



HISTORY AND IMPLICATIONS



SUPPLEMENT 2

United Nations Human Rights Council

Discussing the Impact of the Arbitrary Use
of Preventive Detention on Human Rights

August 15-17 IISP MUN 2024

Case Studies

New York v. Strauss-Kahn

In 2011, the French economist and politician, Dominique Strauss-Kahn was arrested on charges of sexual assault. After posting \$1 million bail, as well as a \$5 million bond, Strauss-Kahn was released; however, he was legally required to remain confined to his New York apartment under an armed guard in order to meet the conditions of his bail. By strictly establishing and enforcing these conditions, the law effectively required that Strauss-Kahn place himself under house arrest, creating a kind of detention that was more familiar, but which was an effective detention nonetheless. Strauss-Kahn was not allowed to leave the apartment under any circumstances, was required to wear an ankle bracelet, and was put under the supervision of at least one armed guard at all times.

The case was an unusual application of preventive detention; at the time of house arrest/detention, Strauss-Kahn had not been tried and found guilty, and had only been indicted, which is not considered an indication of guilt. Nevertheless, he was placed under an extremely strict guard and prohibited from leaving the mandated apartment, therefore isolating him from the general public except his lawyers and the occasional religious service. Preventive detention, then, is not a term that is only applicable to detention within hostile conditions like a jail; legal loopholes, particularly in systems which allow judges to impose conditions while deciding upon a bail amount, allow preventive detention to take on more varied forms.



Strauss-Kahn post his hearing

From: The New York Times

Rooman v. Belgium

In 2017, a Belgian prisoner who had been detained in a “social-protection” facility filed a case against the state of Belgium, alleging that he had not been provided with appropriate psychiatric and psychological treatment in the family, and therefore his right to liberty had been violated, and that he had been subjected to torture, both of which were egregious violations of the European Convention on Human Rights, the primary document outlining human rights followed by countries within Europe.

When reviewing the case, the court concluded that prisoners being held in similar situations must be provided with care that ranges far past simply the diagnosis stage, and must evolve to include actual psychiatric treatment with a positive prognosis, in order to prepare them for their eventual release. In its final opinion, the court found that there had been breaches of Articles 3 and 5 of the ECHR (the right against being tortured and the right to liberty, respectively) for a 13-year period between 2004 and August 2017, but after a change made to the regimen of the plaintiff in August 2017, there had been no breaches after August.

The court found in the plaintiff’s favour, and established guidelines for the treatment of prisoners who are held in detention centre in order for baselines in terms of physiological and psychological care.

Ameena Begum Case, 2023

In September 2023, the Supreme Court of India heard arguments in a case filed by Ameena Begum, whose husband had been detained earlier that year in Telangana, under the provisions of an act passed to prevent dangerous activities of criminals such as dacoits, drug-offenders, sexual offenders, and more. The court found it necessary to revisit the conditions under which preventive detention was permissible, and found that preventive detention could only be applied “to prevent the greater evil of the elements”, or in situations “imperiling the safety of a State”.

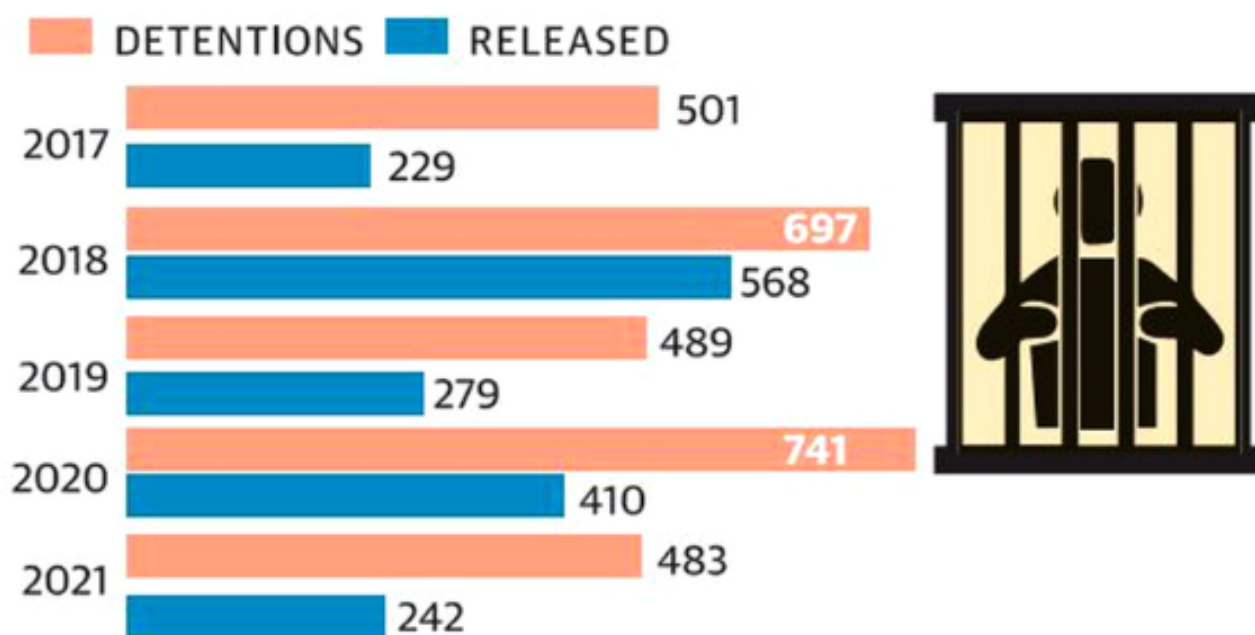
After reviewing the conditions of preventive detention, as well as the circumstances of the specific case, the Supreme Court ruled that preventive detention in India would be an “exceptional measure”, that could only be used in emergency situations, and should not ever be applied for more routine crimes or more day-to-day occurrences.

Impact on Human Rights

Preventive detention is a fully legal practice in many parts of the world, to mixed results; some countries find it to be a sustainable mode of law enforcement that allows for the security of the state, while others have found it to be more redundant. However, it has received significant criticism for its impact on human rights, and the rights of the individual being detained.

The harshest criticism of the policy alleges that it infringes upon fundamental human rights, which are considered inalienable to the state of being human, and therefore can and should be enjoyed by every single individual, regardless of their guilt and innocence. Among these are the right to life and liberty, which constitute some of the most important human rights, and are central to life as a free being. The right to liberty, in particular, ensures that individuals are allowed to live their lives by their own mandates and to maintain their own freedom without it arbitrarily being taken away.

Other criticism of the policy also includes that it violates the general mandate of “innocent until proven guilty” followed in most democratic nations; even though there is no official verdict, or even a trial, as guaranteed by due process of the law, preventive detention allows law enforcement authorities to place individuals under



Statistics for Preventive Detentions, 2017-2021

From: Civils Daily

punitive conditions, almost assuming guilt before they have been legally allowed to mount a defense, or given a just verdict.

Many argue that placing an individual in preventive detention also denies them the privacy that is guaranteed to them within most human rights documents (such as the UDHR), especially since being in detention virtually guarantees round-the-clock supervision, usually by one or more people.

Even in cases like that of Strauss-Kahn, who was forced into house arrest by the conditions of his bail, despite being in a familiar environment (his home), Strauss-Kahn was made to live under the supervision of one armed guard at all times. While for dangerous individuals this kind of supervision may indeed be necessary in order to prevent impulsive and dangerous acts, it calls into question the degree of privacy that should be inherent to the human experience, and at what point privacy, a natural human desire, may be nullified in favor of security.

Furthermore, preventive detention is considered an anticipatory measure, rather than a punitive one, which means that it relies upon the judgement of an individual or group of individuals, who are given the absolute discretion of deciding whether an individual “may be” guilty of a crime or not. Granting this discretion to individuals effectively gives them the power of judgement over their peers, and may have significant ramifications if the responsibility is given to someone with the wrong priorities or the wrong motivations—as is often the case in many right-wing authoritarian administrations and governments.

Virtually all authoritative documents concerning human rights for the last century have focused on the inalienable rights accorded to all humans, including the right to life, and the right to liberty. The primary critics of preventive detention as a policy and as a method of law enforcement focus on the ways in which it violates these rights, as well as the ways in which it is used as a medium of censorship, suppressing alternative voices and allowing for the creation of a monoculture.

By suppressing these rights, critics argue that the negatives of the policy may outweigh the instances in which the suspicions are warranted, suggesting that the absence of a trial and the due process of the law is a more egregious outcome than a potential (and occasionally unjustified) threat to security.

Notable Agreements & Organizations

Universal Declaration of Human Rights

The Universal Declaration of Human Rights (UDHR) is an international document adopted by the UNGA in 1948 creating provisions for the protection of the freedoms and rights of all human beings. Of the 4 main goals of the UN, the UDHR is focused on “encouraging and promoting human rights.” Composed of 30 articles, The Declaration addresses an individual’s rights to “basic rights and fundamental freedoms,” and is considered to be a common standard of achievement for human rights around the world. Among others, the UDHR highlights the right to life, liberty, and security, as well as the right to free speech. It also guarantees that “all are equal before the law”, and are free from discrimination within the legal system. The fundamental human rights outlined with the UDHR notably include that “nobody shall be subjected to arbitrary arrest, detention or exile”; as such, preventive detention, when exercised in a truly arbitrary way, is a direct violation of the UDHR, as well as a violation of other rights guaranteed by the UDHR, such as the right to free speech and equal treatment before the law.

International Covenant on Civil and Political Rights

The International Covenant on Civil and Political rights, adopted by the UN General Assembly in 1966, calls upon nations to respect the civil and political human rights of all individuals, including the right to life, freedom of religion, freedom of assembly, and freedom of speech. The covenant is considered by many a milestone document in international humanitarian law; it forms part of the International Bill of Human Rights, along with the International Covenant on Economic, Social and Cultural Rights (ICESCR) and the Universal Declaration of Human Rights (UDHR). The UNHRC is required to monitor the compliance of nations with the ICCPR, and is allowed to request reports from countries at its discretion upon the state of their compliance. Like the UDHR, the ICCPR affirms that nobody shall be subjected to arbitrary arrest or detention, except on grounds that are well established by the law, as under any circumstances this would constitute a loss of liberty.

Nelson Mandela Rules (Standard Minimum Rules for the Treatment of Prisoners)

The Nelson Mandela Rules are a set of rules advocated for by the United Nations, which articulate protocols to be followed in order to protect the rights of those who have been deprived of liberty (i.e., detained, arrested, or incarcerated).

The Nelson Mandela Rules help cover implicit loopholes left by the UDHR, which did not explicitly mention prisoners (although it did lay out rights which implicitly included them).

The rules were established out of a desire to protect the inherent dignity of all prisoners, and ensure that they are accorded the inalienable rights which are guaranteed to them as human beings. The rules also apply to pre-trial detainees, and cover a vast array of issues, ranging from the punitive measures given to individuals, as well as more mundane things like ensuring that food portions are not reduced. The rules also prohibit the use of instruments which are cruel or degrading, such as chains. The rules also identify solitary confinement as a measure that can only be used in the most extreme scenarios, as a last resort.

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment

The Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment entered into force in 1987 after being adopted by the UN General Assembly, and put in place a series of protocols and methods to minimize the use of torture and other cruel forms of punishment.

The convention calls upon member states to immediately take legislative and judicial action to prevent acts of torture, whether official or unofficial, and does not allow for any exceptional circumstances whatsoever for the same. It also prohibits extradition of a prisoner if there is a serious danger of the individual being subject to torture, and requires the concerned authorities to take appropriate measures in order to determine this risk.



UNHRC 44th Assembly

From: The United Nations



contact@iispmun.com

unhrc@iispmun.com



iispmun.com



[@iispmun](https://www.instagram.com/iispmun)



[IISP MUN](https://www.linkedin.com/company/iispmun)



pune.indusschool.com



IISP MUN '24



IB CONTINUUM
CONTINUUM DE L'IB
CONTINUO DEL IB

