Sonargaon University (SU)

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On
Preventive Detention and Violation of Human Rights: Bangladesh Perspective.

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Submitted By

Omar Faruk Sajib

ID No. LLM2103024009

Program : LL.M. (1 Year)

Department of Law

Sonargaon University (SU)

Submitted To:

Deedarul Islam Bhuiyan

Head of the Department

Department of Law

Sonargaon University (SU)

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Letter of Transmittal

To

Deedarul Islam Bhuiyan

Head of the Department

Department of Law

Sonargaon University (SU)

Subject: Submission of Research Monograph on "**Preventive Detention and Violation of Human Rights: Bangladesh Perspective."**

Dear Sir,

This is a great pleasure to submit the Research Monograph on **"Preventive Detention and Violation of Human Rights: Bangladesh Perspective."** as a partial requirement for the fulfillment of my LLM course under the Department of Law of the Sonargaon University (SU).

I have given due efforts to make this Research Monograph as fruitful one and to make it as informative as possible. I hope that this paper will not be the formality of academic course completion rather it will be a source of information for other purpose on this topic.

Yours sincerely

.....

Omar Faruk Sajib

ID No. LLM2103024009

Program : LL.M. (1 Year)

Department of Law

Sonargaon University (SU)

Declaration

I do hereby declare that the Research Monograph Title **"Preventive Detention and Violation of Human Rights: Bangladesh Perspective."** prepared solely by me and which has been submitted to the department of Law, Sonargaon University (SU) for achieving the LL.M. (1 Year) Degree. This is an original work of nine. No part of this research, in any way of or in from, has been submitted to any University or Institution for any Degree, Diploma or for other similar purposes.

.....

Omar Faruk Sajib
ID No. LLM2103024009
Program : LL.M. (1 Year)
Department of Law
Sonargaon University (SU)

Supervisor Certificate

This is to certify that the work presented in this dissertation is based on the work, carried out by the author herself under my supervision in Department of Law, Sonargaon University (SU).

It is also certifying that the work presented here is original and suitable for submission as the style and contents, for fulfillment of LL.M. program.

.....

Deedarul Islam Bhuiyan

Head of the Department

Department of Law

Sonargaon University (SU)

Acknowledgement

***In the name of Allah, the Beneficent, the Merciful".**

Praise by Allah & thanks to Allah for patronizing me to finish this Research Monograph. I am very happy to finish it. It is a great Research of my life. It is a long cherished hope of my life to become a great lawyer. That's why I have admitted in the Department of Law in Sonargaon University (SU) to fulfill my dream. But through my whole study life in this field, I did not get much more opportunities to examine and show my knowledge and skill in this wide field. Lastly I have got a great chance to make my study meaningful when I got the chance to prepare a Research Monograph on **Preventive Detention and Violation of Human Rights: Bangladesh Perspective.**

I acknowledge my grateful to respected course teacher **Deedarul Islam Bhuiyan** for instructing me how to prepare a Research Monograph and his famous Books lectures on this subject help me to complete my task sincerely.

I am also thankful to my classmate as they help me to complete the Research Monograph. I am extremely paying my solitude to all the authors and writers whose works help me to draft this original Research Monograh.

We are indeed thanks to everyone who inspired us to write this Research Monograh.

Thank you

Omar Faruk Sajib

Executive Summary

Preventive detention is the most debatable issues of law in our country. Preventive detention means detention of a person without trial and without conviction by a court, but merely on suspicion in the minds of the executive authority. The violation of human rights has started from very beginning of our civilization. It is being made in culture of violation of human rights through preventive detention all over the world, specially in the third world countries. It is sorry to mention that Bangladesh is one of them. In my paper discussion I want to highlight its definition, history, its nature and justification, our constitutional safeguards and to put some recommendations to protect the human rights violation through preventive detention. In this paper I would like to show how Preventive detention infringes the human rights i, e rights of a person and liberty of a citizen due to misapplication of Preventive detention in Bangladesh and in what extant such right is violated, drawbacks of preventive detention, validity of the preventive detention and finally to stop the misuses of preventive detention in order to protect personal liberty from invasion, which is the basic human rights of citizens. It also examines social necessity of the law of the preventive detention for our country. Preventive detention should be used sparingly only in exceptional circumstances.

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Chapter 1

INTRODUCTORY CHAPTER

1.1 Statement of the problem

Preventive detention means detention of a person without any trial or conviction by a court, but merely based on suspicion in the minds of the executive authority that one might be a threat to peace and security. The violation of Human rights has started from very beginning of our civilization. It is being made in culture of violation of human rights through preventive detention all over the world, especially in the third world countries

The main objective of an elected government is to maintain the law and order. And to do this many government has taken many steps. Preventive detention is one of such steps. But this has drawbacks as well. With the protection of the preventive detention many governmental agency is harassing people in unlawful manner. To use the actual protection and benefits of the preventive detention government must play the vital role.

This research aims to examine the negative impact of preventive detention on our society by scrutinizing various leading decisions by the Supreme Court. It also tries to examine the need for amendment of the preventive detention laws of Bangladesh. Overall, this research provides insight into how the structure of political institutions interacts with legal frameworks during emergencies to contribute to the formulation of preventive detention systems. The findings of this investigation are instructive for answering a number of questions regarding the relationship between decision-making and the protection of human rights.

1.2 Research question

1. Is Preventive detention a violation of Human Rights?

1.3 Objectives of the Study

Choosing objects for this research is very important to identifying the aim and objects of this research. This Study is helpful to find out the problems faced in the preventive detention process in Bangladesh. It is highlight some leading cases regarding preventive detention. This Study is highlight the constitutional as well as the judicial safeguards of preventive detention in Bangladesh. It is to make recommendations to improve the current preventive detention process in Bangladesh and also point out suggestions to reform the laws related to preventive detention.

1.4 Limitation of the Study

Though there are huge information's in text books, journals and in internet it's not sufficient. I have to also give concern about time and cost. Furthermore, the present study is undertaken as part of fulfillment of the requirements of LLB degree. The researcher gets only one month to complete the research. Moreover, the research is directed to be within prescribed word limit. Therefore, there is not much scope for doing a comprehensive study. Yet, I try my best to fulfill the objectives set out in the present study.

1.5 Scope of the Study

The present study projects focus on preventive detention and violation of human rights in criminal justice system in Bangladesh. In doing so, the present study firstly makes an endeavor to substantiate the proper knowledge about preventive detention, arbitrary arrest by law enforcing agency and violation of human rights. Secondly, the present study makes an analysis on laws related to preventive detention. Thirdly, the present study gives an outline and makes a critical evolution of the existing law regarding preventive detention in criminal justice system in Bangladesh. Finally, the study makes a humble effort to draw some suggestions, arrived at the conclusion of the present study.

1.6 Analytical Framework

My dissertation is about an analysis on preventive detention and violation of human rights: Bangladesh Perspective. This dissertation has some criteria and the chosen criteria for this thesis

will be analyzed. So for the purpose of the study, the chronologies of chosen criteria are as follows:

The methodology of the present research work include- Review of related literature and examination of important principle document, law Book and Based, Journals, law ripcord DLR, ILR, Periodicals and Judicial precedence concern with preventive detention in Criminal Justice System. Research method of documentary analysis or content analysis has used which has helped me to focus the concept of preventive detention in existing laws and to find out the demerits of the present preventive detention system in Bangladesh. Side by side the analytical research method has helped to find out the purpose of the study, relevant judicial decisions have been collected from various sources and analysis to identify the main trends on the issues.

1.7 Review of the Literature

Justice Latifur Rahman state that The paper aims to show how the rights violated through Preventive Detention because, it is mostly used for violation of rights of an individual according to Constitution of Bangladesh.

In my paper, discussion I want to highlight its definition, jurisdiction and our constitutional safeguards.[1]

Md. Abdul Halim, ***state that*** author in his article discussion, he wants to highlights its definition, history, nature, justification and some recommendations to protect the human rights violation and how to maintain the rules of our Constitution.

In my paper, I include some recommendations against the preventive detention. So that, it cannot be enforced.[2]

. S. PirzadaSharifuddin state that**,** author in his book he only highlights the violation of human rights in Bangladesh India and Pakistan.

[1]Justice LatifurRahman, *The Constitution of The People's Republic of Bangladesh with Comments & case-Laws, 2nd ed.,* (Dhaka: Mullick Brothers, 2005).
[2]Md. Abdul Halim, Constitution, *Constitutional law and Politics: Bangladesh Perspective, 3rd ed., (Dhaka: CCB Foundation, 2008),*

In my paper, I highlight the Constitutional analysis of preventive detention and some remarkable cases with Pakistan Constitution. [3]

remarkable cases with Pakistan Constitution.

M. Faizuddin and M.A Hanna state that**,** this article shows some legal cases regarding preventive detention and constitutional safeguards and some recommendation to improve the process of preventive detention in Bangladesh.

In my paper I describe the recent development of arbitrary arrest and torture with Human Rights.[4]

Quazi Reza-ul Hoque state that**,** author in his paper he deals with origin and development of preventive detention legislation in Bangladesh. The Study of investigates the preventive detention legislation and its impact over the fundamental rights of the citizens in Bangladesh.

In my paper, I describe the judicial relief and role of Supreme Court regarding preventive detention.[5]

Md. Ashraful Arafat Sufian state that, Our political system also tried to ignore our rules of preventive detention and they still avoid the rules. They abuse their power. It is really bad effect for our country people.[6]

This study is based on an analytical approach and critical appraisal of judicial decisions of the Supreme Court of Bangladesh. For the purpose of the study, relevant judicial decisions have been collected from various sources and analyzed to identify the main trends on the issue. The study has also reviewed the existing legal framework on arrest, detention and torture under both national and international law. My research monograph

[3]S. PirzadaSharifuddin, *Fundamental Rights and constitutional Remedies in Pakistan, 1st ed., (Lahor: All Pakistan Legal Decisions, 1966),*

[4]M. Faizuddin and M.A Hanna, *Protection of Human Rights in Criminal Justice Bangladesh Perspective, Research Project 1998,*Rajshahi University,

[5]Quazi Reza-ul Hoque*, Preventive Detention Legislation and Judicial Intervention in Bangladesh*, 1st ed., (Dhaka: Bishwa Shahittya Bhavan, 1999),

[6]Md. Ashraful Arafat Sufian*, 'Preventive Detention in Bangladesh: A General Discussion', Bangladesh Research Publication Journal*, Volume: 1, Issue: 2,

is totally based on the books, articles, and journals, newspaper reports, reports by many Human Right Organizations and internet survey. In my research monograph I will take help from national statutory provisions, case laws, website, international journals and the help from my supervisor. The legislation governing the administration and management of the preventive detention in Bangladesh is enumerated as The Special Powers Act -1974, The Code of Criminal Procedure -1898, The Emergency Power Rule -2007 and Article-33 of the Constitution of Bangladesh. The Special Powers Act provides provision regarding preventive detention, article-33 of Constitution of Bangladesh provides safeguards against preventive detention and section 54 of CrPC says about the general Power of Arrest by Police. Besides these, Constitution of India, The Penal Code of 1860, The Security Act-1952, The East Pakistan Public Safety Ordinance-1958, Arms Act-1878, the Explosive Substances Act- 1908 and the Emergency Powers Act, 1975 have also been scrutinized by the researcher for additional information to enrich the study.

1.8 Structure of the thesis

Second chapter deals with the concept of preventive detention, which includes definition, development of preventive detention, Nature and Justification of Preventive Detention, Preventive detention and human rights, Preventive detention and Punitive Detention.

Third Chapter deals with the Preventive Detention under the Constitution of Bangladesh and Other Statutory Law. Which includes Preventive detention in the light of Bangladesh Constitution, Constitutional Safeguards against preventive detention, Approval by advisory board, Communication of Grounds of Detention, Right to Representation against the orders of Detention, Preventive Detention under the special Powers Act, 1974.

Fourth Chapter deals with the Violation of Human Rights by preventive detention and case studies on preventive detention, which includes Preventive detention and violation of Human Rights, Violation of Rights to life by Preventive detention, Violation of Rights to Liberty and freedom of movement, Discuss about the Some Case Studies

Fifth Chapter Deals with the Find out the some problem, and with includes Recommendation.

Chapter 2

CONCEPT OF PREVENTIVE DETENTION

2.1 Definition

Arbitrary arrest, detention and custodial torture by law enforcing agencies have remained a persistent feature of our 4 criminal justice system. Though the concept of Preventive Detention is acknowledged all over the world, no universal definition exists. The term preventive detention means a detention the aim of which is to prevent a person from doing something which is likely to endanger the public peace or safety or causing public disorder.

Preventive detention is a special from of imprisonment that is putatively justified for non-punitive purposes. According to "Black's law dictionary" preventive detention means confinement imposed upon a criminal defendant who has threatened to escape, possesses a risk of harm, or has otherwise violated the law while awaiting trial or on a mentally ill person who may cause harm".

Preventive detention means detention of a person without trial and without conviction by a court, but merely on suspicion in the minds of the executive authority. In *A.K. Gopalan v. State of Madras*[7], it was held that there is no authoritative definition of Preventive Detention. The word "Preventive" means that restrain, whose object is to prevent probable or possible activity, which is apprehended from a would be detent on ground of his past activities[8]. "Detention" means keeping back[9]. Preventive detention means detention of a person only on suspicion in the mind of the executive authority without trail, without conviction by the court.[10]

The detention, the aim of which is to prevent a person from doing something which is likely to endanger the public peace or safety or causing public disorder.[11] Preventive detention is an abnormal measure whereby the executive is authorized to impose restrain upon the liberally of a

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7 AIR 1950 SC 27

8 *Sunil Kumar Sammaddar v. Superintendent of Hoagly Jail* 75 Cal WN 151.

9 *Alamgir v. The State AIR* 1957 at p. 285.

10 Patel, T; "Personal liberty under the constitution of India" Jain Publisher, Delhi (1993) at p. 48.

11 Chowdhury, Badrul Haider; "The long Echocs," Publisher: Naima Haider (Dhaka, 1990) p.3.

man who may not have committed a crime but who it is apprehended, is about to commit acts that are prejudicial to the public safety etc.[12,]As David H.

Bayley said "A law of Preventive detention sanctions the confinement of individuals in order to prevent them from engaging in forms of activity considered injurious to the community and the like hood of which is indicated by their past action"[13]

According to Article 3 of *the Special Powers Act-1974*, if the concern executive authority is personally satisfied that there is sufficient cause of suspicion against any person of committing any of the acts prohibited by the Special Powers Act, he can give order for punitive detention.

So preventive detention means the confinement in a secure facility of a person who has not been found guilty of a crime. We can also say that preventive detention is holding of an accused in the custody of a law enforcement agency, to prevent the accuser's escape or risk of harm to others.

2.2 Development of Preventive Detention

In *R. v. Halliday*, the expression, the word Preventive detention was used in Britain first time. Preventive detention was first introduced in our sub-continent in1818 by the Bengal State Prisoners Regulation iii. Under this regulation the Governor-General was authorized to order detention and for this purpose he was invested with wide discretion; the jurisdiction of a court of law to question the legality was barred. Under this regulation detention order could be made only on grounds connected with the maintenance of public order and a person could be detained without trial for an unlimited period. The Presidencies of Madras and Bombay made similar regulations in 1819 and 1827. Later on under the authority of *the Government of India Act, 1919* several emergency Power Ordinance were promulgated. Also the Anarchical and *Revolutionary Crimes Act, 1919* popularly known as the Rowaltt Act was passed. In 1935 through Government of India Act, provided for scope of Preventive detention and under the Defense of India Ordinance was promulgated. Afterward it was transferred into the Defense India Act 1939 and continued during the period of the World War ii and was in force till 6 months after the war ended in 1945.

Besides the two instrument i.e. *the Defense of India Act, 1915 and of 1939* of First and Second World War dealing with preventive detention in in war time several ordinances dealing with

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12 Brohi, A.K.; "Fundamental Publisher, Karach) at p. 424.

13 Balyley, David H, "*Public liberties in the New States" Cambridge i*3rd ed. (University Press, 1958), p. 23.

Preventive detention were promulgated both under the *Government of India Act of 1919 and of 1935*.Needless to say that these preventive laws in peace time which are alien to the British systems, were made and used by the British rules with a view to perpetuating their colonial interests and rule."Hundreds and thousands of Indians both Muslims and Hindus and almost all their leaders had suffered imprisonment or regours of these laws in some way or other. Particularly a detention without trial was considered by all during the Indian Independence movement as a crime against humanity"[14].

But it was the fact though it was unfortunate that after partition and independence both the Pakistan and India retained these laws in peace time. The Indian Constitution empowers the parliament to legislate on preventive subject to limitation laid down by Article 22.

In India the Preventive detention was enacted in 1950 as named "*Preventive Detention Act,1950*". Afterward it was amended and replaced by Maintenance of Internal Security Act, (MISA) 1971. Preventive detention also introduced by Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) 1974, *National Security Act 1980,* The Essential Services Maintenance Act (EMS) 1981, and lastly by the Terrorist and Disruptive Activities (Prevention) Act 1985.

In Pakistan through Public Safety Ordinance Act 1949[15], Public Safety Act (Amendment) 1950, Public Safety Ordinance 1952 and lastly *The Security of Pakistan Act* 1952 were provided Preventive detention in various ways. The constitution of Pakistan of 1956 and 1962 empowered and also constitution of1973 empowered parliament of Pakistan to enact Preventive detention laws.

Immediately after independence the constitution of Bangladesh was adopted on 4th November, 1972 and it came into force on 16th December, 1972. Taking the bitter experience of arbitrary arrest and detention under various preventive laws during the 23-year history of Pakistan into serious consideration the Constitution makers did not want to leave any scope for preventive detention.

In Bangladesh the original constitution, there was no provision in support of Preventive detention. But through 4th amendment by "*The Special Powers Act, 1974*" (9thFebruary) enacted Preventive detention act which was an anti-people black law still continuing. After enacting the

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14 Ahmed, Moudud, *Bangladesh: Era of Sheikh MujiburRahman*,3rd ed. (University Publication, 1983), p.100.

15 *The Liquor Licensing Amendment Ordinance,* (xiv) of 1949.

provision by the Special Powers Act, Sheikh MujiburRahman used Preventive detention against the tribal people of Chittagong Hill Tracts, and against the suspected members of JatioShomajtantirikDol and Shorbohara Party. President Ershad govt. used this Preventive detention against Awami League and BNP during his regime (1982-90). But unfortunately two elected party BNP Govt. (1991-95) and Awami League Govt. (1996-2001) used it to oppress the opposite party severely.

2.3 Nature and Justification of Preventive Detention

For every matter, there is nature and justification behind it. The nature of Preventive detention is different from the nature of punitive detention. The word Preventive detention is used in contradiction to the word punitive detention.[16]Few people have described both actions as restraint of individual's freedom and personal liberty [17].

When a person comes within the satisfaction of the government authority that a person is going to commit prejudicial acts [18], he may be detained by Preventive detention to defend him from doing that act. In Sasti v. State of West Bengal[1719], Indian Supreme Court elucidated the nature of Preventive detention as a detention of a person without trial in such circumstances that the evidence in possession of the authority is not sufficient to make a legal charge or to secure the conviction of the detent by legal proof but may still be sufficient to justify his detention. On the other hand, the philosophy lying behind the preventive detention is the greater interest and security of the state and nation because National Security is more important than the personal liberally of citizen. Justifying the measure Lord Atkinson in R. v. Halliday said, "…..where preventive justice is put in force some sufferings and inconveniences may be caused to the suspected persons. This is inevitable but the suffering is….inflicted for something much more important than his liberty or convenience, namely for securing the public safety and the defense of the realm",

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16 *Ibid*., p.56.

17 D. Feldman, *"Civil Liberties and Human rights in England and Wales"*, 4th ed. (Oxford Publications,1993), p.169.

18 *Section 2(f) of the Special Powers Act, 1974*.

19 *Section 2(f) of the Special Powers Act, 1974*.

In the same case Lord Finlay has said, "Any preventive measure even if they involve some restraint or hardship upon individuals, do not partake in any way of the nature of punishment, but are taken by way of precaution to prevent mischief to the state"[20].

Similar view also expressed by Lord Alfred Denning. He said, "If there are traitor in our midst, we cannot afford to wait until we catch then in the act of blowing up our bridges or giving our military secrets to the enemy, we cannot run the risk of living then at large, we must detention then suspicion"[20].

Regarding preventive detention the Indian Supreme Court observed, "That appears to have been done because the constitutions recognize the necessity of preventive detention on extraordinary occasion when control over public order, security of the country, etc., are in danger of breakdown. But while recognizing the need of preventive detention without recourse to the normal procedure according to law, it provided at the same time certain restrictions on the power of detention, both legislative and executive, which it considers as minimum safeguards to ensure that the power of such detention is not illegitimately or arbitrary used"[21].

2.4 Preventive Detention and Human Rights

Right against arbitrary arrest and detention is one of the important element of Human Rights emphasized by numerous international human rights instrument. Preventive detention, though an evil, is sometimes a necessity for state security. Although this detention has to be only under special circumstances and with accordance with the due procedure of law. Unlawful detention affects several other rights guaranteed by the Constitution consequently it violates Human Rights of a person.

Amongst the national institutions, the judiciary always comes in the forefront of the national systems for the protection of human rights. One of the main functions of the judiciary is to protect human rights guaranteed in constitutions and laws.

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[20] *Quoted by Brohi A. K. ibid* p.424. [(1917) AC 260]

[21] Denning, Lord Atfred, "*Freedom under the Law," Hamlyn Lecture Series London*5th ed. (University of Oxford, 1998) ,p.11.

In protecting human rights, the function of the judiciary is to oversee the way in which the diverse powers of government are exercised within the framework of laws and a set of values, and to protect individuals from arbitrary governmental action.[22]

Preventive detention is a serious encroachment upon the personal liberty of a person, for the simple reason that, unlike ordinary arrest or imprisonment, preventive detention is effected without trial. But in guise of preventive detention law, most of the times the executive authority exercise discretionary power regarding arrest and detention and violates human rights.

2.5 Preventive Detention and Punitive Detention

Punitive detention is the detention as a punishment for the crime committed by an individual. It takes place after the actual commission of an offence or at least after an attempt has been made. The time taken from actual offence to detention can vary in length. It is a punishment imparted to the wrongdoer and involves strict measures. The duration of such a detention depends on what the law stipulates for the particular offence.

Preventive detention is the detention made as a precautionary measure. This kind of detention can be made by the authorities even on a slight apprehension that the person can commit a crime. It is generally made for protecting the society from any future happening. It is not a punishment but a precaution. This detention comes to an end the moment the apprehension of danger ends.

[22] *Pankaj Kumar v. State of West Bengal, AIR* (1970) SC 97.

Chapter 3
PREVENTIVE DETENTION UNDER THE CONSTITUTION OF BANGLADESH AND OTHER STATUTORY LAWS

3.1 Preventive Detention in the light of Bangladesh constitution

In Constitution of Bangladesh (1972), Article 33 did not leave any scope for preventive detention. But by the second amendment of the Constitution, Article 33 was replaced by the present one. Preventive detention, though an evil, in a necessity for State security and by *the Constitution Act, 1973* the rights under Article 33 of the Constitution were curtailed under specific circumstances.

Art. 33(1) & (2) guarantee four rights to a person arrested. Any law or action not in conformity with those rights will be void and the arrest made will be unlawful. The four rights under Art. 33 are:

1. A person arrested must be informed as soon as possible of the grounds of arrest,
2. He must be allowed to consult and be defended by a lawyer of his choice,
3. He must be produced before the magistrate within twenty-four hours of arrest, excluding the time necessary for journey,
4. He must not be detained for a period longer than then twenty-four hours plus the time of journey without the authority of the magistrate.

But these four rights are not available to a person arrested or detained under a law providing for preventive detention.[23]Although Art 33(3), (5) & (6) provide three important safeguards in the case of preventive detention.

[23] Ch. Perelman, 'The Safeguarding and Foundation of Human Rights', *Journal of Law and Philosophy*, Vol. 1 (1982), p. 119-129.

3.1.1 Constitutional Safeguards against Preventive Detention

After the second amendment of the Constitution any person arrested or detained under any law regarding preventive detention will not have the rights conferred by Art. 33(1) & (2) of the Constitution. But the Constitution has itself put some restrictions in the exercise of those laws proving for preventive detention. In order to protect individuals from arbitrary arrest and detention the Constitution provided some safeguards against such laws and against the exercise of powers by the executive authority. Clause (4) and (5) provide three important safeguards for this purpose.

3.1.2 Approval by Advisory Board

The constitution of an Advisory Board for the purpose of reporting to the government its opinion whether a person should be detained for more than Six months may be said to have been introduced for the very reason that review by the Law Courts was excluded. This is no doubt, a special procedure but this shows that the person detained has not been left without any safeguard. The setting up of an Advisory Board to determine whether such detention is justified is considered as a sufficient safeguard against arbitrary detention under any law of preventive detention. Article 33 (4) provides that no law shall authorize detention for a period of more than six months and the period of six months can be extended only if an Advisory Board, before the expiry of six months, opinions that there is sufficient cause for detention. If no such affirmative opinion is given by the Advisory Board, the detenu has to be released on the expiry of Six months. In a writ of habeas corpus, the court is not required to wait for the opinion of the Advisory Board and should dispose of the petition if it is otherwise ready for hearing.[24]

The Advisory Board is to be constituted with three persons, two of whom must be person who are, have been, or are qualified to be appointed as judges of the Supreme Court and the other must be a senior officer in the Service of the Republic.

The Advisory Board stands perhaps midway between the court and the executive. It has the power of going through the records of a case but it will not be bound to hear any arguments addressed by a counsel on behalf of a detained person. If it reports against detaining a person any further he will be at once set free. And no law can be passed for detention of a person exceeding

[24] *Art*. 33(3)(b), *The Constitution of the People's Republic of Bangladesh*.

six months unless the Board reports before the end of such a period that he may be detained for a longer period.

If the order, of detention is only for two months there is no scope for the Advisory Board to determine the 'Sufficiency of cause for his detention' and so the argument that a detainee is not entitled to pay for a writ of habeas corpus unless his case is referred to the Advisory Board is not tenable clause (4) of Article 33 contemplates detention for a specific period.

3.1.2.1 Communication of Grounds of Detention

Article 33 (5) says that the detained person right to know immediately 'the grounds on which the order has been made". The reason for the expression as soon as may be for furnishing grounds and the earliest opportunity for making a representation[25]indicates the extreme anxiety of the makers of the constitution to see that no person is detained contrary to the law enabling preventive detention or contrary to the safeguards provided by the constitution. Again the grounds served must be in a language that the detenu understands.[26]

There is a proviso to Art.33(5) which permits the detenu authority to refuse to disclose the facts if it considers it to be against the public interest.

3.1.2.2 Right to Representation against the orders of Detention

The detenu authority has to inform the detenu that he has a right of opportunity to make representation and failure to inform may render the continued detention illegal.[27] Article 33 (5) again provides that the detaining authority must afford the detenu the earliest opportunity of making a representation against his detention order. It is important to mention here that the third right, Right to make an effective representation depends on the second right, Right to communication of grounds. Article 33(5) provides that the detaining authority may refuse to disclose facts which such authority considers to be against the public interest to disclose. If all the relevant facts and particulars of the grounds, therefore are not supplied to the detenu it is not at all possible for him to make an effective representation and the right to make a representation

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25 *Dr. Habibullah v. Secy., Ministry of Home,* 41 DLR 160

26 *GhulamAzam v. Bangladesh,* 46 DLR 29

27 *HariKisna v. Maharashtra,* AIR 1962 SC 911

becomes illusory. It is therefore for this provides of Article 33(5) that the second and third constitutional rights of a detenu have become quite meaningless.

3.2 Preventive Detention under the *Special Powers Act, 1974*

The basic content of the Act lies in section 3, which enables the government to detain any person in custody under the disguise of preventive detention. The parliament on February 9, 1974 enacted this black law, *Special powers Act, 1974* containing the provisions of preventive detention.

Some important sections of the *Special Powers Act 1974*, which is related to the prevention detention, these sections are following bellow

Section-3: Power to make orders detaining or removing certain person

Section 3 of the Act lays down the substantive power and conditions of an order of detention. Sub-section (1) of section 3 of the Act empowers the Government to order detention of a person on the satisfaction with respect to any person that with a view to prevent him from doing any prejudicial act.

Sub- section (2) of the same section empowers a District Magistrate or an Additional District Magistrate to order detention of a person after arriving at similar satisfaction to that of government for the same purposes.

Section- 4: Execution of Detention orders

Section 4 of the Special Powers Act provides that the order of detention passed under section 3 of the Special Powers Act shall be executed as provided in section 80 of the Code of Criminal Procedure. If section 3 of the *Special Powers Act, 1974* and section 80 of the Code of Criminal procedure are read together, it becomes abundantly clear that an order of detention passed under section 3 of *the special powers Act, 1974* must be served upon the detenu.

Section-8: Communication of grounds of order

Section 8 of the act requires the detaining authority to communicate the grounds of detention to the detenue within 15 days from the date of detention informing him at the same time that he has

a right to submit a representation in writing against the order of detention and also affording him an opportunity of submitting the representation at the earliest possible opportunity.

Section-9: Constitution of Advisory Board

Section 9 of the Act requires the Government to constitute an Advisory Board consisting of three persons of whom two persons are or have been or are qualified to be judges of the Supreme Court and the other person should be a senior officer in the service of Republic. This section also requires the Government to appoint one of the two members who are or have been or are qualified to be judges of the Supreme Court as Chairman of the Advisory Board.

Section-10: Reference to Advisory Board

Section 10 of the Act requires the Government to place the grounds of detention and the representation, submitted by the detenue before the Advisory Board within one hundred and twenty days from the date of detention.

Section-11: Procedure of Advisory Board

Section 11 requires the Advisory Board to consider the grounds of detention, the representation submitted by the detenue, any other information which it may deem necessary and after allowing the detenue an opportunity of being heard to submit a report to the Government as to the propriety or otherwise of the detention within one hundred and seventy days from the date of detention of the detenue.

Section-12: Action upon the Report of Advisory Board

In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of the person concerned, the Government shall revoke the detention order and cause the person to be released forthwith[28].

In the case, Board's opinion regarding detention-opinion of the Advisory Board is given under section 12 and section 12 says that Government may confirm the detention order but if the Advisory Board gives the opinion that there is no case for detention then the Government shall revoke the detention[29].

In another case of the detenu not placed before the Advisory Board within 120 days from the date of detention Government failed to show that in accordance with provision of section 12(1)

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[28] *Jayendra Thakur v. India, AIR* 1999 SC 3517

[29] Nirmal Chandra Paul, *The Special Powers Act*, 1st ed. (Dhaka: Shams Publications, 2008), pp. 105-6.

of the Act the Advisory Board reported that there was sufficient cause for detention of the detenu-Detention held illegal[30].

3.3 Emergency Power Rule-2007

The government formulates the Emergency Power Rule-2007[31] as per the power given under section 3 of the Emergency Power Ordinance, 2007 and it came into operation from 12 January 2007. Rule 14, 15, 16 and 21 deals with the provision of preventive detention and it gives a wide range of powers to the executive authority to detain a person merely on suspicion on their mind.

3.*3.1 Provision related to preventive arrest warrant of warrant*

As per rule 21 of the Emergency Power Rule-2007, under the state of emergency, if it appears satisfactory or believable that a person has committed or may commit an offence under any act mentioned in this rule or rules 14 and 15, provisions related to the preventive warrant of arrest under *Special Power Act, 1974* may be applied against that person. As per rule 14 of the Emergency power Rule-2007, to safeguard the security and interest of the state and the people and to maintain discipline and peace, the law and order forces will play an active role in applying the Penal Code-1860[32], *Arms act, 1878*, [Explosive *Substances Act-1908*, Foreign Exchange Regulation Act-1947[33],

Special Powers Act-1974, *Narcotics Control Act-1990* and special other acts in restraining illegal arms, explosive substances, sabotage, hoarding, adulteration in drugs and food stuff, counterfeiting money and government stamps, black marketing, smuggling, narcotics and other crimes subversive of the security and economic life of the state and the people.

In Bangladesh, most of the developing countries, the laws regarding Preventive Detention has been used as a weapon to dominate, crash the opposition and to perpetuate rule. After achieving our independence, there are no situations of war or internal aggression or internal disturbance which are threatening our security but Art. 33, *The Special Powers Act, 1974* and Emergency

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30 *Md. Anwar Hossain v. State*, 29 DLR 15.

31 *Md.GolamHossain v. State*, 54(1991) BLD 37.

32 *Ordinance No. 1 of 2007*

33 *Constitution of the People's Republic of Bangladesh Act No. vi of 1908*

Power Rule-2007 are still being used to suppress anti-government movement and sometimes democratic movement also.

3.4 Bad Sides of Preventive Detention

It is true that most of the developing countries used the preventive detention as a weapon to dominate, crash the opposition and to perpetuate rule. After achieving our independence, there are no situations of war or internal aggression or internal disturbance which are threatening our security but the *Special Powers Act*, 1974 is using still to suppress anti-government movement and sometimes democratic movement also. [34]

Firstly, in Bangladesh without trial six months detention can confer to the detainee. This is a bad process because now here in the world such along period is not found anywhere. In India, this time is three months and in Pakistan the initial period of detention is three months.

Secondly, in democratic countries preventive detention is a method resorted to in emergencies like war. The western developed countries like USA, UK, and Singapore, it is specifically mentioned that only in time of emergency, Preventive detention is applied for and also for specific purposes, but there is no specification in our constitution and can be restored to in times of both peace and emergency.

Thirdly, we have not a fixed maximum period of detention not in our Constitution or in *the Special Powers Act* 1974. This is also a negative aspect of Preventive detention. In Pakistan the period of Preventive detention is eight months in a year and in India maximum two years.

Fourthly, in Bangladesh a large number of political workers and leaders are detained without trial through the preventive detention under *the Special PowersAct* 1974 and known as a "Black Law". But this picture of detention without trial is not found in western countries where this preventive detention also exists.

Fifthly, the Preventive detention under the *Special Powers Act* is keeping in line with the maintenance of *Indian Security Act*, 1971 and the *East Pakistan Public Safety Act*, 1958. But in Bangladesh the provision relating to Preventive detention made more draconian than those of

[34] Md. Ashraful Arafat Sufian, 'Prevntive Detention in Bangladesh: A General Discussion', *Bangladesh Researcher Publication Journal*, vol.1, no.2, (Aug.2008), p.166-176.

twos. By 44th amendment the process of Preventive detention made something democratic in Indian constitution.

Sixthly, police officer after arresting any person prays before Magistrate court for remand and in maximum cases police gets remand and starting bodily, mentally torture which is a violation of international human rights law.

Seventhly, there is nothing entitled against whom a detention order has been made to appear by lawyer in any matter connected with the reference to the Advisory Board, and its report excepting that part of the report in which opinion of the Advisory Board is specified shall be confidential.

Eighthly, if any person is actually criminal that he or she would be arrested under general law and Magistrate can punish him or her but if it is happen then he or she must bring before Magistrate within 24 hours. But not to bring within 24 hours before Magistrate, a suspected is arrest under *the Special Powers Act* 1974. Because by this a person without bring before Magistrate can put in prison month after month.

Ninthly, many suspected people who are not actually criminal, for wrong information they kept inside the jail. Among them who are rich come outside through writ of *Habeas Corpus* in High Court Division but those who are poor, they have no chance.[35]

3.5 Demerits of the Preventive Detention Law and Its Impact over the Constitutionalism in Bangladesh

Firstly, both in Pakistan and Indian constitution the in initial period of detention is 3 months .But in Bangladesh constitution the initial period 6 months. Nowhere in the world such is a long period of initial detention found.

Secondly there should be a fixed maximum period of detention. In Pakistan under article 10(7) a person can not be detained more than 8 months in a year In India the maximum period 2 years. But neither the constitution of Bangladesh nor *the Special Powers Act* specifies any fixed period .It means that a person can be detained for an indefinite period once the advisory opines that there exists sufficient cause for such detention.

Thirdly, in democratically developed countries like USA it is specifically mentioned that only in time of emergency preventive detention law would be applied. But in our constitution no such specification is provided for. As a result, preventive detention law has been an integral part

[35][http://www.bdresearchpublications.com/,last visited on 15 November 2017]

of our constitution and every government is using this law as a permanent weapon to crash down opposition and throttle personal liberty guaranteed by the constitution.[36]

[36][http://books.google.com.bd/,last /last visited on 17 November 2017]

Chapter 4

VIOLATION OF HUMAN RIGHTS BY PREVENTIVE DETENTION AND CASE STUDIED ON PREVENTIVE DETENTION

4.1 Preventive Detention and Violation of Human Rights

Right against arbitrary arrest and detention is one of the important element of Human Rights emphasized by numerous international human rights instrument. Preventive detention, though an evil, is sometimes a necessity for state security. Although this detention has to be only under special circumstances and with accordance with the due procedure of law. Unlawful detention affects several other rights guaranteed by the Constitution consequently it violates Human Rights of a person.

Amongst the national institutions, the judiciary always comes in the forefront of the national systems for the protection of human rights. One of the main functions of the judiciary is to protect human rights guaranteed in constitutions and laws. In protecting human rights, the function of the judiciary is to oversee the way in which the diverse powers of government are exercised within the framework of laws and a set of values, and to protect individuals from arbitrary governmental action.[37]

Preventive detention is a serious encroachment upon the personal liberty of a person, for the simple reason that, unlike ordinary arrest or imprisonment, preventive detention is effected without trial. But in guise of preventive detention law, most of the times the executive authority exercise discretionary power regarding arrest and detention and violates human rights.

[37] *The Narcotics Contract Act,1990.*

4.1.1 Violation of Rights to Life by Preventive Detention

'Life' within the meaning of Art.31 means something more than mere animal existence.[38] It includes the right to live consistently with human dignity and decency, right to the bare necessities of life such as adequate nutrition, clothing and shelter and the facilities for reading, writing and expressing oneself its diverse forms, freely moving about and mixing and commingling with fellow human beings[39] and all that which gives meaning and content to a man's life[40]including tradition, culture and heritage.

According to a leading news daily of Bangladesh, country's 68 jails[41], which are designed to detain 34,147 inmates but currently they are holding 71,606.[42] Preventive detention is not for punitive purpose, but the condition in which a person is detained is more than what punishment can be meant. So by detaining a person under preventive detention in jails, which are degrading for any human being to live in, is a gross violation to right to life of the detenu person.

4.1.2 Violation of Right to Liberty and Freedom of Movement

Article 32 of the Bangladesh Constitution ensures personal liberty to every person and Art. 36 ensures freedom of movement, which means every citizen shall have the right to move freely.

But by detaining any person under colorful exercise of the laws regarding preventive detention, the detaining authority violates these fundamental human rights. Again the laws regarding preventive detention itself has many lacunas which the executive authority often takes advantage of. In Bangladesh without trial six months' detention can conferred to the detainee. This is a bad process because nowhere in the world such a long period is not found. In India and Pakistan, the initial period of detention is three months.

Secondly, no maximum period of detention has been fixed by the Constitution or the Special Powers Act. So a person can be detained for indefinite period where the advisory board thinks it fit.

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38 Ch. Perelman, 'The Safeguarding and Foundation of Human Rights', *Journal of Law and Philosophy*, Vol. 1 (1982), pp. 119-129.

39 *Vikram v. Bihar, AIR* 1988 SC 1782. ibid

40 *Francis Caralie v Union Territory, AIR* 1981. ibid.

41 *H.P v. Uned Ram, AIR* 1987. ibid.

42 *Ramsharan v. India, AIR 1989. as cited in Mahmudul Islam,* ibid.

Also in Bangladesh there is no specific time when preventive detention law can be applied. It can be applied in both peace time and emergency time. However, in most democratic countries Preventive detention is a method resorted to in emergencies like war. The western developed countries like USA, UK, and Singapore, it is specifically mentioned that only in time of emergency, Preventive detention is applied for and also for specific purposes, but there is no specification in our constitution and can be restored to in times of both peace and emergency.

Moreover, in Bangladesh the Government frequently uses the police for political purposes and provided immunity to members of security forces. There are wide spread corruption allegations and a severe lack of resources, training, and discipline amongst the detaining authorities present. Bangladesh has a large number of political workers and leaders detained without trail through preventive detention under *the Special Powers Act 1974*, which is a great violation of right to liberty and freedom of movements. On 7 September 2000 a three-member Sub-committee of the Parliamentary Standing Committee submitted a 31-page report on SPA to the Parliament, in which it mentioned that 69,010 people were detained under SPA of 1974 in the last 24 years and 68,195 persons were released by order of the High Court Division.[43]

Special Powers Act has become a draconian law because of its unconstitutional provisions and also its unlawful use by detaining authority. Special Powers Act is a draconian law because under this Act,

- A detainee has not given any right to know the grounds for which he is detained through the judicial body.
- Secondly, the Govt. can arrest and detain any person at any time.
- Thirdly, the Govt. can detain a person for an indefinite period of time if wishes.
- It is against the commitment and spirit of the Constitution and human rights.

4.1.3 Violation of Right to Freedom from Torture and Cruel, Inhumane or Degrading Treatment

Under the Special Powers Act Govt. can use the police officers to arrest any person. And it is a common practice amongst the police to inflict bodily and mental torture or cruel treatment of the persons detained.

[43] Dhaka Tribune, Bangladesh 'Arrest spree punishes prisons' [http://www. dhakatribune.com/ bangladesh/2015/feb/08/arrestspreepunishesprisons#sthash.hdF1Fswe.dpuf, last visited decmber 19, 2017.]

In spite of constitutional guarantees and protection under International Bill of Rights, such as UDHR [44] and ICCPR the police often in the name of state security detain any person they wish and use torture and cruel treatments in the name of getting information from them.

An example of the scale of the problem is the four-week crackdown on May 28, 2008 resulting in the arbitrary arrest and detention of more than 50,000 Bangladeshis. Media reports indicated that most persons arrested were subjected to same from of ill-treatment, including beating and that torture was also used on a significant number of detainees, during which the police extracted money or confessions.

4.1.4 Violation of Right to Fair Trail

When a police officer arrests a person under sec. 54 of the CrPC, then the arrested person must be produced before the magistrate within 24 hours of such arrest. But if the Govt. wants to detain any person under sec. 3 of the SPA and makes an order for such detention, the police can put him into prison for 6 months without producing him to any Judicial or Executive authority.

Moreover, many suspected people are detained under wrong information. And most of them don't possess the means to go to the judicial body to seek remedy. Only the rich can go to the High Court Division and get remedy by instituting the writ of Habeas Corpus.

Art. 33(5) requires that the grounds of detention must, as soon as may be, be communicated to the detenu and the detaining authority must afford him the earliest opportunity of making a representation against the order of detention.[45]It is very important because it not only enables the detenu to make the representation, but also enables him to file a proper application for a writ of Habeas corpus. But there is a proviso to Art. 33(5) and also Section 8(1) of the SPA, 1974 permits the detaining authority to refuse to disclose the facts which it considers against the public interest. However, the ambit of public interest has not been defined, so this proviso is often used as an exploitation tool and in denying right to fair trial.

4.1.5 Freedom of speech and expression

Human rights defenders and professionals, including from media, were regularly being monitored, threatened and intimidated by the personal of the country's armed forces and various

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44 *The Bangladesh Today*, 19th February 2005.

45 *Article, 5*

intelligence agencies. The democratically elected government does not always have the scope to utilize the emergency provisions for doing the above misdeeds.

However, in the name of SPA and anti-terrorism Act, it has arrests various persons, inflicts torture on some of them and threatens everyone who wish to speak against the Govt. of order of preventive detention against them.

The condition of overall Human Right condition is not up to the mark in Bangladesh. Even where necessary legal reforms have been made to avoid injustice and protect the fundamental human rights, the unwillingness and incapability of the executive authority had not made the protection a reality. So the horrific use of a draconian law such as SPA 1974 can be easily being presumed. This blackest of the black is the cause of most human right violations in Bangladesh and throughout the world.

CASE STUDIED ON PREVENTIVE DETENTION

4.2 Some Leading Cases Regarding Preventive Detention

When a person is detained under any law regarding preventive detention, he can file a writ petition against such order in the High Court Division under Art. 102 of the Constitution. Generally, most cases of detention order are quashed by the Supreme Court. Some leading cases regarding preventive detention has come to time in exercising this constitutional right to seek remedy from the apex court. Some of the leading cases regarding preventive detention are:

4.2.1Farzana Haqvs Government of Bangladesh[46]

Facts of the case

SanaulHuqNiru was arrested and detained first on 13th September 1987 under SPA. His detention order was challenged and the Court directed that the detention order was illegal and ordered the release of the detainee. He was not released rather a fresh detention order was passed against him under section 3 of *the Special Powers Act, 1974*. The same drama was repeated several times and ultimately his detention came up before a Division Bench of the High Court Division.

[46] 42 DLR (HCD) 346

Judgment

The Court ordered the detaining authority to pay regard to the order of the Court It decided that the detention was illegal and the detainee should be set at liberty forthwith. And this time the order war complied with by the detaining authority.

4.2.2 BilkisAkterHossain v. Governmen[47]

Facts of the Case

Dr. Khandakar Musharraf Hossain was arrested on the ground of delivering provocative speech.

Judgement

The court held that the detention was illegal and also held that there was a non-application of mind in giving the detention order. And in this case along with three other similar petitions, detention of four political leaders was held mala fide, and illegal. For the first time, the court awarded compensation of one lakh taka to each detenues.

4.2.3 Abdul LatifMirza v. Bangladesh[48]

Facts of the Case

Abdul LatifMirza was detained under the SPA 1974 on the ground of vehemently criticizing the fundamental principles of the government and also allegation was made that he is trying to over through the government through violent means.

Judgment

The Court held that the grounds on which the person is detained are vague and hence bad. The ground that he addressed public meetings criticizing fundamental principles of the government is not clear. Also the court denied that it amounts to a prejudicial act under the meaning of *the Special Powers Act 1974*.

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47 (1991)11 BLD 553

48 2 MLR 1997 113

4.2.4 Habiba Mahmud v. Bangladesh and Others[49]

Facts of the case

The appellant's husband, KaziMohamoodHossain, was arrested on August 20, 1991 in pursuance of an order of detention date August 18, 1991 under section (3) (1) (a) of *the Special Powers Act, 1974.*

In the grounds of detention it is stated that the detenu had been engaged in various anti-social and lawful activities, and for that there was resentment and hatred against him in the minds of the public. The detenu was previously detained twice from April 1982 to April, 1983 and from November 1984 to March 1985. In November 1988 another order for his detention was passes, but the detenu evaded arrest by going over to India. For his oppressive and terrorist activities the detenu was suspended form the post of chairman of kotwaliparaupozila. So that nobody dares raise any objection against him, the detenu organized an armed illegal bahini known as the Special Army and that bahiniis still existing.

Judgment

In view of the above, I hold that the detenuKaziMahmoodHossainMontooKazi is being detained without lawful authority. The judgment and order of the High Court Division is set aside. The appeal is allowed, but without any order as to costs. The detenu be released forthwith, if not wanted in connection with any other case.

4*.2.5 TaheraNargisSayed v. DIG Prison, Dhaka*[50]

Facts of the case

In this case, to defy an order of the HCD declaring a preventive detention illegal, a fresh order of detention was served and thereby the petitioner's husband was deprived of his liberty in defiance of the order of the Highest Court. Even before the release order was served, the detenue was served with fresh order of detention. The DIG prison was accused of delaying the release and in the meantime informing the government about the release order so that government can issue fresh order of detention.

Judgment

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[49] 31 DLR(AD) 1979

[50] 45 DLR (AD) (1993)

The jail authority is not the detaining authority rather they are custodian of the body of the detenue and they could not allow the detaining authority to serve fresh order within the jail premises which was effect of thwarting the order of this court. They must advice the Special Branch official to move out of the jail and do what they wanted to do after the detenue is completely emancipated from the custody of the jail authori

4.2.6 HuidromKonungjao Singh vs State of Manipur & Others[51]

Facts of the case

The son of the appellant, namely, HuidromShantikumar Singh was arrested on 19.6.2011 by the Imphal Police under Section 302 of Indian Penal Code, 1860 read with Section 25(1-C) of *the Arms Act, 1959*. The District Magistrate, Imphal West passed the detention order dated 30.6.2011 under the Act on various grounds with an apprehension that as in similar cases, the accused involved therein had been enlarged on bail the detenu in this case would also be released on bail and he would indulge in activities prejudicial to public order.

Judgment

Supreme Court of India laid down that a person's liberty is sacrosanct and cannot be taken away by the state without due process of law as it violates fundamental rights. The detaining authority also has to satisfy that it had reliable material on the basis of which it had reasons to believe that there was real possibility of the arrested person's getting bail and that after his release, he would indulge in activities, prejudicial to public order.

The appeal succeeded and detention order dated 30.6.2011 was quashed.

4.2.7 Md. Sekandar Ali v. Bangladesh[52]

Facts of the case

In this petition one MdSekander Ali, was expelled from the Degree Examination hall. The agitating expelled candidates raided the examination centre, attacked the UpazillaNirbahi Officer and his house. Md. Sekander Ali was detained under Section 3 of *the Special Powers Act, 1974*. The government alleged that Md. Sekander Ali had secret sitting with the others and at his indication all others indulged in unlawful acts.

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51 41 DLR 508

52 (2012) 7 SCC 181

Judgment

Declaring the detention illegal, the Court held that the law requires the Government, while detaining a person, must serve specific grounds for detention so as to enable the detenue to know what his faults are so that he is in a position to make an effective representation.

The foregoing discussion reveals that the criminal law and the constitution nexus in Bangladesh stands on a loose footing and that and that the fundamental rights of the accused.

Chapter 5
CONCLUSION

Bangladesh without trial six months detention can confer to the detainee. This is a bad process because now here in the world such a long period is not found anywhere. In India, this time is three months and in Pakistan the initial period of detention is three months. some democratic countries preventive detention is a method resorted to in emergencies like war. The western developed countries like USA, UK, and Singapore, it is specifically mentioned that only in time of emergency, Preventive detention is applied for and also for specific purposes, but there is no specification in our constitution and can be restored to in times of both peace and emergency.

we have not a fixed maximum period of detention not in our Constitution or in *the Special Powers Act* 1974. This is also a negative aspect of Preventive detention. In Pakistan the period of Preventive detention is eight months in a year and in India maximum two years. in Bangladesh a large number of political workers and leaders are detained without trial through the preventive detention under *the Special PowersAct* 1974 and known as a "Black Law". But this picture of detention without trial is not found in western countries where this preventive detention also exists. the Preventive detention under the *Special Powers Act* is keeping in line with the maintenance of *Indian Security Act*, 1971 and the *East Pakistan Public Safety Act*, 1958. But in Bangladesh the provision relating to Preventive detention made more draconian than those of twos. By 44th amendment the process of Preventive detention made something democratic in Indian constitution. police officer after arresting any person prays before Magistrate court for remand and in maximum cases police gets remand and starting bodily, mentally torture which is a violation of international human rights law. there is nothing entitled against whom a detention order has been made to appear by lawyer in any matter connected with the reference to the Advisory Board, and its report excepting that part of the report in which opinion of the Advisory Board is specified shall be confidential. if any person is actually criminal that he or she would be arrested under general law and Magistrate can punish him or her but if it is happen then he or she must bring before Magistrate within 24 hours. But not to bring within 24 hours before Magistrate, a suspected is arrest under *the Special Powers Act* 1974. Because by this a person without bring before Magistrate can put in prison month after month. many suspected people

who are not actually criminal, for wrong information they kept inside the jail. Among them who are rich come outside through writ of *Habeas Corpus* in High Court Division but those who are poor, they have no chance.

5.2 Recommendations

The above discussion reveals the truth that preventive detention is an abnormal measureto detain a person which is serious violation of personal liberty of a citizen. Under this law the detaining authority upon its discretion, may detain any body and the law provides all immunities to the detaining authority. As a result, the detaining authority misuses their power e.g. they exercise arbitrary and malicious discretion in order to perpetuate rule.

Considering the above discussion, I notice the following recommendations which may give relief to the people from the pangs of this repressive law.

1. Government should take initiative to stop arbitrary arrest and detention by repeal or amending all providing for preventive detention.

2. An option of judicial review should be given to those who are arrested under such laws.

3. Since our constitution gives the authority of making preventive detention laws, so the constitution must contain provision describing the certain specific period when the law shall be exercised, i.e. only in time of grave emergency or war.

4. Article 33 (3) (b) of the constitution deprived the detainee from the fundamental rights ensure by article 33(2) which provides that every person who is arrested and detained in custody shall be produced before the magistrate within 24 hours and right to counsel under article 33 (1) of the constitution and these are fundamental human rights guaranteed by constitution itself. So such a provision should be repealed and it is the clear violation of these rights.

5. The detenu shall be informed immediately about the grounds of his detention with facts and particular's which enable him to make effective representation.

6. The opportunity to challenge the legality of their detention order before a court of justice should provided towards all detenu who are detained under preventive detention laws.

7. The detenu shall not be subject to torture and other ill treatment in detention.

8. All allegations of oppressions should be quickly and immediately investigated.

9. The government should bring a provision in the constitution ensuring the right to get compensation at least the person who is detained unlawfully in peace time as article 9 (5) of the international Convention of civil and political rights.

10. The orders and directions should be obeyed entirely, immediately and strictly.

11. Judicial detention is preferable to executive detention. In order to ensure the proper functioning of democratic environment and to maintain the standard of human rights preventive detention should be restricted.

12. There must be constitutional provisions describing certain limited period when the powers of preventive detention exercised.

13. All reasonable opportunities should be provided to the detenu.

14. The detenu must not be kept with those who are regular convicts.

15. He or she will be informed as early as possible about the reasons behind his or her arrest.

16. The relatives of the detenu should be promptly of the detention and transfer of detenu.

17. The detenu must be allowed immediate and regular access to lawyer, family members and unbiased medical board.

18. Police should not be used for political motives.

19. Judiciary and administration need to be free from corruption.

20. Establishing a legal aid clinic in few police stations on pilot basis. The above recommendations should be ensured and practiced. Eventually, the government may add aforesaid provision in our constitution or in the laws providing for preventive detention which will specifically mentioned that the preventive detention law can not be used by government except in times of emergency, war or external aggression.

All ready I have mentioned that government may exercise preventive detention only in case of grave emergency and government can not violated one's fundamental rights which is prescribed in Bangladesh constitution. Though preventive detention is a tool of constitution for social needs, but now it is working for others purpose behind its legal or theoretical purpose. The excessive use of laws of preventive detention, affects the liberty of the individual and as well as dangerous for a big community. The law related person should not forget that this law is for the protection of society and state and not for the oppression to the people who are in different community or thought. The philosophy lying behind the preventive detention is the safety of the community at large, but may create an atmosphere which affects the community in general and liberty of the personin particular. The government should remember that in an organized society it exists for the welfare of the people. The power of detention is available no doubt, but it should be used only in exceptional circumstances. So, in order to show respect and follow the constitution, exercise the Practice of true democracy every government should give its attention to establish the fundamental human right of the citizens but not to violate their rights. Government should remember that in an organized society preventive detention exists for the welfare of people but not to encroach their basic human rights.

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