



**RESEARCH PAPER**

**Pakistan's Preventive Detention Policy: Juggling Security and Freedom in the War on Terror**

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**ABSTRACT**

This paper examines Pakistan's preventive detention policy, focusing on its conflict between national security and individual liberties. The policy, implemented after the 9/11 attacks, aims to hold individuals suspected of terrorism responsible for any crime but their suspecting terrorism status. However, critics argue it undermines constitutionalism, particularly the right to be presumed innocent until proven guilty and personal liberty. The study uses qualitative legal and case study research to analyze Pakistan's preventive detention laws and detainee experiences. Results show that while the policy has reduced terrorism incidences, it has also led to significant human rights violations. Critics blame the lack of judicial review and misuse by security teams. The paper recommends addressing the issue of preventive detentions in Pakistan and ensuring a balance between security and liberty.

**Keywords:** Civil Rights, Constitutionalism, Human Rights, Preventive Detention, Supreme Court

**Introduction**

The government of Pakistan always worries about forthcoming terrorist' operations and this concern never lets Pakistan free from the shadow of terrorism. Preventive detention is one of the practices that the government has undertaken aiming at combating terrorism. This is just one of, if not the many techniques deployed by the government in the war on terror. These provisions allow the authorities to arrest legally foreign nationals, who might be involved in terrorist activity, without putting a case or conducting a trial. Applying this technique promises the key benefit that many terrorist attempts can be foreseen and prevented thus contributing significantly to ensuring national security. The argument of those in support of this action is that the operation must be carried out at high speed to prevent attacks and dismantle the terrorist groups. However, there is a principal reason to worry about risk of abusing in addition to scrapping liberties in the United States. On this, the opponents – and it's worth counting and discussing them – have pointed for the chilling effects that such measures may have on civil liberties, due process, and the presumption of innocence (Akram, 2024)

Perhaps one of the most pertinent questions that must be asked is whether it is possible to have security all the while losing one's liberty. This is the core of the argument. Do you think that preventative detention deals properly with terrorism issue, or do you think that it is rather reduces liberties that it is to protect? Therefore, this article aims at carrying out a concern-oriented analysis and give a critical look at the current legal framework applicable to preventive detention in Pakistan. This paper also constitutes a consideration of this complex theme. This investigation has aimed at evaluating the degree of success to the declared counterterrorism objectives. Additionally, studies have compared the effects that such statutes confer on the other rights and freedoms individuals enjoy in their lives (Hayek. 2022).

This study has assessed other countries' efforts in responding to the imbalance of security/ liberty threat posed by terrorism through comparison. This will enable us to apprehend the stumbling blocks, which other countries have encountered. In conclusion, this research will seek to make a small contribution towards developing a clearer and informed position regarding the use of preventative detention as part of Pakistan's counter-terrorism strategy.

In fact, the term "preventive detention" comprises two words that rather imply vastly different concepts. "Preventive" refers to making someone stop from doing something bad and "detention" means to confining someone's freedom of movement. In general terms, "preventive detention" is best described as restricting a person's freedom to avoid a given bad occurrence. So, it's "the act of incarcerating a person with the purpose of preventing them from committing additional offences or of maintaining public order." The precautionary custody legislation is controversial and often violated.

Sher notes the fact that through the British Parliament's 1778 East India Company Act, preventive imprisonment was introduced in India. The executive branch in India introduced preventive detention for maintaining peace and order, to secure highest individual freedom in a well-ordered society and to check subversive activities and misuse of liberty which led to extensive study. Unfortunately, our legal system has retained such contentious laws due to their necessity. Only lawful detention is permissible, but how can it be legalized merely on anticipatory apprehension of specific offences?

Preventative detention is a legal procedure used by governments to hold individuals suspected of being dangerous or criminal, with the intention of preventing potential danger to society or the country. This concept has been criticized for violating human rights and civil liberties, but it is often seen as a deviation from these principles. The constitution of Pakistan 1973 suggests that preventative detention may directly infringe on citizens' rights, but it is essential to achieve a balance between efficiency and human rights. This study aims to examine the effectiveness of preventive detention legislation in Pakistan's counter-terrorism strategy, focusing on its impact on the country's security and citizens' rights. It will critically evaluate the Anti-Terrorism Act (ATA) of 1997 and constituent laws provision, determine whether pretrial custody can effectively prevent the execution of terror campaigns, assess the impact of preventative detention on human rights, and enable comparison between counter-terrorism measures in other countries. (Uma, 2023).

The research has also analyzed various approaches to combating terrorism in Pakistan, such as community policing, de-radicalization, and rehabilitation programs. (Frankowski, 2022).

## **Literature Review**

Enforced disappearance does not differentiate its victims by colour, race, religion or political standing or any other demarcation. The UN has reported thousands of enforced disappearances in more than 100 states, including Iraq, Iran, Sri Lanka, Chile, Ethiopia, Syria, and Pakistan. Preventive detention has its roots in the ancient history starting with colonialism, World Wars and Cold War. It was used to keep order, to contain and quell rebellion and to combat what was seen as threats. In due course, 'preventive detention legislation' or a 'legal charter of preventive detention' emerged as a valid legal arm and policy measure across countries to serve legal warrant of arrest based on national as well as public security propelling ahead the conflict between civil liberties/human rights and security states. Nevertheless, there have been controversies over preventive detention because of likely abuse and infringement of people's rights hence the concern for the respect of people's rights and public safety (Laakkonen, 2022).

The aim of the present research is to assess PPDA in the context of Pakistan using a conception that analysed procedural justice at the ratio of security and liberty. This paradigm recognizes the fact that, there is always a clash between measures taken for the security of the nation and freedom of the people. Within the context of this framework, this investigation shall take into consideration two fundamental perspectives: As earlier discussed, in utilitarianism the aim is to provide the greatest well-being or security of most people including putting restrictions for rights of the people. Due to this viewpoint, preventative detention is justified provided it can prove it decreased on terrorist potential. Liberalism i/s a political policy that attaches importance to such things as basic rights and procedural fairness rules. From this perspective, preventive detention leads to the issues of concern about abuse and loss of civil liberties (Ndururu, 2023).

This research has compared the issues of preventive detention and counter-terrorism measures in the context of Pakistan with the aspects of their efficacy, legal compliance and the impact on human rights. Previous studies employed qualitative interview, questionnaire and document review techniques as sources of data. The existing legal standards were established during the investigation to show that preventive detention policies were sometimes accompanied by insufficient procedural protection with reference to prisoners detained without trial for a long time and restricting the right to counsel. The analysis of human rights situations unveiled cases of unlawful imprisonment, abuse, and eminent lack of procedural justice. Each of the countries was assessed in relation to counter-terrorism measures, and concerns for Pakistan included feelings that the measures undermined civil liberties and relations with the community. The measures' relation to the IHRS was also examined in the analysis. The given research serves to proceed from these insights to map future directions, evaluate the adequacy of the existing actions, and outline appropriate strategies and solutions for policy and practice.

### **The Legal Landscape of Preventive Detention in Pakistan:**

The laws relating to preventive detention in Pakistan provide for the reason for detention which are normally as under; security of the state, safety of the public or prevention of acts which are prejudicial to the country. These grounds must specify so that a person cannot be held based on those mere grounds without any legal justification. It is the district magistrates or commissioners of police and other competent authorities to issue detention orders selectively. The period for pretrial detention is determined and limited to a maximum number of months, with possible subsequent renewals in terms of a review committee (Rasool,2024). In Some of the laws put in place provide checks to ensure equitable and non-exploitative reviews are made. They acknowledge some rights of a person, and these are right to receive information, right to an advocate, right to contest detention, and right to be treated with human dignity. The competent authority may be expected to keep records and make reports periodically to increase accountability. The measures provided under the laws of preventive detention may be varied by some measures stated in the Maintenance of Public Order Ordinance and the Anti-Terrorism Act.

### **Anti-Terrorism Act and The Maintenance of Public Order Ordinance:**

As it is observed that the preventative detention does not exist separately in the Pakistani criminal justice system and constitution but some sections of them give hint of its existence. Maintenance of Public Order Ordinance from 1960 (MPO) and Anti-terrorism Act from 1997 (ATA) are the main legal regimes of preventative detention in Pakistan. The said revolutionary enactment of MPO Ordinance enables the authorities to arrest and detain people without trial or charges, detention orders renewable. Advisory Boards are set to consider detention orders and to give opinions. The Anti-Terrorism Act offer a legal paraphernalia on the fight against terrorism, thus enabling the authorities to hold suspected terrorists for terrestrial without the need to be formally charged. The APA also allow detention for up to 90 days for an investigation and, grants the power to place review boards

to the situations of detained persons. Preventative detention in Pakistan has its basis in these laws, and other relevant legislation (Atubukha, 2023).

MPO Ordinance on Pakistan is aimed to control any sort of riots and maintain law and order by detaining anti-social threat. But the law only covers alien enemies and there are no restrictions on the length of time they can be detained. The research conducted by Amnesty International on human rights violation of this country has reported that MPO has been used by the police whenever there is lack of evidence to lay charge against an individual. The Ordinance violates Article 4 and 25 of Pakistani constitution of right to liberty and equality respectively according to legal scholars. As harsh as the law have been, it has been applied occasionally in the interest of the country.

The Anti-terrorism act of 1997 allow police to arrest any person thought to be engaged in terrorism for a maximum of ninety days or more with permission from a judge. The Fourth Schedule of the Constitution allows preventative detection in peculiar circumstances, including to maintain peace. However, there are concerns as to what some may perceive as terrorism and suspect – leading to detention without cause (Ali, 2023).

The Act called Anti-Terrorism Act (ATA), that was adopted in 1997, regulates the fight against the terrorists and the criminal acts that stir panic in society. At the outset, there was no provision for preventive detention which came into operation as sections 11-EEE and 11-EEEE in the year 2002 and 2013, respectively which only permits detention of such persons. But detention of enlisted persons is admissible only on some useful information being received and detention on mere surmises of terrorist complicity raise certain issues. The ATA was the first global record put together with the intent to present a permanent legal solution for combating terrorism. The government enacted the Anti-Terrorism (Amendment) Ordinance, 2002, and the Anti-terrorism (Second Amendment) act 2013 to insert Section 11-EEE and Section 11-EEEE respectively for the Preventive Detention under the ATA. These amendments sought to fill the gaps especially about the issue of preventive measures against terrorism (Kateete, 2022).

Pakistan has been experiencing periodic incidents of forced disappearances since the time of General Pervez Musharraf governed from 1999 to 2008. These disappearances entail persons being kidnapped, arrested, detained unlawfully or arrested without recourse to the law. Such cases have risen in Musharraf's regime more so in the early 2000s in Counter Terrorism operations and Baluchistan province. The Pakistani government set up a Commission back in 2011 to investigate enforced disappearances that it has addressed around 5000. The problem is due to absence of remedial measures, poor legislation, buccaneering by security agencies, and insignificance of immunity. To effectively tackle this issue several measures, need to be taken including sensitisation, lobbying of relevant laws, enhancing compliance with the law, investigation and finally app sourced everyone is brought to book.

### **The Constitution of Pakistan 1973**

The current version of Pakistan's constitution was first published in 1973, when it was formally published. Article 10 of the Constitution addresses preventive detention in a precise manner, and the vocabulary employed in this provision has not changed significantly over the course of the years. Article 10(4) of the Constitution appears to provide a hint of preventative detention, based on a simple examination of the instrument. Before the discussion of article 10 of the Constitution, it seems appropriate to reproduce the text of article 9 of the Constitution, which states that "No person should be deprived of life or liberty except in accordance with the law." After stating article 9, it is important to emphasize that the notion of preventive detention is incorporated in article 10 (1, 2 and 3), but that article also mentions some restrictions and limitations, such as the following: 1. that no person shall be detained in custody without being informed of the grounds for his arrest.

In accordance with the language of article 10(3) of the Constitution, every individual who is arrested and imprisoned is required to be produced before a magistrate within twenty-four hours after his arrest. However, the two requirements specified above do not apply to rules that deal with the notion of preventative detention (Tobawal, 2022).

### **The restrictions and limitations that apply to individuals detained under preventative measures**

The concept of preventative detention in Pakistan requires individuals to pose a threat to the country's integrity, security, or public order. The detention period can only exceed three months if approved by a review board. The individual must present their case in person, be informed of the reasons for detention within 15 days, and could state their case. The maximum time of incarceration for individuals engaging in behavior that threatens public order should be 8 months, while in all other cases, it should not exceed 12 months. Financial support for the detainee's family will be determined during their time of incarceration. However, the concept of preventive detention does not align with the constitution and fails to protect citizens' fundamental rights. (Junejo, 2024).

### **The Protection of Pakistan act (2014)**

The Protection of Pakistan ordinance was implemented in 2013 as a temporary measure to safeguard the country against acts of war or invasion targeting Pakistan. This ordinance facilitated the swift trial of specific offenses listed in the schedule. In 2014, the ordinance was transformed into the "Protection of Pakistan Act 2014" after receiving approval from the National Assembly and Senate. Article 6 of the mentioned act establishes a maximum detention period of 90 days. However, this period only applies if there are reasonable grounds to believe that the detainee is involved in activities that are harmful to the integrity, security, and defense of Pakistan or any part of it, as well as for the maintenance of public order. It is important to note that this provision does not apply to enemy aliens (Munira, 2022).

The ordinance was amended in January 2014 and its legality was subsequently extended for an additional 120 days. The Protection of Pakistan (Amendment) Act, 2014 broadened the scope of preventative detention in comparison to the initial ordinance. Section 6 underwent revision, incorporating additional categories of individuals within the provisions pertaining to preventative detention. Upon careful examination of the mentioned act, it becomes evident that there are no conditions specified in the constitution that imply the concept of preventive detention, even if similar allegations are made against someone as stated in the constitution. Therefore, the provisions of the mentioned act can be considered inactive in accordance with the constitution of Pakistan. As a result, the term "missing person" has emerged in Pakistan.

The Government has the authority to detain an individual for a specified period of up to ninety days if it believes that the person is engaging in activities that are harmful to the integrity, security, defense, external affairs, public order, or maintenance of supplies and services of Pakistan. However, it is important to note that any detention must comply with the provisions outlined in Article 10 of the Constitution (Murharjanti, 2022).

### **Actions (In Aid Of civil power) regulations, 2011**

Regarding regulations, it is important to note that the concept of preventive detention is only applicable when the armed forces are assisting the civil power as instructed by the Federal Government to defend Pakistan against external threats of war and instability. Based on this fact, it is evident that the scope of applicability of AACPR is restricted. It can only be utilized to support civil power and can also be expanded to include the Federally Administered tribal areas (FATA). The sole objective of AACPR appears to be

to assist the armed forces in their operations in FATA during conflicts. However, this law does not meet the conditions or prerequisites that would justify the detention of individuals. As a result, it raises concerns about the legitimacy of the concept of preventive detention in accordance with the law and constitution (Jahan, 2024).

### **The Security of Pakistan act, 1952**

The Security of Pakistan Act of 1952, a controversial law, remains in effect today despite concerns about its validity due to subsequent laws. The Lahore High Court affirmed its validity, stating that if any subsequent laws repealed the Act, the government would have acknowledged it during the 1981 review of federal laws. An in-depth analysis of this act reveals that it shares many similar conditions and limitations as other relevant laws mentioned earlier. It is important to highlight Section 6 of the Act, which states that the communication of the reasons for detaining someone is a mandatory requirement. However, this provision can be deviated from if the competent authority deems that disclosing the information would be against the public interest. In such cases, the information can be kept hidden for a maximum of 15 days from the date of detention, but not beyond that under any circumstances (Weyar, 2023).

"Limitations on the mobility of individuals who are suspected of wrongdoing and their confinement" If the Federal Government is convinced that it is necessary to prevent a specific individual from engaging in any activities that could harm the defense, external affairs, or security of Pakistan or any part of it, they have the authority to issue an order for their detention. As long as, within a span of twenty-four months starting from the day of initial detention based on an order made under the mentioned clause, no individual, except for someone who is currently an enemy alien or is employed by, works for, or follows instructions from the enemy, or is acting or attempting to act in a way that harms the integrity, security, or defense of Pakistan (Gayretli, 2022).

Individuals who are subjected to rules regulating preventative detention are classified and designated depending on numerous factors. It is crucial to emphasize that these statutes utilize the term "person" rather than "citizen." The significance of this discrepancy lies in the fact that Pakistan's preventative detention statute is not exclusively contingent upon an individual's citizenship status. It is important to note that the provision of the law is addressing the main question on one hand, while also indicating the lack of applicability of the applicable operational law in its entirety.

### **The juvenile justice system ordinance, 2000**

Section 10(6) of this Ordinance restricts the detention of any individual who meets the criteria of being a "child" as defined in this Ordinance. This provision is explicit and Preventive confinement is explicitly prohibited by juvenile legislation of Pakistan. The purpose of these laws is to safeguard the rights and welfare of individuals who have not yet reached the legal age of adulthood. In Pakistan, the legal regime fails to provide any allowance for keeping of youths without trial or charges which is commonly referred to as preventive custody. Instead, alternative interventions are implemented to cater to the requirements and reintegration of juvenile offenders, guaranteeing the protection of their rights and offering them suitable assistance and direction. According to the Juvenile Act (2018), it is prohibited to arrest any young person under the age of 18 under the legislation related to preventive detention or under the requirements of Chapter VII of the Code (Cohen,2022).

### **The criminal procedure code, 1898**

Section 491Cr.PC and Article 199 of the Constitution of Pakistan, 1973 offer legal recourse for those who have been unlawfully detained or held in prison. Detention that does

not have a proper grievance can be taken to the court of law according to the provisions above stated. It must be the responsibility of Pakistan's judicial system to protect citizens from arbitrary preventative detention. Judicial systems have the powers to review detentions and have the powers to check conformity of the orders to constitutional instruments and legal characteristics. The habeas corpus allows individuals Freedom or a chance to argue against the legal reason as to why they are imprisoned in a courtroom. In turn, management of preventive detention focuses on realism and culpable responsibility. Government is expected to provide information on why custody is being sought, how long custody will be allowed and whether there could be an extension of custody which may be granted. Detainees are then hence appearing or have an opportunity to obtain and challenge papers that are being produced against them and hence custody orders should be properly recorded.

### **Preventive Custody under Global Law**

International humanitarian law (IHL) regulates preventative detention, a controversial method used by the executive branch to protect national security or public order. The International Human Rights Law (IHRL) is the primary source of law concerning preventive detention, with the Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) serving as principal commanding legal sources. Non-binding sources of law include the Human Rights Committee, Guidelines for the Safety of People with Mental Disorders, and the System of Guidelines for the Safety of Everyone under any kind of Custody or Detention. (Pillai, 2022).

Preventive detention is often justified by national security, public safety, and organized crime but raises concerns regarding security-liberty relations, due process, risk assessment, oversight, and accountability. To improve the legitimacy of preventive measures and respect human rights, recommendations include examining the legal systems of developed countries, creating independent overseeing bodies, and promoting international cooperation. Critics argue that preventative detention can be used to control people's rights, restrict civil liberties, or punish specific groups or people. (McGregor, 2023). Comparative analysis with other jurisdictions is essential to understand the impact, potential, superiority, scope, implications, and ability to strike a reasonable balance between security and rights. Countries like Pakistan, India, Ireland, Germany, Japan, Yugoslavia, Malaysia, and Singapore have different legal systems, procedures, and human rights norms for preventive detention. (Frankowski, 2022).

### **Preventive Detention: A USA-UK Comparison**

Nevertheless, while both the United States and the United Kingdom use preventative detention in a certain measure, the approaches states apply are significantly different.

The United States has long used preventative measures like Guantanamo for national security, but has been accused of unlawful detention, detention without trial, and violating human rights. In recent years, the US has transitioned back to traditional criminal justice processes, focusing on intelligence and prosecution. Preventive detention is used to punish offenders who are likely to reoffend after serving their time in prison. The UK has also implemented preventative detention to counter terrorism, primarily under control orders and "Terrorism Prevention and Investigation Measures" (TPIMs). The UK has developed a close pre-charge detention policy, allowing detaining persons on terrorism or serious crime suspicion for approximately 28 days without charging them formally. Critics argue that this denial of presumption of innocence is a harbinger of long detention pre-trial charges.

## **Key Differences**

The United States and the United Kingdom have different approaches to preventative detention, with the US relying on imprisonment after a conviction and the UK employing detention before formal charging. Both countries have provisions for fair treatment and legal processes, but the effectiveness of preventative detention in countering terrorism is challenging due to production scarcity and undercover nature of terrorism. Preventive detention can erode the doctrine of 'benefit of the bounce', which expects detainees to be guilty until proven otherwise. It may also lead to arbitrary imprisonment and the deliberate targeting of political dissidents or marginalized communities. This raises concerns about the need and relevance of such measures. (Dragojlović, 2022).

The Pakistani Constitution of 1973 states that any law that goes against its principles is null and void, and any law that goes against its principles is null and void. To implement preventative detention prohibitions, the constitution restricts the legislature from passing measures that go beyond permissible limits and sets a cap of three months on preventative detention. Personal freedom, liberty, protection from arbitrarily deprived of their freedom, detention without charges, and fair trial protection may be violated by preventive detention. A dangerous interplay between counterterrorism measures and human rights implies that citizens' rights to privacy, free speech, and protection against torture may be violated. (Olomjobi, 2022). Recommendations include tighter judicial scrutiny, limited use of preventive detention laws, openness, and protection of the right to a fair trial, examination, and prosecution of claims of torture and ill-treatment. Pakistan's counterterrorism measures need constant focus to ensure safety without affecting basic human rights and just procedures. (Frankowski, 2022).

## **Protection against “Preventive Detention”**

The part where the show investigates Local law on preventative detention lays down 3 conditions that must be met if one must be detained for an unspecified or unlimited period. These rights include that a person can be held for more than three months and cannot meet a review board; that the reasons for custody must be stated within fifteen days; and that the person can appeal against the detention order. It must not exceed eight months where the cases relate to a public order offense and twelve months where the case does not entail a public order offense. The goal here is to establish clear parameters to make it clear, above all, the rights of the people who are restricted by preventive custody. The author again expresses worry on the impact of the proposed change to provide for the periods of detention less than 15 days to mean that individuals will be detained without proper cause. Also, the author casts aspersion on the necessity of giving grounds for detention.

## **Communication of grounds of detention**

Communication of the grounds of detention in Pakistan plays an important preventive measure against arbitrary preventative detention. It would guarantee that anyone who is confined gets to be informed and timely on the reasons that lead them to such confinement and would allow someone confined to lawfully challenge on their confinement. The transmission of reasons for detention is protected by several legislative measures and these are Under Article 10 of the Constitution, everyone has the right to receive information concerning the reasons for arrest. Pursuant to paragraph (e), this provision demands that any person who is arrested or is detained in any-should be informed of the reason as to why he/she has been arrested and detained. From the constitution of Pakistan for the part of arrest with a law that allows preventive detention, the authority making the arrest must inform the arrested person of the grounds for the order within 15 days of arrest and provide the arrested person an opportunity to contest the order Article 10(5). This provision is also stated on the Maintenance of Public Order Ordinance, Chapter 355, Section 9 (1960). In section (6) whenever under this section any person is detained, the authority concerned



issuing the detention order shall, within fifteen days of passing such an order, communicate to such person the grounds of detention and afford the earliest reasonable opportunity to the person to be heard against the detention order.

Within the territory of Pakistan procedural provisions regarding arrest and detention are set out by the Code of Criminal Procedure, 1898 (CrPC). According to Section 50 of the CrPC, the arresting officer must notify the person being detained about the reasons for their arrest and, if relevant, give them a copy of the arrest warrant.

The courts in Pakistan have a vital responsibility in ensuring that the reasons for incarceration are well communicated. Upon the presentation of a detained individual to a court, the judge examines whether the reasons for the detention have been conveyed and if they are legitimate. If the court determines that the reasons for detaining an individual are inadequate or illegal, it has the authority to order their release. The courts initially ruled that a detention order, authorized and demonstrating the authority's satisfaction, justified detention. However, the Lahore High Court later ruled that personal judgment is a condition precedent for making a detention order. The court also found that routine detention orders without due care were invalid. The authority's satisfaction was not sufficient, as they also had a duty to provide evidence of the necessity of detention. Furthermore, it is essential that the individual who is about to have their freedom restricted is provided with adequate reasons for their imprisonment, thereby necessitating their input to secure their release. Imposing detention based on inadequate and ambiguous reasons is not deemed acceptable under the law and constitution from any perspective (Munir, 2024).

When proceeding to detain and produce someone before a court of law, it is the responsibility of that court to examine the validity and robustness of the reasons for the detention. The examination of those grounds must be rigorously verified in the pursuit of justice. The deprivation of an individual's freedom must be sufficiently justified, else it should be considered criminal. Furthermore, it is important to remember that satisfying the detaining power alone is not enough. The court of law, which is carrying out its constitutional obligation to provide justice in accordance with the law, must also be satisfied. It would be reasonable for a court of law to investigate the credibility of the accusation or information against a detainee.

### **Prime pre-requisites of order of detention**

The following prerequisites are essential to justify the order of detention for an individual.

- The court must ascertain that the evidence presented by the detaining authority is sufficiently reasonable to justify the implementation of preventive detention.
- If any of the grounds is determined to be ambiguous, it can compromise the integrity of all the grounds.
- All evidence supporting the detention of an individual must be presented to the court without invoking any privileges about the information. The court is responsible for assessing the credibility and integrity of the evidence against the person in question.
- It is crucial for the court to ensure the competence of the authority detaining an individual.
- The court must also ascertain whether the grounds for detention have been conveyed to the detainee within the legally prescribed time frame or promptly if no specific term is indicated.
- The goal of providing the detainee with the grounds of detention is to allow them to prepare their response to the legally mandated authority.

The concept of preventative detention lies at the intersection of two important philosophical principles: state security and individual liberty. Below is an analysis of the main arguments:

### **National security:**

Advocates contend that preventive detention provides a utilitarian advantage. Through the pre-emptive detention of those who pose potential dangers, the state can ensure the safety of its population and maintain public order. This places higher importance on the overall benefit to society rather than the possibility of limiting personal freedom. The social contract theory, for example the state of nature theory, proclaims that people consciously forfeit some rights for the state to protect. The use of preventive detention is viewed as an obligatory measure for the government to fulfill responsibilities within the framework of the social contract on protection of the population and ensuring order. The claim is that there is superiority of government as a body, and it can use precautionary arrest in extreme circumstances to prevent the individuals posing threat to themselves and others (Sonika, 2022).

### **Personal freedom**

John Locke's ideology revolves around preserving individual liberties, most especially the liberty right. Preventive detention if and as conducted without adequate due process and trial can be associated with infringement on these fundamental rights. The CFI specifically refers to presumption of innocence as being part of justice which holds that a person is innocent until the person is proved otherwise. Preventive detention therefore basically turns this on its head, it may remove a person's liberty and freedom based on suspicion and not on a proven fact. Fears Coercive critics have singled liabilities on the argument that preventive detention has the potential to set a dangerous precedent and open the country for slippery slope Concerns have been raised by critics over the establishment of a risky precedent through the authorization of preventive detention. It might potentially be used by the state to cling on power and oppress the opposition or discriminate against the opposition groups and therefore erode civic liberties. (Ramiro, 2024)

### **Material and Methods**

This study aims to understand Pakistan's preventive detention policy and its impact on balancing state security and civil liberties. Using a mixed research approach, the study employs both qualitative and quantitative methods, focusing on the legal framework, consequences, and efficiency of the policy in combating terrorism. Data collection methods include document analysis, case studies, interviews, and ethics issues. The primary methodological approach is based on analyzing Pakistan's preventive detention laws, including the Anti-Terrorism Act of 1997 and the Protection of Pakistan Act (PPA) 2014. Case studies will focus on citizens held without trial or charged on terrorism-related charges. Interviews will be conducted with legal experts, security and law enforcement personnel, and human rights advocates and NGOs. The study aims to provide valuable insights into the effectiveness of preventive detention in operationalizing the fight against terrorism and the concerns and drawbacks of the security-civil liberties ratio.

This study aims to analyze Pakistan's preventive detention policy using official government reports, law enforcement agencies, and human rights organizations. The data collected will include terrorism-related incident statistics, detention figures, and judicial records. Qualitative analysis will use thematic analysis to identify common trends and issues concerning the effects of preventive detention on human rights, security, and the rule of law. The study will also conduct a legal analysis of the language and constitutional compliance with preventive detention laws, focusing on the application of laws that give way to selective violence against individuals. Quantitative analysis will be descriptive, providing information

on the trends of terrorism and preventive detention within the same cycle of time. The study will also use correlation analysis to check the link between the application of preventive detention and a decrease in terrorism incidents. Ethical considerations include informed consent, confidentiality, and avoiding harm. Limitations of the study include access to information, interview bias, and generalizability due to Pakistan's unique legal and political system. The findings will be of importance for policy makers, lawyers, and civil liberties activists interested in the relationship between state security and rights.

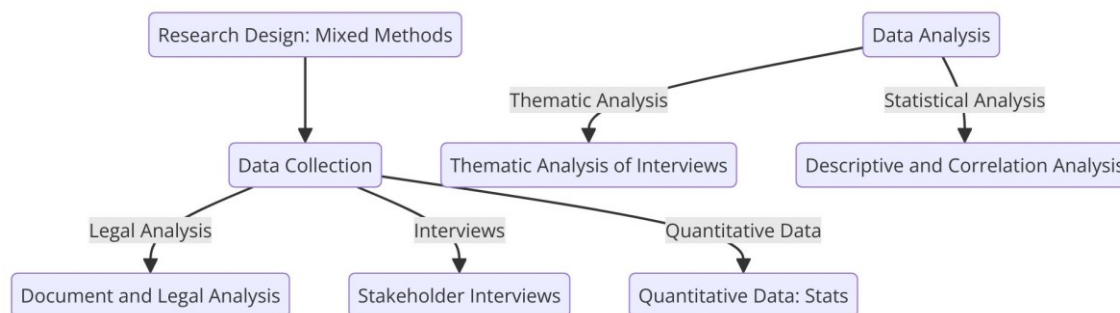


Figure 1: Diagram of Research Methodology

## Results and Discussion

### Federation of Pakistan v. Malik Ghulam Jilani (1970)

#### Summary

Few political detainees Under the Defense of Pakistan Rules, the famous political personality of that time Malik Ghulam Jilani was arrested for carrying out political activities. The case raised constitutional issues in relation to preventive detention.

#### Analysis

It important to note that in case of national security threat, preventive detention under the Defense of Pakistan rules had the veto of the Supreme Court by ruling in favour of the government. The case was a landmark decision of judicial deference especially regarding issues of national security. But it also results in concerns about the states' restricted liberties during emergencies.

### Benazir Bhutto v. Federation of Pakistan (1988)

#### Summary

This case grew out of the house arrest of Benazir Bhutto who was arrested with an aim of preventing her from engaging in any political action. The preventive detention order was challenged on conventional grounds on grounds of freedom of expression and political activity.

#### Analysis

The Sindh High Court released Benazir Bhutto from detention saying it was unlawful to do so. **JUDGEMENT** The court also ruled that preventive detention should not be used as a political measure to suppress the opposition. This case was important because it reminded that preventive detention laws cannot be used to stifle out political opponents.

### Mazhar Hussain v. Government of Sindh (2006)

### **Summary**

Mazhar Hussain was arrested under the MPO Ordinance for the role he had taken in anti-government policy demonstrations. He petitioned the court to seek release from detention on grounds that his detention was politically instigated and was not well backed by the laws of the country.

### **Analysis**

The Sindh High Court did give its verdict and held that the detention was unlawful as preventive detention could only be valid when the detainee poses an imminent danger to public order. The court affirmed the position that doing peaceful protest is not unlawful thus giving more force to freedom of speech and right to peaceful assembly entrenched in the constitution.

### **Dr. Mubashir Hassan v. Federation of Pakistan (2010)**

#### **Summary**

That was why Dr. Mubashir Hassan, a political activist, was detained under the MPO Ordinance during political protests. Responding to his continued detention, he said that was unlawful and meant to quell any protests.

#### **Analysis**

Lahore High Court's declared that political opponents cannot be put under preventive detention. Hassan's constitutional Detention was unlawful, the court concluded and in consonance with it, the court reaffirmed that the right to protest and political dissent cannot be restricted without legal justification.

### **Iqbal Zafar Jhagra v. Federation of Pakistan (2013)**

#### **Summary**

This one was one of the cases of detention of political workers under the Anti-Terrorism Act (ATA) after political instability. This detention order was trailing a litigation where its credibility was challenged as being politically tinged and anti-constitutional.

#### **Analysis**

The Supreme Court quashed the detention orders, saying that preventive detention cannot be used in a whims fashion or to suppress political opposition. The court recognized the right of the accused to be treated in accordance with all the requirements of procedural law and emphasized that preventive confinement should be used strictly when there is danger of considerable, imminent harm to the public.

### **Abdul Hameed v. Federation of Pakistan (2015)**

#### **Summary**

Abdul Hameed was arrested under ATA for suspected connections with terrorist organizations. He questioned the legal mechanism of his arrest saying that he had not being charged or given a trial as required by the law.

#### **Analysis**

The Court of Appeals dismissed Hameed’s appeal for delayed trial and affirmed the denial of preventive detention beyond the constitutional provision. The court reiterated the principle that even in the war against terrorism, people are afforded all their rights including the right of fair trial. After this case, the Civil liberties found strong judicial protection based on the US constitution regardless of the national security issues.

### **Asfandiyar Wali Khan v. Federation of Pakistan (2018)**

#### **Summary**

A political leader Asfandiyar Wali Khan was caught under the accusation of embezzlement and implicated under the National Accountability Bureau (NAB) Ordinance. He denied any wrongdoing and accused the officers of detaining him for political reasons and a violation of his rights.

#### **Analysis**

The Supreme Court quashed the detention of Mr. Khan and declared it unlawful. The court also held that preventive detention in terms of section 3 of the NAB Ordinance was being used politically and was not constitutional as it did not accord with procedural fairness. The case is indicative that there is need to enhance the accounting measure and transparency taking into consideration the application of preventive detention laws where there is political sensitization.

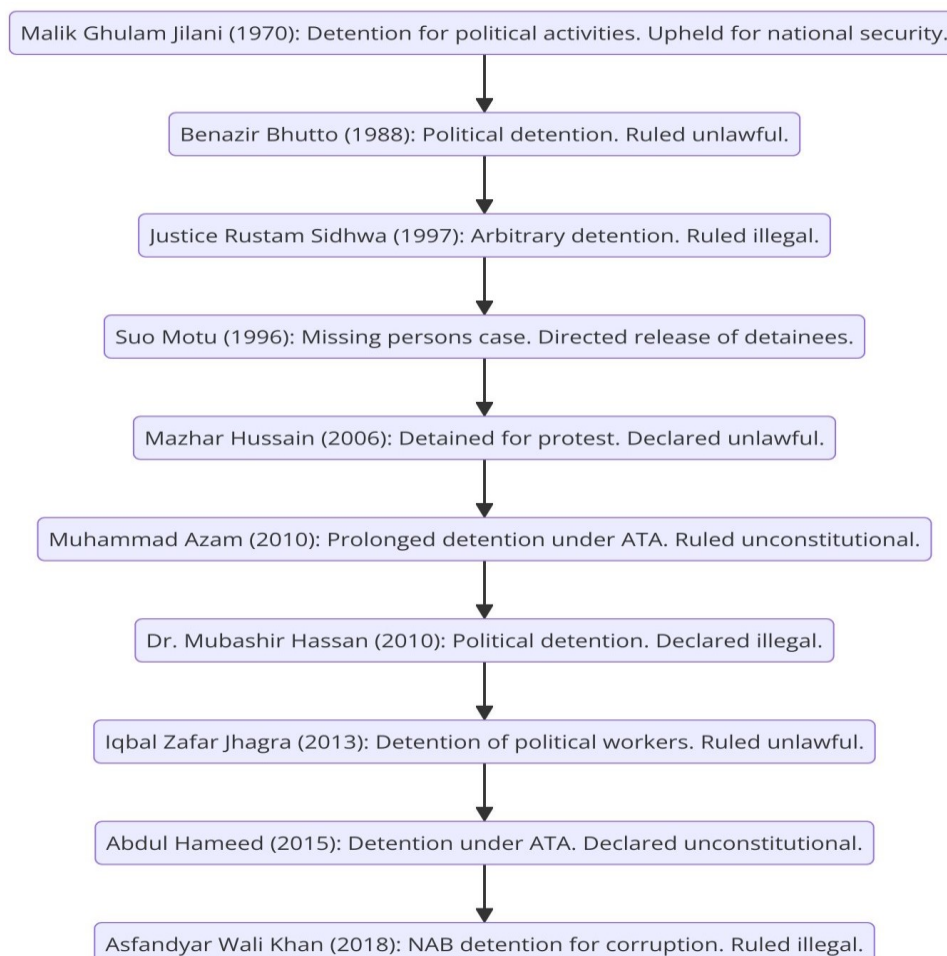


Figure 2: Diagram of Cases taken for Analysis

These cases put together depicts the issue with preventive detention in Pakistan in the following manner. Although preventive detention laws are legitimated in the name of security of the nation and maintenance of public order the Judiciary especially the Supreme Court of Uganda has not hesitated to strike down arbitrary detentions where it considered that such detentions were vitiating freedom of a person and that any such detentions must be subject to due process of the law, judicial scrutiny, and protection of individuals' rights and freedoms. In the past, the courts tread carefully to ensure that the state securities its need while at the same time recognizing individual's constitutional rights and freedom. Even though terrorism and political instability are real issues confronting Pakistan its judiciary has been instrumental in protection of civil liberties and guarantee that preventive detentions will not be used as an instrument of violation of human rights.

### **The Philosophical Dilemma**

Basic tension emerges from the question of how much security, on one hand, and how much protection of liberties, on the other. In as much as the advocates have called for some degree of freedom to be contingent on the need to protect society, opponents have argued that this is a worthy sacrifice. Anti-reformists argue that there is always a price to pay even in the name of security for a person's life and a fair judicial system; that there is always a possibility of misuse of the devise and perpetual decline of a fair judicial process.

### **Striking the Equilibrium**

The debate concerning preventive detention centers on the idea of right proportion or mean. Clear instructions, and legal oversight mean it is possible to ensure the usage of preventive detention only in rather exceptional cases and with sufficient safety measures in place. One of the best ways is to reduce the arbitrary use of detentions is if there is transparency and accountability. Therefore, there should be formal or legal guidelines for holding over persons. Pretrial detention must be made amenable to strict temporal limits to avoid being turned into a permanent confinement measure. Furthermore, the question arises: until what extent it is possible to let go of liberty to receive protection? This subject is complex, and the issues are not easily solved. This involves ongoing research from a philosophy as well as a legal angle. (Sroka, 2024).

### **Presumed Guilty and Presumed Innocent: Two Approaches to Achieving Justice**

The innocence-rule is a principle that ensures a reasonable and fair system, allowing individuals to be presumed innocent unless proven otherwise. This principle is often undermined in police states where the government has significant authority over the common people, leading to prejudicial convictions and a lack of legal protections. In a civilized legal system, the benefit of the doubt recognizes individual rights, dispenses justice, and fosters public faith.

Police and intelligence organs often infringe on people's rights through early intervention, anticipating terrorist activities without concrete reasons. Court cases often fail to present compelling evidence against certain individuals, and the inherent worth of an individual remains constant regardless of their gender, ethnicity, or nationality. In Pakistan, individuals are often held in custody as a precautionary measure under the Anti-Terrorism Act of 1997 or for maintaining public order. A review board has the legal authority to extend or terminate detention, or even deem it unlawful. The constitution holds the highest authority over any other law, guaranteeing the right to life and liberty for every citizen, except when restricted by law. (Ferstman, 2024)

High courts have the power to invalidate any law that goes against the constitution, as it is their primary responsibility to uphold it. The Universal Declaration of Human Rights (UDHR) and the International Covenant on Civil and Political Rights (ICCPR) both emphasize

the importance of preventive detention in international law. Article 9 of the UDHR states that every person has a right not to be arbitrarily arrested, detained, or exiled. This ban aims to abolish all unlawful and unjustified arrests and detentions. The ICCPR also provides for "Preventive Detention," which allows individuals to have their case reviewed by a court to determine the legality of detention and order their release if it is found to be unlawful. This provision is like Article 199 of the Pakistani Constitution 1973, which addresses legal recourse for individuals who believe they are being unlawfully detained through the writ of "Habeas Corpus."

However, Pakistan's codified laws regarding preventive detention are poorly enforced, leading to the phenomenon of "Missing Persons." The research aims to analyze these insufficient provisions and analyze constitutional changes necessary to bring coherence and congruity between preventive detention under Pakistani laws and constitution.

## **Conclusion**

The original four conventions together with two additional protocols are associated with international armed conflict and non-international armed conflict (IAC & NIAC). These conventions determine places of holding, prohibition of torture, inhuman treatment and guarantee to fair trial. The fourth, they stand for trial by a regularly constituted court of a detainee, explanation/reasons/charges, and the right of the individual to be presumed innocent until proven otherwise. Pre-treatment and preventive detention is still held to some elements of standards that guard rights of detainee. A legal document possibly bearing concepts related to preventive detention is the international human rights instrument known as the ICCPR Klum taking issue with the liberty of the subject which is protected by Article 9 of the ICCPR It also consolidates the right of the detained person to require the lawfulness of the detention to be determined by a court and constructive right to be tried within a reasonable period or be released.

International human rights law on the unlawful deprivation of liberty 61 also contains provision on arbitrary detention and the principle of innocent until proven guilty. All detainees must be respected, and primary attention should be paid to the accusations of their inhuman treatment. Each state which has ratified a human rights treaty needs to submit a report to the committee on the measures that have been taken to implement the treaty and the provisions of the treaty which relate to preventive detention. The United Nations Human Rights Council and its Special Reporters consider the compliance level of states with obligations in the field of human rights and make suggestions for further improvement.

The preventative detention of counterterrorism for Pakistan is problematic in the following ways. Where it may afford some security benefits there are potential tyrannical abuses and constant erosion of rights, and gradual effacement of the legal process to consider. It is further recommended that, Pakistan should seek other countries best practices and policies in counterterrorism and integrate into its own practice while focusing on new ideas and approaches. This will eventually translate to efficiency and respect for human rights as a way of doing things. Future research should be conducted to look at the long term social and economic impacts of preventative imprisonment in Pakistan. Dialogue needs to be conducted openly and in confidence about priorities and strategies for advancing security and primary rights not to have these initiatives for fighting terrorism erode the very freedoms being protected.

## **Recommendations**

Preventive detention is a legal process where a government detains a person without filing a formal charge in court for security reasons. However, it can be abused and

cause human rights abuses, negating the rule of law. In Pakistan, laws allowing preventive detention to have been a concern due to their political usage and lack of legal approval. To improve the preventive detection system in Pakistan, several measures are suggested.

**Enhancing judicial oversight:** The system of preventive detention does not guarantee adequate judicial supervision, as seen in cases like *Mazhar Hussain v. Government of Sindh (2006)* and *Muhammad Azam v. Government of Balochistan (2010)*. Detention orders should be reviewed by the judiciary compulsorily after a predetermined period, allowing holders to explain the reasons for detention and whether the person is a threat.

**Introducing time limits for detention:** Pakistani laws regarding preventive detention still lack time limits, leaving suspects and detainees detained for long periods without trial. Preventive detention should be refined in legal bases, prescribing strict limitations of time.

**Considering reformist strategies for preventing political misuse of preventive detention laws:** The policies should be under stricter legal provisions, with justification for detention presenting a clearer correlation between the detainee and security threats.

**Enhancing legal rights of detainees:** Administrative measures should recommend access to lawyers, communication with families, and understanding of the causes of detention.

The prevailing uncertainty surrounding the parameters for preventive detention in Pakistan, highlighting the need for clear criteria to reduce law enforcement's discretion and detain only dangerous individuals. The Federal Equal Employment Opportunity and Discrimination Laws generally comply with International Human Rights Standards, but Pakistan's laws must adhere to international treaties like the ICCPR. This recommends legal reforms to correct preventive detention laws, ensuring they respect human rights and provide a fair trial.

This research addresses the issue of enforced disappearances, highlighting the need for proper recording systems and abolition of such practices. Moreover, it proposes the creation of independent oversight bodies to monitor the implementation of preventive detention laws and ensure compliance with the constitution and law. The body should be composed of legal professionals, human rights activists, and CEOs be empowered to recommend the release of unlawfully detained individuals.

In conclusion, preventive detention is crucial for preventing threats to a nation's sovereignty, but caution must be taken to avoid infringement of citizens' freedoms. The proposed measures, from strengthening the judiciary and legal rights to adhering to international human rights litigation models, aim to make Pakistan's preventive detention system fair, transparent, and respectful of the rule of law while responding to rightful security concerns.

Preventive Detention should be a part of all Pakistani laws, clearly stating its need, circumstances, and prescription. It should be mandatory for detainees to be informed of their arrest/detention reasons, duration, and access to legal counsel. The concept should be returned to the 1973 Pakistan Constitution in Article 5 to stimulate state loyalty and maintain the balance between national security and human rights protection.

Legal provisions regarding preventative detention and counter-terrorism actions require strengthening in Pakistan. Clear guidelines should be in place to ensure legal, reasonable, and under the supervision of the judiciary. Judicial review serves the important function of eliminating misuse of power and ensuring responsibility. Transparency in cases



when preventative detention measures are applied is crucial, and measures should be implemented to facilitate identification of individuals who violated people's rights under the pretext of preventive detention.

Pakistan needs to align its actions with international human rights norms and ensure compliance with international treaties that protect individual freedoms. Engaging international human rights authorities and organizations can help maintain these requirements. Informing and educating the public about preventative detention and counterterrorism can help create an environment for organizational improvement and promote societal change. Civil society organizations and human rights defenders should be assertively involved in the debate on preventative detention and counterterrorism. Their understanding, perceptions, and support can help develop effective legal frameworks, protection methodologies, and accountability systems. By periodically reviewing and improving legislation, the country can better its counter terrorism capability and further a safe and just society.

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