PREVENTIVE DETENTION IN INDIA: CONSTITUTIONAL SAFEGUARD AND CONTEMPORARY RELEVANCE

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ABSTRACT

Detention is an exceptional way to arrest the culprit who indulges in criminal activities or armful activities. Preventive detention is a mechanism under the framework of constitution by which state may restrict the person's liberty to movement to prevent the harmful and mischievous activities in society. The preventive detention is altogether different from the detention or arrest under ordinary criminal law, it deals with the offences which are already committed, whereas the preventive detention deals with the prior of the actual harm cause in the society. This action of detention raises the questions relating to personal liberty, procedural fairness and the power of executives. This article examines the main foundational constitutional values and constitutional base of preventive detention in India, with specifically focus on the need of maintaining the appropriate balance between individual liberty and state security. The article discusses about the available constitutional safeguards to the person, subjected to preventive detention, which includes the communicating the grounds of arrest or detention, opportunity to make effective representation, review by the advisory board and compliance with procedure established by law. This article examines the contemporary relevance and concerns relating to preventive detention which includes the delay in communicating the grounds of detention, vague or insufficient reasons for detention, improper utilization of subjective satisfaction, repeated detention and arbitrary use of power. The article concludes with stating that, the preventive detention should be used in exceptional measure, operated with proper constitutional safeguards, procedural fairness, relevant material and effective judicial oversight. It is very much essential to maintain proper balance between the individual liberty and state security and liberty of the person should not be curtailed but it should be respected for preserving justice, dignity and the rule of law.

Keywords: Constitutional Safeguards, Judicial Oversight, Personal Liberty, Preventive Detention, State Security.

1. Introduction

Liberty is of the main component of the Indian constitution. It is the basic value and placed in the Article 21 of the Indian Constitution.[1] It lays down the procedural safeguards to protect the citizen from arbitrary actions. However, the constitution allows the state in certain exceptional condition to detain or arrest a person without any prior conviction. Whereas ordinary criminal law deals with arrest or detention of a person after the conviction. Preventive detention is the tool to restrict the person from doing any future wrong that may harm the national security, integrity and public order in the interest of the state. The constitution of India under article 22 guarantees the power and safeguard the right to make representation and provide the grounds for detention and review by the advisory board.[2]

Preventive detention strikes the balance between individual liberty and state security. This preventive detention has possible risk of misuse because it is the conduct for possible future happening and not for guilt. These concern the violation of basic fundamental rights of the citizen which includes the reason for detention, delay in informing the reason to the person who is arrested, improper detention.

The Supreme Court has elucidated important safeguards through such cases like A.K. Gopalan v. State of Madras[3], Khudiram Das v. State of West Bengal[4], Icchu Devi Choraria v. Union of India[5]. Some of the recent decisions of the apex court have reaffirmed the preventive detention as extraordinary measure and can be used with limit and carefulness.

This article examines the constitutional safeguards relating to the preventive detention in India, contemporary concern and perspectives related to it. It states that the preventive detention should be used as measure not as the arbitrary arrest and it should adhere the principle of personal liberty and constitutional foundational values.

1. Constitutional Foundation of Preventive Detention

The Constitution of India guarantees certain fundamental rights under Part III of the

[1]INDIA CONSTI.art.21.
[2]INDIA CONSTI.art.22(4)-(7).
[3]A.K. Gopalan v. State of Madras, 1950 S.C.R. 88 (India).
[4]Khudiram Das v. State of West Bengal, (1975) 2 S.C.C. 81 (India).
[5]Icchu Devi Choraria v. Union of India, (1980) 4 S.C.C. 531 (India).

Constitution. The following are the Articles which are the foundation as follows: -

i. Article 21 of the Constitution of India[6]

Under Indian Constitution Article 21, protects the life and personal liberty of the constitution of every human being. This Article prevents from arbitrary actions of the state from taking away the liberty and protects the life and liberty of the person. The state cannot deprive the person from his liberty without following the law. In various cases, Supreme court also elaborated that, personal liberty has broad view and definition. The court further stated, any action which arbitrarily takes away the person's liberty should not be accepted and state shall follow the procedure established be law.[7] Preventive detention violates the article 21 of the constitution. It involves the detention of a person and depriving the person's liberty to walk freely.

ii. Article 22 of the Constitution of India[8]

Article 22 of the constitution is the core provision relating to the preventive detention. Under Article 22 (3) (b)[9] states that standard rights and safeguards given to the arrested person under ordinary criminal law but do not apply to anyone arrested or detained under any law providing for preventive detention. However, constitution provides the safeguards and protection against preventive detention.

Article 22 (4) to 22 (7)[10] of the constitution sets the rules and limits for preventive detention, which gives crucial protection to a person kept under the preventive detention. As this provision sets the limits, the review of advisory board is crucial to prevent the person from preventive detention which should not be used unfairly and arbitrarily.

The Constitution of India may permit the preventive detention in certain scenarios but put certain limits and rules. The purpose behind these safeguards is to strike the balance between national security and personal liberty of individual.

[6]INDIA CONST. art. 21.
[7]Menaka Gandhi v. Union of India, (1978) 1 S.C.C.248, 282-283 (India).
[8]INDIA CONST. art. 22 (3)-(7).
[9]INDIA CONST. art. 22 (3) (b), (4)-(7).
[10]INDIA CONST. art. 22(4)-(7)

2. Principle Preventive Detention Laws in India

The Preventive detention in India is governed by various legislations which deals with specific circumstances that could arise the question of national security, public order and integrity in the interest of State. These various legislation gives the power to state to detain the persons in order to prevent harmful activities. The power of preventive detention is subject to the provisions under Article 22 of the Indian Constitution.

i. National Security Act, 1980[11]

The National Security Act, 1980 is one of the major legislations dealing with preventive detention in India. It permits the state to detain a person when there is necessity to detent the person in order to prevent harmful and unlawful activities which may affects the national security and public order, or the maintenance of essential supplies and services. The act also provides the provisions for reviewing the person detention through the advisory board. The detention of the person under the act follows the detention order and its requirement of the parent act as well as constitutional provisions relating to preventive detention.[12]

ii. COFEPOSA Act, 1974[13]

The Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 mainly focuses on smuggling and matters relating to foreign exchange matters. The act permits the preventive detention of the person who indulges in the circumstances covered under this legislation.[14] The main aim behind the act is to curb the serious economic offences and smuggling activities which hampers the economic interests of the country. This is also subject to the constitutional safeguard and scope of judicial review.

iii. PITNDPS Act, 1988[15]

The Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988

[11]National Security Act, No 65 of 1980, India Code (1980).
[12]National Security Act, No 65 of 1980, §§ 3,8, 10-14 (India).
[13]Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, No. 52 of 1974, India Code (1974).
[14]Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, No. 52 of 1974, §§ 3, 8-10, India Code (1974).
[15]Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, No. 46 of 1988, India Code (1988).

allows the preventive detention in such cases involving the illicit trafficking of narcotic drugs and psychotropic substances.[16] The purpose of the Act is to prevent persons indulged in such illegal activities from continuing their operations. This act is vital to deal with organized drugs trafficking where the ordinary criminal proceedings may not always continue, involvement in such illegal activities. The provision given in this act for preventive detention is limited to certain extent. Authorities should not use unlimited power and freedom to detain the person, and it subject to requirement of relevant provision of law and constitutional safeguards.

The Apex Court consistently held the exceptional measures for preventive detention and must be used in great care. In Mortuza Hussain Chaudhary v. State of Nagaland[17], the Court strictly emphasized the serious nature of preventive detention and need to adhere the constitutional safeguards.

3. Critical Issues and New Perspective

Preventive detention is the action intended to prevent the person from doing harmful activities which may threaten the national security, public order in the interest of the state. The important concern arises is when the person's individual liberty is curtailed for the future offence rather than the proven offence. This does not require any prior conviction and entirely based on material considered by the competent detaining authority. It establishes the need for application of mind, reasonableness and effective intervention of judiciary. The power given to the authority should be used in limit and it does not become the routine method of restricting the personal liberty.

A primary concern arises when ordinary criminal law already exist. The existing criminal law provides provisions relating to investigation, trial and determination of guilt, whereas the preventive detention focuses on preventing future conduct. The pendency of criminal case or mere delay in criminal process does not justify the action of preventive detention. This action should be used in accordance with law and there is genuine preventive need where the existing laws are insufficient.

The subjective satisfaction of the detaining authority is an important concern. The authority

[16]Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, No 46 of 1988, § 3, India Code (1988).
[17]Mortuza Hussain Chaudhary v. State of Nagaland, 2025 INSC 321, ¶ 2 (India).

has power to order the detention, but this decision is subject to the proper and relevant information. The clear reasons and facts should be connected with the case. The order without proper consideration of the reason and facts may lead to use of arbitrary power and it would amount to violation of personal liberty.

The communication of grounds of arrest is crucial. A detained person should know the reason or ground of detention to make appropriate representation. The grounds must be communicated clearly and promptly with the detained person. The unnecessary delay and uncommunicated grounds can undermine the protection guaranteed under Article 22 of Indian Constitution.[18]

In addition, the significant concern is the distinction between law and order and public order. Every criminal action does not hamper public order at large. The use of preventive detention should be reasonable and, in such situation, where the real apprehension of public order, peace and national security. Similarly, when the person is detained repeated for the same grounds, there must be a clear, new and relevant reasons to justify the detention.

It shows the need for proper and reasonable balance between State Security and Personal Liberty. The preventive detention should be used in proper and genuine condition, supported by relevant and appropriate materials. The competent authorities must follow the safeguards guaranteed under the Constitution and Courts must ensure that, the power should not be arbitrarily used. Prevention detention should remain as an exceptional measure and time bound measure, to ensure the security of the society is maintained without hampering the fundamental rights of the people.

4. Contemporary Relevance of Preventive Detention

Preventive detention continues to have significance in India, particularly in case of national security, public order, smuggling, foreign exchange violations and illegal trafficking of narcotic drugs. Legislation like National Security Act[19], COFEPOSA[20] and PITNDPS[21] allows the authorities to take preventive actions where there is serious concern about the national

[18]INDIA CONST. art.22(5).
[19]National Security Act, No. 65 of 1980, India Code (1980).
[20]Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, No. 52 of 1974, India Code (1974).
[21]Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, No. 46 of 1988, India Code, (1988).

security. This also used in circumstances where the serious threat to public peace is concerned.

The present-day application of preventive detention raises the significant concerns about the personal liberty and misuse of executive power. The primary possibility of preventive detention is future conduct of the person, rather finding the actual guilt. This might come under the risk of detention based on insufficient grounds, vague or outdated information.

The delay in communicating the grounds of detention is primary issue. Any unnecessary delay leads misrepresentation and affects the ability of detained person to challenge the detention. The current application preventive detention requires the check and balance mechanism by the judiciary with the help review. It should follow the strict constitutional safeguards to ensure the state security is protected without unnecessarily affecting the personal liberty of the person.

5. Conclusion

Preventive detention has a significant but sensitive place in the Indian Constitution. It gives a state a way to deal with serious threats to national security, public order, smuggling and drugs trafficking. At the same time, it directly affects the personal liberty of the person.

The present study shows that the power of preventive detention requires strict constitutional safeguards and careful utilization. The distinction between the preventive action and punishment must always remain clear.

In the present context, the actual challenge is to maintain a proper balance between state security and individual security. Preventive detention should be use as an exceptional measure, utilize only in genuine preventive purposes. A vigilant approach from the competent authority and effective supervision by the courts would help to ensure the powers serve its constitutional purpose without unnecessarily affecting the fundamental rights guaranteed under Part III of the Constitution.