



Preventive Detention and criminal prosecution

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1. Introduction

A criminal proceeding and Preventive Detention are not similar proceedings. Preventive Detention is an anticipatory measure and may not relate to crime; on the other hand the object of a criminal trial is to punish a person for an offence committed by him. In Preventive Detention cases the evidence in possession of the authority is not ample for making a legal charge and securing the conviction of the arrested person by legal proof, but may still be sufficient to justify his Detention. Preventive Detention is stood for to prevent person from doing something which comes under entries 9 for list I and of list III.

2. Preventive Detention and criminal prosecution

Preventive Detention is such Detention which's goal is to prevent the person from acting in a manner prejudicial to public order, the security of the state or like, his past behavior and antecedents may form the basis of an order of arrest if they expose a tendency to do such acts. It is not necessary for the state to do actual breach of public order etc, having been caused by his acts.ⁱ There is no bar to an order of Preventive Detention only for the pendency of a prosecution. Preventive Detention may be made in anticipation of or simultaneously with a prosecution or after discharge or even acquittal in a criminal proceeding and may be based on the same grounds and material facts on which prosecution may be or may have been launched. An order of Preventive Detention can be done even after a criminal proceeding is withdrawn for want of ample evidence. It is the subject of detaining authority for his subjective satisfaction, whether even in Preventive Detention case. It is necessary for detaining authority to have sufficient materials to place the person under Preventive detention in order to detain him from acting in a manner biased to public order or the like in future.ⁱⁱ

The object of the criminal trial is to distribute Justice according to law of the land. The criminal Justice system commences from the police station and ends up in jail as the police is expected to investigate the commission of crime in accordance with procedure established by law. The main object of the investigation is collect evidence and to trace out and arrest the culprit who face the accusation. The conviction or acquittal of the accused depends on the gravity and reliability of evidence.

The accused person is supposed to be innocent unless proved otherwise, in criminal jurisprudence this principle is like a golden thread. The second one principle is like that burden of proving beyond reasonable doubt the guilt of accused lies on the prosecution. These two principles are inherited from British legal system which are the foundation of the criminal Justice system. Criminal justice system believes every offenders are human beings and they deserve to be treated so. Therefore the natural and constitutional rights cannot be denied even to the person in police lock up or jail. The criminal Justice system keeps on changing. Actually Britishers were the forefathers of the criminal justice system in India and codified various laws in India. The code of criminal procedure, 1973 and Indian evidence

Act, 1872 have given several procedural rights for the accused person and the constitution of India has been enshrined human rights in the form of fundamental rights in part-III . These rights are available to the accused person to move the Supreme Court and the high courts for enforcement of natural rights by apt proceedings. The Supreme Court and the high court's of the states have the power to issue directions, orders or writs embodying the writs in the nature of habeas corpus, prohibition, quo-warranto, mandamus and certiorari. The supreme court of India had clarified that, "Prisons are built with stones of law and so it is needful for the court to insist that, in the eye of law, prisoners are not treated like animals and punish the deviant guardian of the prison system where they go berserk.

3. Criminal Justice System and Right to life and personal liberty in the light of Preventive Detention

Right to life is most essential basic fundamental right in a democratic state and it is the most precious, inalienable, sacrosanct and fundamental of all fundamental rights of citizens. Right to life does not denote the continuance of a person's existence but a right to the possession of each of his limbs and faculties by which life is enjoyed.ⁱⁱⁱ Article 21 of the Indian constitution Right to life is also engaged with Right to personal liberty as it says "**NO person shall be deprived of his life or personal liberty except according to a procedure established by law.**"^{iv} Article 21 can be only claimed when a person is deprived of his "life or "personal liberty" by the state. Violation of the right by private individuals is not included in the Article 21. The state can takes away the rights to life and personal liberty only after the procedure established by law as provided under Article 21 of the Indian constitution. For that matter the procedure should fair, reasonable and not arbitrary, fanciful or repressive otherwise it would be amounted no procedure at all.^v

Though such Provisions are provided in to Article 21 of the Indian constitution, the sub clause (3) to (7) of the Article 22 is totally contrast as clause (3) to (7) of Article 22 of the Indian Constitution provides for the procedure which is to be followed if an individual is detained under the law of Preventive Detention. These types of Detention is attributed to only the suspicion or reasonable probability of arrest at the time of committing some act likely to cause harm to the society or imperil the security of the government. The Preventive Detention is for Preventive purposes and no charge is framed against the individual. The Preventive Detention will be traced since 1935 and enactment of the Preventive Detention Act 1950, the national security Act 1980, and the maintenance of internal security Act, 1971.

The court can pronounce upon the validity of an order of Preventive Detention on any of the following grounds.

1. When a law of Preventive Detention is challenged before the court, the court has got to determine on a deliberation of the true nature and character of the legislation whether it is really on the subject of Preventive Detention or not.
2. The court may check the grounds specified in the order of Detention to see whether they are relevant to the fact under which Preventive Detention could be supported.^{vi}
3. The court may check the grounds supplied have a relevant connection with the order or the grounds to see whether the order was based on no material.
4. The court may examine the grounds communicated to the arrested person to see if they are ample to enable him to make an effective representation.^{vii}
5. The order should be struck down if it violates any of the need of Art. 22 or does not strictly follow the procedure laid down by the law of Preventive Detention under which it has been made.

4. Conclusion

The object of the framers of the constitution in giving a constitution status to Preventive Detention was to control anti social and subversive activities from imperiling the welfare of the infant republic.

Preventive Detention must be inconsistency with the concept of fairness implicit in Art 21, though it cannot be challenged on the grounds of violating the concept of “due process.”

Reference

- ⁱ.Supreme Court of India (1973) Nishikanta Vs .State of west Bengal, (1973)1, S.C.R: 224 (230).
- ⁱⁱ . Supreme Court of India (1975) Samir Vs .State of west Bengal, A.I.R. 1975 S.C 1165.
- ⁱⁱⁱ .Supreme Court of India (1981) Francis Coralie Vs .U.T of Delhi, A.I.R. 1981 S.C 746.
- ^{iv} .Article 21 of Indian Constitution, Reads as “NO person shall be deprived of his life or personal liberty except according to a procedure established by law.”
- ^v .Supreme Court of India (1989) C.Ramkonda ReddyVsState of A.P, A.I.R. 1989 S.C235.
- ^{vi} . Supreme Court of India (1950) LakhinarayanVsProv. of Bihar, 1950 S.C.J 32 (43).
- ^{vii} . Supreme Court of India (1951) State of Bombay VsAtmaram, (1951) S.C.R 167.