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Sonargaon University (SU)
সোনারগাঁও ইউনিভার্সিটি (এসইউ)

Research Monograph

On

"The Thin Line Between Security and Opression: The Human Rights Implications of Preventive Detention from Bangladesh Perspective"

Research paper submitted in partial fulfillment of the requirements of the degree of LL. B 4 year under Sonargoan University

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Letter of Transmittal

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To
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Subject: Submission of Research Monograph

Dear Sir
It is indeed,a great pleasure for me to be able to submit my research monograph "**The Thin Line Between Security and Oppression: The Human Rights Implications of Preventive Detention From Bangladesh Perspective "** I have given best effort and caliber in preparing this research and top make it a worthy one. In order to prepare thisresearch, I have gathered somepractical knowledge about the research matter. This will assist me to incorporate for professional life and will enrich my rael knowledge.

I would therefore be very happy if the research report helps to understanding the mentioned topic. Any shortcoming in this report is absolutely my fault.

Your Sincerely

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Declaration

I declare that the Research Paper titled " The Thin Line Between Security and Oppression: The Human Rights Implications of Preventive Detention from Bangladesh Perspective" submitted by me as the requirement of Sonargoan University is my own work.

I am solely responsible for the content of this work. The research paper complies with the University rules against plagiarism. It has not been submitted for any other degree of this University or any other University or for any publication.

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Acknowledgments

At the outset from my heart, I am highly grateful and indebted to myrespected Deedarul Islam Bhuiyan, Assistant Professor and Head of the Department,Department of Law, Faculty of Arts and Humanities, SonargoanUniversity for cooperation and for providingvaluable suggestions and comments whenever I needed. My gratitude goesto him, who all through the duration provided valuable suggestions withsincerity and dedication. His comments helped me immensely withoutwhich, the work would have been far less comprehensive.My honor and respect go to all the faculty members of Law,Sonargoan University for their invaluable help and support. I gratefullyacknowledge the support of library staff of the Sonargoan University for theircooperation in searching books and other sources and keeping us updatedwith the arrival of new materials.I am mindful and thankful to all my friends specially Tania akter, Abu Zafar siddiqiwhosecooperation and fruitful discussion at every stage assisted me to overcomehurdles. They were always helpful in providing information about pertinentmaterials.Finally, gratitude goes to my beloved parents for their uncountable stimulation and inspiration.Above all, I would like to express my profound gratitude to Almighty Allah for giving me the strength and enabling me to finish the task within the planned time.

Thank You

Gratitude Respect of honor's

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Certificate of the thesis Supervisor

This is to certify that the dissertation on "The Thin Line Between Security and Oppression: The Human Rights Implications of Preventive Detention from Bangladesh Perspective" is done by Hasan Ali**,** ID No. LLB1902017036**,** Batch- 17th, in partial fulfillment of the requirements for degree of LL. B from Sonargoan University. The research monograph has been carried out under my guidance and record of the bona-fide work carried out successfully.

Deedarul Islam Bhuiyan
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Abstract

Bangladesh is one of the few countries in the world which allows preventive detention even during non-emergency periods. Since Independence preventive detention has been the most used tool in case of violation of Human Rights. Irrespective of any forms of government which has been in power in Bangladesh, has used this as a mean of political exploitation. Each of them have failed miserably to stop the endemic problem regarding preventive detention. However, this is against the spirit of our constitution, democracy and the rule of law. Despite various legal safeguards against preventive detention, the practice of malicious preventive detention is rampant in Bangladesh.

The study aims to show how the rights are violated through preventive detention and how the legal authorities are abusing their powers. In my research I want to highlight the definition and scope of preventive detention, its historical development, its nature and our constitutional safeguards for it. I will also highlight why preventive detention is a necessary evil for our country. I will cite the leading cases relating to preventive detention in Bangladesh and while emphasizing on the recommendations given by the Supreme Court. And lastly I will also give my recommendation on how we can put chains on this blackest of the black law.

Chapter-01

INTRODUCTION

1.1 Introduction

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.

Arbitrary arrest, detention and custodial torture by law-enforcing agencies have remained a persistent feature of our criminal justice system. These practices have been widespread in Bangladesh irrespective of the forms of government and successive governments have failed to stop this endemic problem. Arbitrary arrest, detention and infliction of torture are unacceptable in any form of government that is committed to democracy and the rule of law. Despite the legal and constitutional provisions against arbitrary detention, the practice is rampant in Bangladesh. Against this background, the higher judiciary in Bangladesh has taken a proactive stand in prevention of arbitrary arrest and detention and delivered a number of guidelines in some Public Interest Litigation (PIL) cases for initiating legal reform by the government.

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 Context of the Research

Arbitrary arrest and detention which is understood in other words as preventive detention derived from the misuse of Special Powers Act- 1974 causes a great violation of human rights and protection thereof. Arbitrary detention by law enforcing agencies have remained a persistent

feature of our criminal justice system. These practices have been widespread in Bangladesh irrespective of the forms of government, and successive governments have failed to stop this endemic problem. Torture while detention is typically committed by different state agencies-law enforcing, intelligence and security agencies, which include police army, para-military forces, coast guard, navy forces, prison officers and security agencies such as the National Security Intelligence (NSI) and Director General of Foreign Intelligence (DGFI). Usually, the venue of custody is the police station. But arrested persons are also frequently taken to the cantonment, or to unknown locations for interrogation by police-army joint cells, which is clear violation of law. Arbitrary detention is unacceptable in any form of government that is committed to democracy and the rule of law.

Though preventive detention was introduced to face the grim and grave situation to deal with the problem, it has some lacunas. This study reveals that with whatever saintly motive the Special Powers Act may have been enacted, it has been used invariably to repress people whom the administration does not like. Though our Constitution has inserted the provision regarding the safeguards of preventive detention, these are not sufficient and the law enforcing agencies as well as the court administration are not interested to the provisions and the common people have little knowledge about these safeguards.

1.3 Review of Literature

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 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.

1.4 Justification of the Study

This study will consider the validity of preventive detention law and discover to what extent the rights are infringed due to misapplication of preventive detention laws and will finally put necessary recommendations to stop the misuse of the law. The aim of this study is to analyses the past decisions of higher judiciary in the field of arrest, detention and torture. So in future, it will be helpful for the policy makers, legislators, teachers, students and researcher to know about the problems and prospects of the preventive detention system in our country. As in Bangladesh there are inadequate rules on safeguards of implement the provisions related to safeguards of preventive detention in Bangladesh.

1.5 Aims and Objectives of the Study

The aims and objectives of the study are as follows-

1. To find out the problems faced in the preventive detention process in Bangladesh.
2. To highlight some leading cases regarding preventive detention.
3. To highlight the constitutional as well as the judicial safeguards of preventive detention in Bangladesh.
4. To make recommendations to improve the current preventive detention process in Bangladesh.
5. To point out suggestions to reform the laws related to preventive detention.

1.6 Methodology of the Study

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 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.

1.8 Limitation of the Study

Though there are huge information 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 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.

1.9 Chapter Outline

The research is under the following heading "The Human Rights Implications of Preventive Detention from Bangladesh Perspective". The research will be divided into six different chapters. The chapters are as follows:

- Introduction to Preventive Detention,
- Basic Concept Regarding Preventive Detention
- Bangladeshi Laws Regarding Preventive Detention
- Preventive Detention in other Country; Comparison with Bangladesh
- Case Studied on Preventive Detention
- Recommendations and Conclusion.

Chapter-02

BASIC CONCEPT REGARDING PREVENTIVE DETENTION

2.1 Definition

Definition PD means the incarceration of an individual afore trial with the motive of averting him from engaging of any prejudicial behavior.[1] A proper definition of the term is given by Lord Atkinson in Rex vs. Halliday[2] which is as follows: PD means, the incarceration of an individual afore trial in court of law by an command of the dominant authorities with the intention of averting him from engaging in operation which is detrimental for revival and state's safety.[3]PD may be identified as an unusual process; for under the process the suspect is detained simply on doubt of his indulgence in any act disadvantageous to the welfare and development of our country, without any evidence thereof and also without an allegation of the commission of offence.[4]

The analysis of the definition of preventive detention shows clearly the followings:

a) Preventive detention is no imprisonment or solitary confinement in legal terminology; it's simply a detention. Its right that both detention and imprisonment are more or less the same thing, in both cases the detent has be confined to the four walls of jail, but the distinction is that preventive detention takes place before judicial proceedings but imprisonment takes place after judicial decision.

b) Preventive detention follows the command of an administrative officer, not of a judicial one.[5]

c) The order for preventive detention given without any formal investigation into the fact as whether or not an offence of the kind mentioned has actually been committed. It takes place based merely upon the police officer's report, even report being unexamined as to its credibility.

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[1] The Special Powers Act 1974, s. 2(f)
[2] (f) 2 [1917] UKHL 1
[3]Mahmudul Islam, "Constitutional Law of Bangladesh" (2nd edition Mullick Brothers 2008) 255
[4] Md. Abdul Halim, "Constitution, Constitutional Law and Politics: Bangladesh Perspective" (first published 1998, 15th edn, CCB Foundation 2020) 29
[5] ibid.

d) An order for preventive detention is given with a deterrent purpose, for the purpose of preventing a person from doing some act against the security of the state. No punitive purpose remains there. No punishment is inflicted under such order.[6]

e) Preventive detention is a precautionary measure whereas punitive detention is an ordinary measure.[7]

2.2 Historical Background of Preventive Detention

Absence of provisions for PD can be seen in the original constitution of 1972.[8] Potential civil and criminal protection, together with the right not to be whimsically incarcerated was provided in Part 3 of the original constitution in 1972. In Art. 26 (2)[9] it apportioned that any law incompatible with Part 3 (fundamental rights) become void. Art, 32[10] ensured right to exist, autonomy and protection of a person. Furthermore, Art. 33, Part 3 proceeded to fabricate some shield for the detainee's right. Those are: 1) He cannot be incarcerated in prison without knowing, of the causes of his capture. 2) Consultation right and represented by a pleader of the detained person own desire. 3) Not more than twenty four hours a person can be incarcerated without producing him afore the magistrate's court. 4) He cannot be incarcerated in prison beyond the period of twenty four hours except a command from of magistrate's court.[11] The Constitution of 1972 introduced the national basic goal of determining a society based on the principles of different judicature, fundamental HR and emancipation, parity and justice.

The essence of 1972 did not survive very long. In nine months 1973, only 9 months following the enactment of the constitution, government authority legislates Act no. 24, (2nd Amendment Bill). After that, the complete shield imposed by Art. 26 of "fundamental rights" was no longer

[6] ibid
[7] ibid
[8] Adopted on 4 December, and entered into force on 16 December, 1972. To gather a useful knowledge on the history of Bangladesh's Constitution-making, see Abul Fazl Huq, Constitution making in Bangladesh (Pacific Affairs 1973) 59-76
[9] The Constitution of the People's Republic of Bangladesh, Article-26(2)
[10] ibid Article 32
[11] Md Nazir Ahmed, 'Preventive Detention, Violation of Individual Human Rights: An Overview from Bangladesh Perspective' (2015) < http://miurs.manarat.ac.bd/download/Issue-05/08.pdf > accessed 15th April, 2022

subsists, authorized them to be entangled by various ways. Furthermore, Constitutional armor for capture and incarceration were exempted by inclusion of Article- 33(3) that introduced PD.

Parliament was in a hurry to apply of its freshly authorized jurisdiction. On ninth day of February in 1974, it legislates the SPA, 1974. The Act was intentionally planned to subdue black marketers and smugglers, allegedly liable for the food deficit in the whole country.[12] As leftwing insurgents strengthened their political dissent, PM Mujibur retaliated with a variety of measurement: a printing and press ordinance, an embargo on hartal for three month, an embargo on open assembly, proclamation of a state of emergency use of which variant civil rights were ceased and at last the formation of one authoritative party govern in 1975. The SPA substantiated to be an effective measure for aforementioned procedure.[13]

2.3 Nature and justification of preventive detention

Nature and justification may be found in each condition. The characteristic of PD is several from the characteristic of incarceration under punitive laws. PD is used in fully different sense than punitive detention. Both actions were described as an obstacle of individual's emancipation also personal liberty by few people.[14]The theory behind supporting of PD is the national protection also safety of the state's citizens.[15]When the authority has conception that a person is about to occur detrimental acts, he may be incarcerated by PD to avert him from doing that act. In A P Gopalan v. State of Madraz,[16]SC of India elaborated the character of PD is defined as the incarceration of a person except framing of charge or trial in situation where the evidence, documents and witnesses in the hands of the authority is not adequate to frame a offence or connect the detainee's punishment by legal proof. Necessity for the process "where deterrent measures is put in place, material hardships and difficulties might be occurred to the incarcerated parties," Lord Atkinson remarked in R. vs. Halliday that, this is inescapable, whatsoever the torment is inflicted for a cause generally vital than his freedom or advantage: to insure the

[12] 27 DLR (HCD) 122

[13] Ibid

[14]Arif Hussain, 'Preventive Detention and Violation of Human Rights' (2016) accessed 15 April 2022

[15]Halim (n 4) 295

[16]AIR 1951 HCD 27

citizen’s safety and the realm's defense." "Any preventative action, even if it involves some obstruct or suffering on individuals, the characteristics of punishments cannot be administered, but is implemented as a precaution to avert injury upon the state and its people," Lord Finlay observed in aforementioned case.[17]

Same opinion also manifested by Lord named Alfred Denning. He said, “At the existence of betrayer in our midst, authority is unable to delay till we capture then in the offence of demolition our culvert or providing state’s military covert information to the opponent, we are unable to put in danger the people’s living. So, we must detention then suspicion”.

[17] ibid. (n 2)

Chapter-03

BANGLADESHI LAWS REGARDING PREVENTIVE DETENTION

Bangladesh has signed into different human rights treaties of United Nations till date, but here the author will discuss about the treaties which include preventive detention and those are

A. International Covenant on Civil and Political Rights 1976

B. Universal Declaration of Human Rights 1948.[18]

3.1 Preventive Detention in Lights of Constitution

The concept of Preventive Detention was not present in the first enacted Constitution of Bangladesh but it was amended in the 2nd amendment of 1973 by adding two new clauses in Article-33 of the Constitution of Bangladesh which are clause (4) and clause (5). The two newly introduced clauses were known as the constitutional safeguard for an individual who have been held under preventive detention laws. According to the article there are three constitutional safeguards for any kind of preventive detention-

1. Review by an Advisory Board,

2. Right to communication on ground of detention, and

3. Right of representation against the order of detention.

These safeguards did not eventually workout as it was predicted to be, as the executive authority has been abusing the loopholes of this system and which ultimately caused the violation of human rights and constitutional rights of ordinary citizens.[19]

Review by Advisory Board- An arrested person under any preventive detention law will be brought before an Advisory Board if the executive authority wants to detain that person for more than 6 months18. Advisory Board will be consisting of 3 members[20] among them- two of them

[18] OHCHR Dashboard' (Indicators.ohchr.org, 2020)
[19] Mahmudul Islam, Constitutional Law of Bangladesh (3rd edn, Mullick 2017).
[20] Mahmudul Islam (n 14).

will be acting Judges of Supreme Court or equally qualified. No person can be detained without the permission of the board for more than 6 months in any situation, But it is not obligatory for detentions less than 6 months and that is how law enforcing agencies abuse this power. They also deprive individuals from any kind of legal support or liberty for at least 6 months as well which is the longest period in the world which has surpassed the 3 months period of India.[21] Also, the Advisory Board is neither a regular court or tribunal and does not follow any strict judicial procedure as it is a quasi-judicial body, so detenu cannot possibly appoint an advocate before it for his favor to run his suit.

Right to Communication on Grounds on Detention- The authority will have to communicate with the detenu as soon as maybe on the grounds which the order has been passed.[22]

Right to Representation against the Orders of Detention- The Article-33(5) of the Constitution of Bangladesh also gave the safeguard of right to representation of the detenu. It gives the opportunity of making demonstration for himself against detention order as soon as possible. This right is very related with the second right because without knowing proper and satisfactory information, one cannot make the best representation against the order. As it has been declared by Kemaluddin Hossain CJ that, "the grounds must be clear, precise and give such information to the [detainee] that he could make a representation; it must not be vague or indefinite and that the grounds must be relatable to the existing facts".

That is why, despite of having three safeguards against the preventive detention two of them are ineffective.[23]On the landmark case of Aruna Sen vs Government of Bangladesh[24] it was observed that every detention without trial and conviction is apparent as unlawful, also the order of detention has to be given under clear grounds and that cannot detain one's constitutional and legal rights, which means the actual principle of preventive detention does not get approved by the court in the first place. Furthermore, there is no law regarding how many days one can be detained after getting permission from the Advisory Board. One can literally be detained him for unspecific period which can extend for life. Already the authority is invoking the power of not taking a detainee to the Advisory Board before 6 months and even if they took the detenu to the

[21] Indian Constitution, Article 22
[22] Constitution of Bangladesh, Article 33(5)
[23] Md. Abdul Halim (n 5)
[24] (1975) 27 DLR(HCD) 122

Board they can give any vague and unspecific decision to detain that person. This two points are the biggest loopholes of preventive detention laws of Bangladesh. Article-33(5) of the Constitution of Bangladesh states that executive authority can also refuse to disclose the information which can go against any public interests. If the detenu does not know enough facts of the order to file a suit, then the person cannot use the ground for communication and without the proper grounds of communication the detenu will not have the right to represent as well[25]. In this kind of scenario, the second and third safeguards fail to protect the citizen who has been detained. Even if there are constitutional safeguards for the detenu but still the whole concept violates various human rights and constitutional fundamental rights. Preventive Detention violates numerous sections of ICCPR and UDHR and also few constitutional rights as well. Preventive Detention itself is a violation of human rights[26]also arrest only on mere suspicion is a violation of human rights itself, The second and third safeguard provided by Article-33 of the Constitution is not effective and the authority has yet to take any steps about it after all these years and this is a further violation of human rights.[27] Besides that, the officials can refuse the detenu to give proper information if that goes against the public interest, which is also a gross violation of human rights.[28] The irony of preventive detention is that the part of constitution in which it has been explained has violated various rights of the Constitution itself. In Madan Mohan vs Government , the High Court had declared the detention unlawful and he was released but he was again arrested on the jail gate which also violated constitutional right[29] Finally, the power of executive authority to arrest any person from anywhere violates several other constitutional rights, which includes Right to Life and Personal Liberty and not giving proper information to detenu just because it goes against the public interest, this violates the protection and information rights to detenu[30] .

[25] Nazir Ali vs. Secretary of Home Affairs (1990) 10 BLD (HCD) 258.
[26] International Covenant on Civil and Political Rights, Article 9(1)
[27] International Covenant on Civil and Political Rights, Article 9(2)
[28] Ibid
[29] Constitution of Bangladesh, Article 35(2)
[30] Ibid, Article 33(1)

3.2 Preventive Detention under Special Powers Act and Incompatibility with Human Rights

The most controversial law in the history of Bangladesh is known as The Special Powers Act 1974. The reasons are, vagueness of the laws, giving excessive power to authority and having preventive detention powers in a safe and democratic state like Bangladesh. But unfortunately even after the fall of that regime no other government changed or abolished the law till now and using it for their own purposes[31]. Basically it states that if anyone does any Prejudicial Acts or is certain to do one then it gives the power to detain someone without any warrant.The Prejudicial Acts mentioned in Section-2(f) of the Act are very confusing as it includes prejudice against the independence or security of Bangladesh, the preservation of alliance with other states, disturbance of public safety, creation of hatred between different communities, interfering administrative work or law maintenance, prejudice of maintenance of supplies or economic interests and causing fear among public. It was meant to be for the safety of the citizen but protection of life means that individual person's life cannot be endangered.[32] This law severely violates many constitutional rights and human rights and the continuous use of the law has gradually made the it more political than safeguard for citizens. Moreover, this law was the main reason why preventive detention was first introduced in Bangladesh as there were no laws related to that topic before The state has made SPA a tool for depreciating the freedom and security of people by giving the authority to exercise the power to give detention to literally anyone[33].

The law has some loopholes and it is not clearly stated by which the executive authority can make any person fall under the prejudicial acts stated by Section-2 of the given Act. According to ICCPR this kind of actions cannot be taken if those are not clearly defined in the Law.[34] Also in the Act, it is stated that there will be an Advisory Board for the people who will be accused under SPA which will be operated by Judges from High Court and a Senior Officer.People who are accused under this law will be sent straight to this Board within 120 days of arrest but not to

[31] Md. Jahid Hossain Bhuiyan, 'Preventive Detention Law In Bangladesh: A Review' The Daily Star (Dhaka, 5 January 2008)
[32] Giasuddin v.Dhaka Municipal Corporation & others (1997) 49 DLR 199.

[34] International Covenant on Civil and Political Rights, Article 15(1)

the Court and the accused can be punished or maybe detained by just the satisfaction of the Board not the Court. But fortunately The Appellate Division held that the Court have to be satisfied with the Board to punish or detain any person, only the satisfaction of the Board will not be enough.[35]

Still there are many drawbacks of this law which violates many constitutional and human rights on various scales. Moreover, like the detentions under Article-33 of The Constitution of Bangladesh, the authority can abstain from revealing the grounds of detention if it goes against the public interest. But the HCD ordered that the Government have to disclose the reasons behind detention under Section-3 of SPA so that the detenu can prepare for an effective representation. In most of the cases, authority does not abide by the rules or orders given by the HCD and because of that the detenu ends up having only one right up his sleeve which is Advisory Board but in most cases they cannot go there before 120 days and for that the detenu have to suffer in the hands of authority for several months. It has been decided that no detenu can be imprisoned for 1974 more than 120 days as it'll be illegal.[36] Furthermore, the Advisory Board can detain that person for unspecific period as there is no law regarding it.

All these things led into the violation of various Constitutional and Human rights by the SPA. This draconian law has breached the right of life and liberty of an individual, subject to torture and cruel, inhuman or degrading punishment or treatment according to Article 5 of UDHR and Article 7 of ICCPR, subject to arbitrary arrest, detention or exileand right to fair trial by Article 10 of UDHR and article 14 of ICCPR, which has been provided by numerous universal human rights treaties that Bangladesh has agreed upon. Also the SPA ironically breached some of the constitutional rights provided by the Constitution of Bangladesh as well. These kind of laws were very common in all over the world few years ago but after the appearance of ICCPR the situation is much better now[37] but still in some countries like Bangladesh the political parties are using it for the benefit of themselves despite of being signed in ICCPR and UDHR.

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[35] Habibullah Khan vs. S.A. Ahmed (1983) 35 DLR(AD) 72. 47 Md. Sekandar Ali vs. Bangladesh (1990) 42 DLR(HCD) 346

[36] The Special Powers Act 1974, S 10

[37] Javaid Rehman, International Human Rights Law (1st edn, Pearson Education UK 2003).

3.3 Section 54 of Code of Criminal Procedure and Misuse of Power by the Police

Section 54 of Code of Criminal Procedure 1898 gives Police to arrest any individual without any kind of order from Magistrate or a warrant in the give circumstances-

- A person who has been apprehensive in any cognizable offence or reasonable
- complaint has been made or reliable information has been acknowledged or reasonable suspicion exits. Anyone who's without lawful excuse implement of house breaking.
- He/she has been declared as an offender under this Code or by any law of
- Government. Any person who's been found or suspected to be in possession with stolen property.
- Who has obstructed a police while execution of his duty.
- Any suspect of deserting from the armed militaries of Bangladesh.
- A person who has been concerned for or any complaint has been made against the person or credible information has been received or reasonable suspicion exits that he has committed an act outside Bangladesh which is an offence if it has been committed in Bangladesh, under the Fugitive Offenders Law 1881 he will be arrested or detained in custody.
- Released offender committing a breach of trust under Section 556, sub section-3.
- Arrest requisition received for any person by another police-officer.

The reason of giving this kind of power to the police is to prevent heinous crimes before occurring,[38]which is also a form of Preventive Detention as it goes with the definition of the preventive detention. Giving Police the power of arresting someone without warrant is giving them consent to use the supreme power and showing them the loopholes of abusing this power and already the police-officers are using this power to arrest anyone they like with the help of SPA. But it was meant to be for the cognizable offences and the power was supposed to be very

[38] The Code of Criminal Procedure: The Violation of Human Rights In Bangladesh' [2016] American Journal of Business and Society 1

limited by action. In BLAST vs Bangladesh[39] it was decided that Police is abusing the power of arresting without any kind of warrant viciously and it is violating the liberty of the citizen, BLAST, Ain O- Salish Kendra (ASK), Shammilito Shamajik Andolon and some other individuals jointly file this writ petition which has become a landmark case for this decision of the High Court Division. Also the HCD annexed that Police don't usually reveal the ground of arrest to the arrested person and this is a direct violation of Article-33 of The Constitution of Bangladesh.

Also the implement of Sec-54 also violates various human rights of UDHR and ICCPR including right to life, subject of arbitrary arrest and detention according to Article 9 of UDHR and Article 9 of ICCPR, right to be fair trailed[40] on which Bangladesh is also a party into. Despite of intended as precautionary measure for the betterment of society, Police with the help of Sec-54 of CrPC and SPA started to abuse the power of arresting without any warrant at their own will which is unacceptable in terms of International human rights and also Constitutional rights as well.

[39] (2003) 55 DLR 363.
[40] Universal Declaration of Human Rights, Article 10; International Covenant on Civil and Political Rights, Article 14.

Chapter-04

PREVENTIVE DETENTION IN OTHER COUNTRY; COMPARISON WITH BANGLADESH

4.1 Preventive Detention in Bangladesh

The first constitution of Bangladesh had no provision of preventive detention. It has been added on the constitution by the 2nd amendment of the constitution in 1973. Preventive detention has been legalized in Bangladesh by the article 26 and 33 of the Constitution of Bangladesh. It has been stated in article 33 that "Safeguards as to arrest and detention-[41]

(1) No person who is arrested shall be detained in custody without being informed, as soon as may not be of the grounds for such arrest, nor shall he be denied the right to consult and be defended by a legal practitioner of his choice.

(2) Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of twenty four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate, and no such person shall be detained in custody beyond the said period without the authority of a magistrate.

(3) Nothing in clauses and shall apply to any person- (a) who for the time being is an enemy alien; or (b) who is arrested or detained under any law providing for preventive detention.

The Special Power Act 1974 of Bangladesh has also described the provision of preventive detention.

The Parliament on February 9, 1974 enacted the black law, "Special Powers Act, 1974" containing the provisions of preventive detention. The Act says that any person can be arrested and detained by the executive authority if there is apprehension in the mind of the authorities that he may commit "prejudicial act" which means-

- To prejudice the sovereignty or defense of Bangladesh;

[41] 2nd amendment of the constitution in Bangladesh 1973

- To prejudice the maintenance of friendly relations of Bangladesh with foreign States;
- To prejudice the security of Bangladesh or to endanger public safety or the maintenance of public order;
- To create or excite feelings of enmity or hatred between different communities, classes or sections of people;
- To interfere with or encourage or incite interference with the administration of law or the maintenance of law and order;
- To prejudice the maintenance of supplies and services essential to the community;
- To cause fear or alarm to the public or to any section of the people;
- To prejudice the economic or financial interests of the State.

So, it is clear that though the first constitution of Bangladesh didn't have the provision regarding the preventive detention, it has been made as law for some unlawful opportunities taken by the political parties by the 2nd amendment of constitution and Special power act 1974.[42]

Enactment and application of preventive detention law during the fifth proclamation of emergency (2007–08)

Bangladesh's fifth emergency arose out of conflict over the composition of the non-party caretaker government,[43] which was entrusted with the responsibility of assisting the Election Commission in holding free and fair general elections. Upon the conclusion of the Bangladesh Nationalist Party (BNP) government's five-year term on 28 October 2006, violent protests, sponsored and led by the Bangladesh Awami League (BAL), broke out all over the country over the possibility of Justice Hasan (who had been Chief Justice during the BNP's time in power) heading the non-party caretaker government. BAL alleged that Hasan, who, as the country's former Chief Justice, was constitutionally destined to take over as the Chief Adviser of the caretaker government the same month, was biased in favour of the BNP. Amidst this violence,

[42] Special power act 1974
[43] 'Bangladesh Power Shift Postponed'(British Broadcasting Corporation, 28 October 2006) <news.bbc.co.uk/1/hi/world/south_asia/6093300.stm>

Justice Hasan declined to accept the position of Chief Adviser, with BAL claiming Hasan's refusal resulted from its agitation.

The conflict intensified when, without exhausting the four alternative options for appointing a chief adviser provided by the Constitution at that time, President Iajuddin Ahmed offered himself as a candidate for the office of Chief Adviser in addition to bearing the responsibilities of the Presidency. While this was technically possible under what was then Article 58C(6), it was only permitted if all other options concerning the appointment of the Chief Adviser had been exhausted.[44] Nevertheless, Iajuddin was able to secure the endorsements of the major political parties, with the exception of BAL, which remained concerned about Iajuddin's neutrality given his election to the Presidency on a BNP ticket.Footno

Consequently, BAL again violently opposed Iajuddin and his caretaker government, making several demands the implementation of which it deemed crucial if the regime was to remain impartial during general elections. In view of the mounting violence, which brought the national economy to a standstill, and of the external pressure from western diplomats, who were concerned about protecting their 'development investments' in Bangladesh[45] the Chief of Army Staff and several other senior army personnel successfully pressured Iajuddin into stepping down from the post of the Chief Adviser[46] and proclaiming an emergency on 11 January 2007, yet again on the grounds of 'internal disturbance'

The proclamation of emergency brought about a new caretaker government, which entered office on 12 January 2007 and was headed by a former governor of the Bangladesh Bank. Although the political unrest came to an end with the installation of a new caretaker regime, the proclamation of emergency was nevertheless maintained and furthermore the regime, pursuant to section 3(1) of the Emergency Powers Ordinance, framed the Emergency Powers Rules 2007 on 25 January 2007.[47]

The Emergency Powers Rules did not confine the exercise of the power of preventive detention only to prejudicial acts as defined in the SPA. Rather, they extended the ambit of the exercise of

[44] 'President offers to be Chief Adviser'(The Daily Star, 29 October 2006).
[45] <archive.thedailystar.net/2006/10/29/d6102901011.htm> accessed 22 February 2017
[46] Ibid 8
[47] 89Circular Issued by the Office of the President (11 January 2007).70M. E. BARI

the power of preventive detention under the SPA to prevent the commission of any of the offences under the Emergency Powers Rules[48] for example, organizing demonstrations and assemblies, convening hartal,strike and lockout publication of politically motivated and provocative news, income tax, corruption and money laundering offences, hoarding, black-marketing, smuggling and sabotage.[49] It appears difficult to justify incorporating more draconian provisions into the Emergency Powers Rules concerning preventive detention when the powers available to the government under the SPA were sufficient to meet the exigencies of the situation. Furthermore, rule 19E of the Emergency Powers Rules deprived a detainee of the right to seek any remedy from the courts during the continuance of the state of emergency.

Subsequently, these wide powers concerning preventive detention were used to stage an unparalleled crackdown on senior political leaders belonging to both the major political parties, the BNP and BAL. At least 929 senior politicians were kept in preventive custody, including former Prime Ministers Begum Khaleda Zia and Sheikh Hasina.[50]The preventive detention of senior political figures exposed the political ambition of the military-backed caretaker regime to perpetuate its rule in contravention of the constitutional requirement of holding general elections within 90 days of its formation. Furthermore, the exercise of the power of preventive detention by the regime was not only confined to the victimisation of political leaders. Innocent civilians were also brought within the purview of this power, often without any criteria or basis for detention. A staggering estimated 230,074 persons were preventively detained during the continuation of the emergency from 11 January 2007 to 17 December 2008.[51] The government of

[48] Emergency Powers Rules 2007, r 21
[49] Rule 4, 5 , 6,15, 14.
[50] dhikar,'13 Months of Emergency in Bangladesh: Immediately Lift the State of Emergency'(12 January2008)3<1dgy051vgyxh41o8cj16kk7s19f2.wpengine.netdna-cdn.com/wp-content/uploads/2012/08/13-Months-State-of-Emergency-Report-2008.pdf> accessed 21 February 2017.
[51] Sara Hossain and Dina M Siddiqi (eds),'Human Rights in Bangladesh 2007'(Ain o Salish Kendra2008)36<www.askbd.org/ask/wpcontent/uploads/2015/06/ASK_Human_Rights_Report_07.pdf> accessed 21February 2017; Asian Forum for Human Rights Development,'Bangladesh: Stop Using Preventive Deten-tion'(27 June 2007) 1 <www.forum-asia.org/?p=7181> accessed 3 April 2013.OXFORD UNIVERSITY COMMONWEALTH LAW JOURNAL71

the day failed to realise that frequent use or misuse of the power of preventive detention makes a mockery of the liberty of the individual in a democratic state.

The cavalier attitude of the government towards the liberty of individuals can be further gathered from the fact that although the High Court Division released a number of detainees on bail pending decisions on the legality of their detention orders, these detainees were often re-arrested immediately at the prison gate and subsequently fresh detention orders were served on them under the Emergency Powers Rules. One of the victims was Abdul Qayum Khan, an activist of the BNP and an elected Commissioner of the Dhaka City Corporation, who had been kept in preventive custody since 12 January 2007. The High Court Division granted him bail pending a decision on the legality of his detention order. Consequently, he was released on 10 January 2008 only to be re-arrested by the police at the gate of the prison. He was placed in preventive custody for another month but he died in detention due to the inadequacy of proper medical treatment for the 'serious illness he had suffered during his prolonged detention in the unhygienic conditions of the prison'.[52]

4.2 Preventive Detention in India

The Pre-constitutional era of India before freedom under British rule India has faced preventive detention laws back to the days of when the Bengal Regulation III of 1818 (the Bengal State Prisoners Regulation) was there and the British government was given power to detain anybody on mere suspicion under the regulation. The Defence of India Act 1939 under Rule 268 specified a war time legislation which allowed to detain a person on satisfaction that such detention of a particular person is necessary to prevent any prejudicial activity against the defence and safety of the country.[53]

After adoption of the Constitution in 1950 the members of the Constituent Assembly while framing the Constitution, who already faced Preventive Detention Laws during Colonial Regime, but still they were in opinion that giving Constitutional sanctity to the Preventive Detention Laws

[52] Asian Legal Resource Centre,'Bangladesh: The Prolonged State of Emergency is Resulting in Wide-spread Violations of Human Rights'(22 February 2008) UN Doc A/HRC/7/NGO/35, 4

[53] A. Faizur Rahman, "Preventive Detention an Anachronism", The Hindu, Sep 07'2004, New Delhi

in the Fundamental Rights chapter of the Constitution is need for the country. Parts of Article 22[54] are not Fundamental Rights but Fundamental imperilment to the citizens for whom and allegedly by whom the Constitution was framed, to keep a doorkeeper in a new society, with freedom of speech and expression available to all. In 1950 Sardar Ballabhbhai Patel placed Prevention Detention Act, and said that he had several 'sleepless nights' before deciding that it is required to introduce such Bill.[55]

The first Preventive Detention Act was enacted by the Parliament in 1950 and in same year, under this Act, a political leader of A.K. Gopalan's notability was arrested but ordinary disturbers of law and order were not arrested. In this case the petitioner in this case argued that since preventive detention would rob a person of his liberty and consequentially his rights flowing from Article 19(1) will also be taken away from him; such deprivation should therefore, be permitted, only if the law authorising preventive detention is in conformity with the reasonable restrictions as given under Article 19(2) to 19(6). But the Supreme Court did not accept this argument and held that the different fundamental rights given in Part III of the Constitution must be read disjunctively, in a mutually exclusive manner From that initial action, it was apparent that this Act was meant to keep a check on political dissent, and that legacy has been and is being followed.

The grounds for Preventive detention provided under Article 22 of Indian Constitution are, Security of state, maintenance of public order, maintenance of supplies and essential services and Defense, foreign affairs or security of India.

A person may be detained without trial only on any or some of the above grounds. A detainee under preventive detention can have no right of personal liberty guaranteed by Article 19 or Article 21 Supreme Court in Ankul Chandra Pradhan v. Union of India[56] held that preventive detention laws are not enacted to punish the detainees but it was enacted to restrain detained person from doing or acting offensive or anything which is contrary to law. In the recent judgement of Ahmed Noor Mohmad Bhatti v. State of Gujarat, the Apex Court upheld the constitutional validity of Section 151 of Criminal Procedure Code, 1973, which gives power to

[54] http://legislative.gov.in/sites/default/files/COI-updated.pdf
[55] http://egyankosh.ac.in/bitstream/123456789/39085/1/Unit-1.pdf 12 PRE
[56] AIR 1997 SC2814

Police to arrest and detain any person on mere suspicion without producing warrant to prevent him from committing any cognizable offence. In the case of ADM Jabalpur case[57] the constitutional validity of the Maintenance of Internal Security Act, 1971 was challenged. The Supreme Court of India held the Act Constitutional and further stated that it was a rule of evidence and cannot be challenged under Part III of the Constitution of India.

India while performing on the premise of Article 22 came up with the Preventive Detention Act, 1950 which was considered to be a short-term measure and so on, it lapsed around the year 1969. But after the expiry of this legislation other legislations were enacted allowing preventive detention for various reasons. For the reference, the Maintenance of Internal Security Act (MISA) was enacted in 1971, followed by Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) in 1974 and thereafter the Terrorism and Disruptive Activities (Prevention) Act (TADA) in 1985. Although MISA has been repealed and TADA has lapsed, COFEPOSA continues to be operative along with other similar statutory laws such as the National Security Act (NSA) 1980, the Prevention of Black-marketing and Maintenance of Essential Commodities Act 1980. Apart from this there are laws with similar provisions enacted by the State governments. Prevention of Terrorism Act (POTA) 2002 also provided for preventive detention, though in the year 2004 the Act was repealed. Now, preventive detention in India is governed by Unlawful Activities (Prevention) Act with amendments made in 2008 and 2019.[58]

4.3 Preventive Detention in U.K

Magna carta was the first step with respect to Preventive Detention Law in U.K. It was sealed on June 15 1215 by the famous King John of England and this Magna carta also includes the protection of civilians and illegal detention.[59]

Darnel's case of the year 1627 are familiar to the history of English constitution which was ultimately followed by various habeas corpus Acts.[60] There were five petitioners in the King's

[57] Additional District Magistrate, Jabalpur v. Shivakant Shukla, (1976) 2 SCC 521
[58]https://www.indiacode.nic.in/handle/123456789/1470?view_type=browse&sam_handle=123456789/1362
[59] https://www.bl.uk/magna-carta

bench and the prayer before the King's bench was to let them free. The basic challenge that petition of right 1628 reversed the decision of preventive the power of arbitrary committed by the King. The Darnel case was mainly on the point that of grounds of detention of an individual vis-à-vis power of the King to detain any individual in the interest of security of the State.

The petition of Right 1628 which sets out specific liberties of the subject the king is prohibited from infringing this Act was passed on 7th June, 1628 with respect to the subject including imprisonment without any cause.

In 1688 the Monark Williams and Mary accepted the idea of British Bill of Right, 1688 which was ultimately passed in 1689 received Royal Assent in 1689 which was basically for the purpose of determining a basic civil rights of the individual and also on the subject that who will be the successor of next crown of the country. This bill was basically for the purpose of controlling the power of Monark and also for the purpose of the cruel behaviour against an individual /citizen of the country.28 This was the first law which was introduced in the year 1688 for protection of individual right and enjoyment of absolute right. In the period of Charles the main protection for the common people was the house of lord and at that point of time in England one equivalent bill was passed which was equal to Magna carta the bills of Right 1689.[61]

The Preventive detention to combat terrorism in written was first introduced in 1974 i.e., Preventive from Terrorism Act and it was in 1939 the prevention from violence Act was introduced for detaining people for a period of 7 years and subsequently this Act was repealed in 1973 the PTA was again reintroduction of PVA mostly as a response of Bombing of two pubs in Birmingham with seven years detention for a person who involved in suspicion of terrorism. The PTA was introduced without access to a lawyer for 48 hours and PTA was continuously renewed until 2000.

In 2012 the UK abolished its previous preventive detention scheme the imprisonment for public protection which was replaced by extended determinate sentence (EDS) scheme under Section

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[60] http://www.legislation.gov.uk/primary+secondary?title=Habeas%20Corpus, History of various Habeas Corpus Acts are also available at https://www.loc.gov/law/help/habeas-corpus/uk.php

[61] https://www.bl.uk/collection-items/the-bill-of-rights

226A of Criminal Justice Act. In these cases the custodian term is 10 years or more or the sentences imposed in respect of certain specified offence. The secretary of State cannot release a person serving as EDS in such circumstances the person's case was referred to Parole board must continue to detain that person unless it is satisfied that there is no longer for protection of public.[62]

[62] http://www.legislation.gov.uk/ukpga/2003/44/contents

Chapter-05

CASE STUDIED ON PREVENTIVE DETENTION

5.1 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:

Aruna Sen v. Government of Bangladesh (1975) 27 DLR (HCD) 122 is a case of the High Court Division of the Supreme Court of Bangladesh. The case concerns unlawful detention under the Special Powers Act, 1974 (SPA). The judgement set a precedent for invalidating most detentions under the SPA.

Facts of the case:

The detention of Chanchal Sen, who had been taken away by the Rakki Bahini, was challenged by a writ petition, under Article 102 (2) (b) (i) of the Constitution by his mother, Aruna Sen. Writ petitions are an indirect system of judicial review in Bangladesh. After much effort, she learned that her son had been handed over to the Special Branch of the Police Department and was in custody at Mohammadpur Police Station within Dhaka City.

She visited her son and found him in a miserable condition. Signs of physical torture were visible on his whole body. The case of the government was that the detainee had been held under section 3 of the Special Powers Act, 1974, for various activities such as illegal possession of arms, robberies and murders.

Judgement:

The court observed the following:

The English principle as expressed by Lord Atkin in his dissenting speech in Liversidge v Anderson, that every imprisonment without trial and conviction is prima facie unlawful and the

onus in upon the detaining authority to justify the detention by establishing the legality of its action according to the principles of English law has been adopted in the legal system of this Subcontinent, as has been rightly observed by Hamoodur Rahman, J., (as he then was) in the Government of West Pakistan and another vs. Begum Agha Abdul Karim Sohorish Kashmiri.

It is further observed in Aruna Sen's case that an order of detention of malafide or collated purpose is illegal, it must be shown that the grounds of detention are relevant and do not suffer from vagueness, are not indefinite and are not such as to deprive the detained person of his constitutional and legal right of making an effective representation against his detention at the earliest opportunity as provided in clause (5) of Article 33 of the Constitution and subsection (1) of section 8 of the Special Powers Act, 1974. It is also held in that case that if some of the grounds are irrelevant or non-existent, the satisfaction of the detaining authority, in that particular case, may be said to have been caused by both valid and invalid grounds and such satisfaction cannot be held to be sufficient compliance with the requirement of law. Similarly, on question relating to furnishing of grounds of detention to the detenu as required by clause (5) of Article 33 of the Constitution and sub-section (1) of section 8 of the Special Powers Act, 1974, it is held that if some of the grounds are vague and indefinite although some other grounds are not so, the constitutional and legal requirements of the above provisions cannot be said to have been complied with.

Farzana Haq vs Government of Bangladesh

Facts of the case:

Sanaul Huq Niru 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.

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.

Bilkis Akter Hossain v. Government

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.

Abdul Latif Mirza v. Bangladesh

Facts of the case:

Abdul Latif Mirza 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.

Habiba Mahmud v. Bangladesh and Others

Facts of the case:

The appellant's husband, Kazi Mohamood Hossain, 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 detenu Kazi Mahmood Hossain Montoo Kazi 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.

Chapter-06

RECOMMENDATIONS AND CONCLUSION

6.1 Recommendations

I forward the following recommendations:

1. Preventive detention should be used only as a last resort and for emergency period only. So necessary legal reform must be made to stop the use of preventive detention in peace time.
2. Scope of preventive detention must be curtailed and the grounds on which it could be allowed must be clearly stated down by the legislative authority.
3. The scope of safeguards under Art. 33 should be extended. Detaining persons should also have the right to be produced before the magistrate within 24 hours of arrest.
4. Article 33(4) of the constitution should be amended and the initial period of detention should be lessened from existing 60-day period.
5. Detention must not be for indefinite period. A maximum period for preventive detention should be inserted in the constitution.
6. All the legal statute regarding preventive detention must be scrutinized very carefully and repeal the provisions which violate the spirit of the constitution.
7. The detenu must be communicated the grounds of arrest within a fixed specific time, which must be laid down by law.
8. The relatives of the detenu should be informed as soon as possible of the detention, so that the detenu can exercise his right to representation as soon as possible.
9. A judicial review should be held to review the conditions of all the persons detained under preventive detention laws.
10. The detenu should not be kept with the regular convict as it is not a form of punishment for any crime.

11. The detenu must be treated with honour as he has not violated any law so legal provisions should be made to force the detaining authority to be respectful.
12. The detenu must be allowed immediate and regular access to lawyer family members and unbiased medical board.
13. All forms of torture or inhume treatment should be avoided and for that strict rules and regulations must be made for the detaining authority.
14. In case of illegal detention, the detenu must be compensated adequately and the responsible party for such mistake, if not bonafide, must be brought under the law.
15. In case of interrogation all the recommendations made by the Supreme Court in various cases must be followed and a comprehensive rules and procedure should be created for the use of interrogating officers.

6.2 Conclusion

Preventive detention is a necessary evil. Sometimes in a state of national emergency it can be a useful tool in restoring peace and security. But it is a matter of great surprise that the constitute of Bangladesh allows the Govt. to use various draconian laws regarding preventive detention against its own citizen. Arbitrary arrests and detention or torture has become a norm in Bangladesh. The philosophy behind preventive detention was to ensure safety of the community at large, but in reality it has become the biggest threat for the safety of the community. Individual liberty has fallen into the mercy of the government. But to ensure true democracy in the country all form of arbitrary detention must be avoided and individual liberty must be ensured. And only then the society can flourish and proper environment for democracy will be shaped.

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AD= The Appellate Division

CrPC= Code of Criminal Procedure 1898

HCD= The High Court Division

ICCPR= International Covenant on Civil and Political Rights 1966

SPA= The Special Powers Act 1974

UDHR= Universal Declaration on Human Rights 1948

AIR= All Indain Report

DLR= Dhaka Law Reports

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