must accept prosecution evidence as is at the bail stage undermining presumption of innocence.

### **2.3.5 Other Relevant Laws Addressing Illegal Detention**

Apart from constitutional and procedural safeguards, several statutory provisions aim to deter illegal detention and custodial abuse in India.

#### **Protection of Human Rights Act, 1993**

This Act established the National Human Rights Commission (NHRC), which plays a critical role in addressing cases of unlawful detention, custodial deaths and human rights violations by state actors. The NHRC is empowered to:

- Investigate complaints of human rights violations, including illegal detention,
- Summon authorities, recommend compensation and suggest disciplinary or legal action,
- Monitor compliance with the UN Convention Against Torture, though India has yet to ratify it.

Despite its broad mandate, the NHRC's recommendations are non binding, which often leads to poor enforcement.

## **3. Judicial Response and Interpretation**

The Indian judiciary has played a pivotal role in interpreting constitutional provisions and laying down safeguards to prevent illegal detention. However, the gap between judicial pronouncements and enforcement on the ground remains a significant challenge.

### **3.1 Landmark Judgments and Judicial Activism**

#### **▪ A.K. Gopalan v. State of Madras<sup>17</sup> (1950)**

In this early constitutional case, the Supreme Court upheld the validity of preventive detention under the Preventive Detention Act, 1950, interpreting Article 21 narrowly holding that as long as a law existed, liberty could be curtailed. This marked a period of formalistic legalism, limiting protection against arbitrary State actions.

#### **▪ Maneka Gandhi v. Union of India<sup>18</sup> (1978)**

This case transformed constitutional jurisprudence by expanding Article 21 to require that any "*procedure established by law*" must be just, fair and reasonable. It effectively overruled the

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<sup>16</sup> AIR 2019 SC 1734

<sup>17</sup> AIR 1950 SC 27

<sup>18</sup> AIR 1978 SC 597

narrow approach in Gopalan and laid the foundation for substantive due process, thereby strengthening protections against illegal and arbitrary detention.

▪ **D.K. Basu v. State of West Bengal<sup>19</sup> (1997)**

This landmark judgment established 11 binding guidelines to curb custodial torture and unlawful detention under Article 21 and Article 22. The Court held: “*Custodial violence, including torture and death in lock ups, strikes a blow at the Rule of Law.*” The guidelines included mandatory arrest memos, informing relatives, medical examinations and judicial oversight yet compliance remains inconsistent.

▪ **Joginder Kumar v. State of U.P.<sup>20</sup> (1994)**

The Court ruled that arrest should not be made merely because it is lawful—but only when it is necessary. It emphasized the right to know the reasons for arrest and to inform relatives, reinforcing procedural safeguards under Articles 21 and 22.

▪ **Arnesh Kumar v. State of Bihar<sup>21</sup> (2014)**

This case addressed misuse of arrest powers under **Section 498A IPC**, stating, “*No arrest should be made in a routine manner.*” The Court directed that police officers must record reasons for arrest and follow **Section 41 CrPC** strictly. It attempted to curb unnecessary pre trial incarceration. The Notice of Sec 41A CrPC has become a practice nowadays which enables all of the accused to prevent the regular problem of police harassment.

▪ **Nilabati Behera v. State of Orissa<sup>22</sup> (1993)**

The Court invoked Article 32 to award compensation for custodial death, asserting that “*A claim in public law for compensation... is an acknowledged remedy for the enforcement and protection of fundamental rights.*” This established State liability in cases of illegal detention and custodial violence.

Associating with the above given case the Tamil Nadu faced a case of Custodial death on which massive outrage have been erupted by the public. The whole situation is yet to be decided by the stakeholders.

### **3.2 Judicial Shortcomings and Structural Delays**

While the judiciary has delivered progressive rulings, implementation and systemic obstacles hinder their efficacy.

#### **Delays in Habeas Corpus Petitions**

Though Article 226 and Article 32 allow individuals to seek urgent release through writs of habeas corpus, such petitions often face procedural delays due to court backlogs and inadequate legal aid, especially for the marginalized.

#### **Draconian Laws and Bail Restrictions**

Laws like the UAPA and NSA limit the judiciary’s role by:

- Denying anticipatory bail under UAPA.

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<sup>19</sup> AIR 1997 SC 610

<sup>20</sup> AIR 1994 SC 1349

<sup>21</sup> AIR 2014 SC 2756

<sup>22</sup> AIR 1993 SC 1960



- Requiring courts to assume prima facie guilt before granting bail (NIA v. Zahoor Ahmad Shah Watali, 2019).
- Allowing executive discretion under the NSA without mandatory disclosure of detention grounds.

These restrictive thresholds weaken judicial review and deny prompt remedy to detainees.

### **Backlog and Procedural Bottlenecks**

India's overburdened judiciary, with over 5 crore pending cases (as per NJDG, 2024), leads to delayed justice, especially in criminal matters. Detained individuals often remain incarcerated due to delayed framing of charges, adjournments, or lack of legal representation.

While the judiciary has constitutionally expanded the scope of personal liberty, the lack of institutional support, failure in implementation and statutory constraints under preventive detention laws have limited its protective role. Bridging the gap between constitutional ideals and enforcement remains imperative.

### **Judicial Delays and Inefficacy**

The judiciary, though constitutionally mandated to be the guardian of personal liberty, often fails to offer timely relief due to chronic delays, procedural rigidity and restricted statutory powers.

- **Backlog of Cases:** With over 5 crore pending cases across Indian courts (as per the National Judicial Data Grid, 2024), even urgent matters like illegal detention are delayed. Habeas corpus petitions meant to provide immediate relief often languish for months, defeating their core purpose.
- **Dilution of Habeas Corpus:** Although Article 32 and 226 empower courts to issue writs of habeas corpus, several High Courts have taken months to admit or hear such petitions. In the *Mehbooba Mufti case (2020)*<sup>23</sup>, the J&K HC took over three months to hear her habeas corpus plea after her detention under the PSA.
- **Bail Restrictions under UAPA & NSA:** Judicial discretion is severely curtailed under laws like UAPA and NSA. Section 43D (5) of UAPA imposes a near prohibition on bail unless the court believes the accused is "not guilty of the alleged offence", making pre trial detention the norm. The Supreme Court in *Watali v. NIA*<sup>24</sup>, upheld these stringent bail provisions, further restricting judicial intervention.

These challenges contribute to prolonged illegal detention, eroding public faith in judicial remedies and further victimizing those already subject to state overreach.

## **4. Systemic Issues Leading to Illegal Detention**

### **4.1 Police Misconduct and Impunity**

Illegal detention is often a result of **deep rooted police impunity**, especially during interrogations and politically sensitive operations.

According to the NHRC's **2023–24 report**, over 125 custodial deaths were reported in one year, with very few leading to conviction. Police continue to resort to illegal confinement,

<sup>23</sup> *Ittija Mufti v. Union of India & Ors* (Order dated 26 Feb 2020, unreported)

<sup>24</sup> AIR 2019 SC 1734

physical assault and coercion to extract confessions despite guidelines issued in *D.K. Basu v. State of West Bengal*<sup>25</sup>.

While Section 120 BNS criminalize torture to extort confession, conviction is rare due to poor evidence collection and absence of independent oversight. It even which punishes public servants for unlawful detention, is seldom invoked. Example: In Chhattisgarh (2011), the petitioner, a tribal teacher, was subjected to brutal custodial violence. Despite national outrage, no police officer was convicted, highlighting systemic impunity.

#### **4.2 Misuse of Preventive Detention Laws**

Preventive detention, while constitutionally permitted under Article 22(3)– (7), has evolved into a tool of political suppression rather than a legitimate exception.

National Security Act (NSA) and Unlawful Activities Prevention Act (UAPA) are frequently invoked without concrete evidence, particularly in cases involving dissent, protests, or minority rights.

**The Bhima Koregaon Case (2018–Present):** Sixteen human rights activists, lawyers and professors—including Sudha Bharadwaj, Gautam Navlakha and Rona Wilson—were arrested under the UAPA for alleged Maoist links. Investigations revealed that evidence (emails and documents) was likely planted through malware on Wilson’s device (*The Washington Post*, 2021). Several accused were held in pre trial detention for over 5 years, with some still awaiting bail. In the Bhima Koregaon case, courts repeatedly denied bail, citing Section 43D(5) of UAPA, even when no conclusive evidence was found. This shows how legal statutes can be weaponized for prolonged, pre trial incarceration.

#### **4.3 Targeting Marginalized Communities**

The John Austin said that the law was made by the political superior for the political inferior, In India the struggle of the communities is of 2500 years old and still continuing.

Marginalized communities including Dalits, Muslims, Adivasis and political dissenters bear the disproportionate brunt of illegal detention practices.

**NCRB Data (2022–2023)** shows that Muslims and Dalits are overrepresented in custodial deaths and preventive detention. For instance, Muslims constitute 14% of the population but over 30% of UAPA arrests. Dalits and Adivasis are frequently picked up in rural insurgency related cases without evidence or trial<sup>26</sup>.

Dalit protestors during the Bhima Koregaon anniversary in 2018 and Muslims during the 2019–20 CAA protests were subjected to mass detentions and surveillance. In Uttar Pradesh alone, over 5,500 arrests were made following the anti CAA demonstrations, many of which lacked due process.

Despite these patterns, courts have rarely interrogated the discriminatory application of preventive laws, nor have they demanded robust justifications for detention from the executive.

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<sup>25</sup> AIR 1997 SC 610

<sup>26</sup> National Crime Records Bureau (NCRB), *Crime in India 2022*, Ministry of Home Affairs, Government of India, New Delhi, December 2023

## 5. Institutional & Systemic Failures in Combating Illegal Detention

### 5.1 Police Misconduct and Abuse of Power

Arbitrary arrests, custodial violence and fabricated charges are alarmingly common, with officers often resorting to torture to extract confessions or impose discipline. A 2025 study showed 20% of police justified harsh methods as necessary, while 35% said they were “somewhat important”.

Internal accountability is weak and legal tools like IPC Sections 330/331 against custodial torture are rarely enforced effectively.

Despite clear prohibitions under BNS section 258 (illegal confinement) and Section 127 (wrongful confinement), convictions are scarce and abuse continues with little consequence.

### 5.2 Failure of Oversight Mechanisms

The National Human Rights Commission (NHRC) and State Human Rights Commissions are empowered to address illegal detentions but can only issue recommendations, not binding orders.

Courts have consistently pointed out gaps in compliance with the Supreme Court’s *D.K. Basu* guidelines and the *Prakash Singh* directives for police reform, leading to only patchy implementation across states.

Without strong enforcement mechanisms or transparent monitoring, oversight bodies struggle to curb systemic abuse.

### 5.3 Misuse of Detention Laws for Political Repression

The Bhima Koregaon case provides a stark illustration: sixteen activists—including Sudha Bharadwaj, Rona Wilson and Shoma Sen—were arrested under UAPA in mid 2018. Many spent years in custody before trial or bail, even though evidence was later questioned, Anand Teltumbde’s 2019 arrest was declared illegal as linked letters were “of questionable authenticity”<sup>27</sup>.

Similarly, anti CAA protestors and Kashmiri leaders were detained under NSA and UAPA, often with no clear legal justification, effectively criminalizing dissent and journalism.

Use of UAPA increased sharply: between 2016 and 2020, over 24,000 people were arrested, but only ~2% were convicted, indicating widespread pre trial detention without substance.

### 5.4 Disproportionate Targeting of Marginalized Communities

Dalits, Adivasis, Muslims and political dissenters are overrepresented in preventive detention statistics.

In January 2018, mass arrests of Dalits during Bhima Koregaon protests were described by activists as “illegal,” with **hundreds detained**, including **minors**, under police “combing” operations.<sup>28</sup>

NCRB data show marginalized groups are **disproportionately charged** under terrorism laws, highlighting systemic bias in enforcement<sup>29</sup>.

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<sup>27</sup> [newslaundry.com](https://newslaundry.com)

<sup>28</sup> [globalfreedomofexpression.columbia.edu](https://globalfreedomofexpression.columbia.edu)

<sup>29</sup> [scholar.uwindsor.ca](https://scholar.uwindsor.ca)

In 2018, following caste violence in Bhima Koregaon, Pune Police arrested 16 activists (the “BK 16”) under UAPA. Investigations later revealed that **evidence was likely fabricated**, including staged malware on activists’ devices. Journalistic accounts highlighted this case as emblematic of **state machinery used against dissenters**, reinforcing constitutional fears and prompting global human rights concern<sup>30</sup>. Only a few, like Rona Wilson and Sudha Bharadwaj, secured bail after years, reflecting the **brutality of protracted pre trial detention** in the absence of clear evidence.

## **6. Impact on Rule of Law and Human Rights**

### **6.1 Erosion of Trust in the Judiciary**

Illegal detention directly **undermines the credibility of the justice system**, especially when courts fail to respond swiftly and meaningfully. Judicial delays in habeas corpus petitions, arbitrary denial of bail under stringent laws like UAPA or NSA and lack of compensation for unlawful detention convey an impression of **state impunity**.

“*The Indian Constitution: Cornerstone of a Nation*” by Granville Austin notes that without swift and fair enforcement of fundamental rights, constitutional morality loses its grounding and people gradually lose faith in legal remedies<sup>31</sup>.

The India: Rule of Law Report 2022 by the World Justice Project (WJP) found that public trust in the justice system has steadily declined due to “arbitrary arrests, pre trial detentions and lack of accountability for custodial torture.”<sup>32</sup>

### **6.2 Chilling Effect on Dissent**

One of the gravest consequences of unchecked illegal detention is its chilling effect on freedom of speech and dissent. Arbitrary arrests of journalists, students, activists and lawyers under the guise of national security or public order discourage political participation and intimidate civil society. In 2020, **Safoora Zargar**, a pregnant student activist, was arrested under UAPA for alleged links to Delhi riots, despite no direct evidence. She was denied bail for weeks, causing national and international concern.

Preventive detention laws are increasingly used to suppress democratic dissent, converting India’s legal architecture into a tool of political control<sup>33</sup>.

### **6.3 Violation of International Human Rights Law**

India’s practice of prolonged and arbitrary detention often violates its international obligations under the International Covenant on Civil and Political Rights (ICCPR), ratified in 1979.

- **ICCPR – Article 9:** “Everyone has the right to liberty and security of person... No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedures as are established by law.”

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<sup>30</sup> timesofindia.indiatimes.com

<sup>31</sup> Austin, Granville, *The Indian Constitution: Cornerstone of a Nation*, Oxford University Press, New Delhi, 1966

<sup>32</sup> World Justice Project, *India Rule of Law Report 2022*, (Rule of Law Index, 2022)

<sup>33</sup> Narrain, Arvind, *India’s Undeclared Emergency: Constitutionalism and the Politics of Resistance*, Context (Westland Publications), New Delhi, 2022

India's preventive detention laws like the NSA and UAPA do not always comply with this principle—particularly due to the lack of judicial review, vague grounds for detention and denial of bail.

- **UN Human Rights Committee (General Comment No. 35):** It emphasizes that prolonged pre trial detention, especially without regular judicial oversight, is incompatible with Article 9 of the ICCPR.
- **UN Special Rapporteur Reports:** The 2021 report by the UN Special Rapporteur on the Promotion and Protection of Human Rights and Fundamental Freedoms notes that India's detention practices "are increasingly inconsistent with international norms," especially in handling protests, minority rights and freedom of expression.

### **7. Role of Oversight Institutions in Preventing Illegal Detention**

The prevention of illegal detention in a constitutional democracy like India requires more than legal safeguards—it demands effective functioning of independent oversight institutions that ensure continuous accountability of law enforcement agencies. Despite their existence, many such bodies in India either lack adequate powers, political independence, or public visibility. This section analyzes the current state of these mechanisms and introduces comparative insights from international models.

#### **7.1 National and State Human Rights Commissions**

The National Human Rights Commission (NHRC), established under the Protection of Human Rights Act, 1993, plays a central role in investigating custodial deaths and unlawful detention. The NHRC is empowered to:

- Inquire into violations of human rights or negligence by public servants,
- Visit detention centers to review living conditions,
- Recommend compensation, disciplinary action, or prosecution.

However, the NHRC's powers are recommendatory and non binding, which severely limits its ability to enforce accountability. According to a 2021 report by Amnesty International, the NHRC closed over 70% of custodial death cases without prosecution or disciplinary action.

State Human Rights Commissions (SHRCs) suffer from chronic underfunding and staffing issues and often lack independence due to executive influence in appointments.

#### **7.2 Role of Civil Society and Media**

Civil society organizations (CSOs) and investigative media outlets often act as watchdogs where state mechanisms fail. Reports by Human Rights Watch and The Wire have exposed repeated misuse of the UAPA and NSA against journalists, students and activists.

For example, the prolonged detention of Delhi student Safoora Zargar under the UAPA drew national and international criticism after being widely reported in the press, prompting eventual judicial scrutiny.

However, recent trends of censorship, legal intimidation through SLAPP suits and the use of sedition laws have significantly weakened the freedom of press and civil society monitoring.



### 7.3 Internal Police Accountability Mechanisms

The Supreme Court's directives in *Prakash Singh v. Union of India (2006)*<sup>34</sup> mandated the creation of Police Complaints Authorities (PCAs) at both state and district levels to address complaints of police misconduct, including illegal detention.

Despite this, a 2023 study by the Commonwealth Human Rights Initiative (CHRI) revealed that:

- Only 12 out of 28 states had functional PCAs,
- Most lacked independent staffing,
- Their decisions were largely ignored or overruled by police departments.

The absence of credible, independent mechanisms at the departmental level fosters a culture of impunity, particularly in custodial situations.

### 7.4 Role of Lokayuktas and Vigilance Commissions

Lokayuktas and vigilance bodies are designed to investigate corruption and maladministration by public servants. However, their jurisdiction over police misconduct is often unclear or minimal. Further, their independence is diluted by executive appointment processes and frequent political interference.

### 7.5 Comparative Models: International Oversight Practices

India can learn from global best practices in police oversight:

#### (a) United Kingdom – Independent Office for Police Conduct (IOPC)

The UK's IOPC investigates complaints of serious misconduct against the police, including wrongful arrest and detention. Unlike NHRC, it has the statutory power to initiate criminal proceedings against erring officers. IOPC operates independently from the police and is governed by a civilian board.

#### (b) United States – Department of Justice Civil Rights Division

The DOJ's Civil Rights Division enforces federal statutes prohibiting police abuse and unlawful arrests. Under Section 14141 of the Violent Crime Control and Law Enforcement Act (1994), it can initiate investigations, impose consent decrees and mandate systemic reform of police departments.

These models demonstrate the importance of:

- Independent statutory authority with prosecutorial powers,
- Civilian participation in oversight,
- Mandatory implementation of recommendations,
- Transparency and regular reporting.

### 7.6 The Way Forward

To effectively curb illegal detention and strengthen institutional oversight in India, a multipronged reform approach is essential. First, the recommendations of the National Human Rights Commission (NHRC) should be made legally binding, especially in cases involving serious rights violations, to ensure accountability. Second, Police Complaints Authorities (PCAs) must be constituted with independent civilian representation and their directives should



carry mandatory enforcement. Third, the protection of civil society and media must be reinforced through robust legal safeguards for press freedom and the enactment of comprehensive whistleblower protection laws. Finally, the establishment of a National Police Oversight Authority—endowed with investigative and disciplinary powers and modeled on successful frameworks such as the UK's Independent Office for Police Conduct (IOPC) or the U.S. Department of Justice (DOJ)—should be seriously considered to institutionalize transparency and accountability in policing.

### **8. Recommendations for Reform**

Illegal detention not only violates constitutional and human rights but also weakens democratic governance and public confidence in the rule of law. The following reforms are imperative to address the systemic causes and consequences of such violations:

#### **8.1 Strict Enforcement of Arrest Procedures**

Courts must ensure compulsory compliance with the procedural safeguards laid down in *D.K. Basu v. State of West Bengal*<sup>35</sup>, where the Supreme Court issued 11 binding guidelines to prevent custodial abuse, including:

- Preparation of an arrest memo signed by a witness and countersigned by the detainee.
- Informing relatives of the arrest.
- Medical examination every 48 hours.
- Right to legal counsel during interrogation.

However, multiple NHRC reports and SC observations<sup>36</sup> show these safeguards are frequently ignored. There must be departmental penalties and criminal liability for non compliance by police personnel.

#### **8.2 Judicial Oversight: Fast Track Habeas Corpus Petitions**

Delays in hearing habeas corpus petitions dilute their constitutional purpose under Article 32 and 226. Special fast track benches should be created in High Courts and the Supreme Court to hear such cases within 72 hours, especially in preventive detention matters.

In *Sheela Barse v. State of Maharashtra*<sup>37</sup>, the Court emphasized speedy judicial inquiry in custodial cases involving women and children.

The **Law Commission of India (Report No. 277, 2018)** also called for swift disposal of bail and custody related cases.<sup>38</sup>

#### **8.3 Amend Draconian Laws**

Preventive detention laws like the Unlawful Activities Prevention Act (UAPA), National Security Act (NSA) and Jammu & Kashmir Public Safety Act (PSA) should be urgently reviewed to bring them in line with international human rights norms.

- Vague definitions such as "unlawful activity" or "public order" must be narrowed.

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<sup>35</sup> AIR 1997 SC 610

<sup>36</sup> *Paramvir Singh Saini v. Baljit Singh & Ors.*, (2020) INSC 672  
(Supreme Court Special Leave Petition No. 3543 of 2020, judgment dated 2 December 2020)

<sup>37</sup> AIR 1983 SC 378

<sup>38</sup> Law Commission of India, *Wrongful Prosecution (Miscarriage of Justice): Legal Remedies*, Report No. 277, Government of India, August 2018

- Time bound judicial review (within 7–10 days) must be mandated.
- The burden of proof must not shift unfairly to the accused.
- Bail should be the norm, not the exception.

United Nations Human Rights Committee, *General Comment No. 35* on ICCPR, criticizes such laws for lacking proportionality and judicial oversight.

#### **8.4 Police Reforms: Implement *Prakash Singh* Directives**

The Supreme Court in *Prakash Singh v. Union of India*<sup>39</sup> issued binding directives to insulate the police from political interference and ensure accountability. Key mandates include:

- Establishing State Security Commissions.
- Transparent appointment of DGPs with minimum tenure.
- Formation of Police Complaints Authorities (PCA) at state and district levels.

Despite the ruling, implementation remains piecemeal. Parliament and State Legislatures must ensure full compliance and funds should be allocated specifically for training, oversight and internal vigilance.

#### **8.5 Compensation Mechanisms for Victims**

There must be statutory provisions for monetary compensation in cases of proven illegal detention or custodial torture. Courts often grant compensation under Article 32/226<sup>40</sup>, but this remains discretionary.

A framework similar to Section 396 BNSS (for victims of crimes) should be extended to custodial violations. The NHRC Guidelines (1994) for awarding interim relief should be made enforceable by statute<sup>41</sup>. Victims should also be given psychological support and legal aid.

### **9. Conclusion**

Illegal detention in India reflects a deep and troubling disconnect between constitutional promises and the lived realities of many citizens. Despite a comprehensive legal framework comprising constitutional guarantees, statutory protections and a rich body of judicial pronouncements, implementation remains patchy and often symbolic. This persistent gap between normative safeguards and ground level enforcement has fostered a climate where impunity flourishes, especially within law enforcement institutions. Marginalized communities, political dissidents and those without access to legal resources often bear the brunt of these systemic failures.

The judiciary has consistently reaffirmed the sanctity of personal liberty under Article 21 of the Constitution. Seminal judgments have underscored that arbitrary arrests and custodial violence are fundamentally incompatible with democratic values. However, judicial interventions, though vital are frequently retrospective in nature, offering redress only after significant harm has occurred. Preventive detention laws like the Unlawful Activities (Prevention) Act (UAPA), the National Security Act (NSA) and the Public Safety Act (PSA)

<sup>39</sup> (2006) 8 SCC 1

<sup>40</sup> *Rudul Sah v. State of Bihar & Anr.*, (1983) 4 SCC 141

<sup>41</sup> National Human Rights Commission, *NHRC Guidelines on Arrest, Detention and Custodial Practices*, issued to Chief Secretaries of all States and Union Territories, 21 June 1995 (based on guidelines circulated since 14 December 1993) (unpublished official communication)



are routinely invoked in ways that sideline due process and suppress dissent, thereby eroding the very principles they purport to protect.

Restoring public confidence in the rule of law demands more than judicial vigilance; it necessitates bold legislative reform and genuine administrative accountability. This includes structural changes such as ensuring police autonomy from political interference, instituting time bound judicial review mechanisms for preventive detention and creating enforceable frameworks for compensating victims of unlawful detention.

In a constitutional democracy, the protection of individual liberty cannot be treated as expendable in the face of political expediency or abstract notions of national security. Safeguarding human dignity and placing real limits on state power are not only legal duties but moral imperatives intrinsic to the ethos of India's constitutional order.