



PREVENTIVE DETENTION – THE WEAPON OUGHT TO BE PRESERVED

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Abstract: -

The Indian legal system standing in the twenty first century has one of the most unique and vulnerable provision in its system for keeping a check on the criminal activities happening in the nation. The provision which is of quite importance in today's situation that is the preventive detention holds greater significance as this remedy brings in or prevents any future crime which might take place in future. If the detaining authorities are convinced that this particular individual in future might commit some cognizable offence which would ultimately disturb the national security or the law and order of the country, then the authorities can take that individual under detention so as to prevent the same. It is basically an anticipatory measure to prevent the loss of life and property to the fullest. The increasing rate of crime in today's generation has seriously brought up the need of preventive detention which can potentially become an asset so as to bring down the rate of criminal cases in India.

However, it is quite unfortunate to mention out the ground level reality that this extraordinary relief has been repeatedly misused by various police personnel and other detaining authorities in today's time. This misuse is taking place in the society with various establishments of false and

fabricated facts which is ultimately leading to the serious infringement of the fundamental rights of the individuals who are detained without any justifiable reasoning. The article therefore focuses on the legislative objective behind this provision and various other judicial pronouncements wherein the courts of India has defined the provision at its depth and its degree of consistency with the fundamental rights guaranteed under the Constitution of India.

Introduction: -

The preventive detention, under the present situation of the society is considered as one of the pivotal weapon to regulate the law & order situation of our country. This constitutional provision has gained immense importance in today's society as well as from the time of independence, it allows preventive detention of a person if the authorities are convinced and satisfied that the particular is a threat to national security or law and order. The main object behind this provision is to prevent the individual from committing a suspected prospective crime¹. It is for the national security, that the suspected is confined for a particular period of time so as to prevent a crime which would have affected thousands of common people. An individual can be detained under these provision for a time period up to 12 months however, the state government needs to be intimidated as soon as possible that a person has been detained under the National Security Act. Various International forums are not in support of the provision enshrined under the Indian legal system. As India is one of those few democratic countries in the world whose legal system allows for

¹ <https://www.gktoday.in/gk/article-22-and-preventive-detention-in-india/>



preventive detention to take place in regular affairs of the country. Various global organisations in various instances have pointed out that the safeguards enshrined under the Constitution of India is not in adequate to upheld the fundamental rights of the citizen. The South Asia Human Rights Documentation Centre in its submission in August, 2000 recommended to the Indian officials and its government to delete all those provisions from the legal system which allows preventive detention. They are of the firm opinion that the weapon of preventive detention enshrined under Article 22 strikes a fatal blow to the fundamental rights of the citizen, it takes away the personal liberty of an individual which is considered as one of the backbone of a democracy. The European Court of Human Rights in its various statements clearly made out the point that preventive detention is illegal and unconstitutional under the European Convention on Human Rights regardless of the safeguards provided by the supreme source of law of the land. Legislative Objective: -

The Madras High Court in the case of *Mariappan v. The District Collector and Ors*². stated in its judgement that the object of detention is not to punish, but to prevent the commission of certain crimes so as to bring out a safer society for the citizens. The prevention is from doing any act which affects the public interest at large. The suspicion or the satisfaction of the detained authority is a question of fact which is depending on the facts and circumstances of the particular case. the danger or the alleged activity should basically cover the following few areas: -

- I. Foreign Affairs,
- II. Public order,
- III. Security of the state

However, this provision which is in force today in India had to face a lot of criticism and hatred as this weapon brings a direct attack on the fundamental rights of a citizen guaranteed by the Constitution. Such legislative objective was considered unconstitutional and barbaric for the welfare of the society. England, has eradicated this provision and applies this principle only in cases of national emergency, in those type of situations wherein some particular individuals becomes a threat to the national security and attempts to jeopardise the country's integrity. India, being one of the biggest democracy holds this provision in its system in its regular affairs of the nation so as to maintain the constitutional machinery of the democracy. The philosophy behind India keeping these provision as a regular element in its security system is that India is a multi-structured country comprising of various languages, religions, caste etc. where in communal violence has become an unfortunate regular locus. The Indian independence history also states that during the time when the Constitution came in force, this provision was very much required. The following statement made by Dr. Bhimrao Ambedkar clearly establishes the importance of these provision. He said, "..... in the present circumstances of the country, it may be necessary for the executive to detain a person who is tempering either with the public order or with the defence services of the country. In such case, I don't think that the exigency of the liberty of an individual

² H.C.P.(MD) No.244 of 2014



*shall be above the interest of the state*³. The legislative object of the preventive detention laws got its constitutional sanctity subsequently and was incorporated in the Part-III of the Constitution of India⁴, therefore, it is irrelevant to compare the conditions of various nations as each and every country has their own unique identity and issues, the societal evolution of different nation remains completely different from each other which therefore, needs different remedies so as to uphold the harmony of the society and to make sure that the multi-structured citizens of our country lives happily without the fear of crime. Article 22 of the Indian Constitution provides that the person who has been detained under the preventive detention shall have the constitutional right to have his representative against his reviewed by the advisory board appointed. If the advisory board comes up with the finding that the detention is false and not justified, then the detained must be released immediately without any further time waste. However, if the board finds out same material in it and states that the detention is justified, then it is left on the government to decide for the time period of the detention of the individual. The advisory board needs to finish its proceedings within the time prescribed by law, if there is a failure then it will lead to an automatic invalidity of the detention.

The landmark judgement of the Supreme Court in the case of *Ahmed Noormohmad Bhatti v. State of Gujarat*⁵ upheld the validity of these provision and stated this provision as a pivotal step towards a safer society. The three – judge bench uphold the validity of the

power of the police authorities under section 151 of the Code of Criminal Procedure 1973, to arrest and detention of a person without a warrant, to prevent commission of a cognizable offence, ruled that a provision could not be held to be arbitrary and unconstitutional. This preventive detention is a necessary tool to prohibit the future crime and this power vested to the executives authorises them to arrest any particular individual from whom reasonable suspicion arises.

The blatant exploitation: -

However, this legislation with the passage of time has faced several criticisms from the nation due to various instances wherein this urgent and immediate relief has been blatantly misused by the authorities and the police. Various procedural exploitations have taken place wherein proper procedure was not followed and excessive time was taken which led to utter delay. The law has repeatedly come under various questions and arguments regarding its constitutionality. The Uttar Pradesh government in the month of January, 2018 released a report stating that it had detained 160 people under the National Security Act. However, it is quite unfortunate to mention out the fact that all those cases of detention had not been investigated and they are still pending. The Law Commission Report in this regard has stated that more than 14 lakh people were held under preventive laws in India, without any justifiable cause, maximum of these cases are still pending for the verdict. The exploitation and inhuman treatment of the detained people in India has led to the intervention of various

³ <https://www.gktoday.in/gk/article-22-and-preventive-detention-in-india/>

⁴ <http://www.legalserviceindia.com/legal/article-751-preventive-detention.html>

⁵ Appeal (crl.) 109 of 2001



International Human Rights Organisation and the Human Rights Commission of India to the issue, such inhuman treatment towards the detained has made India one of those barbaric nation which failed to show humanity towards the prisoners and the detained individuals.

The recent judicial pronouncement has clearly made out the point that illegal preventive detention leads up to the serious violation of fundamental right under Article 21 of the Indian Constitution. The personal liberty of an individual gets infringed and it leads to serious encroachment on the fundamental rights of an individual. In the case of *Prem Narayan v. Union of India Throu. Secy. Minister of Home Affairs & Ors*⁶. The division bench of Madras High Court clearly stated that an illegal preventive detention is an encroachment upon the personal liberty of an individual and it cannot be done in a casual manner. Hon'ble Justice Shabihul Hasnain and Hon'ble Justice Rekha Dikshit on 22nd December 2019, in its judgement clearly pointed out the fact that if any preventive detention takes place based on false or fabricated fact or evidence, it leads to a serious form of injustice and directly hits the personal liberty of an individual enshrined under Article 21 of the Constitution of India.

The court was of the firm opinion that if an act falls within the category of public interest, it should be of such nature which should disturb the ordinary tempo of the society, it should bring in certain unfavourable scenarios which will lead to certain crisis in the law and order situation of the country. If

the ordinary criminal law of our country has the capability to efficiently deal with the present situation or the alleged activity, then the need to apply the course of preventive detention does not arise, thus it is an extraordinary relief which needs to be applied in exceptional situation wherein no other relief is available. The above mentioned case clearly establishes the point before the court of law that the present facts and circumstances and the arguments of the detaining authorities could not establish the alleged act as a threat to the public order or national security. It was a pure manipulation and influence on the part of the authority which is frivolous and fabricated in nature. This recourse always involves the element of political influence in it which cannot be completely ruled out or ignored but it is one of the prime duty of the executive body to make sure that there remains a minimal instance of political influence which will ultimately make this remedy a transparent weapon to curb the rising offences taking place in our nation.

In the case of *Pebam Ningol v. State of Manipur & Ors*⁷. the Apex Court of India clearly stated that if any of the grounds specified under the detention order are non-existent, misconceived or irrelevant under the National Securities Act, 1980, it will be invalid, unmaintainable and will directly hit the personal liberty of an individual. Therefore, this recourse needs to be applied with utter efficiency and upon the true knowledge of the facts otherwise it will lead to a serious miscarriage of justice. The principle of Audi Alteram Partem considered as a principle of natural justice comes as a weapon to safeguard the victims of unlawful preventive

⁶ H.C.P No. - 27130 of 2019

⁷ S.L.P. (Crl.) No. 2555 of 2010



detention by providing them the reasonable opportunity to be heard and defend themselves. The petition of Habeas Corpus also act as a defence for the petitioner in case of a an illegal detention.

personal liberty has been jeopardised by the State.

Conclusion: -

The weapon of preventive detention is considered as one of the most critical tool to keep a check on the criminal activities that are taking place in the nation. When the Constitution came in force, the provision of preventive detention was of much importance. The unique feature of the Indian Constitution which provides for this provision during peacetime also faced various criticism from the nation and various global organisations due to the inadequacy and the exploitation faced by the individuals when they are detained by the various authorities. Various instances in India show up the fact that this provision is being blatantly misused which directly injures the fundamental right of an individual. Various political influences, agendas and various fabricated facts leads to exploitation of the provision at its peak level. At this situation, it is on the executives of the country to minimise this external influences as much as possible and tend to detain those individuals which are a real threat to the nation. All the law enforcing agencies needs to be regulated and properly checked so that these exploitations are decreased and all those safeguards which are provided in the Indian Constitution are applied with utter fairness so that the transparency of the mechanism appears on the face of the democracy. The Indian Judiciary also known as the temple of justice needs to intervene and make sure that these cases are dealt in a speedy manner so as to provide justice to those individuals who has been exploited blatantly and whose

