

Preventive Detention Law: The Commandment of Arbitrary Punitive stroke

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Preventive Detention laws are the most contested letters of Government's might. Detention without a trail is an enigma which still haunts the progressing societies. Worldwide the despotic regimes have used arbitrary preventive detention laws as a certified weapon to curb any kind of opposition or contrary opinion to their official propaganda.

Way back in 1948 United Nations General Assembly adopted the Universal Declaration of Human Rights which were expressly believed to be the rights which all human beings are inherently entitled to. Article 9 of it decrees that "No one shall be subjected to arbitrary arrest, detention or exile" which means, the government cannot deprive an individual of their liberty without proper due process of law. Moreover its offshoot the International Covenant on Civil and Political Rights specifies the protection from arbitrary arrest and detention by the Article 9. But as the current condition of Declaration itself the Article 9 has gone for a toss in almost all of its signatories' states.

As the modern Nation States takes a tilt from welfare state towards more security centric police states preventive detention laws gets more conventional status by getting clipped into the modern liberal democracies.

In India preventive detention thrives under constitutional sanction. The authoritarian detention is the most contentious part of the scheme fundamental rights in the Indian constitutions. The Article 22 (3) of the Indian constitution provides that, if a person is arrested or detained under a law providing for preventive detention, then the protection against arrest and detention under Article 22 (1) and 22 (2) shall not be available.

In our country a person can be detained without a trial by taking vague pleas of the security and defense of the state, maintenance of public order or even for maintenance of essential supplies and services. A detainee under preventive detention will be deprived of personal liberty guaranteed under Article 19 or Article 21 of Indian Constitution.

In the scheme of Criminal Law, Preventive detention should be cautiously distinguished from Punitive Detention. Where the Punitive detention is the punishment for illegal acts done, the Preventive detention on the other hand is action taken beforehand to prevent possible commitment of crime. Preventive detention thus becomes an action taken by the authorities behind the curtain of suspicion that some wrongful or illegal acts may have been done by the person concerned. The mere ground

of suspicion to book a citizen under PD makes it vulnerable for abuse of power at hands of authorities.

Preventive Detention under Article 22(3) survives in the Constitution with the aid of subsequent clauses which in the grab of safeguards to citizens provide it pillar support for judicial survival.

Firstly under Article 22 (4) provides for an advisory board to review the detention if it extends beyond 3 months. However Article 22(7) (a) allows parliament to pass a law to circumvent the article 22(4) in classes of cases.

Secondly under Article 22(5) a person detained should be entitled to know the grounds of his detention. But the catch is Article 22(6) puts a rider on the safeguard and allows state to have arbitrary power to refuse to divulge the grounds of detention under the name of public interest. This shows that even the safeguards itself is not secure to protect the detainees from arbitrary government action.

During the British Raj imperial government took recourse of preventive detention to suppress popular independence movement. Bengal Regulation-III of 1818 and Rule 26 of Defense of India Act 1939 empowered government to detain anybody on mere suspicion.

With the validation from preventive detention provisions of the constitution Legislatures on successive intervals passed laws providing for preventive detention.

Independent India's first Preventive Detention Act came in 1950 after its lapse in 1969 then came the "Maintenance of Internal Security Act 1971" popularly known as the MISA. In 1974 came the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act popularly known as the COFEPOSA.

During the dark days of Emergency in India MISA was grossly abused leading to many Human and Civil Rights violations. The abuse of Preventive Detention laws became so common that debate around it in electoral arena made Janata Party to rise on power ladder with an electoral pledge that preventive detention laws will be repealed. The Janata Government repealed the MISA but COFEPOSA continued. But this sigh of relief was short lived as Preventive detention powers of the government were further enhanced by passing National Security Act, popularly known as NASA of 1980.

Preventive detention has been a concurrent subject of legislation between Center and States, when Central Government was experimenting with cocktail of arbitrary draconian laws such as TADA [Terrorist and Disruptive Activities (Prevention) Act] and POTA (Prevention of Terrorists Act) many states made sure that they are not left

behind the race, thus many states within country ended up having different preventive detention laws.

The state of Andhra Pradesh in the year 1986 legislated 'AP prevention of dangerous activities of bootleggers, dacoits, drug offenders, goondas, immoral traffic offenders and land grabbers Act, 1986', a.k.a. AP Preventive Detention Act.

A person detained under this Act will have to go through incarceration of complete 12 months without a trial. As per the Constitutional framework the Act provides for an Advisory board to review the detention but most of the times when the detainee hails from a weaker section he will hardly have the luxury of board review or any subsequent court challenges.

Under this Act police authorities have to send recommendation and proposal to District Collector to invoke the Act to issue detention orders against any person. In Metropolitan areas where Police Commissioner is incharge of law & order the power of issuing detention orders lies directly with his office.

Since its inception the Act has survived many Constitutionality Challenges from the High Court to Supreme Court and since grown many folds in its rampant usage.

In Andhra Pradesh and the new state of Telangana the AP PD Act is invoked on regular basis by the Law enforcement agencies on mere ground that they anticipated that Accused will get out on court bail and commit the offence again. To interpret the reasoning of Police in layman's term the PD Act gets invoked in order to circumvent the institution of judiciary in anticipation of an accused getting his legal right of bail. Thus a bias belief without any support of substantive proof becomes a ground to steal the liberty of a citizen.

For the state of Andhra Pradesh and Telangana the situation of frequent preventive detention orders have become so grim that due to rising habeas corpus petitions filed by detainee's families Hyderabad High Court have to allot Preventive Detention Act as subject to a division bench.

It is an open a secret that PD Act left in the hands of arbitrary power has been grossly misused. Anyone against whom Law enforcement agencies built up a grudge and is unable to grasp enough evidence to warrant his conviction that person can be sure to been thrown in Jail under PD Act. This makes the weaker sections of society highly vulnerable to such a practice.

In a reply to RTI application filed by Civil Liberties Monitoring Committee it has been revealed that in Hyderabad Central Prison at Chanchalguda there are 259 prisoners

from Hyderabad alone detained under Prevention Detention Act out of which nearly half of them, 121 detainees are Muslims.

Preventive detention is inherently undemocratic. In simple terms it is denial of liberty of a person in an unsubstantiated anticipation of a crime to be committed by him. Preventive detention contradicts the rule of law with habeas corpus becoming in fructuous in democracy it is nothing but becomes a forced disappearance.

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