



Dangerousness, with reference to Preventive detention in India

BHAVESHKUMAR RAMESHCHANDRA JOSHI
Ph.D Scholar of Raksha shakti University, Ahmedabad
Under the Guidance of

DR DIMPAL RAVAL
Asst. Professor & Head, Department of Law, Raksha Shakti University

1. Introduction

To put in jail has been a comprehensive sanction of deviant behavior for decades. India seems not be a very special case in this respect of its history. In India the origins of the modern prison are conventionally set by historians in the beginning of the battle for freedom of India. India has introduced many national criminal justice system specific type of sanctions for some groups of culprits that were considered to be dangerous. The present article tries to focus on the field where discourses of dangerousness and of “total institutions” meet, that is form of preventive detention of some groups of criminal offenders considered to be dangerous for this aim, it will be useful first to give a short overview on legal concepts of dangerousness and preventive detention in India.

2. Shortly description of preventive detention and dangerousness

2.1 Definition of Preventive Detention

The imprisonment of a person with the aim of preventing him from committing further offences or of maintaining public order.

Holding of an accused in the jail by a law enforcement agency to prevent the accused's escape or risk of harm to others.ⁱ

2.2 Definition of Dangerousness

The word “dangerous” includes full of danger or risk; causing danger; perilous, risky, hazardous, unsafeⁱⁱ.

In short dangerousness means full of danger and risky which include involving possible. Injury, pain, harm or loss characterized by dangerⁱⁱⁱ.

According to constitution of India, the elected government has the right and indeed the obligation to protect its citizens from dangerous activities including those defined as crimes. The state has the obligation to promote an environment that approve and inspire humans to develop. This condition incorporates peace, protection of democratic institutions and the resolution of conflict.

The individual culprits and society to transforming degrees share the responsibility for the commission of crimes. The man is not merely the inactive product of the interplay between his or her inborn characteristics and his or her life's nature and nurture, Society has to share the liability for the person's actions if and when it fails to provide the environment that gives chance to persons to develop as human beings. Society has an obligation to seek remedies for all who involved in and affected by crime and anti-social conduct.

In every country the requirement for preventive detention is based on the prime necessity of maintains the healthy and safe environment of the society. For that purpose the expedient of Preventive Detention

is adopted in Indian constitution for achieving public order and national security by protecting the natural rights and personal liberty.

3. Preventive Detention and dangerousness in the light of personal liberty in India.

“The right to personal liberty in substance is a right not to be subjected to any physical coercion without legal justification”-Dicey^{iv}

Preventive detention is such types of confinement which has connection with the predicted harm. Most of the cases of Preventive Detention are connected with the predicted harm. In each and every cases of Preventive Detention there must be fanciful hypothetical's of certainty about a high risk of future serious harm doing. It cant be understood why a person is depriving from his life and liberty, when he has neither committed nor attempted to do predicted harm. In Preventive Detention cases there is awe of Predicted harm which is like dangerous undetainables and which is highly greater in numbers than the dangerous detainable.

In the cases of Preventive Detention the ground of dangerousness is always Questionable. The aim of the Justice is to punish offenders for the crimes they commit yet during the past several decades, the justice system's focus has shifted from punishing past crimes to Preventive future violation by the help of constitutional validity of preventive Detention in India. India is the such State where the awe of violence occurs in different forms whether it may be terrorist attacks, the violence at the time of election, at the time of communal and racial violence etc, and therefore framers of the constitution had put the Provisions of Preventive Detention in constitution for achieving public order and national security.

The right to personal liberty and immunity from wrongful detention is included in the Magnacarta. The term liberty embodies freedom of movement and the freedom from detention of a person. The concept of rule of law denotes that if the liberty of an individual is to be denied, then it is to be denied via due process. In India “the order of preventive detention is emphasized on the subjective satisfaction of the detaining authority which affecting the life and liberty of the citizen”. The power of preventive detention is being statutory in nature and its implementation has to be within the limitations of the statute and must be exercised for the object the power is conferred.

In preventive detention executive can curtail the Right of personal liberty for the purpose of safeguarding national security or public order. In some circumstance that person may arrest without framing any charge and without any trail proceeding and therefore No person may claim their fundamental and other natural rights which are given by constitutional law and other law.

“Any person may be arrested before committing the offence and the offence which may harmful for the national security or public order “which comes under Article 22 of the Indian Constitution. In Indian Constitution the minimum procedural needs are given under Article 22, including any law enacted by legislature in accordance of which a person is deprived of his personal liberty. There is also the vacancy for right of an arrested person in article 22(1) and (2), no one can be arrested and detained without being informed that why he is being detained. Every detained person have the opportunity of hearing as every arrested person would be produced before the nearest magistrate within 24 hours and he can also consult with a legal practitioner and appointed to defend them. The arrested person cannot send in to the jail beyond the said period by the authority of magistrate which is mentioned under article 22(1) and (2) of our constitution.

But the safeguards of Article 22 (1) and (2) will not apply for some matters under Article 22 (3), if the person is at the time being an enemy alien, means when India is in war, the citizen of the enemy country may be arrested, secondly the person has the potential to commit a crime in future. The word preventive

detention is very confusing because of only the implications of arresting a person without having committed a crime means detention will be made on only suspicion grounds.

4. Conclusion

Right of personal liberty is the birth right of a man and this right must be free from any types of coercion and restraint. India has adopted the policy of preventive detention as India has many problems like caste and communal violence, much and more religious gathering, violence in election etc. Though India has adopted the policy of preventive detention the Indian courts have been conscious about the protection of most cherished rights of a human being namely the independence of his person and have therefore gradually evolved a few principles to control executive discretion in the area in order to safeguard the person's freedom from undue exercise of power.

In the case of A.K.Gopalan Vs state of madras (A.I.R. 1950 SC 27) ^v it was held that preventive detention Act was intra virus. The constitution of India with the exception of section 14 which is unlawful and ultra-virus and Article 21 is also attributed to preventive detention. It is also noted that Preventive Detention Act 1950 permits detention beyond a period of three months and excludes the necessity of consulting an advisory Board.

In another case Kharaksing Vs state of UP (A.I.R. 1963, SC 1295) ^{vi} the court observed that personal liberty was not only limited to bodily restraint of implement. The court laid down that illegal intrusion into a person's home and disturbance caused to him there by Violated his right to personal liberty enshrined in Article 21 (A.I.R. 1963, SC 1295)

References

ⁱThe Definition of "Preventive Detention" reads as, The imprisonment of a person with the aim of preventing him from committing further offences or of maintaining public order. Holding of an accused in the jail by a law enforcement agency to prevent the accuser's escape or risk of harm to others. [Online] Available from <http://www.businessdictionary.com/definition/preventive-detention.html/> Accessed from 02nd April 2019.

ⁱⁱ The Definition of Word, "Dangerous" reads as, The word "dangerous" includes full of danger or risk; causing danger; perilous, risky, hazardous, unsafe, [Online] Available from <https://www.dictionary.com/browse/dangerousness/> Accessed from 02nd April 2019.

ⁱⁱⁱ The Definition of Word, "Dangerousness" reads as, dangerousness means full of danger and risky which include involving possible [Online] Available from <https://www.merriam-webster.com/dictionary/dangerous/> Accessed from 02nd April 2019.

^{iv} [Dicey, [T] The law of constitution 207-08] Dated : 02/04/2019

^v .Supreme Court of India (1950) A.K.Gopalan Vs state of madras (A.I.R. 1950 SC 27).

^{vi} .Supreme Court of India (1963) Kharaksing Vs state of UP (A.I.R. 1963, SC 1295).