Preventive Detention & Section 54 of the Code of Criminal Procedure: The Violation of Human Rights in Bangladesh

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ABSTRACT

Preventive detention is the most debatable issues of law in our country. Preventive detention means detention of a person without trial and without conviction by a court, but merely on suspicion in the minds of the executive authority. The violation of human rights has started from very beginning of our civilization. Violation of human rights through preventive detention has become a part of the culture all over the world, especially in the third world countries. It is sorry to mention that Bangladesh is one of them. In my paper discussion, the researcher wants to highlight its definition, history, its nature and justification, our constitutional safeguards and some recommendations to protect the human rights violation through preventive detention. In this paper, the researcher would like to show how the preventive detention infringes the human rights i.e. rights of a person and liberty of a citizen is violated due to misapplication of preventive detention in B Bangladesh and to what extent such right is violated, drawbacks of preventive detention, validity of the preventive detention and finally ways / recommendations to stop the misuses of preventive detention in order to protect personal liberty from invasion, which is the basic human rights of citizens. The researcher also examines social necessity of the law of the preventive detention for our country. Preventive detention should be used sparingly only in exceptional circumstances.

Keywords: Preventive detention, detenue, wrongful arrest, human rights, violation.

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.

REVIEW OF LITERATURE

This study is based on an analytical approach and critical appraisal of judicial decisions of the Supreme Courtof 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.

METHODOLOGY

This paper is qualitative in nature. The methodology of the present research work include- Review of related literature and examination of important principal document, law Book and Based, Journals, law ripcord DLR, ILR, Periodicals and Judicial precedence concern with preventive detention in Criminal Justice System. Data has been collected for this study from both primary as well as secondary sources. This is a critical study on the issue of preventive detention statute such as Special Powers Act -1974, The Code of Criminal Procedure -1898, The Emergency Power Rule -2007, Article-33 of the Constitution of Bangladesh, case law and existing research report as primary source. The researcher has also used text books, journals and information from internet as secondary sources in order to give complete shape to the study. The researcher has also scrutinized other countries preventive detention laws to enrich the study.

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.

Definition of Preventive Detention

Arbitrary arrest, detention and custodial torture by law enforcing agencies have remained a persistent feature of our 4 criminal justice system. Though the concept of Preventive Detention is acknowledged all over the world, no universal definition exists. The term preventive detention means a detention the aim of which is to prevent a person from doing something which is likely to endanger the public peace or safety or causing public disorder.

Preventive detention is a special from of imprisonment that is putatively justified for non-punitive purposes. According to “Black’s law dictionary” preventive detention means confinement imposed upon a criminal defendant who has threatened to escape, possesses a risk of harm, or has otherwise violated the law while awaiting trial or on a mentally ill person who may cause harm”.

Preventive detention means detention of a person without trial and without conviction by a court, but merely on suspicion in the minds of the executive authority. In A.K. Gopalan vs. State of Madras, it was held that there is no authoritative definition of Preventive Detention. The word “Preventive” means that restrain, whose object is to prevent probable or possible activity, which is apprehended from a would be detune on ground of his past activities. “Detention” means keeping back. Preventive detention means detention of a person only on suspicion in the mind of the executive authority without trail, without conviction by the court.

According to Article 3 of the Special Powers Act-1974, if the concern executive authority is personally satisfied

that there is sufficient cause of suspicion against any person of committing any of the acts prohibited by the Special Powers Act, he can give order for punitive detention.

Preventive Detention and Human Rights

Right against arbitrary arrest and detention is one of the important elements of Human Rights emphasized by numerous international human rights instruments. Preventive detention, though an evil, is sometimes a necessity for state security. Although this detention has to be only under special circumstances and with accordance with the due procedure of law. Unlawful detention affects several other rights guaranteed by the Constitution consequently it violates Human Rights of a person.

Amongst the national institutions, the judiciary always comes in the forefront of the national systems for the protection of human rights. One of the main functions of the judiciary is to protect human rights guaranteed in constitutions and laws. In protecting human rights, the function of the judiciary is to oversee the way in which the diverse powers of government are exercised within the framework of laws and a set of values, and to protect individuals from arbitrary governmental action.

Preventive Detention and Punitive Detention

Punitive detention is the detention as a punishment for the crime committed by an individual. It takes place after the actual commission of an offence or at least after an attempt has been made. The time taken from actual offence to detention can vary in length. It is a punishment imparted to the wrongdoer and involves strict measures. The duration of such a detention depends on what the law stipulates for the particular offence.

Preventive detention is the detention made as a precautionary measure. This kind of detention can be made by the authorities even on a slight apprehension that the person can commit a crime. It is generally made for protecting the society from any future happening. It is not a punishment but a precaution. This detention comes to an end the moment the apprehension of danger ends.

Preventive Detention under the Constitution of Bangladesh

In Constitution of Bangladesh (1972), Article 33 did not leave any scope for preventive detention. But by the second amendment of the Constitution, Article 33 was replaced by the present one. Preventive detention, though an evil, in a necessity for State security and by the Constitution Act, 1973 the rights under Article 33 of the Constitution were curtailed under specific circumstances.

Art. 33(1) & (2) guarantee four rights to a person arrested. Any law or action not in conformity with those rights will be void and the arrest made will be unlawful. The four rights under Art. 33 are:

1. A person arrested must be informed as soon as possible of the grounds of arrest,
2. He must be allowed to consult and be defended by a lawyer of his choice,
3. He must be produced before the magistrate within twenty-four hours of arrest, excluding the time necessary for journey,
4. He must not be detained for a period longer than then twenty-four hours plus the time of journey without the authority of the magistrate.

But these four rights are not available to a person arrested or detained under a law providing for preventive detention. Although Art 33(3), (5) & (6) provide three important safeguards in the case of preventive detention.

Constitutional Safeguards against Preventive Detention

After the second amendment of the Constitution any person arrested or detained under any law regarding preventive detention will not have the rights conferred by Art. 33(1) & (2) of the Constitution. But the

Constitution has itself put some restrictions in the exercise of those laws proving for preventive detention. In order to protect individuals from arbitrary arrest and detention the Constitution provided some safeguards against such laws and against the exercise of powers by the executive authority. Clause (4) and (5) provide three important safeguards for this purpose.

Approval by Advisory Board:

The constitution of an Advisory Board for the purpose of reporting to the government its opinion whether a person should be detained for more than Six months may be said to have been introduced for the very reason that review by the Law Courts was excluded. This is no doubt, a special procedure but this shows that the person detained has not been left without any safeguard. The setting up of an Advisory Board to determine whether such detention is justified is considered as a sufficient safeguard against arbitrary detention under any law of preventive detention. Article 33 (4) provides that no law shall authorize detention for a period of more than six months and the period of six months can be extended only if an Advisory Board, before the expiry of six months, opinions that there is sufficient cause for detention. If no such affirmative opinion is given by the Advisory Board, the detenue has to be released on the expiry of Six months. In a writ of habeas corpus, the court is not required to wait for the opinion of the Advisory Board and should dispose of the petition if it is otherwise ready for hearing.

The Advisory Board is to be constituted with three persons, two of whom must be person who are, have been, or are qualified to be appointed as judges of the Supreme Court and the other must be a senior officer in the Service of the Republic.

The Advisory Board stands perhaps midway between the court and the executive. It has the power of going through the records of a case but it will not be bound to hear any arguments addressed by a counsel on behalf of a detained person. If it reports against detaining a person any further, he will be at once set free. And no law can be passed for detention of a person exceeding six months unless the Board reports before the end of such a period that he may be detained for a longer period.

Communication of Grounds of Detention:

Article 33 (5) says that the detained person right to know immediately ‘the grounds on which the order has been made”. The reason for the expression as soon as may be for furnishing grounds and the earliest opportunity for making a representation indicates the extreme anxiety of the makers of the constitution to see that no person is detained contrary to the law enabling preventive detention or contrary to the safeguards provided by the constitution. Again, the grounds served must be in a language that the detenue understands.

There is a proviso to Art.33 (5) which permits the detenue authority to refuse to disclose the facts if it considers it to be against the public interest.

Right to Representation against the orders of Detention:

The detenue authority has to inform the detenue that he has a right of opportunity to make representation and failure to inform may render the continued detention illegal. Article 33 (5) again provides that the detaining authority must afford the detenue the earliest opportunity of making a representation against his detention order. It is important to mention here that the third right, right to make an effective representation depends on the second right, right to communication of grounds. Article 33(5) provides that the detaining authority may refuse to disclose facts which such authority considers to be against the public interest to disclose. Because grounds are reasons on conclusions drawn by the authorities from the facts or particulars on which the detention order is made.

If all the relevant facts and particulars of the grounds, therefore are not supplied to the detenue it is not at all possible for him to make an effective representation and the right to make a representation becomes illusory. It is therefore for this provides of Article 33(5) that the second and third constitutional rights of a detenue have become quite meaningless.

Preventive Detention under the Special Powers Act, 1974

The basic content of the Act lies in section 3, which enables the government to detain any person in custody under the disguise of preventive detention. The parliament on February 9, 1974 enacted this black law, Special powers Act, 1974 containing the provisions of preventive detention.

Some important sections of the Special Powers Act 1974, which is related to the prevention detention, these sections are following bellow:

Section 3 of the Act lays down the substantive power and conditions of an order of detention. Sub-section (1) of section 3 of the Act empowers the Government to order detention of a person on the satisfaction with respect to any person that with a view to prevent him from doing any prejudicial act.

Sub- section (2) of the same section empowers a District Magistrate or an Additional District Magistrate to order detention of a person after arriving at similar satisfaction to that of government for the same purposes.

Section 4 of the Special Powers Act provides that the order of detention passed under section 3 of the Special Powers Act shall be executed as provided in section 80 of the Code of Criminal Procedure. If section 3 of the Special Powers Act, 1974 and section 80 of the Code of Criminal procedure are read together, it becomes abundantly clear that an order of detention passed under section 3 of the special powers Act, 1974 must be served upon the detenue.

Section 8 of the Act requires the detaining authority to communicate the grounds of detention to the detenue within 15 days from the date of detention informing him at the same time that he has a right to submit a representation in writing against the order of detention and also affording him an opportunity of submitting the representation at the earliest possible opportunity.

Section 9 of the Act requires the Government to constitute an Advisory Board consisting of three persons of whom two persons are or have been or are qualified to be judges of the Supreme Court and the other person should be a senior officer in the service of Republic. This section also requires the Government to appoint one of the two members who are or have been or are qualified to be judges of the Supreme Court as Chairman of the Advisory Board.

Section 10 of the Act requires the Government to place the grounds of detention and the representation, submitted by the detenue before the Advisory Board within one hundred and twenty days from the date of detention.

Section 11 requires the Advisory Board to consider the grounds of detention, the representation submitted by the detenue, any other information which it may deem necessary and after allowing the detenue an opportunity of being heard to submit a report to the Government as to the propriety or otherwise of the detention within one hundred and seventy days from the date of detention of the detenue.

In any case where the Advisory Board has reported that there is, in its opinion, no sufficient cause for the detention of the person concerned, the Government shall revoke the detention order and cause the person to be released forthwith.

In the case, Board's opinion regarding detention-opinion of the Advisory Board is given under section 12 and section 12 says that Government may confirm the detention order but if the Advisory Board gives the opinion that there is no case for detention then the Government shall revoke the detention.

In another case of the detenue not placed before the Advisory Board within 120 days from the date of detention Government failed to show that in accordance with provision of section 12(1) of the Act the Advisory Board reported that there was sufficient cause for detention of the detenue-Detention held illegal.

Emergency Power Rule-2007

The government formulates the Emergency Power Rule-2007as per the power given under section 3 of the

Emergency Power Ordinance, 2007 and it came into operation from 12 January 2007. Rule 14, 15, 16 and 21 deals with the provision of preventive detention and it gives a wide range of powers to the executive authority to detain a person merely on suspicion on their mind.

Provision related to preventive arrest warrant of warrant:

As per rule 21 of the Emergency Power Rule-2007, under the state of emergency, if it appears satisfactory or believable that a person has committed or may commit an offence under any act mentioned in this rule or rules 14 and 15, provisions related to the preventive warrant of arrest under Special Power Act, 1974 may be applied against that person. As per rule 14 of the Emergency power Rule-2007, to safeguard the security and interest of the state and the people and to maintain discipline and peace, the law and order forces will play an active role in applying the Penal Code-1860, Arms act-1878, Explosive Substances Act-1908, Foreign Exchange Regulation Act-1947, Special Powers Act-1974, Narcotics Control Act-1990 and special other acts in restraining illegal arms, explosive substances, sabotage, hoarding, adulteration in drugs and food stuff, counterfeiting money and government stamps, black marketing, smuggling, narcotics and other crimes subversive of the security and economic life of the state and the people.

Preventive detention and violation of human rights

Right against arbitrary arrest and detention is one of the important elements of Human Rights emphasized by numerous international human rights instruments. Preventive detention, though an evil, is sometimes a necessity for state security. Although this detention has to be only under special circumstances and with accordance with the due procedure of law. Unlawful detention affects several other rights guaranteed by the Constitution consequently it violates Human Rights of a person.

Amongst the national institutions, the judiciary always comes in the forefront of the national systems for the protection of human rights. One of the main functions of the judiciary is to protect human rights guaranteed in constitutions and laws. In protecting human rights, the function of the judiciary is to oversee the way in which the diverse powers of government are exercised within the framework of laws and a set of values, and to protect individuals from arbitrary governmental action.

Violation of Rights to Life by Preventive Detention

'Life' within the meaning of Art.31 means something more than mere animal existence. It includes the right to live consistently with human dignity and decency, right to the bare necessities of life such as adequate nutrition, clothing and shelter and the facilities for reading, writing and expressing oneself its diverse forms, freely moving about and mixing and commingling with fellow human beings and all that which gives meaning and content to a man's life including tradition, culture and heritage.

According to a leading news daily of Bangladesh, country's 68 jails, which are designed to detain 34,147 inmates but currently they are holding 71,606. Preventive detention is not for punitive purpose, but the condition in which a person is detained is more than what punishment can be meant. So, by detaining a person under preventive detention in jails, which are degrading for any human being to live in, is a gross violation to right to life of the detenue person.

Violation of Right to Liberty and Freedom of Movement

Article 32 of the Bangladesh Constitution ensures personal liberty to every person and Art. 36 ensures freedom of movement, which means every citizen shall have the right to move freely.

But by detaining any person under colorful exercise of the laws regarding preventive detention, the detaining authority violates these fundamental human rights. Again, the laws regarding preventive detention it has many lacunas which the executive authority often takes advantage of. In Bangladesh without trial six months' detention can conferred to the detainee. This is a bad process because nowhere in the world such a long period is not found. In India and Pakistan, the initial period of detention is three months.

Secondly, no maximum period of detention has been fixed by the Constitution or the Special Powers Act. So a person can be detained for indefinite period where the advisory board thinks it fit. Whereas the maximum period in India is 2 years and 8 months in a year in Pakistan.

Moreover, in Bangladesh the Government frequently uses the police for political purposes and provided immunity to members of security forces. There are wide spread corruption allegations and a severe lack of resources, training, and discipline amongst the detaining authorities present. Bangladesh has a large number of political workers and leaders detained without trail through preventive detention under the Special Powers Act 1974, which is a great violation of right to liberty and freedom of movements. On 7 September 2000 a three-member Sub-committee of the Parliamentary Standing Committee submitted a 31-page report on SPA to the Parliament, in which it mentioned that 69,010 people were detained under SPA of 1974 in the last 24 years and 68,195 persons were released by order of the High Court Division.

Violation of Right to Freedom from Torture and Cruel, Inhumane or Degrading Treatment

Under the Special Powers Act Govt. can use the police officers to arrest any person. And it is a common practice amongst the police to inflict bodily and mental torture or cruel treatment of the persons detained. In spite of constitutional guarantees and protection under International Bill of Rights, such as UDHR and ICCPR the police often in the name of state security detain any person they wish and use torture and cruel treatments in the name of getting information from them.

An example of the scale of the problem is the four-week crackdown on May 28, 2008 resulting in the arbitrary arrest and detention of more than 50,000 Bangladeshis. Media reports indicated that most persons arrested were subjected to same from of ill-treatment, including beating and that torture was also used on a significant number of detainees, during which the police extracted money or confessions.

Violation of Right to Fair Trail

When a police officer arrests a person under sec. 54 of the CrPC, then the arrested person must be produced before the magistrate within 24 hours of such arrest. But if the Govt. wants to detain any person under sec. 3 of the SPA and makes an order for such detention, the police can put him into prison for 6 months without producing him to any Judicial or Executive authority.

Art. 33(5) requires that the grounds of detention must, as soon as may be, be communicated to the detenue and the detaining authority must afford him the earliest opportunity of making a representation against the order of detention. It is very important because it not only enables the detenue to make the representation, but also enables him to file a proper application for a writ of Habeas corpus. But there is a proviso to Art. 33(5) and also Section 8(1) of the SPA, 1974 permits the detaining authority to refuse to disclose the facts which it considers against the public interest. However, the ambit of public interest has not been defined, so this proviso is often used as an exploitation tool and in denying right to fair trial.

Freedom of speech and expression

Human rights defenders and professionals, including from media, were regularly being monitored, threatened and intimidated by the personal of the country's armed forces and various intelligence agencies. The democratically elected government do not always have the scope to utilize the emergency provisions for doing the above misdeeds.

However, in the name of SPA and anti-terrorism Act, it has arrests various persons, inflicts torture on some of them and threatens everyone who wish to speak against the Govt. of order of preventive detention against them.

Preventive Detention: Contrary to Rule of Law:

Rule of law specks for the establishment of human rights, democracy which is the desired dimension of our constitution. But in Bangladesh, every government has used Special Powers Act , 1974 as a brutal weapon and a huge number of persons are detained every year without trial with the view to suppress political opponents for

purpose and fundamental rights guaranteed by article 31,32 (A) 33(1) and (2) of our constitution, namely, right to protection of law, personal liberty and safe guards ,as to arrest and detention, are not ensured by the constitution itself for the detainee, detained under preventive detention laws. Thus, once a person is detained illegally under this law, he finds his all-fundamental rights except the right to life strangulated in a pincer- like trapping. In our country such law is exercised by all government always in peace time as a permanent law. So, the provisions allowing for preventive detention in peace time is contrary to the concept of rule of law. More over this law empowers the detaining authority to exercise their arbitrary discretion to detain any person upon their satisfaction that such person shall be detained in order to prohibit him from doing any prejudicial act against the state. This arbitrary and wide discretionary power of the detaining authority is contrary to the concept of rule of law. Excessive exercise reliance on preventive detention laws, tyrannical laws by the government reduced the governments status as adopting `rule by law' not rule of law. "Rule of law" is distinct form "Rule by law". Abuse and excessive use of power by the government may be designated as "rule by law" when the laws are used as instruments of governments policy. Rule of law, by contrast, is the use of law-making power by the government. The abuse of rule by law manifests itself in the passing of and reliance or unjust laws, it is already mentioned that in our country preventive detention law used as an ultimate and brutal weapon to perpetual rule. Form the aforesaid discussion it can be concluded that preventive detention law is a draconian and obnoxious law which undermines the rule of law and fundamental principles of human rights.

Rationality of Section 54: Violation of Human Rights

Section 54 Cr PC gives wide powers to the police to make an arrest without warrant in certain circumstances. It provides that a police officer may arrest a person without an order from a Magistrate and without a warrant if –

1. Such a person has been concerned in any cognizable offence or a reasonable complaint has been made against him or her or credible information has been received or a reasonable suspicion exist of his or her having been so concerned; or

2. Such person having in his or her possession without lawful excuse any implement of house breaking; or

3. Such a person has been proclaimed as an offender either under Cr PC or by order of the Government; or

4. In his or her possession anything is found which may reasonably be suspected to be stolen property and he or she may reasonably be suspected of having committed an offence with reference to such thing; or

5. Such a person obstructs a police officer while in the execution of the officer's duty; or

6. Such a person has escaped or attempts to escape from lawful custody; or

7. Such person reasonably suspected of being a deserter from the armed forces of Bangladesh; or

8. Such a person has been concerned in, or a reasonable complaint has been made against him or her or credible information has been received or a reasonable suspicion exist of his or her having been concerned in, any act committed in Bangladesh, would have been punishable as an offence, for which he or she is liable to be apprehended or detained in custody in Bangladesh under any law relating to extradition or under the Fugitive Offenders Act 1831, if otherwise; or

9. Such a person is a released convict who is committing a breach of any rule under s 563(3) relating to the notification of residence or charge of or absence from residence by released convicts; or

10. He or she is a person for shoes arrest a requisition has been received from another police officer.

The philosophy behind the powers of arrest without warrant is that prevention is the most effective approach to control crime. The object of s 54 Cr PC is to give widest powers to the police in cognizable cases subject to the limitation that the powers must be used reasonably and cautiously. The words 'may arrest' signify that the powers

of arrest are discretionary. However, it was not t all the intention of the lawmakers that the police officer may arrest any citizen of the country by abusing their power. Despite this, there is always an allegation that the powers of arrest without warrant

is frequently misused by the police and therefore arrest under s 54 is a burning issue in Bangladesh. Recently this issue has become an important subject of judicial interpretation.

In this context the case of BLAST v Bangladesh (2003) is worth mentioning. The fact of the case disclose that a writ petition was filed in the High Court Division jointly by the Bangladesh Legal Aid and Services Trust (BLAST), Ain 0- Salish Kendra (ASK), Shammilito Shamajik Andolon and some other individuals with the allegation that the police, by abusing the powers given under s 54 Cr PC have been curtailing the liberty of the citizens. The writ petitioners narrated several instances of such abusive exercise powers and violation of Fundamental Rights [52-60]. From the language used in s 54 Cr PC, the High Court Division found that the police can abuse the power abusively.

This is because there is nothing in this section which provides that the person arrested be furnished with the grounds for his or her arrest though it has the basic human right that wherever a person for his or her arrest. The Court observe that as s 54 Cr PC now stands, a police officer is not required to discloses the reason for the arrest to the person whom he has arrested, but under Art 33 (1) of the

Constitution of Bangladesh the person who is arrested must be informed, as soon as may be, of the grounds for such arrest. The Court Further observed that unfortunately, the provision Art 33 (1) of the Constitution is not followed by the police officers [51]. In this same way S54 of Cr PC violates the aforementioned Article of the Bangladesh Constitution, UDHR, and ICCPR.

Judicial Guidelines on Prevention of Arbitrary Arrest by Section -54 of the Code of Criminal Procedure (Cr PC), 1898

Finally, the Court held some recommendations related to S 54 of Cr PC, which can be summarized as follows:

1. No police officer shall arrest a person under Section 54 of the Cr. P. C. for the purpose of detaining him under Section 3 of the Special Powers Act, 1974.

2. A Police officer shall disclose his identity and if demanded, shall show his identity card to the person arrested and to the persons present at the time of arrest.

3. He shall record the reasons for the arrest and other particulars in a separate register till a special diary is prescribed.

4. A police officer shall furnish reasons of arrest to the detained person within three hours of bringing him to the police station.

5. An arrested person should be allowed to consult a lawyer of his choice or meet his relatives.

6. If a police officer finds any marks of injury on the person arrested, he shall record the reasons for such injury and shall take the person to the nearest hospital or Government doctor for treatment and shall obtain a certificate from the attending doctor.

7. If the person is not arrested from his residence or place of business he shall inform a relation of the person over the phone, or through a messenger, within one hour of bringing him to the police station.

Present Scenario in Bangladesh

Bangladesh authorities should investigate recent allegations of enforced disappearances and torture including by members of the police Detective Branch.

Violent protests broke out on January 19 in Gazipur after Mohammad Rabiul Islam, a 38-year-old shopkeeper, died in police custody allegedly due to torture, although the police said he had been hit by a truck.

On January 29, Abu Hossain Rajon, a lawyer, alleged that he was detained for a week at Hartijheel police station, but was taken to Detective Branch headquarters every day where he said he was tortured and interrogated. The police, however, denied he had been arrested.

Raghunath Kha, a journalist, alleged that he was tortured in Detective Branch custody on January 23 after being arrested by police in Satkhira district. "I was blindfolded at the police station and was taken to the DB office, where they put devices on both my ears and electrocuted me in phases for half an hour. They beat me upon my feet with a stick," Raghunath told the media.

A senior officer at Satkhira's Detective Branch, dismissed Kha's claims saying: "Nothing such happened."

Bangladesh's Detective Branch has previously been implicated in allegations of grave human rights abuses by local human rights groups, including enforced disappearances and torture.

Allegations of torture in Bangladesh are rarely investigated or prosecuted. Following a review in July 2019, the UN Committee against Torture described the Bangladesh police as a "state within a state," asserting that "in general, one got the impression that the police, as well as other law enforcement agencies, were able to operate with impunity and zero accountability."

Only one case of torture has ever been convicted under Bangladesh's Torture and Custodial Death (Prevention) Act since it was passed a decade ago, according to media reports.

Bangladesh has ignored repeated requests from the UN Committee Against Torture to follow up its recommendations, as required. The Committee's recommendations included independent monitoring of all detention sites and investigation of all allegations of torture or ill-treatment by law enforcement officials.

Bangladesh security forces are under increased scrutiny following the designation of human rights sanctions by the US government and in the lead-up to general elections slated for early 2024. Bangladesh authorities should implement the recommendations by the Committee Against Torture, investigate allegations, and hold perpetrators to account.

Case Study

Despite the legal and constitutional provisions against arbitrary arrest and detention, the practice of arbitrary arrest, detention and torture is rampant in Bangladesh. Fortunately, the higher judiciary in Bangladesh has taken a proactive stand in prevention of arbitrary arrest and detention and protection of people from torture. The most important judicial decision in this regard in recent years is BLAST vs. Bangladesh.

In ASK (Ain 0 Salish Kendra) vs. Bangladesh and others**:**

the unlawful detention of the prisoners languishing in Dhaka Central Jail, despite having served out their terms of conviction, was challenged. According to law, after pronouncing conviction, the court will send the conviction warrant to the jail authority. But due to negligence of court staff and jail authorities, the said conviction warrants did not reach the jail and many prisoners could not be released from jail, even after serving out their terms of conviction. The Court issued a rule nisi upon the respondents on April 16, 2005 to show cause as to why the continued detention of the persons in Dhaka Central Jail, in violation of their fundamental rights as guaranteed under Articles 31, 32, 35 (1) and 36 of the Constitution, and in spite of serving out the terms of their respective sentences, should not be declared to be without lawful authority and why an independent commission should not be appointed to conduct an inquiry into the matter. The Court also directed the respondents to submit a list of such prisoners. The Jail authority submitted the report and the case is still pending for final hearing.

STUDY OF MR. AKHTER HAMTD SIDDIQUL WRIT PETITION NO. 2111 OF 2009.

Mr. Siddiqui, the former Deputy Speaker was arrested on 21.03.2009 in connection with two general diaries

dated 19.03.2009 and a C.R. Case No. 230/2008 order of detention was passed on 21.03.2009 by the District Magistrate and served upon Mr. Siddiqui on 21.03.2009. (Annexure-A) grounds served on the same day 21.03.2009. (Annexure-B) order of govt. dated 07.04.2009 under S. 3(1) for continuance of the order for 3 months effective from 19.04.2009. (Annexure-C) writ petition filed under Article 120(2)(b)(i) by daughter Faria Tejeen Siddiqui, Writ Petition No. 2111 of 2009. Rule was issued upon the govt. and writ petition was heard on 06.05.2009. judgment passed on 07.05.2009 setting aside the detention order and Mr. Siddiqui was ordered to be released forthwith.

Judicial decisions:

The grounds of detention arc vague, indefinite and without any specification of time, date and place and as a result, the detenue was deprived of giving any effective representation controverting the allegations imputed again him. 31 DLR (AD), P.I Abdul Latif Mirza Vs. Govt. of Bangladesh, the principle of Mirza 's case is still in force which would be evidenced in the detention case of Mr. Hussain Mohammad Erslwd 3 BLC (AD) 1998. P. 141 (Mustafizur Rahman Vs. Bangladesh). A citizen's right to liberty is the determining factor in this sort of judicial pronouncements.

APPLICATION OF THE JUDICIAL DECISIONS IN MR. SIDDIQNI'S CASE:

Court's observation, "having considered the grounds for detention, we find that general allegations were made against the detenue without any specification of time, date and place and as such, the detenue was deprived of giving any effective representation converting the allegations imputed against him. Mere pendency of a criminal case and two G.D. Entries cannot be (tie grounds for detention. Such being the state of affairs, the detenue cannot be held in custody for indefinite period".

BILKIS AKTER HOSSAIN V. GOVERNMENT

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.

MD. SEKANDAR ALI V. BANGLADESH

In this petition one Md Sekander Ali, was expelled from the Degree Examination Hall. The agitating expelled candidates raided the examination centre, attacked the Upazilla Nirbahi Officer and his house. Md. Sekander Ali was detained under Section 3 of the Special Powers Act, 1974. The government alleged that Md. Sekander Ali had secret sitting with the others and at his indication all others indulged in unlawful acts.

Judgment:

Declaring the detention illegal, the Court held that the law requires the Government, while detaining a person, must serve specific grounds for detention so as to enable the detenue to know what his faults are so that he is in a position to make an effective representation.

FINDINGS

It is true that most of the countries use preventive detention as a weapon to dominate, break into pieces the political parties and to eternalize the power of governing.

1. Without trail six months detention can be conferred to the detainee. This is a bad process because now here in the world such periods are not found anywhere.

2. In our country preventive detention is a method restored to in emergencies like war but the developed countries it is specifically mentioned that preventive detention is applied in time of emergency.

3. In developed countries preventive detention applied for some specific purposes but in Bangladesh it's applied both in time of peace and emergency.

4. In Bangladesh there have no specific maximum period of detention in constitution or in the special powers Act 1974, but in Pakistan preventive detention is eight months in a year[i] and in India maximum two years.

5. In Bangladesh a large number of political leader and supporters are detained without trail through the preventive detention but this type of detention is not found in other countries like Pakistan and India.

6. Many persons who are not actually criminal, being detained for wrong information.

7. Wrongfully detained persons who are rich they came outside through writ of habeas corpus in high court division but those who are poor, they have no chance.

RECOMMENDATIONS

In my research I forwards 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 detenue must be communicated the grounds of arrest within a fixed specific time, which must be laid down by law.

8. The relatives of the detenue 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 detenue should not be kept with the regular convict as it is not a form of punishment for any crime.

11. The detenue must be treated with honor as he has not violated any law so legal provisions should be made to force the detaining authority to be respectful.

12. The detenue 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 detenue 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.
16. All reasonable opportunities should be provided to the detenue.
17. Direction and orders of any court must be given its due importance.
18. In order to ensure accountability of actions of the police authorities, the directives of the Supreme Court in BLAST vs. Bangladesh and Saifuzzaman vs. State should be implemented as soon as possible.
19. Government should restrict the use of preventive detention as much as government can. To ensure the proper functioning of democratic environment and to maintain human rights, the recommendation state above should be followed.
20. Legislative reform should be initiated in line with all these commendations.

CONCLUSION

Right to personal liberty is an important right of an individual without which s/he cannot enjoy other Human Rights meaningfully. Considering its importance the Constitution of Bangladesh has mentioned the right to life and liberty in two of its articles, namely articles 31 and 32. Article 32 clearly declares that 'no person shall be deprived of life or personal liberty saves in accordance with law'. The combined meaning of articles 31 and 32 is that the Constitution has guaranteed right to life and liberty to every citizen of Bangladesh and no police officer or Government agency can do anything determine to life, liberty and reputation of any citizen. A Police officer can curtail the liberty of a person by the name of preventive detention and abusive power of section 54 of Cr PC if that police officer has lawful authority to do that. The Constitution has provided some safeguards to a person who is deprived of his/her right to personal liberty. In limiting people's liberty, the police officers must follow the lawful procedure and respect the constitutionally guaranteed human rights of the arrested person. No compliance with the procedure and disrespect to the human right off accused will make the arrest and detention unlawful.

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