Introduction

The governance regime in India includes certain specific laws and acts which have been constructed either to keep internal security or have continued since the period of the British rule. In today's world, caste and communal violence have become very common. National security, equality, and human freedom being the central principles in India's constitution, the Constitution of India under Article 21 ensured a life with dignity to every person, which is a fundamental right which is inviolable. The state's approach towards criminals has always been tough in suppressing and disowning the illegal activities in the best interest of the public. Our constitutional framers chose to keep preventive detention as a method of curbing anti-national operations.

Preventive Detention can be understood as imprisonment of a person without trial, an act that is supposedly justified for non-punitive ends and is often described as a preventive measure rather than a punitive one. The essence of the Law on Preventive Detention is entirely different from the arrest and incarceration under regular criminal prison, which is relevant in both a crisis and a calm scenario. In the event of arrest and detention, the arrested person is given various safeguards mentioned under Article 22(1) and (2) of the Constitution, but in compliance with the law of preventive detention under Article 22(3), such protections are not extended to the arrested detention. Clauses (4) to (7) provide for the protections in accordance with preventive detention.

We currently have various laws regarding preventive detention, but it is still an unsettled matter that how far these procedures are capable of protecting a detainee's interest. Existing laws are more conducive to an arbitrary exercise of powers and require immediate action from the judicial perspective. Judiciary plays a very vital role in cases of detention as in the cases of punitive detention, a judicial brain is ensured prior to the arrest, but when it comes to preventive detention, the coercive power is with the executives in regard to detention.

Even the review of the conduct of the detenu is given to the Advisory Boards which is also an executive authority. In this kind of situation, the detaining officials may abuse and misuse authority and power, which harms the fundamental right of personal liberty of the detenu. To understand it in a better way, the power to detain any individual as a preventive measure has become an unreliable tool provided in the hands of state machinery which might be used to accomplish their unlawful purpose.

What is preventive detention?

Preventive detention is when a person is held in police custody only based on a suspicion that they would conduct a criminal act or cause harm to society. The police have the authority to hold anyone they suspect of committing a criminal offence. The police can make arrests without a warrant or a magistrate's authorization in certain cases. Preventive detention was undoubtedly an important part of the colonial legal system in India. Surprisingly, the framers of the Indian Constitution, who had been the most oppressed by the preventive detention legislation, did not fail to provide the statutory validity to the same in independent India.

The word detention simply means when any person is arrested or taken into custody. It can be legal as well as illegal. But when it comes to the security of the state and benefit of the society, there comes a new term which is Preventive Detention.

There are commonly two types of detentions:

Punitive detention, which means detention as a punishment for the criminal offence. It occurs after an offence is committed, or an attempt has been made towards the commission of that crime.

On the other hand, preventive detention means a person's incarceration in advance to prevent any further possibility of the commitment of crime or its engagement. Preventive detention is, therefore, an action taken based on apprehension that the person in question might do some wrongful act.

The word 'preventive' is different from 'punitive' as also been said by Lord Finley in the case of R. v. Halliday, that it is not punitive but a preventive measure.

'Preventive detention' is also referred to as 'administrative detention', since this detention is directed by the executive and the decision-making authority lies exclusively upon the administrative or managerial authority.

Preventive detention is said to be the practice of imprisoning accused persons prior to trial on the presumption that their discharge would not be in favour of society, and, if discharged, they might commit multiple other crimes. Whenever the discharge of the accused is deemed to be prejudicial to the ability of the state to conduct its investigation, then also the measure of preventive detention is used. Understanding in a simple sense, preventive detention means that a person is detained

without trial and conviction by the court, based on mere apprehension formed in the executive authority's mind. In the case of Mariappan v. The District Collector and Others held that the aim of detention and its laws is not to punish anyone but to stop certain crimes from being committed.

In the case of Union of India v. Paul Nanickan and Anr, the Supreme Court stated that the purpose of the preventive detention isn't to punish any person for doing something but to obstruct him before he does it and deter him from doing so. The reasoning for such detention is based on suspicion or reasonable possibility and not a criminal conviction, which can be justified only by valid proof.

The laws regulating preventive detention are repulsive to the modern democratic constitution. These laws raise substantial queri\es about the protection of the citizens, as mentioned under Article 22 of the Indian Constitution and the freedom of a person detained on mere suspicion.

As per Section 151 of The Code of Criminal Procedure, 1973, a police officer can apprehend any person without a Magistrate's authority or without a warrant if he receives any such information that the person is likely to commit any crime of cognizable nature and which cannot be prevented otherwise.

Historical perspective

India has a vast tradition of preventive detention and it comes under those very few countries in the world which provide regulations for preventive detention. Though the critics say that the provisions relating to preventive detention are without any safety measures that are recognised elsewhere to be the essential components to safeguard basic human rights. Taking an example of the European Court on Human Rights which has ruled that preventive detention is illegal under the European Convention on Human Rights irrespective of the protections provided for in the legislation. Similarly, in its submission to the National Commission for the Review of the Functioning of the Constitution (NCRWC) in August 2000, the South Asia Human Rights Documentation Center (SAHRDC) proposed the removal of the constitutional provisions which expressly authorise preventive detention.

During World War I and II, considering the object of preventive detention, England created certain emergency acts like the Realm Act and the Emergency Powers (Defence) Act. All such

acts were specially designed for emergency purposes during war-time but also ceased to exist after the wars ended.

However, the Defence Act was replaced by peacetime preventive detention laws such as the Rowlett Act (1919) and Bengal Criminal Law Amendment Ordinance, after World War I.

During the pre-Independence period of India, in the British era, the then government was allowed to arrest any person on mere suspicion under the Bengal State Prisoners Regulation, III of 1818.

The rules laid down in the Defence of India Act, 1939 permitted a person to detain if he was satisfied that such detainment was essential in order to prevent him from behaving in any way detrimental to the nation's security and defence.

The first Preventive Detention Act was passed after independence in 1950. But this act was questioned on its validity in the case of AK Gopalan v. the State of Madras at the Supreme Court and with the exception of some provisions, the Supreme Court held the act constitutionally valid. The Act before getting expired in the year 1969 was amended 7 times and the reason for each amendment was to extend its validity for 3 more years and so was extended until December 31, 1969.

Starting from pre-independence till now there have been several laws made in regard to preventive detention such as Maintenance of Internal Security Act (MISA), 1971; Foreign Exchange Conservation and Prevention of Smuggling Activities (COFEPOSA), 1974; Terrorist and Disruptive Activities (Prevention) Act (TADA), 1985; Prevention of Terrorist Activities Act (POTA), 2002; Unlawful Activities (Prevention) Act, 2008 and many more in order to protect the society by constraining the ability of any individual who is likely to cause harm.

ANALOGUS PROVISIONS:-

In the United states the 5th amendment in the Constitution is praise to the Magna carta meaning thereby law of the land and it can be further referred to law of the emperor. According to the

Constitution Law of United States personal liberty has been protected against the power of eminent domain further in United States of America the power vested with the courts is to examine whether the law is just, fair and proper. The United State of Supreme Court has not taken a consistent view with respect to doctrine of due process of law and it differs on the perception of a Judge in a case. America's preventive detention powers did not evolve as regrettable, and therefore narrow, byways diverging from a main road of criminal justice detentions. Many of them, rather, predate the Bill of Rights and have coexisted with it for the entirety of the life of the country. Many have narrowed over time in response to abuses — including both individual injustices and discrimination against socially disfavoured groups — and concerns that the powers in question authorize more detention than is strictly necessary. Nonetheless, the evolution of the scope of preventive detention powers is not unidirectional. Detention powers may expand, or contract as public sentiment evolves concerning how much detention a given problem truly requires. America today, for example, sees dramatically less quarantine and mental illness detention than in decades past. The detention of sexual predators is on the rise, however, as is immigration detention, and the post-September 11 period saw a significant (and controversial) spike in the detention of material witnesses. Despite the post-September 11 controversies over counterterrorism detentions, the power to capture and hold enemy combatants has not traditionally been a subject of dispute. The Supreme Court has made this clear: "by universal agreement and practice, [these powers] are important incidents of war. The best way to understand preventive detention under American law and practice is not that some broad principle prohibits it. It is, rather, that American law eschews it except where legislatures and courts deem it necessary to prevent grave public harms. The law then tends to unapologetically countenance detention, but only to the extent necessary to prevent those harms. So far as American history is concerned with respect to doctrine of due process of law there was a restriction on the procedure but in the subsequent period the doctrine of due process was extended to serve as a restriction not only on the procedure but also upon the substance of the activity in which Government has controlled. And thereafter American Court's arrogated the power to revise all legislation. As per Munro in his Constitution of United States submitted that a due process of law means fair play. According to him it senses all proceeding related to legal aspects which are in furtherance of public good and which can strengthen the principle of liberty. He further stated that according to Lord Denning with the preface due process of law means the measure authorised by the law so as to keep the stream of justice pure: to see that trials and inquiries are fairly conducted, the arrests and searches are properly made, that lawful remedies are readily available and that unnecessary delays are eliminated.

(C) POSITION IN U.K.

Magna carta was the first step with respect to Preventive Detention Law in U.K. It was sealed on June 15 1215 by the famous King John of England and this Magna carta also includes the protection of civilians and illegal detention. Darnel's case of the year 1627 are familiar to the history of English constitution which was ultimately followed by various habeas corpus Acts. There were five petitioners in the King's bench and the prayer before the King's bench was to let them free. The basic challenge that petition of right 1628 reversed the decision of preventive the power of arbitrary committed by the King. The Darnel case was mainly on the point that of grounds of detention of an individual vis-à-vis power of the King to detain any individual in the interest of security of the State. The petition of Right 1628 which sets out specific liberties of the subject the king is prohibited from infringing this Act was passed on 7th June, 1628 with respect to the subject including imprisonment without any cause. The enactment with respect to Preventive Detention Law in England was enacted in 1640 [which is also known as second Magna Carta which was passed by long Parliament which declares that if any person is imprisoned by the order of the King or by Privy council or by councillor can apply the writ of Habeas corpus petition and this Act was subsequently amended in 1679. In 1688 the Monark Williams and Mary accepted the idea of British Bill of Right, 1688 which was ultimately passed in 1689 received Royal Assent in 1689 which was basically for the purpose of determining a basic civil rights of the individual and also on the subject that who will be the successor of next crown of the country. This bill was basically for the purpose of controlling the power of Monark and also for the purpose of the cruel behaviour against an individual /citizen of the country. This was the first law which was introduced in the year 1688 for protection of individual right and enjoyment of absolute right. In the period of Charles the main protection for the common people was the house of lord and at that point of time in England one equivalent bill was passed which was equal to Magna carta the bills of Right 1689. It is stated and submitted that it was Blackstone was the first person who classified personal right of men into absolute right. Earlier to this bill there was ultimate power of Monarch and there was no right of an individual with respect to his personal liberty was found place in the country U.K. (England). Subsequently in Habeas corpus Act 1803 was enacted by the U.K. to enable the judges to award writ of habeas corpus with respect to persons detained in Gaol before Court Martials. The Habeas Corpus Act 1804 was enacted for more effectual administration of justice in England and Ireland by giving power to the court to issue writ of habeas corpus. The main aim and object of this act was expedient for more effectual administration of justice in England. The Habeas Corpus Act 1816 was enacted by the parliament of United Kingdom which basic purpose was to remove the rule against controverting the return in non-criminal cases. The aim and object of this act was giving more speedy remedy upon the field of writ of habeas corpus. Similar enactment was passed with respect to Habeas Corpus an

Act was subsequently passed by the United Kingdom in the year 1862 which was popularly known as Habeas Corpus Act, 1862 which elaborate that writ not to issue out of England into any colony having a court with authority to grant such writ and also not to affect right of appeal to her majesty. Thereafter according to the need of the society in England there was need of legislation with respect to habitual criminals therefore, in the light of this fact the United Kingdom legislated a Law Prevention of Crime Act, 1908 which stipulates that if court has any opinion that if any person by reason of its criminal habits and for the protection of public that the offender should be kept in detention for lengthen period of years may pass further sentence if a person shall not be found to be habitual criminal unless the juris finds on evidence that

(a) that since attaining the age of 16 years he has at least three times previously convicted to conviction of the crime charge

(b) that he has on such a previous conviction be found to be established criminal sentenced to preventive detention. The Preventive detention to combat terrorism in written was first introduced in 1974 i.e., Preventive from Terrorism Act and it was in 1939 the prevention from violence Act was introduced for detaining people for a period of 7 years and subsequently this Act was repealed in 1973 the PTA was again reintroduction of PVA mostly as a response of Bombing of two pubs in Birmingham with seven years detention for a person who involved in suspicion of terrorism. The PTA was introduced without access to a lawyer for 48 hours and PTA was continuously renewed until 2000.

In 2012 the UK abolished its previous preventive detention scheme the imprisonment for public protection which was replaced by extended determinate sentence (EDS) scheme under Section 226A of Criminal Justice Act. In these cases the custodian term is 10 years or more or the sentences imposed in respect of certain specified offence. The secretary of State cannot release a person serving as EDS in such circumstances the person's case was referred to Parole board must continue to detain that person unless it is satisfied that there is no longer for protection of public.

POSITION IN AUSTRALIA

As a rule, In Australia, individuals may not be preventatively detained beyond an initial short period of time except after being convicted by a judge. In other words, for citizens, detention is only justifiable as part of a judicial process. As Brennan, Deane and Dawson JJ of the High Court stated in Lim v Minister for Immigration, Local Government and Ethnic Affairs observed, The involuntary detention of a citizen in custody by the State is penal or punitive in character and, under our system of

government, exists only as an incident of the exclusively judicial function of adjudging and punishing criminal guilt. However, in the same case, the Court identified a number of exceptions to the general rule where the detention is non-punitive in character and thus is permitted under the Australian legal system, such as for reasons of mental illness, infectious disease or for immigration related purposes in the case of non-citizens. In the 2004 case of Fardon v. Attorney-General (Qld), the High Court acknowledged that the list of exceptions stated in Lim "is not closed", and therefore left the possibility that detention on security grounds might be permissible within Australian legal system. Since the 1990s, laws of preventative detention have been passed at the state level to provide extended detention for dangerous prisoners, especially sexual offenders, who have a high risk of reoffending. However, these laws apply to offenders who have already been convicted. The addition by the Anti-Terrorism Act (No 2) 2005 of Division 105 to the Criminal Code Act 199548 represented a shift from the general principle in Australia that arrest, and detention should be based on reasonable suspicion of the commission of a criminal offence, to principles of general pre-emption. By inserting the new "preventative detention" scheme in the context of anti-terrorism laws, terrorism suspects might now be detained for a (longer) period without any criminal charges.

Regulations for Preventive Detention in India

India is one of the few nations in the world with a Constitution that provides for preventative detention in times of peace without the protections that are considered necessary in other countries to protect fundamental human rights. The European Court of Human Rights, for example, has long concluded that preventative detention, as defined by the Indian Constitution, is unconstitutional under the European Convention on Human Rights, regardless of the protections enshrined in the statute. Preventive detention may be used indefinitely under Article 22 of the Indian Constitution, whether in times of peace, non-emergency situations, or otherwise. Detainees are denied the right to legal counsel, cross-examination, timely or periodic review, access to the courts, or compensation for wrongful arrest or imprisonment under the Constitution, which enables them to be held without accusation or trial for up to three months.

The first Preventive Detention Act was passed on 26 February 1950, with a purpose to prevent anti-national elements from carrying out acts that are hostile to Nation's security and

defence. The said act was supposed to end after the remaining 2 years in practice. But, the time limit of the act was increased from time to time, and finally, it was abolished in the year 1971.

In 1971 Maintenance of Internal Security Act, MISA was instituted to establish internal security in India. It was regarded as a controversial act as it was being used continuously to harass and detain people who put challenges to the governance of Congress including certain opposition parties, reporters, and social workers. Even after making several alterations, the act was finally removed when the Janata Party won in 1977.

Another Act named Foreign Exchange and Prevention of Smuggling Activities Act, COFEPOSA, entered in 1974, which provided for preventive detention to maintain and improve foreign exchange and to deter illegal trade. This act was like a backup for MISA, 1971 and despite the repealing of MISA in 1977, COFESA persisted. The detention period for smugglers initially was for one year via another ordinance on 13 July 1984, this was increased to two years.

In the year 1985 Terrorist and Disruptive Activities (Prevention) Act, TADA was brought in the regard of Khalistan's separatist movement. Originally the act was only for two years but it was revised and reintroduced in the year 1987. This Act is deemed to be the most powerful and restrictive laws drawn up under the system of preventive detention. The purpose of this legislation explicitly indicated that it was accepted on the basis of practice that, in order to deter and successfully counter-terrorism and violent acts, it is important not just to enforce current laws but also to render them stricter. Till 1993 the length of this act had been extended every two years. From the end of its time frame in 1995 until POTA's enactment, there was no law centre level to combat terrorism in India.

Prevention of Terrorism Act, POTA, 2002, was presented as an act similar to TADA in April 2001. POTO (Prevention of Terrorism Ordinance, 2001) was formulated as an authoritative order in the background of terrorist attacks in the USA in 2001. The decree was enacted on 24 October 2001 by the Government of the NDA. Following the parliamentary attacks of 13 December 2001, the Parliament had to be suspended which resulted in the passing of another ordinance on 30 December 2001 in the absence of passing it as an act. POTA was generated

within the theoretical framework of global Islamic terrorism and the National Security of the state. The act was repealed on 21 September 2004 by an ordinance.

Unlawful Activities (Prevention) Act, UAPA, was first passed in 1967 to assert all such groups unlawful who are seen as separatist followers. Under this act, several organizations were considered null and void in the 1990s, in the context of the destruction of the Babri Mosque and the rise of separatist movements in Kashmir.

The Unified Progressive Alliance (UPA) government then amended the Act in 2004. The act was revised again following the Mumbai attacks of 2008. Through this reform, POTA and TADA clauses such as the maximum period for police arrest, warrantless arrest, and bail restriction were applied to the UAPA. These changes allowed the government to hold suspicious individuals in detention for long periods without the possibility of obtaining bail.

The 2012 UAPA amendment incorporated creation and distribution of high-quality counterfeit currencies, and supporting organizations considered unconstitutional under the scope of 'terrorism operation' as instances of those activities that present a danger to the country's economic stability. The latest amendment in the act was done in 2019 which grants the NIA the authority to put even individuals, besides organizations, as 'terrorists' on the ground of suspicion that they have links to act of terrorism.

The constitutional validity of preventive detention

Preventive Detention Act, 1950 reinforces human detention in situations where state conditions are involved, such as national defence, the preservation of peace and public order, international affairs, etc.

The validity of the Preventive Detention Act, 1950 was challenged before the court in the case of AK Gopalan vs The State of Madras where it was apparent that freedom of an individual does not qualify as provided under Article 21. The Supreme Court, having taken a limited view of Articles 21 and 22, refused to entertain whether there were any inadequacies in the

procedure provided by law. It was of the faith that each constitutional article was autonomous of each other. When the petitioner questioned the validity of his detention on the grounds that it violated his rights pursuant to Articles 19 and 21 of the Indian Constitution, the Supreme Court disregarded all the arguments that the detention could be justified merely on the ground that it was conducted in accordance with the 'legally established procedure.'

In the case of Maneka Gandhi v. Union Of India, the court considerably broadened the range of the expression 'personal liberty' and interpreted it in its broadest extent. The court noted that Article 21 does not exclude Article 19 and that any statute depriving a citizen of personal liberty will have to concurrently stand up to the scrutiny of Article 21 and Article 19.

Justice Chandrachud in the case of Justice K. S. Puttaswamy (Retd.) and Anr. v Union Of India And Ors. established threefold conditions in the case of an infringement of personal liberty of individuals: (i) validity, which presupposes the presence of law; (ii) need, identified as a valid purpose of the State; and (iii) proportionality, which guarantees a fair relationship between the objects and the ways pursued to attain them.

Constitutional safeguard against misuse of preventive detention

Article 22 of the Indian Constitution deals with certain rights that are provided in case of preventive detention:

- Clause 2 of Article 22 states that each individual who is arrested and detained shall be produced before the nearest judge within a timeframe of 24 hours of such capture barring the time vital for the journey from the spot of arrest to the court and no such individual will be confined in custody more than the said period without the authority of a magistrate.
- Clause 4 of Article 22 provides that no law for preventive detention authorizes any individual to be detained for more than three months unless an advisory panel claims a reasonable justification for such detainment. The members on the consultative panel will be as eligible as a high court jury. The report has to be presented before the expiration period of the said three months.

- Clause 5 of Article 22 specifies that the reason for detention shall be conveyed to the individual as quickly as possible by any official when detaining any individual under preventive detention. The reason for detention should have a rational connection to the object that the detenu is prevented from acquiring. The correspondence should include all the ground-related information, and it should not be a simple assertion of factual information.
- The authority who has detained the person is not under any obligation to provide the reasons for the detention to be held before his arrest but is recommended to do so as soon as possible, thus giving the detained person with an incentive to be represented.
- A person who is already in detention may be detained if reasonable and satisfactory reasons exist to do so. The main problem is that there is no way to verify if the reason for detention is just and reasonable in the context of preventive detention until it is provided to the advisory committee that is applicable only after a 3-months span.
- Clause 5 of Article 22 also says that the reasons for the detention should be conveyed as quickly as possible in order to enable the person to have the right to representation. The authority that provides the command for detention shall give the person the soonest chance to make a representation against the order.

These restrictions make sure that the detainee is adequately protected so that the state does not exceed its authority. These limitations ensure that the detainee is sufficiently secured so the state doesn't surpass its power. While human rights campaigners may whine that the hardship of Clauses 1 and 2 of Article 22 breaches fundamental rights but the detainee is conceded the right to know whether it will not harm the public interest and the detention is led out considering the interest of the residents.

Judiciary in preventive detention cases

Last year, in the case of Prem Narayan v. Union of India, the Allahabad High Court stated that preventive detention is an infringement upon the personal freedom of an individual and it can't

be infringed in an easy-going way however notwithstanding such alerts, courts most of the times have condoned infringement of liberty, basically giving no solution for the individual for his affliction.

In the case of Khudiram v. State of West Bengal, where confinement was made under the Maintenance of Internal Security Act, 1971 (MISA), the Supreme Court stated that the Court neither has the power to consider the ampleness or respectability of the grounds nor is it allowed to substitute its own supposition with that of the detaining authority which is most appropriate to take such decisions.

In the case of ShibbanLal v. State of Uttar Pradesh, the Supreme Court of India stated that a courtroom isn't even competent to enquire into reality or in any case of the facts which are referenced as the grounds of detainment.

In the case of Shri Pawan Kharetilal Arora v. Shri Ramrao Wagh & Others, an individual was confined for nine months on the grounds of twenty-four bogus cases. The Bombay High Court held that in spite of the fact that the grounds of confinement depended on gross nature of mistakes and the detaining authority committed a serious mistake which stuns judicial conscience, it acknowledged the apology by the authority and held that the authority acted in accordance with some basic honesty and was allowed protection under this section.

In the famous case of A.K Gopalan v. The State of Madras, where the lawfulness of the Preventive Detention Act, 1950 was tested, Justice Das made the accompanying remark, "A procedure laid down by the law-making body may offend the Court's feeling of equity and fair play and sentence given by the legislature may shock the Court's idea of penology, yet that is a completely superfluous question. Our security against legislative tyranny, if any, lies in free and canny public opinion which should, in the long run, stand up for itself."

In the case of Nand Lal Bajaj v The State of Punjab and Anr., the Court while concurring that preventive detainment laws and the absence of legal representation as a framework seem to be entirely conflicting with the fundamental thought of a parliamentary arrangement of government, inferred that the issue is basically political and is the worry of statesman and not judiciary. The

Supreme Court has over and over cautioned that the judges must watch judicial restraint and must not ordinarily encroach into the space of legislature or the executives.

Preventive detention in recent times

In the case of *Mariappan vs The District Collector And others (2014)*, the Madras High Court had laid down that the goal of preventive detention is not to punish the detainee but to keep them from doing anything that is harmful to the State. In this way, the satisfaction of the concerned authority is subjective satisfaction. It falls under any of the defined criteria, such as:

1. State security,
2. Public order,
3. Foreign Affairs, and
4. Community services.

Three recent incidents surrounding the functioning of preventive detention laws in India have been decorated with explanations as they received nationwide attention thereby highlighting the raw truth existing behind the preventive detention laws in India.

Protest of the Citizenship Amendment Act (CAA)

CAA was established in 2019 by Prime Minister Narendra Modi's administration, providing a road to citizenship for six religious minorities from Afghanistan, Bangladesh, and Pakistan who entered India before 2015. Muslims were not included in the list as a result of the law. The decision of religious rights to Indian citizenship sparked widespread protests across India, some of which were spearheaded by Muslim women, and ended in a harsh police response.

Following the anti-Citizenship Amendment Act, 2019 protests in 2019, more than 1,100 persons had been arrested and 5,558 had been placed in preventive custody. The United Nations had asked India to free activists detained for opposing the Citizenship Amendment Act (CAA) stating that *"authorities should promptly free all human rights defenders who are presently held in pre-trial custody without adequate evidence, frequently solely on the basis of comments*

they made criticising the discriminatory nature of the CAA". Meeran Haider, Gulfisha Fatima, Safoora Zargar, Asif Iqbal Tanha, Devangana Kalita, Natasha Narwal, Khalid Saifi, Shifa Ur Rehman, Dr Kafeel Khan, Sharjeel Imam, and Akhil Gogoi were among the 11 people named in the UN statement. Many of the individual cases listed above contain significant claims of human rights violations, torture, and ill-treatment. Experts had further claimed that bail was refused to these demonstrators based on *"counter-terrorism or national security laws, as well as procedural police authorities."*

Muntazir Ahmad Bhat v. UT of J&K (2021)

Jammu and Kashmir Police averted a major tragedy, commonly known as the Pulwama conspiracy, on the eve of the 75th Independence Day by busting a module of Pakistan-based Jaish-e-Mohammad (JeM) tasked with inciting violence by planting a vehicle-based IED. They arrested four terrorists affiliated with the outfit, including a resident of Uttar Pradesh. Muntazir Manzoor, a JeM member, was the first in this line to be apprehended under Section 8 of the J&K Public Safety Act, 1978 on false and flimsy grounds without any justification in terms of the impugned detention order. He was found with a handgun, one magazine, eight live bullets, and two Chinese hand grenades. His truck, which had been used to transfer weapons to the Kashmir Valley, had also been confiscated.

Muntazir Ahmad Bhat had been placed under preventive custody by the District Magistrate in order to prevent him from behaving in any way that might jeopardise the state's security. Justice Tashi Rabstan of the Jammu & Kashmir and Ladakh High Court while hearing the case of *Muntazir Ahmad Bhat v. UT of J&K (2021)*, observed that acts or activities of individuals or a group of individuals, prejudicial to the security of the State or public order, has a magnitude of across-the-border disfigurement of societies. While dismissing the petition seeking release from preventive detention for the detainees involved in the Pulwama conspiracy, the single bench judge viewed that those in charge of national security or maintaining public order must be the exclusive arbiters of what the State's national security, public order, or security demands. Furthermore, the Bench stated that while violent behaviour is not new, today's extremism, radicalism, and terrorism in their full expression have taken on a new character and represent tremendous challenges to the

civilised world. As a result, in order to keep an eye on the detainees' illicit conduct, the Bench rejected the petition, ruling it to be without substance.

Abhayraj Gupta v. Superintendent, Central Jail, Bareilly (2021)

While deciding on the case of *Abhayraj Gupta v. Superintendent, Central Jail, Bareilly (2021)*, the Allahabad High Court quashed a detention order issued against a murder suspect by exercising powers under the National Security Act, 1980, stating that if a person is in custody and there is no imminent possibility of his release, the power of preventive detention should not be exercised.

Essentially, three FIRs were filed against the petitioner on the basis of a single murder that occurred on December 2, 2019, under several sections of the Indian Penal Code, 1860 [including 302 and 307 and the Uttar Pradesh Gangsters and Anti-Social Activities (Prevention) Act, 1986]. According to the petitioner, Rakesh Yadav was slain in the course of the petitioner's conspiracy, and when the police seized him to arrest him for the aforementioned crime on December 2, 2019, he shot at the officers with the intent to kill. Because of the brutal murder committed by the petitioner's accomplices under a conspiracy concocted by him, a detention order was issued against him by using powers under the NSA, 1980, where it was claimed that people became fearful and terrified, and public order was disrupted.

In considering the detention order issued against the petitioner, the Court noted that the detention order contained a blatant assertion that if the petitioner is released on bond, he may engage in criminal activity again. The Court went further to observe that there is no legitimate basis to record this apprehension in the detention order, nor is there any allegation that the apprehended action would be injurious to public order, thus he must be detained to prevent him from behaving in any manner prejudicial to the preservation of public order. The petitioner's claimed act did not create a disruption of public order, according to the Court, because it did not disrupt society to the point of generating a broad disturbance of public peace. The Court finally determined that the satisfaction required to detain the petitioner in order to prevent him from acting in a manner prejudicial to the maintenance of public order is the basis of the order under Section 3(2) of the NSA, 1980, and that this basis was clearly missing in the instant case.

Suggestions

It is amazing to perceive how preventive detention discovers its place in the chapter where other fundamental rights are granted. There have been different examples of abuse of Preventive Detention powers for political advantages or to control free discourse and articulation. A few times back, the National Security Act was utilized in Uttar Pradesh to ensure transparent and corruption-free examinations or captures were made for the issues rising up out of neighbourhood cricket disagreements. Unreasonable capacity to detain an individual without much checks and balances and the least legal impedance expands the chance of conceivable abuse of power to detain an individual.

In the case of Rekha v. State of Tamil Nadu, the Supreme Court of India stated that Prevention detention is, ordinarily, repugnant to democratic ideas and abhorrent to the rule of law. No such law exists in the USA and in England (with the exception during wartime). Since, in any case, Article 22(3)(b) of the Indian Constitution grants preventive detainment, we can't hold it unlawful yet we should restrict the intensity of preventive detention within very narrow limits, else, we will encroach upon a person's entitlement to liberty ensured by Article 21 of the Indian Constitution which was won after a long, laborious, noteworthy battle.

The increased frequency and the simplicity with which preventive detention has been invoked over time presents the need before the Indian law framework to create protections to guarantee fair procedure before restraining the liberty of people.

In the case of United States v. Salerno, the Supreme Court of U.S. set up a couple of safeguards to prevent abuse of powers of Preventive Detention, which included, right to counsel as a fundamental component of proceedings, strict constancy to speedy trial requirements, hearing within a sensibly short timeframe of capture, etc. While the safeguards exist in India however when such defends come into the picture, justice is delayed and denied.

Expanded utilization of this power, often to curb disagreeing voices, represents a real need to build straightforwardness in the government's power to confine an individual. Guaranteeing transparency would mean re-considering the laws that fail to secure some essential rights of a person that can't be undermined.

It is clear that in certain cases the laws pertaining to colonial history now have to be modified or updated over time. Now there is a need for security and human rights to go hand in hand. It now requires an evaluation of the laws and their regulation. The state must take the responsibility to compensate the acquitted detenu in the place of damages caused relating to life, health, income, etc.

A proper system should be made which will make sure that the rights are being made available to the detenu during the detention period. If any accusations for coercive actions are made, it should be taken in a serious way and should be followed by a proper investigation by an appropriate authority. An independent body of law should also be set up to examine such cases. It is also important that the rights of the detained persons be respected and that the justification for their detention is made clear to them as quickly as possible.

Conclusion

Protecting the limited resources alongside preserving peace and order is essential for a developing country. India has undergone many rebels since independence on the grounds of gender, class, race, faith, etc. India has mostly been effective in preserving its independence, dignity, and autonomy through the use of these preventive detention methods and national security legislation. The preventive detention laws are not completely just fair and reasonable and need some changes or alterations to fit in well within the scope of the Right to life and liberty. A few critiques pit security against the concept of human rights as fundamental. India is a nation of immense scale and long borders and it comprises multiple identities due to which the surrounding nations show animosity towards it. Under these conditions, the responsibility of preserving India’s independence, dignity, and sovereignty falls on these security-related rules, actions, and provisions.

As long as the law on preventive detention is made within the legislative entry and does not infringe any of the conditions or restrictions on that power, such law cannot be struck down on the specious ground that it is circulated to interfere with people’s freedoms. Under this respect, a moral assessment must be taken because, at one end of the spectrum, the lives and personal freedom of vast areas of society must be respected and, at the other end, the life and personal freedom of the person detained must be taken care of.