Introduction
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The physical conquest of India by the British started from 1757, when they defeated the then Nawab of Bengal at the Battle of Plessey. Political conquest started soon thereafter from 1780, when the Britishers used the first Preventive Detention Law in India. From that time onwards, the alien rulers of this country passed eleven such laws till India became free in 1947. The most infamous of these Acts were the Bengal Legislation of 1918 and the Rowlatt Act 1919, under which political dissenters were put behind the bars unceremoniously, and kept there indefinitely. During the last World War, the Defence of India Act was also passed, which was equally, or perhaps more, pernicious.

The character of preventive detention has been added by the Supreme Court of India in 1950 in A. K. Gopalan’s case, in the following terms: "Preventive Detention means no offence is proved nor any charge formulated and the justification is suspicion, or reasonable probability and not criminal conviction, which can be warranted by legal evidence".

Regulation 18-B of Britain provided for preventive detention during the Second Ward War. A similar provision exists in the Internal Security Act in the USA to deal with war time contingencies. In our case the power for preventive detention flows from Entry No.9 of the Union List and No. 3 of the Concurrent List appended to the Seventh Schedule of the Constitution. Entry No. 9 provides for detention for reasons connected with defence foreign affairs or security of India and Entry No. 3 for reasons connected with the
security of state, the maintenance of public order and maintenance of supplies and services of essential to the community. If any more grounds are needed for the purpose, the residuary provisions of Entry No. 97 of the Union List can always be summoned for help. Thus, the framers of the Constitution, in their wisdom, have placed near limitless power for preventive detention in the hands of the state.

The only checks on this boundless authority are the Clauses 5 to 7 of Article 22 of the Constitution. The inadequacy of these safeguards has been brought into sharp focus by the case of Sanjay Dutt. Even presuming that his confession before the Police regarding the unlicensed gun is factually correct, the luckless Youngman’s incarceration, in all probability, would have been over by now, but for the TADA. Also, imagine what would have happened to him, had he not been a celebrity and the incident had occurred in Punjab.

Perhaps, the founding fathers of the Constitution piously believed that the people’s governments at the Centre and in the State will resort to preventive detention to deal with extraordinary situations only. Unfortunately, their hopes have been belied. Being obsessed with the threat of Communism to the country, the Government got enacted the Preventive Detention Act, 1950 in the very first year of the Republic. Over the yea,s, it has got so habituated to the short cuts in the maintenance of public peace that it cannot do without preventive detention even for a day. Availability of war time laws for routine peace keeping is too much of a temptation to abjure willingly.
The victims of these sinister laws have been some of the most illustrious soons of the soil like A. K. Gopalan. Dr. Ram Manohar Lohia, Jayaprakash Narayan, George Fernandes and Bharat Ratna Morarji Desai. What a pity that at some point of time, the executive prepared the grounds for their detention suggesting that they were antinational individuals out to destroy the even keel of our community life.

Preventive detention is a Union/Concurrent List subject. The primary initiative for passing the preventive detention laws rests with the Centre. Any responsibility for the misuse of these extraordinary statutes also accordingly devolves on the Union. It is time that the morbid effect of such laws on the liberty of the citizens is realized and these provisions are restricted in application to the genuinely disturbed situations. After all the general civilisational level of a country is measured in terms of the liberty that its citizens enjoy.

India became free in 1947 and the Constitution was adopted in 1950. It is extraordinary that the framers of the Indian Constitution, who suffered most because of the Preventive Detention Laws, did not hesitate to give Constitutional sanctity to the Preventive Detention Laws and that too in the Fundamental Rights chapter of the Constitution. Some parts of Article 22 are not Fundamental Rights but are Fundamental Dangers to the citizens of India for whom and allegedly by whom the Constitution was framed, to usher in a new society, with freedom of expression and freedom of association available to all.
In 1950 itself, a Prevention Detention Act was piloted by Sardar Patel, who said that he had several “sleepless nights” before he could decide that it was necessary to introduce such a Bill. And in 1950, under this Act, ordinary disturbers of order and peace were not arrested, but a political leader of A.K. Gopalan’s eminence was arrested. Even from that initial action, it was evident that these Acts were meant to curb political dissent, and that legacy has been and is being followed.

From the time the country secured its Independence till 1977, except for a period of nearly two years from 1969-1971, free India had the dubious distinction of having these extraordinary, mischievous and ‘unlawful’ laws throughout.

It is worth bearing in mind that no other civilized country, including Britain which brought Preventive Detention laws here, felt compelled to introduce such laws during peace time. Even during the last World War, most European countries and the USA, who were all directly involved in the war, had no such law. During the War, England introduced a Preventive Detention Law to the effect that a person could be detained only on the subjective satisfaction of the Home Minister of Great Britain and not on the subjective satisfaction of a puny magistrate, as it the case here. Further, only one person, Sir Osward Mosley, a rabid Nazi, was detained under this Act. In 1971, because of tremendous political turmoil which resulted in assassinations and destruction all over Ireland, the British Government introduced PD Act for Ireland. But it immediately formed a committee headed by Lord Gardiner to probe and to find out if it was necessary to have
such an Act even in Ireland. The Gardiner Committee Report reads: "Preventive Detention can only be tolerated in any democratic society in the most extreme circumstances. It must be used with the utmost restraint and retained only so long as it is strictly necessary"

Our Constitution, since its enactment, has had a peculiar feature; the fundamental rights guaranteed under it allow preventive detention without trial. Article 22 after providing that any person arrested must be produced before a court within 24 hours of arrest tends this almost nugatory by permitting the state to preventively detain persons without any judicial scrutiny.

The debates in the Constituent Assembly shows that the need to provide for preventive detention was generally accepted, albeit reluctantly. The observations of Alladi Krishnaswamy Ayyar, a distinguished jurist, are typical: he described preventive detention a necessary evil because, in his view, there were people determined to undermine the sanctity of the Constitution, the security of the State and even individual liberty.

What the members tried to do was not to prohibit preventive detention but to incorporate safeguards against its abuse in the Constitution by limiting the period, by giving effective powers to the advisory board to review detention orders, etc. This they failed to get. It was left to Parliament to prescribe the period and even that limit was flouted in spirit by the device, often adopted, of serving a fresh detention order a few hours after releasing the detenu; advisory boards had no power to go into the merits of the detention.
Since 1950 the laws permitting preventive detention have not only increased quantitatively, they have changed qualitatively. In many cases they are used not to detain but in lieu of punishment. A person believed to be a smuggler would, after trial, get a sentence, if convicted, of two or three years. Why not simply detain him for a year or two?

Curiously, former detainees who had suffered from such laws have not only abrogated them when they secured power, they have used them extensively. Congress leaders who had suffered detention under the British, during the 1937-39 periods did do away with many such laws but, after Independence, almost every province passed or extended such laws. In more recent years non-Congress governments have in general, enthusiastically availed of such laws.

Our press is full of criticism of such laws; there is also criticism from distinguished Indians, from human rights groups both in India and abroad. There are at times, some “improvements” in these laws as when Janata Government amended Article 22 to introduce some safeguards against arbitrary detentions. But the laws remain.

The ostensible justification for them is the growing violence in many parts of the country. It would be absurd, however, to suggest that such draconian laws have helped to solve the problem. They may have helped in ending terrorism in Punjab, but that such laws can never really solve a problem is proved by the situation in the north-east where violence has gone on for decades and by the experience in Kashmir where they have merely added to the alienation of the common people.
The real reason for these laws is the attitude of the police and the bureaucracy. As far back as 1949 the Union Home Ministry had opposed giving more power to advisory boards because "it would not be possible for the executive to surrender its judgment to an advisory board". Sadly, this arrogant negation of the rule of law was accepted by the Constituent Assembly. And the executive has never budged; it has sought every opportunity to extend its power.

Few of us realise how extensive is the power that is conferred by these laws on the executive. All that is required is the "satisfaction" of an officer that a particular person is engaged in disruptive activities. Perhaps those who drafted the law had in mind some sort of high-level objective internal examination before an order of detention was passed. That is certainly not the way the law has been implemented.

Association with a person believed to be involved in anti-national activities can and has often resulted in detention orders being passed without any evidence whatever against the person himself. Persons have been detained at times merely because they were in the place where some disruptive incident occurred. Though the laws require that detention orders cannot be passed unless senior officers apply their mind, often those officers mechanically approve detention proposals put up by subordinates.

There have also been numerous cases when detention orders have been passed because of a mistake, the wrong Singh or Desai get detained. Sometimes the hostility or personal malice of a senior officer results in a detention order. Once a detention order is passed the law confers no real or
effective remedy to challenge it. The detenu can approach the advisory
board. But advisory boards cannot go into the question as to whether the
detention was justified. The courts have held that even they cannot go into
the merits. The boards and the courts can only order the release of a detenue
on technical grounds such as the supply of reasons of detention in time. And
in such cases, the detenu can be detained afresh.

No doubt, many who are detained have been involved in grave crimes;
many, however, have been wholly innocent. But even a person demonstrably
involved in a crime deserves a fair trial; he is innocent unless proved guilty, it
is this principle which distinguishes a society governed by the rule of law
from a community where lynch law prevails.

The solution is simple; scrap all laws of preventive detention. It is,
however, difficult to see that happening in the near future. I would suggest a
first step which would remove some of the more undesirable features of
preventive detention. The only justification for preventive detention is to
safeguard society from persons who are out to destroy it. If that is the
justification and that is the only justification officially given, let it be provided
that all those detained under any detention law be kept either in the ordinary
jails or in special detention centres run by the jail authorities.

Such a change does not require fresh legislation. Both the National
Security Act and Cofeposa authorise the State to specify the place and
conditions of detention. The state must be directed to ensure that detenus
must be taken to ordinary jails within 24 hour of detention and be kept there.
In the past that was the pattern of preventive detention. Thousands of
nationalists rounded up by the British during the Independence movement were so detained.

NO order of detention can be passed to aid the police or other authorities to investigate crime or other offences; what justifies to investigate crime or other offences; what justifies a detention is the satisfaction of the appropriate authority that the detention of a particular person is necessary. Once a detention order is passed, that is the end of the matter as far as the detaining authorities are concerned. That being so, the detaining authority must have no access to the detenus.

Even after such a change since the laws will enable the detaining authorities to detain without trial persons believed to be indulging in grave anti-social activities the object, and ostensibly at least, the only object of such laws can still be achieved. The authorities should have no objection to such a change.

The state cannot have any rational objection to such a change. Both the National Security Act and Cofeposa merely authorise detention of persons who see. It is argued, a danger to society if free. If the state does object to such changes it will expose its true motive and also the manner in which detention laws are being abused, persons are detained so as to extract information from them.

If the change is made, one terrible feature of torture of detenus will come to an end. It is also possible that if the authorities cannot use detention to extract information or wreak vengeance, the number of detentions will come down. It will be a step towards a society governed by the rule of law.
This study is confined to a discussion of the rights usually called civil liberty with a special reference to the "Right to Person Liberty" which are involved in cases of preventive detention. In this thesis the effort of the researcher is to study and evaluate only the role of the Supreme Court in safeguarding the person liberty of the citizens of India detained under preventive detention. We believed that an independent and strong judiciary can be the custodians of the person liberty of the citizens who are detained under preventive detention. Some of the questions which disturbed the minds of the citizens are whether the Hon'ble Supreme Court can provide the necessary safeguards to individual liberty and what are the prospects of the judiciary playing with key role in the protection of a civil liberty of the citizens? Can the court be relied upon when the non-judicial system has broken down? Whether the Supreme Court has failed during Emergency (1975-77) in protecting the rights of the citizens when they were sent to jail on non-existent grounds most arbitrary by the people in power to protect themselves from the public agitations. This is a part of the recent history that lot of excesses were committed on the innocent citizens in the garb of law by the administration at the instance of political bosses in the states and the centre. This was the darkest period of Indian history when thousands of peoples were detained in the jail and died languishing in the jail. There families starved and their children suffered heavily.

Statement and Objective of Problem:

The researcher will endeavour to examine the role of the Supreme Court of India since 1950 to 2010 in cases of Preventive Detention. The
The objective of the problem is to see where the Supreme Court misinterpreted the provisions of the Constitution of India and failed to serve as a custodian of a personal liberty of the citizens of India who created themselves the institution of Supreme Court for the protection of fundamental rights. The Supreme Court during emergency particularly has failed to come up with the expectation of the people of India and acted as an agency of the Central Government and delivered judgements for winning the favour of the Government of India and the usurpers of the power of the people in the garb of Law.

**Review of Literature:**

There is lot of literature available on this subject. The main literature is from United States of America and the judgements of the Supreme Court of India and the judgements of the US Supreme Court and also the debates of the Constituent Assembly which frame the Constitution of India. The speeches delivered by eminent people during the framing of Indian Constitution are very important for writing this thesis. The following authors and books were also taken into consideration for writing this thesis:

(i) *Constituent Assembly Debates* (Delhi: Lok Sabha Secretariat, 1946-50), Vols. 12.

(ii) *Constitution of India* (As Modified upto the 15 August 1983), (Government of India, Ministry of Law, Justice and Company Affairs).


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Draft Constitution of India, prepared by the Drafting Committee (New Delhi: Manager, Government of India Press, 1948).


Sir Tej Bahadur Sapru and Others, Constitutional Proposals of the Sapru Committee, the Sapru Report (Moradabad: Secretary, Sapru Committee, 1945).

Besides D.D. Basu Constitutional of India & H. M. Seervai’s book on Constitutional Law have also consulted.

Hypothesis of the Problem:

The researcher believes that the “Preventive Detention Laws” are draconian and such laws are anti democratic and the arch enemy of the rights to person liberty. Preventive Detention envisages detention without trial which is against the basic canons of criminal jurisprudence. The following questions emerge for consideration:

1. Whether Preventive Detention envisages detention without trial.
2. Whether during the war, England introduced Preventive Detention Law to the effect that a person could be detained only on the subjective satisfaction of the Home Minister in Great Britain and not on the subjective satisfaction of a Magistrate as in India.
3. Whether in absence of Preventive Detention Law the country during 1969-71 ran with the help of ordinary laws smoothly.
4. Whether in India MISA was promulgated in the wake of Indo-Pakistan war and it continued during Emergency (1975-77) and was grossly misused against the Political adversaries?
5. Whether the Preventive Detention Laws have been misused.

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most European countries and the USA, who were all directly involved in the war, had no such law. During the War, England introduced a Preventive Detention Law to the effect that a person could be detained only on the subjective satisfaction of the Home Minister of Great Britain and not on the subjective satisfaction of a puny magistrate, as it the case here. Further, only one person, Sir Oswald Mosley, a rabid Nazi, was detained under this Act. In 1971, because of tremendous political turmoil which resulted in assassinations and destruction all over Ireland, the British Government introduced PD Act for Ireland. But it immediately formed a committee headed by Lord Gardiner to probe and to find out if it was necessary to have such an Act even in Ireland. The Gardiner Committee Report reads:

"Preventive Detention can only be tolerated in any democratic society in the most extreme circumstances. It must be used with the utmost restraint and retained only so long as it is strictly necessary."

The British Government soon thereafter withdrew the PDA Act from Ireland, in spite of unabated violence there.

In India the story is otherwise. It seems that our rulers cannot run this country with ordinary laws and have to bank heavily on these extraordinary Acts. A peculiar feature is that these Acts are almost always used against political opponents and not against ordinary criminals or those who disturb public peace. As has been pointed out, from 1969 to 1971, there was no Preventive Detention Act in India. And in spite of that there was no problem in running this country with the help of available ordinary laws. The MISA was brought in the wake of the Indo-Pakistan war of December, 1971. The
The researcher believes that all Preventive Detention Laws are antidemocratic and therefore, they should be repealed without any loss of time in the interest of democracy and individual liberty.

Research Methodology:

The researcher has adopted the Doctrinal Research Methodology and has read all the judgements of the Supreme Court of India from A.K. Gopalan vs. State of Madras and the Habeas Corpus judgement which was a shocking judgement during emergency and has also considered all the judgements after Habeas Corpus case after the withdrawal of emergency. The research is based on the law reports and other commentaries on the Constitution of India and other democratic countries. The research is from the books in the personal library of the researcher and the Supreme Court of India's Library, Indian Law Institute and other important news papers and journals.

This study consist of six chapters, the Chapter First - "Preventive Detention - Historical Perspective" is a theoretical and defines the concept of civil liberty in general as well as in the Indian Constitution. It discusses the different aspects of civil liberty and preventive detention.

3. Shri Gobinda Mukhoty, Sr. Advocate Supreme Court in Mainstream, November 10, 1979
The **Chapter Second** - "**Habeas Corpus Suspension of the Fundamental Rights in emergency**" - deals with the brief period of internal emergency (1975-1977) had exposed the inadequacy of judicial review as a safeguard against the misuse of powers by the Executive, Evidently due to certain constraints. The Court gave shocking judgement in the writ of Habeas Corpus case, *ADM Jabalpur vs. Shivakant Shukla's*.

The great jurist of India H.M. Seervai has met following comments on the judgement of Habeas Corpus Case -

"Anyone who reads and re-reads the four judgements - for they occupy 306 pages of the Sup. Ct. Reports - will be filled with amazement that the four judges should not have asked the central question raised by the Habeas Corpus Case and, even more, that they should have failed to realize the implications of the first question which the Att. Gen. formulated, and the concession which he made in answering that question. We will, therefore, consider the question raised by the Habeas Corpus Case independently of the discussion in the four judgments, and will refer to those judgements in the light of our independent discussion".

The **Chapter Third** deals with the - "**Personal Liberty' and 'Preventive Detention - Articles 21 & 22**, it establishes that Preventive Detention Laws are against the basic concept of Personal Liberty as enshrined under Article 21 of the Constitution of Indian.

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4. AIR 1976 SC 1207 popularly known as Habeas Corpus case.
The **Chapter Fourth** - deals with the *"Emergency excesses and Violation of Human Rights"* and the detention of innocent citizens in the garb of Preventive Detention Laws. This is a very sad commentary on the laws of Preventive Detention and therefore, it is expedient in the interest of democracy that such laws should be repealed without any loss of time.

The **Fifth Chapter** - deals with the *"Role of Supreme Court of India after withdrawal of Internal Emergency - 1977 to date"*. The Supreme Court realised its mistake which it committed during Emergency and later it gave judgements to indicate its impartiality, independence and restore its lost prestige and confidence of the people of India.

The **Sixth Chapter** - deals with the *"Conclusion and Suggestions"* and the suggestions of the researcher is that in view of the past experience there is every likelihood that some people in power may misuse preventive detention laws to perpetuate their anti-democratic rule.

Therefore, it is expedient in the interest of democracy that Preventive Detention Laws should be scrapped and repealed forthwith in the interest of our Great Nation.