



A Review of Indefinite Immigration Detention and The High Court's Power of Judicial Review in Protecting Liberty and Due Process

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Abstract

Indefinite immigration detention is a situation where a non-citizen is held in custody by immigration authorities for a long period without a clear or fixed release date. This usually happens when deportation is delayed, uncertain, or not immediately possible. While governments argue that immigration detention is necessary for border control and enforcement of immigration laws, holding people for too long without a definite timeline raises serious concerns about human liberty, fairness, and due process. This review examines how indefinite immigration detention challenges basic legal and human rights principles, especially the right to freedom from arbitrary detention. It also explains the important role of the High Court through judicial review in checking government power. Judicial review allows courts to examine whether immigration detention decisions are lawful, reasonable, and properly justified. Where detention becomes excessive, unfair, or unsupported by law, the High Court can intervene to protect individual rights and ensure compliance with constitutional and human rights standards. The paper further discusses the balance between state control of immigration and the protection of individual liberty. It highlights how courts try to ensure that detention is not used as punishment or convenience but only as a necessary and proportionate measure. Furthermore, the review shows that judicial review remains a major safeguard in preventing abuse of immigration detention powers and in strengthening due process protections.

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Abstract

Indefinite immigration detention is a situation where a non-citizen is held in custody by immigration authorities for a long period without a clear or fixed release date. This usually happens when deportation is delayed, uncertain, or not immediately possible. While governments argue that immigration detention is necessary for border control and enforcement of immigration laws, holding people for too long without a definite timeline raises serious concerns about human liberty, fairness, and due process. This review examines how indefinite immigration detention challenges basic legal and human rights principles, especially the right to freedom from arbitrary detention. It also explains the important role of the High Court through judicial review in checking government power. Judicial review allows courts to examine whether immigration detention decisions are lawful, reasonable, and properly justified. Where detention becomes excessive, unfair, or unsupported by law, the High Court can intervene to protect individual rights and ensure compliance with constitutional and human rights standards. The paper further discusses the balance between state control of immigration and the protection of individual liberty. It highlights how courts try to ensure that detention is not used as punishment or convenience but only as a necessary and proportionate measure. Furthermore, the review shows that judicial review remains a major safeguard in preventing abuse of immigration detention powers and in strengthening due process protections.

Keywords: *Indefinite immigration detention, judicial review, administrative law, immigration control, arbitrary detention*

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1. Introduction

Immigration detention is when a government holds a non-citizen in custody because of issues related to their immigration status. This may happen when a person is waiting for deportation, waiting for identity checks, or being processed under immigration rules. In principle, detention is supposed to be temporary and used only when necessary. However, in practice, some individuals end up being held for a very long time without a clear release date. This is what is referred to as indefinite immigration detention.

Indefinite detention raises serious concerns because it affects a person's basic right to liberty. In most democratic legal systems, no one should be deprived of freedom without a clear legal reason and fair process. When detention continues for a long time without certainty, it can feel arbitrary and unfair, especially when deportation is not likely to happen soon. Courts in different jurisdictions have repeatedly stressed that immigration detention must remain lawful, necessary, and proportionate throughout its duration, not just at the beginning of the process (European Court of Human Rights, 2024).

In many countries, the High Court plays an important role in controlling how governments use immigration detention powers. Through a legal process known as judicial review, the High Court checks whether immigration authorities have acted within the law, followed fair procedures, and respected human rights standards. Judicial review does not replace government decisions, but it

ensures that those decisions are made properly and not abused (Craig, 2016).

Recent legal developments show that courts are becoming more attentive to how immigration detention is used, especially where detention becomes prolonged without a realistic plan for removal. For example, UK courts have continued to review detention cases where delays in deportation or weak administrative processes raise questions about whether continued detention is still justified under human rights law, especially the right to liberty and protection from arbitrary detention (Judiciary UK, 2025).

The importance of judicial oversight is that it provides a legal safeguard against excessive state power. While governments argue that detention helps to manage immigration control and enforce removal orders, courts must ensure that such powers are not used in a way that violates fundamental rights. This balancing act between state authority and individual freedom is central to immigration law today (UK Home Office, 2025).

Furthermore, the introduction shows that indefinite immigration detention is not just an administrative issue but a serious legal and human rights concern. It highlights why the High Court's power of judicial review is essential in protecting liberty, ensuring fairness, and maintaining the rule of law in immigration systems.

2. Meaning and Legal Nature of Indefinite Immigration Detention

Indefinite immigration detention refers to the situation where a person is held in immigration custody without a fixed release date. In simple terms, it means someone can be kept in detention for an unknown period because their immigration case has not been resolved. This often happens when a person is awaiting deportation, but the government is unable to remove them within a reasonable time due to legal, administrative, or practical challenges.

Unlike criminal detention, immigration detention is not meant to punish a person for committing a crime. Instead, it is supposed to serve administrative purposes such as verifying identity, preventing absconding, or ensuring deportation. However, problems arise when detention continues for too long without a clear timeline or realistic expectation of removal. At that point, it may become “indefinite,” raising concerns that it is no longer serving a lawful immigration purpose but instead becoming arbitrary in nature.

From a legal perspective, most constitutional and human rights systems allow detention only if it is lawful, necessary, and proportionate. This means the government must show a valid reason for holding someone and must continue to justify that detention as time goes on. The European Court of Human Rights has consistently stated that detention must remain closely connected to a lawful immigration objective and cannot continue where there is no realistic prospect of removal (European Court of Human Rights, 2024).

The High Court, through judicial review, plays an important role in examining whether immigration detention still meets these legal standards. Courts assess whether the government has acted within its legal powers and whether continued detention is reasonable under the circumstances. For example, if deportation is delayed indefinitely due to diplomatic or legal barriers, the court may find that continued detention becomes unlawful because it is no longer justified by a realistic immigration purpose (Judiciary UK, 2025).

Recent judicial approaches also show that courts are paying closer attention to the length of detention and the vulnerability of detainees. Where detention becomes excessively long or where individuals face mental or physical harm, courts are more likely to intervene and require release or reconsideration of detention decisions. This reflects the growing recognition that liberty is a fundamental right that cannot be restricted indefinitely without strong justification (UK Home Office, 2025).

Legally, indefinite immigration detention sits at the intersection of administrative law and human rights law. Administrative law requires that government decisions must follow fair procedures and stay within legal limits. Human rights law, on the other hand, protects the individual's right to liberty and security. When detention becomes indefinite, both legal frameworks are engaged because the state must prove not only that detention is lawful but also that it is still necessary and proportionate in a constantly changing situation.

In summary, the legal nature of indefinite immigration detention shows that it is not simply about holding someone in custody. It is about whether the state has a continuing legal justification for doing so. Once that justification weakens or disappears, continued detention becomes difficult to defend under both domestic and international legal standards.

3. Judicial Review and the Role of the High Court

Judicial review is a legal process that allows courts to examine decisions made by government bodies to ensure they are lawful, fair, and reasonable. It is not about the court replacing the government's decision with its own. Instead, it is about checking whether the government followed the correct legal steps and respected the rights of individuals when making decisions. In immigration matters, this becomes very important because decisions about detention can directly affect a person's freedom.

The High Court plays a central role in judicial review, especially in immigration detention cases. When a person believes they have been unlawfully detained, they can apply to the High Court to review the decision of the immigration authorities. The court then looks at whether the detention is legally justified, whether proper procedures were followed, and whether the decision is compatible with human rights standards, especially the right to liberty and security.

In simple terms, the High Court acts like a “legal check” on government power. It ensures that immigration officials do not overstep their authority or keep people in detention without a valid reason. The court does not manage immigration policy itself, but it makes sure that whatever policy is applied still follows the law.

One of the key principles used in judicial review is legality, which means the government must act within the powers given to it by law. Another is procedural fairness, which requires that decisions affecting a person's liberty must be made fairly and transparently. The third is reasonableness or rationality, meaning the decision must make sense based on the facts of the case. These principles are important in cases of immigration detention because the consequences involve loss of freedom (Craig, 2016).

Recent judicial practice shows that courts are increasingly willing to question prolonged or indefinite immigration detention where the government cannot show a clear and realistic plan for removal. For example, UK courts have intervened in cases where detention was continued even though removal was unlikely in the near future, stressing that detention must remain justified at every stage, not just at the beginning (Judiciary UK, 2025).

The High Court also uses human rights standards, especially the right to liberty under Article 5 of the European Convention on Human Rights, as a major reference point. This means that detention must not be arbitrary, and it must be reviewed regularly to ensure it is still necessary. If detention becomes excessive or unjustified, the court can order release or require the government to reconsider its decision (European Court of Human Rights, 2024).

In practice, judicial review helps to balance two important interests. On one hand, the government has a responsibility to enforce immigration laws and manage borders. On the other hand, individuals have the right to be free from unfair or prolonged detention. The High Court ensures that this balance is maintained by stepping in when government actions go too far or fail to meet legal standards.

In summary, judicial review gives real meaning to the rule of law in immigration detention cases. It ensures that no person is held indefinitely without proper legal justification and that government power is always subject to legal limits.

4. Protection of Liberty and Due process

Liberty simply means a person's freedom to move around and live without being unlawfully restricted by the state. In immigration law, this right becomes very important because detention involves

taking away a person's freedom, even if they have not committed a criminal offence. Due process, on the other hand, means that any decision affecting a person's freedom must follow fair rules, be properly explained, and allow the person to challenge it.

In cases of immigration detention, liberty is affected when a non-citizen is held in custody for removal or immigration processing. While this can be lawful in some situations, it becomes a serious concern when detention continues for a long time without clear reasons or a realistic plan for release. Courts have repeatedly emphasized that any restriction of liberty must be strictly justified and cannot continue indefinitely without proper legal grounds (European Court of Human Rights, 2024).

Due process plays a key role in making sure immigration detention is not unfair. It requires that a detained person must be informed of the reasons for their detention, must have access to legal procedures to challenge it, and must have their case reviewed regularly. Without these safeguards, detention can easily become arbitrary, meaning it is based on unclear or unfair decision-making rather than law.

The High Court, through judicial review, helps to protect both liberty and due process. When a case is brought before the court, it examines whether the government has followed the correct legal procedures and whether continued detention is still justified. If the court finds that detention is no longer reasonable or that proper procedures were not followed, it can declare the detention unlawful and order the release of the individual or a fresh review of the case.

In recent years, courts have shown increasing concern about the impact of long-term detention on vulnerable individuals, especially where there are delays in deportation or where health conditions make detention harmful. In such cases, continued detention may be seen as disproportionate and therefore a violation of the right to liberty (Judiciary UK, 2025).

The idea of proportionality is very important here. It means that even if detention is allowed by law, it must not go beyond what is necessary to achieve its purpose. If a person cannot realistically be removed from the country in a reasonable time, keeping them in detention may no longer be proportionate. This is where courts step in to protect individual rights against excessive state power.

Due process also ensures accountability. Immigration authorities must be able to justify their decisions at every stage. They cannot simply rely on initial reasons for detention; they must continue to show that detention remains necessary. This ongoing requirement helps prevent abuse of power and protects individuals from being held without proper justification.

Consequently, the protection of liberty and due process in immigration detention cases shows the importance of legal oversight. It ensures that the state's power to detain is balanced against the fundamental rights of individuals, and that no one is deprived of freedom without fair, lawful, and reasonable justification.

5. Tension between Immigration Control and Human Rights

One of the biggest challenges in immigration law is finding a balance between what the government wants to achieve and what individuals are entitled to under human rights law. On one side, governments have the responsibility to control their borders, enforce immigration rules, and ensure that people who do not have legal permission to stay can be removed. On the other side, every individual, regardless of immigration status has basic rights such as liberty, dignity, and protection from unfair treatment.

This creates a constant tension. Immigration detention is often used by states as a practical tool to manage removal processes or prevent people from absconding. However, when detention becomes prolonged or indefinite, it begins to raise human rights concerns, especially under the right to liberty and security. The law generally accepts that detention can be lawful, but only if it is necessary, reasonable, and not excessive in duration.

Courts have repeatedly emphasized that immigration control cannot override fundamental rights. Even when a person has no legal right to remain in a country, they still cannot be detained in a way that is arbitrary or disproportionate. This means the government must always justify why detention is needed and show that no less restrictive alternative is available. In recent immigration jurisprudence, courts have become more careful in reviewing cases where removal is delayed due to diplomatic, legal, or practical barriers, stressing that detention cannot continue indefinitely without a realistic prospect of deportation (United Nations High Commissioner for Refugees, 2023).

At the same time, governments argue that without detention powers, immigration systems could become ineffective. They often claim that detention helps ensure compliance with deportation orders and prevents individuals from disappearing into society before their cases are resolved. This is where the conflict becomes clear: efficiency in immigration enforcement versus protection of individual rights.

The High Court and other reviewing courts try to manage this conflict through the principle of proportionality. This principle asks a simple question: is the level of detention being used more than what is necessary to achieve the government's aim? If the answer is yes, then the detention may be declared unlawful or excessive. Courts also consider whether the government has properly reviewed detention over time, rather than relying on outdated reasons to keep someone in custody.

Another important factor is vulnerability. Courts are increasingly aware that some detainees may have mental health issues, trauma, or other conditions that make detention more harmful. In such cases, even if detention is legally allowed, it may still violate human rights standards if it causes unnecessary suffering or is not properly justified in light of the person's condition (European Union Agency for Fundamental Rights, 2024).

In simple terms, the tension between immigration control and human rights is about drawing a fair line. Governments need tools to manage migration, but those tools must not go so far that they violate basic human dignity and freedom. Courts exist to make sure that this balance is not ignored in practice.

fundamentally, this tension shows that immigration law is not only about rules and enforcement, it is also about fairness, humanity, and accountability. The legal system continues to evolve as courts respond to real-life cases where the impact of detention raises serious questions about justice and proportionality.

6. Challenges in Judicial Oversight

Even though the High Court plays an important role in reviewing immigration detention decisions, its ability to fully protect individuals is not always straightforward in practice. Judicial review is meant to act as a safeguard against unlawful detention, but several real-world problems can weaken how effective it is.

One major challenge is delay in the justice system. Immigration detention cases often require urgent attention because they involve loss of liberty. However, court processes can take time due to filing requirements, hearings, and backlog of cases. During this

waiting period, a person may remain in detention even where there are strong doubts about whether continued detention is lawful. This delay can reduce the practical value of judicial protection, especially in urgent liberty cases (Alder, 2024).

Another key issue is limited access to legal representation. Many detainees struggle to get immediate or quality legal support. Without a lawyer, it becomes difficult to prepare strong arguments or understand complex immigration procedures. This creates an imbalance between the individual and the state, since immigration authorities usually have legal teams and institutional resources. Studies on detention systems in Europe show that lack of legal aid is one of the main barriers to effective judicial oversight (European Council on Refugees and Exiles, 2023).

There is also the problem of complex and technical legal procedures. Judicial review is not a simple appeal; it requires strict legal grounds such as illegality, unfairness, or irrationality. For many detainees, especially those without legal training, it is difficult to meet these requirements. As a result, some potentially unlawful detention cases may never reach a full court hearing.

Another challenge is limited enforcement speed after court decisions. Even when the High Court rules that detention is unlawful or requires reconsideration, administrative authorities may take time to implement those decisions. This delay can reduce the immediate impact of judicial protection and prolong uncertainty for the affected person (UK Parliament Justice Committee, 2024).

Judicial oversight is also influenced by the principle of institutional restraint. Courts often avoid interfering too deeply in immigration policy because they recognize that border control is mainly a responsibility of the executive government. While this respect for separation of powers is important, it sometimes means courts only intervene when there is a clear legal error, rather than questioning broader policy concerns.

Another challenge is the changing nature of immigration rules. Immigration laws and policies are frequently updated due to political, security, or economic reasons. This makes it harder for courts to apply consistent standards, especially in cases involving long-term or indefinite detention where policies may shift during the legal process (Migration Observatory, University of Oxford, 2025).

Finally, there is the human impact of prolonged litigation. Even when judicial review is available, the process itself can be stressful and slow. Detainees may experience anxiety, uncertainty, and emotional distress while waiting for legal outcomes. This shows that legal remedies do not always fully protect the lived experience of individuals affected by detention.

Therefore, these challenges demonstrate that while judicial oversight through the High Court is a strong legal safeguard, it is not perfect. Practical barriers such as delay, limited legal access, and administrative constraints can reduce how effectively it protects liberty and due process in immigration detention cases.

7. Conclusion

Indefinite immigration detention remains a serious legal and human rights concern because it directly affects a person's freedom without a clear or fixed end point. While governments may rely on detention as part of immigration control, it becomes problematic when it continues for too long without a realistic plan for removal. At that point, detention risks becoming unfair, excessive, and inconsistent with the basic idea of liberty and due process.

This review has shown that the High Court, through judicial review, plays an important role in addressing this problem. It acts

as a legal safeguard by checking whether immigration detention decisions are lawful, reasonable, and properly justified. Where detention is found to be excessive or no longer necessary, the court can step in to protect the individual's right to liberty and require the government to reconsider its actions.

However, the discussion also shows that judicial review alone is not enough to fully solve the problem of indefinite detention. In practice, delays in court processes, limited legal access, and administrative inefficiencies can reduce how quickly or effectively justice is delivered. This means that some individuals may still experience prolonged detention even while legal challenges are ongoing.

The balance between immigration control and human rights remains delicate. Governments have a duty to manage borders and enforce immigration laws, but this must always be done within the limits of fairness and legality. Courts continue to play a key role in maintaining this balance by ensuring that state power is not used in a way that undermines fundamental rights.

Moreso, the main message of this review is that liberty should not be left uncertain. Even in immigration matters, every detention must have a clear legal reason, a fair process, and a reasonable time limit. Where these conditions are not met, judicial review remains an important tool for protecting individuals and upholding the rule of law (UN Human Rights Council, 2024).

Furthermore, strengthening legal safeguards, improving administrative efficiency, and ensuring better access to justice are necessary steps toward reducing the risks associated with indefinite immigration detention and making judicial oversight more effective in practice.

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