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Evolution of Preventive Detention: Legislative and Judicial Trends in India

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Abstract

Within the Indian legal system, preventive detention is a controversial legal technique that has seen significant debate and development. The purpose of this abstract is to outline the judicial and legislative developments in India that relate to preventative detention.

Preventive detention in India has its origins in the colonial period, when the British Raj enacted legislation such as the Defence of India Act, 1915. After independence, the Indian Constitution's forefathers saw the need for and potential abuse of such powers, which is why they included provisions for preventive detention under Article 22 while also enforcing strict protections against abuse.

Numerous laws enabling preventative detention have been passed in India over the years, including the Armed Forces (Special Powers) Act (AFSPA), the National Security Act (NSA), and the Maintenance of Internal Security Act (MISA). Judicial examination has resulted from these statutes' apparent conflicts with fundamental rights and constitutional liberties.

The judiciary has been crucial in striking a balance between the interests of the state and individual liberty in a number of significant decisions. The courts have reinterpreted and interpreted the parameters of preventive detention via a number of rulings, establishing guidelines to guarantee procedural justice, justifiability, and proportionality.

Current patterns demonstrate a judicial propensity to protect individual rights, highlighting the need for strict court review, procedural norm observance, and a restriction on the arbitrary use of executive authority in preventive detention situations.

Notwithstanding the efforts of judges to intervene and achieve equilibrium, obstacles continue to arise. Prolonged imprisonment without trial, broad and ambiguous reasons for detention, and inadequate supervision are only a few of the problems that seriously undermine the efficacy and equity of preventive detention legislation in India.

In order to shed light on the complex relationship between protecting individual liberties and state security imperatives, this abstract aims to provide a thorough overview of the legislative and judicial developments surrounding preventive detention in India. This will help to advance legal discourse and reform in this important area of the law.

Preventive detention means detention of a person without trial. It is so called in order to distinguish it from punitive detention. The object of punitive detention is to punish a person for what he has done and for the illegal act committed by him. The object of preventive detention, on the other hand, is to prevent him from doing something and the detention in this case takes place on the apprehension that he is going to do something wrong which comes within any of the grounds specified by the constitution. In fact, preventive detention is resorted to in such circumstances that the evidence in possession of the authority is not sufficient to make a charge or to secure the conviction of the detenu by proofs but may still be sufficient to justify his detention on the suspicion that he would commit a wrongful act unless he is detained.

Preventive detention as a legal contrivance enables the government of a country to take undesirable persons into custody and keep them so without trial in the interest of public order or the security of the state. "It is obvious that the contrivance is born out of administrative necessity and it has to work under certain safeguards against the abuse of power of detention by the executive." These safeguards differ from country to Country On the other hand, every mature legal system has in it some basic rights or fundamental freedoms for the citizens to make their lives worth living of these, the right to life is the first and the foremost, and ric mes the right to personal liberty, and other rights like the right to speech and expression, association etc. comes after them.

But in reference to the Indian constitution it has a different meaning. In A.K. Gopalan v. State of Madras Kania CJ pointed out that." Preventive detention is not punitive but it is a precautionary measure. Lord Finlay in RV Halliday stated that the word preventive is used in contradistinction to the word punitive. He further observed that in preventive detention "no offense is proved nor any charge is formulated" and than "Jurisdiction of detention is suspicion or reasonable probability and not criminal conviction which will be warranted by legal evidence"

Lord Macmillan also used in Liversidge V/s Anderson almost same words except than for the word "Jurisdiction he used the word "Justification" but added in further explanation that "the object is nor to punish a man for having done something but to intercept before he does it and prevent him from doing it".

To the word "reasonable probability AND. Ray CJ. added in Haradhan shah V/s state of west Bengal the expression "reasonable probability" a term denoting "the future behavior of a person based on his past conduct in the light of the surroundings circumstances.

In the State of Tamil Nadu V Senthil kurnar. The apex court of India observed, "Whereas punitive incarceration is after trial on the allegations made against a person, preventive detention is without trial into the allegation made against him." Preventive detention is thus preventive, in theory. Preventive detention is not to punish an individual for any wrong done by him but at curtailing his liberty, with a view to preventing him from committing certain injurious activities in future."

Constitutional protection against preventive detention in India is provided under articles 22(4) to 22(7) is closely concerned with the preservation and protection of human rights. Human rights are those rights that Endeavour provides for the welfare and protection of each individual in society, safeguard his or her dignity and secure equal benefits for all as can be offered by a benevolent state without distinction and discrimination as Human rights are universal. They are not the preserve of only some; by the rule of law, every one must enjoy them. The fundamental rights enshrined in part III of the constitution of India represent, generally speaking, the broad spectrum of natural or human rights as have been recognized by the judiciary in India.

While dealing with "Human Rights Jurisprudence and safeguards provided under the constitution," It shall primarily deal with the rights conferred by Articles 20,21 and 22 as these represent the most basic rights in criminal jurisprudence in the country.

Article 20(1) Prohibits ex-post against double jeopardy.

20(2) Confers immunity against double jeopardy.

20(3) Offers protection against self-incrimination

Article 21- No person shall be deprived of his or her life and personal liberty except according to procedure established by law.

Article 22 Proceeds to enact laws for protection against arrest and detention in certain cases. Clause (1) and (2) are meant for under-trial accused, while clause (3) differentiate between punitive and preventive detention. Clause (4) to (7) provides safeguards to detenu's detained under preventive detentions, which is accepted as necessary evil.

After India became independent, it unilaterally and voluntarily subscribed to the Human Rights charter of the united nations of 10 December, 1948 which inter-alia, proclaims:

1- All human beings are born free and equal in dignity and rights;

2- Everyone has the rights to life, and liberty and security of person,

3-No one shall be held in slavery or servitude,

4- No one shall be subjected to torture or cruel or degrading treatment of punishment; and

5- No one shall be subjected to arbitrary arrest, detention or exile.Government of India had subscribed to two United Nations conventions in 1978 which are:The international covenant of Economic, social and cultural rights.

The various safeguards included in Article 22 are as under:

1- No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult and to 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 24 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 the clauses (1) and (2) shall apply -

(a) To any person who, for the time being is an enemy alien or(b) To any person who is arrested or detained under any law providing for preventive detention."

4- No law providing for the preventive detention shall authorize the detention of a person for a longer period than two months unless an advisory board constituted in accordance with the recommendation of the chef justice of the appropriate high court has reported before the expiration of the said period of two months that there is in its opinion sufficient cause for such detention provided that an advisory board shall consist of a chairman and not less than two other members and the chairman shall be serving judge of the appropriate high court and the other members shall be serving or retired judges of any high court.

Provided further that nothing in this clause shall authorize the detention of any person beyond the maximum period prescribed by any law made by parliament under sub clause (a) of clause (7)

5. When any person is detained in pursuance of an order made under any law providing for Preventive detention, the authority making the order shall as soon as may be communicated to such person the grounds the order has been made and shall afford him the earliest opportunity of making representation against the order.

6. Nothing in clause (5) shall require the authority making any such order as referred to in that clause to disclose facts which such mity comiders to be against the public interest to disclose.

7. Parliament may by law prescribe a)The maximum period for which any person may in any class or classes of cases be detained under any law, providing for preventive detention, and b. The procedure to be followed by an advisory board in an inquiry under clause (4).

The preventive detention Act 1950, passed by Indian parliament was a temporary act, originally passed for one year, but was continued until the end of 1969. The maintenance of internal security Act, 1971 popularly called as MISA remained in force till 1978 The terrorist and disruptive activities (prevention) Act, 1985 remained in force till 1995. The conservation of Foreign exchange and prevention of smuggling activities Act, 1974- (COFEPOSA) and the national security Act, 1980 (NSA) an continuing till today Similarly, number of central and state acts, state orders, Rules and cognate acts, both repealed and unrevealed cases decided by supreme court of India and the experiences of emergency of June 1975 had given thrust to assess the safeguards against preventive detentions It may be mentioned that the number of dentenas during the emergency of 1975-76 had reached up to 1. 75,000. The socio-legal implications of the decision of the Supreme Court in A.D.M. Jobalpur Vs. Shiv Kant Shukla" of their lordship (both of the majority and minority) are far reaching than hitherto appreciated. It is, therefore, imperative that it ought to be considered in the context of the present sociopolitical structure of Indian society.

Historical perspective related of legislative and judicial trends of preventive detention in india

1947 saw the independence of India, and 1950 saw the adoption of the Constitution. It is remarkable that the Indian Constitution's founders, who were most negatively impacted by the preventive detention laws, did not think twice to declare the laws to be constitutionally sanctified—and to do so in the Fundamental Rights portion of the document. Certain sections of Article 22 are not Fundamental Rights; rather, they are Fundamental Dangers to the Indian citizens, for whose benefit and purportedly on their behalf, the Constitution was drafted in order to usher in a new society in which everyone would have the freedom of expression and association.

Sardar Patel led the Prevention Detention Act in 1950 and claimed to have had multiple "sleepless nights' ' before determining that a bill of this kind was required. On February 26, 1950, the Parliament passed the first Preventive Detention Act. Additionally, in 1950, a prominent political figure named A.K. Gopalan was detained under this Act rather than common disruptors of peace and order. These Acts were clearly intended to suppress political dissent even from that first action, and that legacy has been and continues to be upheld.With the possible exception of the roughly two-year period between 1969 and 1971, free India has the unpleasant distinction of having these exceptional, mischievous, and "unlawful" laws continuously from the time the country gained its independence until 1977.

It is important to remember that no other developed nation felt obligated to enact preventive detention laws during a period of peace, not even Britain, which brought them to our country. The USA, along with most other directly participating European nations, did not have such a statute in place even during the most recent World War. A person could only be imprisoned on the subjective judgment of the Home Minister of Great Britain, not on the subjective judgment of a harsh magistrate, as is the case in this instance, according to a preventive detention law that England established during the War.

Goal of Preventive Detention: The goal of preventive detention is to stop the detainee from acting in a way that might harm the state, not to punish them. This is how the concerned authority's satisfaction is subjectively determined. It falls under any of the above categories, including public order, foreign policy, state security, and community services.

The District Collector and Others v. Mariappan

It was decided that the goal of detention and the laws pertaining to it is to deter specific crimes rather than to punish them.

Preventive Detention Grounds: Preventive detention can only be used for four reasons.

The following are the grounds for preventive detention:

1. State security,

2. Public order,

3. Supply and essential services and defense,

4. Foreign affairs or India's security.

A person may be detained without trial only for one or more of the reasons listed above. A detainee subjected to preventive detention has no right to personal liberty guaranteed by Articles 19 or 21.

Development after coming in to force of the Indian Constitution

The legislative competence to enact a law providing for preventive detention is derived from the seventh schedule of the constitution of India Detention without trial in free India is a legacy of colonial period When it was forced by the British Imperialists to preserve and perpetuate British rule over India On February 25, 1950, only thirty days after the enforcement of the Constitution of India, the Parliament passed the First Preventive Detention Act, 1950 as a temporary measure with a tenure up to 1 April 1951. The prominent features of the Preventive Detention Act, 1950, were as follows

The authority passing the detention order was not bound to disclose to the detent the facts pertaining to arrest whose disclosure, according to detaining authority, was against public interestThe Act authorized government to continue the detention for an indefinite period of time once it was confirmed by the Advisory Board In special cases a person could be detained for one year without obtaining the opinion of the Advisory Board.

The detention order was not to be disclosed to the Court and any person who disclosed the order including jail authorities were punishable with imprisonment for a term which could extend to one year or with fine or both Officials acting in good faith in pursuance of the Act were granted legal immunity from suits or prosecutions.

Comparative Analysis Of Preventive Detention Laws Of Different Legal Systems

(A) POSITION 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 18186 (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 19397 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 defense and safety of the country. 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 in the Fundamental Rights chapter of the Constitution is need for the country. Parts of Article 2210 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 Preventive Detention Act, and said that he had several ‘sleepless nights’ before deciding that it is required to introduce such Bill.

The first Preventive Detention Act12 was enacted by the Parliament in 1950 and in the 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 consequently his rights flowing from Article 19(1) will also be taken away from him; such deprivation should therefore, be permitted, only if the law authorizing 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 Anukul Chandra Pradhan v. Union of India, 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 judgment of Ahmed Noor Mohmad Bhatti v. State of Gujarat14, the Apex Court upheld the constitutional validity of Section 151 of Criminal Procedure Code, 1973, which gives power to Police to arrest and detain any person on mere suspicion without producing warrant to prevent him from committing any cognizable offense. In the case of ADM Jabalpur case15 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.

The National Security Act, 198016 was widely criticized in the country. Because the Act was being misused by government and various officials as the Act did not define “public order” and “state security” which were the grounds of detention. 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)17 was enacted in 1971, followed by Conservation of Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) in 197418 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) 1980,19 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.

(B) POSITION IN USA In the United states the 5th amendment in the Constitution is praise to the Magna Carta meaning thereby law of the land and it can be further referred to law of the emperor. According to the Constitution Law of the United States personal liberty has been protected against the power of eminent domain further in the United States of America the power vested with the courts is to examine whether the law is just, fair and proper. The United States Supreme Court has not taken a consistent view with respect to doctrine of due process of law and it differs on the perception of a Judge in a particular case. America's preventive detention powers did not evolve as regrettable, and therefore narrow, byways diverging from a main road of criminal justice detentions. Many of them, rather, predate the Bill of Rights and have coexisted with it for the entirety of the life of the country. Many have narrowed over time in response to abuses — including both individual injustices and discrimination against socially disfavored groups — and concerns that the powers in question authorize more detention than is strictly necessary. Nonetheless, the evolution of the scope of preventive detention powers is not unidirectional. Detention powers may expand or contract as public sentiment evolves concerning how much detention a given problem truly requires. America today, for example, sees dramatically less quarantine and mental illness detention than in decades past.

(C) POSITION IN U.K.

Magna Carta was the first step with respect to Preventive Detention Law in the 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.22 Darnel's case of the year 162723 are familiar to the history of English constitution which was ultimately followed by various habeas corpus Acts.There were five petitioners in the King's bench and the prayer before the King's bench was to let them free. The basic challenge of that petition of right 1628 reversed the decision to prevent the power of arbitrary force committed by the King. The Darnel case was mainly on the grounds of detention of an individual vis-à-vis the power of the King to detain any individual in the interest of security of the State.

The Preventive detention to combat terrorism in written was first introduced in 1974 i.e., Prevention from Terrorism Act37 and it was in 1939 the prevention from violence Act38 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 the 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 226A of Criminal Justice Act.39 In these cases the custodian term is 10 years or more or the sentences imposed in respect of certain specified offense. The secretary of State cannot release a person serving as EDS in such circumstances if the person's case was referred to the Parole board and must continue to detain that person unless it is satisfied that there is no longer for protection of the public.

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(D) POSITION IN AUSTRALIA As a general rule in Australia, individuals may not be preventatively detained beyond an initial short period of time except after being convicted by a judge40. In other words, for citizens, detention is only justifiable as part of a judicial process. As Brennan, Deane and Dawson JJ of the High Court stated in Lim v Minister for Immigration, Local Government and Ethnic Affairs observed, The involuntary detention of a citizen in custody by the State is penal or punitive in character and, under our system of government, exists only as an incident of the exclusively judicial function of adjudging and punishing criminal guilt.However, in the same case, the Court identified a number of exceptions to the general rule where the detention is non-punitive in character and thus is permitted under the Australian legal system,such as for reasons of mental illness, infectious disease or for immigration related purposes in the case of non-citizens.In the 2004 case of Fardon v. Attorney-General (Qld), the High Court acknowledged that the list of exceptions stated in Lim "is not closed",and therefore left the possibility that detention on security grounds might be permissible within the Australian legal system. Since the 1990s, laws of preventative detention have been passed at the state level to provide extended detention for dangerous prisoners, especially sexual offenders, who have a high risk of reoffending.45 However, these laws apply to offenders who have already been convicted.46 The addition by the Anti-Terrorism Act (No 2) 200547 of Division 105 to the Criminal Code Act 199548 represented a shift from the general principle in Australia that arrest and detention should be based on reasonable suspicion of the commission of a criminal offense, to principles of general pre-emption. By inserting the new "preventative detention" scheme in the context of anti-terrorism laws, terrorism suspects might now be detained for a (longer) period of time without any criminal charges.49

Constitutional framework and Legislative trends

Constitutional Framework the constitutional framework relating to preventing detention is enshrined in article 22 of the indian constitution.Article 22 has two parts, first part relates to "Protection against arrest" while second part contains provisions relating to 'preventive detention.

Protection Against Arrest:

The protection of the individual from oppression and abuse by the police and other enforcement officers is a major interest in a free society. Arrest and detention in police lock-up may be very traumatic for a person. It may cause him incalculable harm by way of loss of his reputation. Denying a person of his liberty is a serious matter. In Joginder Kumar v. State of UP.. the Apex Court pointed out, "No arrest can be made in a routine matter on a mere allegation of commission of an offense made against a person. It would be prudent for a police officer in the interest of protection of the constitutional rights of a citizen and perhaps in his own interest that no arrest should be made without a reasonable satisfaction reached after some investigation as to the genuineness and bonafide of a complaint and a reasonable belief both as to the person's complicity and even so as to the need to effect arrest."

In the light of above observations the court said that the existence of the power of arrest is one thing, the justification for its exercise is quite different. The police officer must be able to justify the arrest apart from his peers to do so. It was clarified that the right not to be arrested except for fare offenses and to have someone informed of the arrest and to consult privately with lawyers is inherent in Articles 21 and 22(1) of the constitution and required to be recognized and scrupulously protected.

Clauses (1) and (2) of Article 22:Clauses (1) and (2) of Article 22 provides four safeguards to an arrested person, which are:Information as to ground of arrest:Clause (1) provides that a person arrested cannot be detained in custody without being informed, as soon as may be, of the ground of his arrest. In the State of M.P. V. Shobharam', the Supreme Court said, "A person's personal liberty cannot be curtailed by arrest without informing him, as soon

as possible, why he is arrested". It enables the person arrested to make his defense and to file appropriate proceedings before a court, If information is delayed, there must be some reasonable grounds justified in the facts and circumstances of the case. Failure to inform the person arrested of the reasons for his arrest would entitle him to be released The court can go into the question of sufficiency of information supplied to the arrested person and if it finds the information to be insufficient, the arrest becomes unlawful. Merely telling a person that he is being arrested under some section of enactment does not give him sufficient information. The need to tell a person as to why he has been arrested does not come to an end by releasing him on bail."

Right to Consult a legal practitioner: The person arrested shall have the right to consult and to be represented by a lawyer of his own choice. The apex court held that a person arrested on accusation of a crime becomes entitled to be defended by a counsel at the trial and this right is not lost even if he is released on bail, or is tried by a court which has no power to impose a sentence of imprisonment. The right to consult a lawyer starts right from the day of rest In Nandini Satpathy v. P.L. Dani Krishna Iyer J. observed, "Article 22(1) does not mean that a person who is not under arrest or custody can be denied the right to consult a practitioner of his choice. The spirit and sense of article 22(1) is that it is fundamental to the rule of law that the services of a lawyer shall be available for consultation to any accused person under circumstances of near custodial interrogation. Reading articles 20(3) and 22(1) together, it will be prudent for the police to permit the advocate of the accused, if there be one, to be present at time he is examined. If an accused person expressed the wish to have his lawyer by his side when his examination goes on, this facility should not be denied to him.(ii) Arrested person to be produced before a Magistrate :

Clause (2) of Article 22 provides that a person who is arrested and detained in custody shall be produced before the nearest Magistrate within a period of 24 hours of such arrest excluding the time necessary for the journey from the place of arrest to the court of the Magistrate.

In Hariharanand V. Jailor', it was clarified that where a person is arrested by a Magistrate, it is not sufficient for purposes of Article 22(2) to produce the person arrested before the same Magistrate who arrested him. The position is that in such a case a Magistrate would not be able to apply a judicial mind to the facts of the case as he would be like a judge in his own cause.

The apex court held the above provision to be a mandatory provision and it took a serious view where a magistrate ordered the remand of an accused to police custody without the accused having been produced before him personally. In such a case it is submitted that the Magistrate would be considered as acting in aid to police officers who acted deliberately and malafidely. The court granted an amount of Rs. 50,000/- as compensation to the victim." The necessity to produce an arrested person before a Magistrate comes to an end when that person is released on bail. If an arrested person is produced before a High court of Judicature and has been remanded to custody it is not required to produce him before a Magistrate

No detention beyond 24 hours without the authority of a magistrate:Clause (2) of article 22 lays down that a person shall not be detained in custody beyond the twenty four hours without the authority of a magistrate, In Gunpati v. Nafisul Hasan" Homi Mistry was arrested from Bombay under a warrant issued by the speaker of UP Assembly for contempt of the house, on presenting a writ of habeas corpus, the Supreme Court ordered his release as he had not been produced before a Magistrate within 24 hours of his arrest as provided in Article 22(2). The apex court in Khatri V. State held that the constitutional requirement to produce an arrested person before a judicial magistrate within 24 hours of his arrest to be strictly complied with .

Exceptions:Clause (3) of Article 22 lays down two exceptions. The fundamental rights guaranteed by clause (1) and (2) do not apply to (a) enemy aliens, and (b) to persons arrested or detained under a law providing for preventive detention.

If a foreigner enters India illegally and is ordered to leave India but he does not comply with the order then his arrest for purposes of deportation does not come within Article 22. The foreigner concerned had no right to enter and remain within India. The constitutional guarantee against illegal deprivation of personal liberty constructed in a practical way cannot entitle a foreigner to remain in India contrary to the law governing the foreigners."

Preventive Detention: Clauses (4) to (7) of Article 22 relates to preventive detention. An examination of lists of 7th schedule makes it clear that the subject of preventive detention is mentioned in entry 9 of List I (Union List) and in entry 3 of List III (concurrent list)." This both the center and the states are free to enact their own law except that in the case of conflict, it is the union law that will prevail. A comparison of both entries clarifies that the center power is wider than the state's power to erect such law. The above stated entries do not exhaust the entire legislative area of parliament with respect to preventive detention on other grounds. Parliament can also enact in the exercise of its residuary power a law providing for preventive detention on any other ground. The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) was enacted by the parliament under residuary power read with entry 36 of the Union list.

Clauses (4) to (7) of Art. 22 lay down a few safeguards, and provide for minimum procedure, which must be observed in any case of preventive detention. If a law of preventive detention, or administrative action relating thereto, infringes any of these safeguards, then the law or the action would be invalid as infringing the Fundamental Right of the detainee.

It is immaterial whether or not these constitutional safeguards are incorporated in the law authorizing preventive detention, because even if they are not, they would be deemed to be part of the law as a superimposition by the Constitution which is the supreme law of the land Some semblance of natural justice has been woven into the fabric of preventive detention by these constitutional provisions, and some protection has been provided to a person whose personal liberty has been taken away through an administrative order.

Judicial Trend

Universal Declaration of Human Rights proclaims, "The recognition of the inherent dignity and of the equal and inalienable rights of all members of the human family is the foundation of Freedom, Justice and peace in the world." The European Court of Human Rights has rightly said "detention without trial is volatile of the European Convention on Human Rights except in time of war or other public emergency threatening the life of the nation" and even then to the extent strictly required by the exigencies of the situation, as the convention says".

In Rex v. Halliday, Lord Atkinson observed, "However precious the personal liberty of the subject may be, to some extent, sacrificed by legal enactment, namely, national success in the war or escape from national plunder or enslavement.... as in almost every case, where preventive justice is put in force, some suffering and inconvenience may be caused to the suspected person. That is inevitable. But the suffering is under this statute inflicted for much more important than his liability or convenience namely, for securing the public safety and defense of the realm. It must not be assumed that the powers conferred upon the executive by this statute will be abused." Again in Ronnfeldt v. Phillips', Scrutton LJ, pointed out that, the courts were always anxious to protect the liberty of the subject. Courts were always anxious to protect the liberty of the subject. They did so both in the interest of the state. In time of war, there must be some modifications in the interests of the state."

In the same tone Bankes L.J. said that, "in times of grave national peril, it was necessary that competent military authorities should be clothed with wide powers to act and to act on suspicion. Honest mistakes might easily be made and, if they were honestly made and, if they were honestly made, it must be borne as one of the consequences of lamentable war."

In A.K. Gopalan V. State of Madras," Mahajan J. observed, Preventive detention laws are repugnant to democratic constitutions and they cannot be found to exist in any of the democratic countries of the world. It was stated at the Bar that no such law was in force in the United States of America. In England for the first time during the first /World War certain regulations framed under the Defence of the Realm Act provided for preventive detention at the satisfaction of the Home Secretary as a war measure and they ceased to have effect at the Conclusion of hostilities. The same thing happened during the second World War. Similar regulations were introduced during the period of the war in India under the Defence of India Act. The Government of India Act, 1935, conferred. authority on the Central and Provincial Legislatures to enact laws on this subject for the first time and since then laws on this subject have taken firm root here and have become a permanent part of the statute book of this country Curiously enough, this subject has found place in the Constitution in the chapter on Fundamental Rights. Entry 9

of the Union List and Entry 3 of the Concurrent List of Sch. 7 mention the scope of legislative power of Parliament in respect of this topic. The jurisdiction, however, to enact these laws is subject.

Though the Constitution has recognized the necessity of laws as to preventive detention it has also provided certain safeguards to mitigate their harshness by placing fetters on legislative power conferred on this subject. These are-

(1) That no law can provide for detention for a period of more than three months unless the sufficiency for the cause of the detention is investigated by an Advisory Board within the said period of three months. This provision limits legislative power in the matter of duration of the period of detention. A law of preventive detention would be void if it permits detention for a longer period than three months without the intervention of an Advisory Board.

(2) That a State law cannot authorize detention beyond the maximum period prescribed by Parliament under the powers given to it in cl. (7). This is a limitation on the legislative power of the State legislature. They cannot make a law authorizing preventive detention for a longer period than that fixed by Parliament.

(3) That Parliament also cannot make a law authorizing detention for a period beyond three months without the intervention of an Advisory Board unless the law conforms to the conditions laid down in cl. (7) of Art. 22. Provision also has been made to enable Parliament to make laws for procedure to be followed by Advisory Boards. This is a safeguard against any arbitrary form of procedure that may otherwise find place in State laws.

Apart from these enabling and disabling provisions, certain procedural rights have been expressly safeguarded by el. (5) of Art. 22. A person detained under a law of preventive detention has a right to obtain formation as to the grounds of his detention and has also the right to make a representation protesting against an order of preventive detention.

(B) Communication of Grounds of detention.

(C) Right to representation and its consideration

(D) Period of detention

(E) Advisory Boards

(F) Detention under following Acts

(1) Preventive Detention Act, 1950

(2) Maintenance of Internal Security Act, 1971

(3) COFEPOSA, 1974

(4) National Security Act, 1980

(5) Detention under Preventive of Black Marketing and maintenance of supplies of Essential commodities Act, 1980

(6) Prevention of Illicit Traffic in Narcotic Drugs & Psychotropic substances Act, 1988.

(A) Relation between Articles 19,21 and 22:-In this regard in A.K. Gopalan V. State B.P. Mukherja J., observed, "To me it seems that Article 19 of the constitution gives a list of individual liberties and prescribes in the various clauses the restraints that may be placed upon them by law. On the other hand Articles 20, 21 and 22 are primarily concerned with panel enactments or other laws under which personal safety or liberty could be taken away in the interest of the society and they set down the limits within which the state control should be exercised. Article 19 uses the expression freedom and mentions the several forms and aspects of it which are secured to individuals, together with the limitations that could be placed upon them in the general interest of the society. Articles 20, 21 and 22 on the other hand do not make used of the expression freedom and they lay down the restrictions that are to be placed on state control where an individual is sought to be deprived of his life or personal liberty. The right to the safety of one's life and limbs and to joyments of personal liberty. IN the sense of freedom from physical restraint and coercion of any sort, are the inherent birth right of a man. The essence of these rights consists in restraining others from interfering with them and hence they cannot be described in terms of "freedom" to do

particular things. There is also no question of imposing on the activities of the individuals, so far as the exercise of these rights is concerned. For these reasons, I think, these rights have not been mentioned in Art. 19 of the Constitution. An individual can be deprived of his life or personal liberty only by action of the State, either under the provisions of any penal enactment or in the exercise of any other coercive process vested in it under law. What the Constitution does therefore is to put restrictions upon the powers of the State, for protecting the rights of the individuals. The restraints on State authority operate as guarantees of individual freedom and secure to the people the enjoyment of life and personal liberty which are thus declared to be inviolable except in the manner indicated in these Articles. In my opinion, the group of Arts. 20 to 22 embody the entire protection guaranteed by the Constitution in relation to deprivation of life and personal liberty both with regard to substantive as well as to procedural law. It is not correct to say, as I shall show more fully later on, that Art. 21 its confined to matters of procedure only. There must be a substantive law,under which the State is empowered to deprive a man of his life and personal liberty and such law must be a valid law which the legislature is competent to enact within the limits of the powers assigned to it and which does not transgress any of the fundamental rights that the Constitution.

(B) Communication of Grounds of detention:Articles 22(5) mandates, When any person is detained in pursuance of an order made under any law providing for preventive detention, the authority making the order shall as soon as may be, communicate to such person the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order".

Thus there is a constitutional obligation on the part of the detaining authority to furnish to the detenu the grounds "as soon as may be possible after the arrest. Grounds are the basis or the conclusions leading to the order drawn by the detaining authority from the facts or particulars with him regarding the detenu. There is a similar obligation to furnish the grounds under Article 22(1), but in Article 22(5) the authority is given the further privilege under Article 22(6) of not disclosing such facts which he considers to be prejudicial to the public interest to disclose. "Facts are the data on which the conclusions for the grounds are based. The authority is bound to disclose all the grounds though not all the facts. But the communication to the detenu should contain all the grounds or conclusions which enabled the order of detenu to be made with sufficient particulars or facts as are absolutely necessary for enabling the detenu to make an effective representation. Sufficiency of particulars of facts and all the grounds to the criterion. In other words the grounds furnished must be exhaustive though tot the 'facts'. The right to receive the grounds is independent but it is inextricably bound up and connected with the right to make representation. It is not good merely reproducing the words of the section of the statute. What is needed is all the grounds and sufficient particulars or facts. These facts may even be supplied subsequent to the communication of the grounds,

In State Bombay V. Atma Ram Shridhar Vaidya, the Supreme Court observed. "Article 22(5) postulates two rights. The first part of Article 22(5) gives a right to the detained person to be furnished with the grounds on which the order has been made and that has to be done" as soon as may be". The second right given to such a person is of being afforded the earliest opportunity of making a representation against the order. It is obvious that the grounds for making a representation against the order. It is obvious that the grounds for making the orders as mentioned above are the grounds on which the detaining authority was satisfied that it was necessary to make the order. These grounds, therefore, must be in existence when the order is made. The question whether such grounds can give rise to the satisfaction required for making the order is outside the scope of the inquiry of the court. But the question whether the vagueness or indefinite nature of the statement furnished to the detained person is such as to give him the earliest opportunity to make a representation to the authority is a matter within the jurisdiction of the courts enquiry and subject to the court decision.

Where the grounds given for the detention are relevant the question whether they are sufficient or not is not for the decision of the court. The legislature has made only the subjective satisfaction of the authority making the order essential for passing the order. The satisfaction for taking the initial order is and has always been under the preventive Detention Act, that of the authority making the order. Because the V.G. Ramchandran," The Law of Preventive Detention India.

Conclusion

In summary, the development of preventive detention in India illustrates a careful balancing act between preserving personal freedoms and ensuring national security. Although attempts have been made to resolve issues through legislative reforms, judicial scrutiny has highlighted the significance of constitutional safeguards and procedural justice. Problems nevertheless exist, necessitating ongoing reform initiatives to guarantee a peaceful coexistence of security requirements and fundamental rights. It will take a sophisticated strategy that combines strict oversight with constitutional principles to create a preventive detention policy that upholds people's rights and successfully addresses national security issues.

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