Sonargaon University

Research Monograph

On

‘‘PREVENTIVE DETENTION IN BANGLADESH PERSPECTIVE: WHETHER VIOLATION OF FUNDAMENTAL RIGHTS OR SAFEGUARD TO OUR SOVEREIGNTY’’

This Research paper is submitted in partial fulfillment of the requirements of the degree of LLB (Honors) under Sonargaon University.

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ABSTRACT

Bangladesh is one of the few countries in the world which allows preventive detention even during non-emergency periods. Since Independence preventive detention has been the most used tool in case of violation of Human Rights. Irrespective of any forms of government which has been in power in Bangladesh, has used this as a mean of political exploitation. Each of them have failed miserably to stop the endemic problem regarding preventive detention. However, this is against the spirit of our constitution, democracy and the rule of law. Despite various legal safeguards against preventive detention, the practice of malicious preventive detention is rampant in Bangladesh. The study aims to show how the rights are violated through preventive detention and how the legal authorities are abusing their powers. In my research I want to highlight the definition and scope of preventive detention, its historical development, its nature and our constitutional safeguards for it. I will also highlight why preventive detention is a necessary evil for our country. I will cite the leading cases relating to preventive detention in Bangladesh and while emphasizing on the recommendations given by the Supreme Court. And lastly I will also give my recommendation on how we can put chains on this blackest of the black laws.

Keywords: Preventive detention, detenu, wrongful arrest, Human rights, violation,

Government, State, Arbitrary arrest, safeguards, constitution

PREFACE

At first, thanks to almighty, who has been kind enough to let me complete this Research Monograph in right time.

I would like to acknowledge my gratitude to my honorable teacher Md. Abdul Alim for permitting me to undertake this research. Thanks to him for his most constructive suggestion. And informative guidance through his lectures.

From beginning of my research, I am personally indebted to some book writers for their kind And valuable writings. Thanks to all from the bottom of my heart.

Signature

Certification by Research Supervisor

This is hereby certified that the research Monograph on the topic **‘‘Preventive Detention in Bangladesh Perspective: Whether Violation of Fundamental Rights or Safeguard to Our Sovereignty’’** submitted by **Md. Sumon Mia** (Id No: - LLB-1802014035) in fulfillment of the requirements for LLB (hones from Sonargaon University, under my active supervision and guidance and that no part of this paper has been submitted any place earlier, as far as I know.

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DECLARATION

This is, **Md. Sumon Mia**, a student of LL. B program of Department of Law of Sonargaon University, **ID No: LLB-1802014035**, do hereby declare that the Research Monograph Titled, "**Preventive Detention in Bangladesh Perspective: Whether Violation of Fundamental Rights or Safeguard to Our Sovereignty''** is an original work.

The assigned work has done by me for partial requirement of my LLB degree, as a part of academic curriculum. I certify that this thesis does not incorporate without acknowledgment any material previously submitted for a degree or diploma in any university; and that to the best of my knowledge and belief it does not contain any material previously published or written by another person except where dereference is made in the text.

I also declare that the presented work does not breach any existing copyright and no portion of this research monograph has been copied entirely from any work done earlier for a degree or otherwise.

Signature:

Date:

Dedicated To: My Beloved Parents

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CHAPTER -1

1.1 Introduction

Since the dawn of civilization humans were arrested for crimes that they had committed and laws Were made to make sure the security of ordinary citizens from the criminals. Arrest means restraint on someone for any criminal act that he has done. It is very indispensable a part of law and order of a rustic which has been there for thousands of years. Just in case of arrest, the Accused person does any reasonably criminal act but just in case of preventive detention, people get detained thanks to suspicion that they could do something. This goes beyond any question that folks cannot predict future and when someone has been detained on some act which he has not committed yet, it becomes injustice for the detent. that why international human rights associations made treaties like "Universal Declaration of Human Rights" an International Covenant on Civil and Political Rights" which declared Preventive Detention as a transparent breach of human rights. State and authority believes that though human liberty is treasurable but it should be sacrificed for domestic safety and success. Although preventive detention may be a necessity for emergencies and war periods but it can never be an answer in peace time. Bangladesh has been using this for several year despite of it's being comparatively a peaceful country. This paper will discuss about the laws associated with this matter and the way it's been breaching several forms of human rights and constitutional rights of its native people.

1.2 Context of the Research

Arbitrary arrest and detention which is known in other words as preventive detention derived from the misuse of Special Powers Act- 1974 causes a good violation of human rights and Protection thereof. Arbitrary detention by law enforcing agencies have remained a persistent feature of our criminal justice system. These practices are widespread in Bangladesh regardless of the varieties of government, and successive governments have didn't stop this endemic problem. Torture while detention is usually committed by different state agencies-law enforcing, Intelligence and security agencies, which include police army, para-military forces, coast guard, Navy forces, prison officers and security agencies like the National counterintelligence (NSI) and Director General of Foreign

Intelligence (DGFI). Usually, the venue of custody is that the police headquarters. But arrested persons also are frequently taken to the cantonment, or to unknown locations for interrogation by police-army Joint cells, which is evident violation of law. Arbitrary detention is unacceptable in any style of Government that's committed to democracy and also the rule of law. Though preventive detention was introduced to face the grim and grave situation to cater to the matter, it's some lacunas. This study reveals that with whatever saintly motive the Special Powers Act may are enacted, it's been used invariably to repress people whom the administration doesn't like. Though our Constitution has inserted the availability regarding the safeguards of preventive detention, these areas sufficient and therefore the law enforcing agencies also because the court administration area interested to the provisions and also the folk have little knowledge about these safeguards.

1.3 Review of literature

This study relies on an analytical approach and demanding appraisal of judicial decisions of the Supreme Court of Bangladesh. For the aim of the study, relevant judicial decisions are collected from various sources and analyzed to spot the most trends on the problem. The study has also Reviewed the prevailing legal framework on arrest, detention and torture under both national and law. My research monograph is completely supported the books, articles, and journals, newspaper reports, reports by many right Organizations and internet survey. In my research monograph i take help from national statutory provisions, case laws, website, international journals and therefore the help from my supervisor.

The legislation governing the administration and management of the preventive detention in Bangladesh is enumerated because **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 overall Power of Arrest by Police. Besides these, Constitution of India, the legal code of 1860, the protection Act-1952, The East Pakistan Public Safety Ordinance-1958, Arms Act-1878, the Explosive Substances Act-1908 and therefore the Emergency Powers Act, 1975 have also been scrutinized by the researcher for extra information to complement the study.

1.4 Justification of the Study

This study will consider the validity of preventive detention law and see to what extent the rights Are infringed because of misapplication of preventive detention laws and can finally put Necessary recommendations to prevent the misuse of the law. The aim of this study is to analyses the past decisions of upper judiciary within the field of arrest, detention and torture. So in future, it be helpful for the policy makers, legislators, teachers, students and researcher to grasp about the issues and prospects of the preventive detention system in our country. As in Bangladesh there are inadequate rules on safeguards of implement the provisions associated with safeguards of preventive detention in Bangladesh.

1.5 Aims and Objectives of the Study

The aims and objectives of the study are as follows-

1. To find out the problems faced in the preventive detention process in Bangladesh.
2. To highlight some leading cases regarding preventive detention.
3. To highlight the constitutional as well as the judicial safeguards of preventive detention in Bangladesh.
4. To make recommendations to improve the current preventive detention process in Bangladesh.
5. To point out suggestions to reform the laws related to preventive detention.

1.6 Methodology of the Study

This research has been based on secondary doctrinal sources and primary legislative sources and qualitative in nature. This is a critical study based on article, journal report, case laws and relevant books. This paper mostly relies on national legislations, constitutions, statutes, case laws, published books, and journal articles and online resources. 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 seek out the demerits of this preventive detention system in Bangladesh. Side by side the analytical research method has helped to search out the aim of the study, relevant judicial decisions are collected from various sources and analysis to spot the most trends on the problems.

1.7 Collection of Data

Data has been collected for this study from both primary similarly as secondary sources. This can Be a critical study on the difficulty of preventive detention statute, case law and existing research Report as primary source. I've also used text books, journals and knowledge from internet as secondary sources so as to grant complete shape to the study.

1.8 Scope of the Study

The present study projects specialize in preventive detention and violation of human rights in criminal justice system in Bangladesh. In doing so, this study

- **Firstly** makes an effort to substantiate the right knowledge about preventive detention, arbitrary arrest by law enforcing Agency and violation of human rights.
- **Secondly,** the current study makes an analysis on laws Associated with preventive detention. Thirdly, the current study gives an overview and makes a Critical evolution of the prevailing law regarding preventive detention in criminal justice system in Bangladesh.
- **Finally**, the study makes a humble effort to draw some suggestions, acquired the Conclusion of the current study.

1.9 Limitation of the study

Though there are huge information in text books, journals and in internet it's not sufficient. I've got to also give concern about time and price. Furthermore, the current study is undertaken as a part of fulfillment of the wants of LLB degree. The researcher gets only 1 month to complete the Research. Moreover, the research is directed to be within prescribed word limit. Therefore, there Not much scope for doing a comprehensive study. Yet, I try my best to satisfy the objectives Launched within the present study.

CHAPTER 2

2.1 Preventive Detention: Definition

Preventive detention means detention of someone only on suspicion within the mind of the Manager authority without trial and without conviction by the court. (Patel, T-1993) Preventive Detention isn't to punish a private for any wrong done by him but to forestall him from acting during a manner prejudicial to the state. It's a pre-trial internment. Although there exists preventive detention law directly or indirectly everywhere the planet but there's no authoritative definition of the term preventive detention because of difference in application of the law during Emergencies or in both time of peace and emergencies.

2.2 Development of Preventive Detention

In Rex v. Halliday; Exparte Zolding (Rex v. Halliday, Exparte Zolding, 1917) [1]case the expression preventive detention was used for the primary time in Britain (Bhuiyan, Md. J. H., 2004) The word preventive means restraint, whose object to stop probable or possible activity, which is apprehended from would-be detenu on grounds of his activities and detention implies that the one that detained liberty to travel nowhere for the very reason preventive detention necessarily involved the detention of an individual. Preventive detention means detention, the aim of which is to forestall an individual from doing something which is probably going to endanger peace or safety or causing public disorder. Preventive detention means detention of someone without trial and convection by the court but merely on suspicion within the minds of the chief authority. In Rex v. Halliday, Lord Finlay quoted that it (preventive detention) isn't a punitive but a precautionary measure. Thus preventive detention could be a precautionary measure adopted by the chief for the greater interest of the state and state. In Gopalon v. State of Madras (A.K. Gopalan v. State of Madras AIR 1950)[2] Justice Mukherjee identified, the preventive detention may be a precautionary measure. The object's to not punish a person for having done something but intercept him before he does it and to forestall him from doing it. No offence is proved nor any charge formulated and therefore the justification is suspicion or reasonable probability and not

[1] Rex v. Halliday; Exparte Zolding (Rex v. Halliday, Exparte Zolding, 1917)

[2] Gopalon v. State of Madras (A.K.Gopalan v. State of Madras AIR 1950)

criminal conviction. To quote A. K. Brohi, Preventive detention is an abnormal measure where by the manager is allowed to impose restrains upon the freedom of a person who might not have committed a criminal offense but who, it's apprehended, is on the point of commit acts that prejudicial to public safety (Halim, Md. A., 2006). Preventive detention means detention of an individual only on suspicion within the mind of executive authority without trial and without Conviction by the court. Preventive detention may be a peculiar measure within the sense that it imposes restriction on the Freedom of a citizen to the extent that someone who has not committed any offence but presumed that he's on the brink of commit any prejudicial act. Preventive detention may be a serious encroachment upon the private liberty of an individual of the easy reason that unlike ordinary arrest or imprisonment, preventive detention is effected without trial &quota Preventative detention means this is often a detention of someone without trial in such circumstances that the evidence within the possession of the authorities isn't sufficient to draw up a legal charge or secure the conviction of the detent by legal proof. Preventive detention laws papers applied by the chief primarily to detain a person with none charge in trial.(Banglapedia: Islam, S., 2003)[3] Seemingly these instruments run parallel to the penal laws that include all grounds that the detention law normally is enforced.

2.3 Nature and Justification of Preventive Detention

For every matter, there's nature and justification behind it. The character of Preventive detention is different from the character of punitive detention. The word Preventive detention is employed in contradiction to the word punitive detention. Few people have described both actions as restraint of individual's freedom and private liberty When an individual comes within the satisfaction of the govt authority that someone goes to commit prejudicial act he is also detained by Preventive detention to defend him from doing that act. In Sasti vs. State of West Bengal, Indian Supreme Court elucidated the character of Preventive detention as a detention of someone without trial in such circumstances that the evidence in possession of the authority isn't sufficient to form a legal charge or to secure the conviction of the detenu by legal proof but should still be sufficient to justify his detention. On the opposite hand, the philosophy lying behind the preventive detention is that the greater interest and security of the state and nation because National Security is more

[3] Banglapedia: Islam, S., 2003

important than the private liberally of citizen. Justifying the measure Lord Atkinson in R. vs. Halliday said,

"where preventive justice is put operative some sufferings and inconveniences could also be caused to the suspected persons. This is often inevitable but the suffering is inflicted for something way more important than his liberty or convenience, namely for securing the general public safety and also the defense of the realm".

In the same case Lord Finlay has said, "Any protection whether or not they involve some restraint or hardship upon individuals, doesn't partake in any way of the character of punishment, but are taken by way of precaution to stop mischief to the state". Similar view also expressed by Lord Alfred Denning. He said, "If there are traitor in our midst. We cannot afford to attend until we catch then within the act of reprimand our bridges or giving our military secrets to the enemy, we cannot run the danger of living then at large, we must detention then suspicion. Regarding preventive detention. The Indian Supreme Court observed, "That appears to possess been done because the constitutions recognize the requirement of preventive detention on extraordinary occasion when control over public order, security of the country, etc., are at risk of breakdown. But while recognizing the requirement of preventive detention without recourse to the traditional procedure in keeping with law, it provided at the identical time certain restrictions on the facility of detention, both legislative and executive, which it considers as minimum safeguards to confirm that the facility of such detention isn't illegitimately or arbitrary used Preventive Detention and Punitive Detention Punitive detention is that the detention as a punishment for the crime committed by a private . It takes place after the particular commission of an offence or a minimum of after a trial has been made. The time taken from actual offence to detention can vary long. it's a punishment imparted to the wrongdoer and involves strict measures. The duration of such a detention depends on what the law stipulates for the actual offence. Preventive detention is that the detention made as a precautionary measure. This sort of detention is often made by the authorities even on a small apprehension that the person can commit against the law. it's generally made for safeguarding the society from any future happening. It's not a punishment but a precaution. This detention involves an end the instant the apprehension of danger ends.

CHAPTER 3

3.1 Origin of Preventive Detention in Bangladesh

The word 'arrest' generally we used in its normal and general sense means the apprehension or control or the deprivation of one's personal liberty to go where he or she gratify. On the other hand, 'preventive detention' means detention of a person only on suspicion in the mind of the executive authority without trial and without conviction by the court. Preventive detention is not to penalize an individual person for any offence done by him but to prevent him from acting in a manner prejudicial state. In Bangladesh preventive detention is a perpetual securitization, even in the normal situation, the law of preventive detention can be applied as opposed to any person living in Bangladesh, regardless of whether he is a citizen or non-citizen. In addition to the constitution, the Special Powers Act of 1974 hold provisions on preventive detention.[4]

3.2 Preventive Detention under the Constitution of Bangladesh and Other Statutory Laws

The claim of personal liberty being the essence of a free society, almost all every civilized country has constitutionally protected its citizens from the excesses of the coercive apparatus of state. Bangladesh is not an exception.

Among the national institutions, the legislature always advances in the forefront of the national systems for the protection of the rights of a person arbitrary arrested and detained. One of the main function of the legislature is to enact laws in protecting human rights of the arbitrary arrested persons because arrested and detained persons are considered as innocent until show their guilt beyond reasonable doubt.

[4] M Eheshamul Bari, 'Suspension of the Fundamental Rights and Unrestrained Exercise of the Power of Preventive Detention during the Successive Proclamations of Emergency in Bangladesh: A Legal Study' (PhD thesis, Macquarie University 2015) 200-05

3.2.1 Preventive Detention under the Constitution of Bangladesh

In Constitution of Bangladesh (1972), Article 33 did not leave any scope for preventive detention[5]. But by the second amendment of the Constitution, Article 33 was change by the present one. Preventive detention, though a wrong in a certainty for State security and by the Constitution Act, 1973 the rights under Article 33 of the Constitution were reduce under specific circumstances. Art. 33(1) & (2) guarantee four rights to a person arrested[6]. 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 well informed as soon as possible of the grounds of arrest,
2. He must be allowed to confer 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 delay 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 present to a person arrested or detained under a law providing for preventive detention. Although Art 33(3), (5) & (6) give three major 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 consult 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 movement of powers by the executive authority. Clause (4) and (5) provide three important safeguards for this purpose.

[5] Constitution of Bangladesh (1972), Article 33 did not leave any scope for preventive detention

[6] Constitution of Bangladesh, Art. 33(1) & (2) guarantee four rights to a person arrested

3.2.2 Preventive Detention under the Special Powers Act, 1974

The primary content of the Act lies in section 3, which permit the government to delay any person in custody under the impersonate of preventive detention. The parliament on February 9, 1974 enacted this black law, Special powers Act, 1974 containing the provisions of preventive detention. Some major sections of the Special Powers Act 1974, which is connected to the prevention detention, these sections are following bellow:

- **Section-3: Power to make orders detaining or removing certain person**
- **Section- 4: Execution of Detention orders**
- **Section-8: Communication of grounds of order**
- **Section-9: Constitution of Advisory Board**
- **Section-10: Reference to Advisory Board**
- **Section-11: Procedure of Advisory Board**
- **Section-12: Action upon the Report of Advisory Board**

3.2.3 Emergency Power Rule-2007

The government draw up the Emergency Power Rule-2007 as per the power specify under section 3 of the Emergency Power Ordinance, 2007 and it appear into operation from 12 January 2007. Rule 14, 15, 16 and 21 deals with the provision of preventive detention and it gives a spacious of powers to the executive authority to detain a person purely on suspicion on their mind.

3.2.4 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 likely 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 as opposed to that person. As per rule 14 of the Emergency power Rule-2007, to safeguard the security and attentiveness of the state and the people and to maintain regulation and peace, the law and order passion will play an energetic 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 pecuniary life of the state and the people.

In Bangladesh, most of the developing countries, the laws regarding Preventive Detention has been used as a weapon to dominate, crash the opposition and to perpetuate rule. After achieving our independence, there are no situations of war or central hostility or internal interference which are threatening our security but Art. 33, The Special Powers Act, 1974 and Emergency Power Rule-2007 are still being used to conquer anti-government movement and sometimes democratic movement also.

CHAPTER 4

4.1 Preventive Detention Legislation in Bangladesh, India, and Pakistan

4.1.1 In Bangladesh:

After the liberation of Bangladesh, the Bangladesh Scheduled Offences (Special Tribunal) Order, 1972, popularly known as P.O. 50/1972 was approve with a view to control the market of necessary object and some marked criminal offences. The provisions of preventive detention were severe and as such popular discontent began to increase every day. Awami League, the then ruling party repealed the P.O. 50/1972 along with the Security of Pakistan Act, 1952 and Bangladesh Public Safety Ordinance, 1958 in the teeth of significant public criticism. Soon after the people got relief from the pangs of the authoritarian laws, the Parliament on February 9, 1974 enacted the anti-people black law, "Special Powers Act,1974" authoritarian the provisions of preventive detention. The Act says that any person can be arrested and detained by the executive authority if there is "satisfaction" in the mind of the authorities that he may perform.

4.1.2 In India:

In India, the early preventive detention law was enacted in 1950 which was named "Preventive Detention Act, 1950." Subsequently it was amended and exchange by the Maintenance of Internal Security Act (MISA), 1971. MISA, which was repealed on and from 3 rd. August, 1978, had been, in every sphere, very harsh in application and it was as opposed to democracy.

Other Preventive detention laws are –

- the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974
- Smugglers and Foreign Exchange Manipulators Act (SAFEMA), 1976,
- Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Ordinance, 1979.

Replaced by

- ✓ Prevention of Black Marketing and Maintenance of Supplies of Essential Commodities Act, 1980, the National Security Act, 1980,

- ✓ The Essential Services Maintenance Act (EMS), 1981 and the Terrorist and Disruptive Activities (Prevention) Act, 1985.

4.1.3 In Pakistan:

The Indian Independence Act, 1947, which received the royal assent on the 18th July 1947, and came into force on the 15th August 1947, divided British India into two independent dominions, India and Pakistan. All successive governments of Pakistan considered "preventive powers indispensable in view of the volatile nature of the population and the existence of elements against whom the normal punitive law would be ineffective". So, the central statutes that were passed were-

- ➢ Pakistan Public Safety Ordinance, 1949, Pakistan Public Safety (Amendment) Act,1950;
- ➢ Pakistan Public Safety Ordinance, 1952; &
- ➢ The Security of Pakistan Act, 1952.

Besides these Central Acts and Ordinances, the Besides these Central Acts and Ordinances, the outlying Government of East Bengal approve a number of Public Safety Acts and Ordinances relating to preventive detention.

CHAPTER 5

5.1 Violation of Human Rights by Preventive Detention in Bangladesh

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, mostly in the third world countries. It is sorry to say that Bangladesh is one of them. Human rights violation in case of preventive detention is a familiar feature in Bangladesh.

5.2 Preventive Detention and Violation of Human Rights

Right against arbitrary arrest and detention is one of the prime portion of Human Rights the best part of numerous international human rights instrument. Preventive detention, though an evil, is sometimes a necessity for state reliability. 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 front line of the national systems for the protection of human rights.

One of the major functions of the judiciary is to safeguard human rights guaranteed in constitutions and laws. In protecting human rights, the function of the judiciary is to supervise the way in which the various powers of government are used within the framework of laws and a set of values, and to protect person from arbitrary governmental movement. Preventive detention is a serious encroachment upon the personal liberty of a person, for the easy motive that, unlike common arrest or imprisonment, preventive detention is attained without trial. But in appearance of preventive detention law, most of the times the executive authority exertion discretionary power concerning arrest and detention and violates human rights.

5.2.1 Violation of Rights to Life by Preventive Detention

'Life' within the meaning of Art.31 [7]means something more than mere animal existence. It includes the right to live consistently with human dignity and decency, right to the bare necessities

[7] Article 31 of the Constitution of the People's Republic of Bangladesh, 1972.

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 detenu person.

5.2.2 Violation of Right to Liberty and Freedom of Movement:

Article 32 of the Bangladesh Constitution [8]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 month**s' 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.**

No maximum period of detention has been fixed by the Constitution or the Special Powers Act[9]. 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.

Also in Bangladesh there is no specific time when preventive detention law can be applied. It can be applied in both peace time and emergency time. However, in most democratic countries Preventive detention is a method resorted to in emergencies like war. The western developed countries like USA, UK, and Singapore, it is specifically mentioned that only in time of

[8] Article 32 of the Constitution of the People's Republic of Bangladesh, 1972.

[9] Constitution or the Special Powers Act, 1974.

emergency, Preventive detention is applied for and also for specific purposes, but there is no specification in our constitution and can be restored to in times of both peace and emergency.

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[10], 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.

Special Powers Act has become a draconian law because of its unconstitutional provisions and also its unlawful use by detaining authority. Special Powers Act is a draconian law because under this Act,

- Firstly, a detainee has not given any right to know the grounds for which he is detained through the judicial body.
- Secondly, the Govt. can arrest and detain any person at any time.
- Thirdly, the Govt. can detain a person for an indefinite period of time if wishes.
- It is against the commitment and spirit of the Constitution and human rights.

5.2.3 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

[10] Special Powers Act, 1974

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.

5.2.4 Violation of Right to Fair Trail:

When a police officer arrests a person under sec. 54 of the CrPC[11], 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 [12]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.

Moreover, many suspected people are detained under wrong information. And most of them don't possess the means to go to the judicial body to seek remedy. Only the rich can go to the High Court Division and get remedy by instituting the writ of Habeas Corpus[13].

Art. 33(5)[14] requires that the grounds of detention must, as soon as may be, be communicated to the detenu 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 detenu 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. Again Section 11(4) of the SPA states that, the

[11] sec. 54 of the Code of Criminal Procedure, 1898.

[12] sec. 3 of the Special Powers Act, 1974

[13] writ of Habeas Corpus Art. 102 of the Constitution of the People's Republic of Bangladesh, 1972.

[14] Art. 33(5) the Constitution of the People's Republic of Bangladesh, 1972.

detainee against whom a detention order has been made cannot appear by any legal practitioner in any matter connected with the reference to the Advisory Board, and the proceedings of the Advisory Board and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential. And as the report of the Advisory Board is binding on the executive authority and the Govt., it is always influenced by the authority.

5.2.5 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.

Recent cases of Preventive Detention in Bangladesh and Violation of Human Rights[15]:

Article 33 of the Constitution [16]guarantees that a person arrested be informed of the grounds for detention; provided access to a legal practitioner of her/his choice; and brought before a court of competent jurisdiction within 24 hours of arrest. Throughout the year, how-ever, law enforcement agencies arrested and detained persons arbitrarily under section 54 of the Criminal Procedure Code (Cr PC) 1898[17] the Special Powers Act, 1974 [18]and the Public Safety Act, 2000.[19]

Section 54 of the CrPC empowers the police to detain any individual on nine grounds of reasonable suspicion' of criminal activity without any order from a magistrate or a warrant. The Code however provides of specific legal safeguards. Under section 162, forced confessions are in admissible in

[15] https://www.lawyersnjurists.com/article/preventive-detention

[16] Article 33 of the Constitution of Bangladesh

[17] section 54 of the Criminal Procedure Code (Cr PC) 1898

[18] the Special Powers Act, 1974

[19] The Public Safety Act, 2000.

evidence unless admitted by the accused before a magistrate, who accepts it as being given voluntarily. Section 163 of the Code prohibits the police from making any inducement, threat or promise during investigation, while section 164 protects the detainee's right to remain silent in case s/he wishes not to confess.

Even though three different governments were in office during the year, there was little change in the nature of police excesses and there was no decrease in arbitrary arrests and detention during the terms of the two elected governments. The administration functioned somewhat neutrally only during the three-month Caretaker regime. In its last year, the AL rule was marked by numerous incidents of arrest, detention and persecution of political opponents. Soon after the Caretaker Government took office, police arrested hundreds of armed cadres associated with the major political parties for the purpose of confiscation of illegal firearms. Under the BNP led Four- Party Alliance, which took office on 10 October, the number of arms cadres were arrested.

5.3 Arbitrary Arrest under Repressive Laws

Notwithstanding the safeguards given in the laws, section 54 Cr. PC [20]is frequently misused by the law-enforcement agencies. In many incidents person initially detained under section 54 of the Cr PC were subsequently given prolonged detention under other repressive laws such as the SPA or the PSA. Newspaper reports have quoted numerous instances of persons languishing in prison without trial for years, on grounds of reasonable doubt.

5.3.1 Arrests under Section 54

The police sometimes use Section 54 to harass and intimidate members of the political opposition and their families. Or detain opposition activists prior to and during general strikes, without citing any legal authority and hold them until after the event. Newspapers have reported instances of police detaining persons to extract money or for personal vendetta.

On 1 July 2001 a report published by the office of the Chief Metropolitan Magistrate, Dhaka revealed that in 11 out eleven police stations of Dhaka city, 17,338 persons were detained, all of

[20]section 54 The Code of Criminal Procedure, 1898.

whom had been arrested under section 54 of the Cr PC. Police sought remand for all the detainees but the court accepted their plea for 6,503 persons only. Only 113 of remanded detainees confessed their guilt to the police. The report also held that punitive actions had been taken against as many as 85,000 police personnel for abuse of power and alleged implication in criminal activities.

Quoting sources in the Ministry of Home Affairs, another news item reported that over the last twelve months, Dhaka Police lodged 3,917 GED (general diary) and arrested 6,178 persons under section 54 of the Cr PC. In most cases, the detainees had been identified as 'wanted criminals', 'extortionists', 'muggers', drug addicts' and 'persons dangerous for peace and tranquility'. Of those arrested, 619 were detained under the SPA. Cases were proved only against four detainees and the court ordered release of the remaining 6,174 detainees. In May 2001, Mr. Shoilendro Kumar Adhikari, the learned Chief Metropolitan Magistrate of Dhaka, held a meeting with all the magistrates under his jurisdiction and directed them to grant immediate bail to detainees under section 54 Cr. PC unless specific charges were brought under any other law. A month after this directive was circulated to the police departments; the metropolitan police stations in Dhaka showed a decrease in arrests. However, the scenario remained unchanged across other parts of the country.

5.3.2 Incidences of Arrest / Detention under Section 54:

⇒ 5 February 1992, the Daily Star [21]reported that a Nigerian citizen was arrested in March 1992 and, after a three year trial, was sentenced to two months of imprisonment. On completion of the prison terms, he remained a prisoner in Dhaka Central Jail. Nineteen-year-old Nigerian citizen Goddyu Ochendo was arrested in connection with drug smuggling along with an American, Elieda MacCord, in 1992 in June 1993, Goddyu was acquitted of drug smuggling. But on 13 July 1993, he was charged with using an'invalid' passport. He completed a two-year prison term on 31 May 1995 in the passport case. He then complained to the CMM Court that he could not go home as his lawyer defrauded him of his money. He had deposited US$1, 421 with his lawyer during the trial, but he alleged that the lawyer did not return the dollars. The lawyer then filed a revision case denying the

[21] 5 February 1992, the Daily Star

allegation. In a recent prayer to the Home Ministry, Goddyu gave up his claim to the dollars and begged for release….. even after five months. Goddyu was one of the 27 foreigners who were detained for years at the Dhaka Central Jail even often completing prison terms. Of them, thirteen were from India, one from Pakistan, ten from Myanmar and three from Africa.

⇒ 7 February 2001, the Daily Ittefaq [22]reported that police sent a motor garage owner to jail under Section 54 of the CrPC, in the Fokirhat area under Bagerhat District. A gang of local hoodlums abducted the ill-fated garage owner, named Keramot Ah. Police rescued him later from the local Polli Mongol Samity (village welfare association), his hands and legs tied with strong ropes. But police later on arrested him and sent him to jail. None of the abductors, however, were arrested by the police.

⇒ 18 February 2001, Jugantor [23]' Panama Faruque', a cadre of the Jabo League (youth front of the ruling Awami League), kidnapped Aminul Islam from his residence in Barisal.The Jabo League gang mercilessly beat him with lethal weapons. The police rescued Aminul Islam; instead of arresting the oppressors, they arrested Aminul Islam under Section 54 of the CrPC [24]and applied for his remand from the Court.

⇒ 14 March 2000, Jugantor [25]reported that a ten to twelve year old boy Noor Hossain was detained in jail. He stayed there for nine months without any charges. Family sources informed that members of Khulna police suddenly entered their home on 1 June 2000 and arrested Noor. Neither Noor nor his parents were told why the boy was kept in prison.

⇒ 30 March, Jugantor [26]reported that eleven party activists of the Islami Chattro Shibir (student wing of Jamat-Islami) were arrested on March 25 under Section 54 of the CrPC and given one month's detention in Dhaka Central Jail. Their detention was on grounds of suspicion that they had been secretly planning to overthrow the AL Government.

[22] 7 February 2001, the Daily Ittefaq

[23] 18 February 2001, Jugantor

[24] Section 54 of the CrPC

[25] 14 March 2000, Jugantor

[26] 30 March, Jugantor

⇒ 3 July 1998, Janakantha [27]reported that Mohammadpur Thana police arrested Jalal along with two other youths, Tanvir and Habib, on 3 December, 1997 under section 54 of the CrPC. They were sent to the court and while the two others had been charged under the Arms Act, Jalal's name did not appear in the charge sheet. Nevertheless, he was detained in the prison for four years, without trail. Recently, the matter was heard by the Fifth Additional Metropolitan Sessions judge Aminul Islam, the learned judge found that Jalal was not an accused in the Arms Act case under Mohammadpur Thana. Jalal arid the two others were granted bail on 22 December 1997 but no date was fixed for his appearance before the Court. As a result, although the two accused were freed, the order for Jalal's release had to await the Court hearing. The Judge ordered his immediate release and termed the prolonged detention as a 'regrettable incident. Even though he committed no offence, Jalal's confinement was prolonged due to police excesses. He received no compensation. 19 July, Janakantha reported that on the order of the Caretaker government police (lid massive operations. On the first day, police in Naogoan, Rajshahi couldn't arrest any terrorist, but twelve people were arrested under section 54.

⇒ On 23 July 1999, Sangbad [28]reported that on 19 July, in chattra league's meeting, Chatra Dal and Shibir jointly caused bomb explosions Chatra Dal District Vice-President Amirul Islam and another leader Khokon was arrested with 38 bore revolver at the time of the incident. For unkown reason, Amirul was shown to be arrested under section 54 and Khokon was arrested under the Arms Act.

⇒ 30 October 2000, Jugantor [29]reported that Ratan Molla a charge sheeted criminal for attempting to murder and keeping explosives (case no 77/463), was arrested by the police. But he was shown to be arrested under section 54 and the police asked for a detention order. Ratan Mollah and his associate's satbbed a person named Enayet Hossiain Howlader

⇒ 8 December 2003, Bhorer Kagoj [30]reported that on 4 December despite having specifically complained JCD leader Nasir was arrested under section 54 Nasir along with his gang

[27] 3 July 1998, Janakantha

[28] On 23 July 1999, Sangbad

[29] 30 October 2000, Jugantor

[30] 8 December 2003, Bhorer Kagoj

demanded a toll from a shop in front of Shutrapur thana and lock the shop. Three days after the following incidents police arrested arid detained him.

5.4 Some remarkable cases under the Special Powers Act, 1974[31]

A very recent case of detention will surely manifest the ugliest application of this Act. Azaduddin, Chairman of Char-Alexander Union Parishad, PS. Ramgati of Laxmipur district and a freedom fighter, was arrested under the Special Powers Act. He was also earlier arrested and detained twice under this Act, in 1996. In the present case, a High Court Division Bench Consisting of Kazi A.T. Monowaruddin, J. and Muhammad Zoinul Abedeen,J. declared the detention of Azaduddin as illegal and without lawful authority and ordered his immediate release. He was arrested for political jealousy and rivalry. The High Court Division in the earlier cases also declared his detention as illegal. In each time he has been detained by the order of the DM (Deputy Commissioner of Laxmipur District) on the same grounds. The High Court Division, on l" September 1999, ordered not only release of Azaduddin but also ordered the DM to pay compensation personally to Azaduddin of Tk. 10,000.00 (ten thousand taka) to be deposited in the High Court Division within 30 days from the date of order and as because the said DM repeatedly detained the said Chairman on the same unreasonable grounds, the learned judges treated it as contempt of court, and the victim is allowed.

The condition of overall Human Right condition is not up to the mark in Bangladesh. Even where necessary legal reforms have been made to avoid injustice and protect the fundamental human rights, the unwillingness and incapability of the executive authority had not made the protection a reality. So the horrific use of a draconian law such as SPA 1974 can be easily being presumed. This blackest of the black is the cause of most human right violations in Bangladesh and throughout the world.

[31] https://www.lawyersnjurists.com/article/preventive-detention

CHAPTER 6

6.1 Case Studied on Preventive Detention

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 protecting individuals from arbitrary preventive detention orders. The judiciary has set forth various standard regarding the grounds on which preventive detention order can be made. It interpreted the laws regarding preventive detention in a way that the use of this as a tool of exploitation and torture can be curtailed.

6.2 Some Leading Cases Regarding Preventive Detention

When a person is detained under any law regarding preventive detention, he can file a writ petition against such order in the High Court Division under Art. 102 of the Constitution. Generally, most cases of detention order are quashed by the Supreme Court. Some leading cases regarding preventive detention has come to time in exercising this constitutional right to seek remedy from the apex court. Some of the leading cases regarding preventive detention are:

6.2.1 Farzana Haq vs Government of Bangladesh[32]

Facts of the case: Sanaul Huq Niru was arrested and detained first on 13th September 1987 under SPA. His detention order was challenged and the Court directed that the detention order was illegal and ordered the release of the detainee. He was not released rather a fresh detention order was passed against him under section 3 of the Special Powers Act, 1974[33]. The same drama was repeated several times and ultimately his detention came up before a Division Bench of the High Court Division.

[32] Farzana Haq vs Government of Bangladesh

[33] section 3 of the Special Powers Act, 1974

Judgment: The Court ordered the detaining authority to pay regard to the order of the Court It decided that the detention was illegal and the detainee should be set at liberty forthwith. And this time the order war complied with by the detaining authority.

6.2.2 Bilkis Akter Hossain v. Government[34]

Facts of the Case: Dr. Khandakar Musharraf Hossain was arrested on the ground of delivering provocative speech.

Judgment: 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.

6.2.3 Abdul Latif Mirza v. Bangladesh[35]

Facts of the case: Abdul Latif Mirza was detained under the SPA 1974 on the ground of vehemently criticizing the fundamental principles of the government and also allegation was made that he is trying to over through the government through violent means.

Judgment: The Court held that the grounds on which the person is detained are vague and hence bad. The ground that he addressed public meetings criticizing fundamental principles of the government is not clear. Also the court denied that it amounts to a prejudicial act under the meaning of the Special Powers Act 1974.

6.2.4 Habiba Mahmud v. Bangladesh and Others[36]

Facts of the case: The appellant's husband, Kazi Mohamood Hossain, was arrested on August 20, 1991 in pursuance of an order of detention date August 18, 1991 under section (3) (1) (a) of the Special Powers Act, 1974.In the grounds of detention it is stated that the detenu had been engaged

[34] Bilkis Akter Hossain v. Government

[35] Abdul Latif Mirza v. Bangladesh

[36] Habiba Mahmud v. Bangladesh and Others

in various anti-social and lawful activities, and for that there was resentment and hatred against him in the minds of the public. The detenu was previously detained twice from April 1982 to April, 1983 and from November 1984 to March 1985. In November 1988 another order for his detention was passes, but the detenu evaded arrest by going over to India.

For his oppressive and terrorist activities the detenu was suspended form the post of chairman of kotwali para upozila. So that nobody dares raise any objection against him, the detenu organized an armed illegal bahini known as the Special Army and that bahini is still existing.

Judgment: In view of the above, I hold that the detenu Kazi Mahmood Hossain Montoo Kazi is being detained without lawful authority. The judgment and order of the High Court Division is set aside. The appeal is allowed, but without any order as to costs. The detenu be released forthwith, if not wanted in connection with any other case.

6.2.5 Tahera Nargis Sayed v. DIG Prison, Dhaka[37]

Facts of the case: In this case, to defy an order of the HCD declaring a preventive detention illegal, a fresh order of detention was served and thereby the petitioner's husband was deprived of his liberty in defiance of the order of the Highest Court. Even before the release order was served, the detenue was served with fresh order of detention. The DIG prison was accused of delaying the release and in the meantime informing the government about the release order so that government can issue fresh order of detention.

Judgment: The jail authority is not the detaining authority rather they are custodian of the body of the detenue and they could not allow the detaining authority to serve fresh order within the jail premises which was effect of thwarting the order of this court. They must advice the Special Branch official to move out of the jail and do what they wanted to do after the detenue is completely emancipated from the custody of the jail authority.

[37] Tahera Nargis Sayed v. DIG Prison, Dhaka

6.2.6 Huidrom Konungjao Singh vs State of Manipur & Others[38]

Facts of the case: The son of the appellant, namely, Huidrom Shantikumar Singh was arrested on 19.6.2011 by the Imphal Police under Section 302 of Indian Penal Code, 1860 read with Section 25(1-C) of the Arms Act, 1959. The District Magistrate, Imphal West passed the detention order dated 30.6.2011 under the Act on various grounds with an apprehension that as in similar cases, the accused involved therein had been enlarged on bail the detenu in this case would also be released on bail and he would indulge in activities prejudicial to public order.

Judgment: Supreme Court of India laid down that a person's liberty is sacrosanct and cannot be taken away by the state without due process of law as it violates fundamental rights. The detaining authority also has to satisfy that it had reliable material on the basis of which it had reasons to believe that there was real possibility of the arrested person's getting bail and that after his release, he would indulge in activities, prejudicial to public order.

The appeal succeeded and detention order dated 30.6.2011 was quashed.

6.2.7 Md. Sekandar Ali v. Bangladesh[39]

Facts of the case: In this petition one Md Sekander Ali, was expelled from the Degree Examination hall. The agitating expelled candidates raided the examination center, 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.

[38] Huidrom Konungjao Singh vs State of Manipur & Others

[39] Md. Sekandar Ali v. Bangladesh

6.2.8 BLAST and Others vs. Bangladesh and Others, {CIVIL APPEAL NO: 53 of 2004} [40]

BLAST and Others and Bangladesh and Others. CIVIL APPEAL NO: 53 of 2004, is a landmark case of the Appellate Division of Supreme Court in which the citizens seek for the protection of Section- 54, 167 and 176 of CrPC while the government seek for its power of legislature which is free from the all body of administration enshrined by the constitution.

Fact of the case: On 23rd July, 1998, a student named Samim Reza Rubel studied BBA in Independent University, Dhaka got arrested under Section-54 of CrPC and was cruelly beaten up into the police custody. Then the police took him to Dhaka Medical college and the doctor declared him as death. Following the abuse of power of police, his father demanded a judicial inquiry. Afterwards, the government through the Ministry of Home Affairs made a judicial inquiry commission. The commission asked for the execution of a set of recommendation made by them but no action was taken by the government to prevent custodial torture.

Judgments:

The High Court Division: The High Court Division pronounced its judgment on 7th April, 2003 in which it determined that Section-54 and 167 of CrPC seek for the amendment on the ground of police arrest without warrant and take persons to the custody (remand) and found it inconsistent with the constitution.

The Appellate Division: To the formation of a fair judgment, the respected judges of the Appellate Division had taken a close look into judgment of the High Court Division. They formulate that it cannot be said that the High Court Division directed the government to amend the existing sections 54,167,176,202 of the Code of Criminal Procedure and some other provisions of the penal code. Rather, it noticed infringement of power and performance of police officers, law enforcement agencies, magistrates and tribunals due to false interpretation of relevant clause or misleading of those grounds. For example, the police officers taking advantages of the language used in section-54 and arresting innocent citizens in a gradual manner without any compliant be filed or making any investigations of those complaints. The High Court also observed that no person shall be

[40] : BLAST and Others vs. Bangladesh and Others, {CIVIL APPEAL NO: 53 of 2004}

subjected to torture in inhuman dignity or degrading punishment and treatment. If an offender is taken to the police custody for the purpose of interrogation, the law does not give the law enforcement agencies to any right to torture him.

Finally, the Appellate Division comes to the part of 15 recommendations given by the High Court Division. The Appellate Division preferred that most of the recommendations given by the High Court Division have harmonious interpretation regarding the Part-III of the constitution. But some of the recommendations are excessively, some of them are viable and some of them are exaggerate.

CHAPTER 7

7.1: 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 of the protection of law, personal liberty and safe guards are not ensured by the constitution itself for the detainee, detained under preventive detention laws. Thus once a person is detained illegally 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 governments during 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. Moreover, 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 government's 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 government's 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.

7.2: Section 54 of Code of Criminal Procedure and Misuse of Power by the Police:

Section 54 of Code of Criminal Procedure 1898 [41]gives Police to arrest any individual without any kind of order from Magistrate or a warrant in the give circumstances-

- A person who has been apprehensive in any cognizable offence or reasonable complaint has been made or reliable information has been acknowledged or reasonable suspicion exits.
- Anyone who's without lawful excuse implement of house breaking.
- He/she has been declared as an offender under this Code or by any law of Government.
- Any person who's been found or suspected to be in possession with stolen property.
- Who has obstructed a police while execution of his duty.
- Any suspect of deserting from the armed militaries of Bangladesh.
- Any person who has fled or attempted to escape from a lawful custody.
- A person who has been concerned for or any complaint has been made against the person/credible information has been received or reasonable suspicion exits that he has committed an act outside Bangladesh which is an offence if it has been committed in Bangladesh, under the Fugitive Offenders Law 1881 he will be arrested or detained in custody.
- Released offender committing a breach of trust under Section 556, sub section-3.
- Arrest requisition received for any person by another police-officer.

The reason of giving this kind of power to the police is to prevent heinous crimes before occurring, which is also a form of Preventive Detention as it goes with the definition of the preventive detention. Giving Police the power of arresting someone without warrant is giving them consent to use the supreme power and showing them the loopholes of abusing this power and already the police-officers are using this power to arrest anyone they like with the help of SPA.

[41] Section 54 of Code of Criminal Procedure 1898

7.3: Annual basis number of detents under the special powers act 1974:

The rule of law demands that power is to be exercised in a manner which is just, fair and reasonable and not in an unreasonable, capricious or arbitrary manner leaving room for discrimination. Delhi Transport Corporation v. D.T.C. Mazdoor Congress, (1991).

But Bangladesh has another scenario. In Bangladesh, "Preventive detention is an abnormal measure whereby the executive is authorized to impose restraints upon the liberty of a man" (Brohi, 1958) For example, during the first 3 years of AL (1996) 7,618, during the 5 years of BNP 18000 and during the 9 years of JP (1981-90) 27000 persons were detained (The Daily Jugantar, May 30,2000)

Year	Total Number of Detenus	Number of Released Persons Through Writ Of Hebeus Corpous
1974	513	13
1975	1114	31
1976	1498	46
1977	1057	25
1978	753	30
1979	960	31
1980	710	41
1981	1759	29
1982	1548	54
1983	872	44
1984	643	36
1985	882	48
1986	2194	94
1987	4585	327
1988	4907	741
1989	4482	871
1990	4615	1099
1991	5302	1710

1992	6497	1594
1993	3669	1066
1994	2968	630
1995	4173	1705
1996	5413	3376
1997	2539	1393

Source: Halim, Md. Abdul, 2006

7.4: Drawbacks of Withdrawing Preventive Detention

Regimes and authority justify Preventive Detention as they explain it to be for the betterment and protection of the nation. As per the authority, national security and interest is far superior to that of individuals as safety of a person wholly depends on the wellbeing of state. That is why Preventive Detention was a tool which was first made with intention for countries which are in grave emergency or in war period. Also there will be people in a state who will not go by constitutional methods and laws to gain their objectives, rather they will choose the methods which are unconstitutional and unethical; for this kind of situations and these kind of people Preventive Detention is a necessary method. Also in the hallmark case of the principle- ***Rex vs Halliday*** Lord Atkinson pointed out that:

> ***"Where preventive justice is put in force some sufferings and inconveniences maybe be caused to the suspected persons. This is inevitable. But the suffering is…… inflicted by for much more important than this liberty, namely for securing the public safety and the defense of the realm."***

Besides that, ***Lord Alfred Denning*** also analyses that:

> ***"If there are traitors in our midst, we can't wait to catch them in the act of blowing up our bridges or giving our military secrets to the enemy. We can't run the risk of leaving them at large. We must detain them on suspicion."***

Basically the authorities want to implicate Preventive Detention as safety measurement for the country and for the citizen and many scholars tend to agree on the fact that a country is much safer if it has laws regarding that instead of not having the law.

7.5 Remedies against Preventive Detention

7.5.1 Habeas corpus writ

Government illegally puts the opposition members into detention just for strengthening their power. If the detention is not in conformity with the provisions of the law under which he is purported to be detained, he may secure release by moving the courts of law. [42] If an individual is illegally detained he can invoke Article 102 of the Constitution of Bangladesh in the High Court Division of the Supreme Court by way of writ of "habeas corpus"[43] . The detenues of Pakistan may do so under Article 199 and those of India under Article 226 of their respective Constitutions. The detenu may seek remedy against his arbitrary detention through the writ of habeas corpus. The High Court/High Court Division, when satisfied that the detenu has been put into detention by the detaining authority arbitrary by, may declare that order as illegal and thereby order for immediate release. It is to be mentioned that there is no hard and fast rule for an application under the habeas corpus writ. This petition does not require any special class of people or persons; any person can file a petition under this provision. [44] Thus the detune himself [45] , or his father [46], his wife [47], his son [48], his sister [49], his relative [50], or even his friend [51] can apply. In the case of a minor, however, the application should be by a person who is entitled to the custody of the minor or to represent the minor legally, and in the absence of such person, by a person

[42] Mahmood, Sh. Shaukat; A Study of the Constitution of Pakistan, Lahore, 1962, at p. 67.

[43] In Greece vs. Home Secretary, (1941) 3 All ER 388 it was held that the full name of the writ of habeas corpus is habeas corpus ad subjuciendum. It is applicable as a remedy in all cases of wrongful deprivation of personal liberty, where there is no legal justification for the detention. It is but a writ of remedial nature and cannot be used as an instrument of punishment. Halsbury's Laws of England, Simond Ed. vol. II, at p. 27. The history of the writ of habeas corpus is lost in antiquity.

[44] See also Dicey, A.V.; Introduction to the Study of the Law of the Constitution, Oxford, 1938, at p. 215

[45] Charanjit Lal vs. Union of India, AIR 1951 SC 41 (paras 43,81)

[46] Thompson, Re (1860) 40 MLJC 19: 9 WR 203; Sundarajan vs. Union of India, AIR 1970 Del 29 (FB).

[47] Begum Nazir Abdul Hamid vs. Pakistan, PLD 1974 Lah 7

[48] Province of East Pakistan vs. Hiralal, PLD 1970 SC 399

[49] Daley, Re (1860) 2 F & F 258.

[50] supra 39 at p. 74

[51] Rajdhar, RC, AIR 1948 Bom 334

interested in the welfare of the minor [52] and the rule is the same in the case of a lunatic[53]. It may be stated here that most of the cases the court had found the grounds of detention to be vague, indefinite and weak grounds. In other cases, orders of release have been conferred for the following reasons:

- government's unlawful authority in ordering detention;
- failure to inform the detenu of his right to representation;
- failure to state the grounds of detention within the statutory period;
- lack of nexus in between some of the reasons shown in the order of detention and the facts and reasons for detention as disclosed in the grounds;
- detention for criticism of an ideology, which cannot be a prejudicial act in a society that permits political activity;
- failure to produce the detenu before the Advisory Board within a specified time;
- mixing of good grounds with bad ones;
- Retrospective issuance of orders and
- Government's failure to produce essential documents in court.

What happens in practice is that in spite of the order of the court for release of the detenu the detaining authorities pass fresh order of detention. [54] In such a situation the number of detained persons exceeding the number of persons ordered for release. Besides the detenues have got some difficulties in their access to court. **For example**, the detenu is not aware of this procedures and their relations along with themselves fail to contact with the lawyers and a remedy of this kind cost a big amount of money, say in Bangladesh the legal fees being over Tk. 10,000 (or U$ 160).Moreover the power of the detaining authorities not to disclose the grounds of detention [55] brings much difficulty and the detenu cannot claim any remedy before the court.

[52] Raj Bahadur vs. Lehal Remembrancer (1953) 47 CWN 507

[53] Ex parte Child (1854) 15 CB 238

[54] Alam Ara Huq vs. Government of Bangladesh, Supra note 85; Farzana Huq vs. Bangladesh, Supra note 87.

[55] Section 8 (1), Special Powers Act 1974

7.5.2 Suo Motu Rule

The judge of the High Court Division may, on the basis of a newspaper report/comment, proceed suo motu.[56] Right to Compensation for Wrongful Arrest The International Covenant on Civil and Political Rights, 1966 lays down in Article 9(5):

> ***"Anyone who has been victim of unlawful arrest or detention shall have an enforceable right to compensation."***

The Supreme Court of India in consideration of individual freedom for the first time passed an order for compensation in the famous ***Rudul Sah vs State of Bihar***. [57] The court observed:

> ***"The right to compensation is some palliative for the unlawful acts of instrumentalities which act in the name of the public interest and which present for their protection the powers of the State as a shield. Respect for the rights of individuals is the true bastion of democracy. Therefore, the State must repair the damage done by its officers to the petitioner's rights. It may have recourse against those officers."***

The Supreme Court of Bangladesh does not usually approve compensation but there are certain exceptions. For example, in **Bilkis Akhter Hossain vs Government** [58]the court directed the state to pay compensation to the detenues. In this writ petition four leaders of BNP were arrested and detained under the Special Powers Act, 1974 in 1997 during the period of Awami League Government. Mrs. Bilkish Akhter Hossain, the wife of one of these four arrested leaders, **Dr. Mosharrof Hossain** submitted a writ petition before the High Court Division against the detention of her husband. The court declared the detention order illegal, passed order for immediate release of the detenues and to pay taka one lakh to each detenu as compensation. The court observed: In the instant case it appears that the detainee's rights of freedom of movement (Article 36), the right of freedom to assemble (Article 37) and the right to protection of life and personal liberty

[56] State vs. D.C. Satkhira, 45 DLR (1993) 643

[57] AIR 1983 SC 1086. For details see, Rao, N. Right to Compensation for Unlawful Detention in India, Indian Journal of International Law, vol. 26, nos. 1 & 2, Delhi, 1986, at pp. 516-18

[58] MLR Mainstream Law Reports, vol. 2, 1997 (Dhaka

(Article 32) as guaranteed by the constitution have been invaded by the detaining authority with mala fide intention under the garb of the Special Powers Act. Considering the facts and circumstances of the case and provisions of law as considered above as well as the order and grounds of detention made in this case and also considering the materials on record, we are of the view that the detention of the detainee is absolutely illegal, without lawful authority and is made in an unlawful manner. Since the fundamental rights of the present detainee guaranteed under the Constitutions have been invaded and violated by the detaining authority maliciously as stated above, since the detainee has been depicted as a leader of the terrorists and provocateur and instigator of the saboteurs and thereby the detaining authority caused irreparable damage to his reputation, name, dignity, honour, prestige, image and social status in the eyes of the public at large, since all these scandalous, derogatory and defamatory news have been circulated through various Government news media, other news agencies, newspapers and journals of this country and abroad, since he was detached from his family members and deprived of his normal avocation of life for being subjected to inhuman mental and physical torture in jail for last 17 days, since such detention is malicious and malafide and made for political victimization and since then detainee has been compelled to take shelter before this court for proper belief and redress and thereby he has been forced to spend a huge sum of money as litigation costs, we are of the view that the ends of justice will be met if we award a reasonable but exemplary lump-sum monetary compensation in favor of the detainee.

Therefore, we assess such reasonable and rational lump-sum monetary compensation of Tk. 1, 00,000/= (Taka one lakh only) to be paid by the Respondent Nos. 1 and 2 to the detainee considering the above reasons and sufferings of the detainee and his social position." There is no provision for payment of compensation for illegal detention under the preventive detention laws. As a result, the detaining authority exercises arbitrary and malicious discretion.

CHAPTER 8

8.1 Preventive Detention in Maintaining Order

The term "pre-crime" was coined by Philip K. Dick in his 1956 science-fiction short story "Minority Report"[59], in which he writes of a society which has eradicated crime by predicting crimes through the use of "precogs" – humans who have precognition ability – and then detaining the prospective offenders before the crimes are committed. The reorientation of the criminal justice system from a retrospective system, which investigates, tries, and punishes, to a prospective system of anticipating crime, assessing risk, and reducing opportunities for offending is a logical consequence of the adoption of the security-based analysis of crime. If crime is a rational choice, the state can only hope to reduce it by intervening before an offence is even conceived, reducing temptation, and increasing the costs to be entered into the cost-benefit analysis. Increasing the severity of punishment will only deter those who are the most risk-averse, given the low chances of being caught. Therefore, the state should engage in profiling of risky populations, and target them with surveillance and other control measures, with the intention that the profiled group will commit less crime because they have been made aware of their profile and the concomitant increase in the likelihood of detection.[60] From the amoral standpoint of security analysis, taking pre-emptive measures is straightforward. However, if one steps away from this view, several distinct but interconnected difficulties with this approach become apparent. First, there is a danger that identifying populations which pose a higher risk of committing crime the state further stigmatises the most disadvantaged groups in society, as these are the groups which are more likely to make a rational choice to commit crime, given that they have the least to lose. Furthermore, as disincentives are less effective on those with the least to lose, preemptive incapacitation becomes the most attractive method of dealing with such groups. Secondly, the act of profiling the most disadvantaged has an inherent risk of entrenching social exclusion and deprivation, which in turn may increase the perceived risk, leading to a perpetual ratcheting up of pre-emptive coercive measures against the targeted groups. Thirdly, the act of profiling can be politicised, with popular demands for unpopular minorities to be profiled and subjected to ever-more stringent controls.

[59] Philip K Dick, Minority Report (Gollancz, 2000).

[60] Criminal Justice (n 70) 290.

Indeed, the ancillary effects of profiling of the targeted groups may increase their risk because their labelling as a high-risk group leads to their further social exclusion and embedding of their pariah status, leaving them with few options but crime, and almost no disincentives. When an individual is already treated like a criminal, to be convicted of and punished for a criminal offence may be of trivial significance. There is also the intractable problem of the potential for profiling to become a self-fulfilling prophecy in that those who are the subject of increased surveillance and other pre-emptive actions will almost inevitably become the groups with the highest crime rates, because of the increase in detection amongst this group vis-à-vis the general population.[61] As McCulloch and Pickering argue, "[p]re-crime laws and the coercive measures that travel with them mobilize prejudice around identity and lead to intensified politicization of policing and law."[62]

8.2 Preventive Detention as Safeguard to our Country

At first glance, there seem to be many advantages to the pre-trial detention framework of preventive detention. Terrorist acts almost invariably involve violations of the criminal's law, so treating terrorist in a manner similar to the way others who violate the law are treated is not obviously illogical. Using the criminal justice system to try suspected terrorist enables experienced and qualified individuals to investigate, prosecute, and convict suspected terrorists trials within the regular court system, and granting members of the judiciary oversight of pre-trial preventive detention also confers considerable legitimacy on the process. in all of the pre-trial detention framework countries, as in the United states, the judiciary is dependant the executives same is India.[63] the independence and impartiality of the judge ordering the initial period of preventive detention combined with a detainees right or appeal to a higher tribunal of independent jurist guarantees a certain degree of fairness in proceeding exists and, compares favourably to the

[61] Equality, Human Rights and Good Relations in 2010 The First Triennial Review, (2010) that black people are, on average, five times more likely to be imprisoned than white people in England and Wales. Equality and Human Rights Commission, Stop and think - A critical review of the use of stop and search powers in England and Wales (2010) found that black people were at least six times more likely to be stopped and searched than white people.

[62] Jude McCulloch and Sharon Pickering, 'Pre-crime and Counter-Terrorism – Imagining Future Crime in the "War on Terror"' (2009) 49 British Journal of Criminology 628, 635.

[63] Constitution of India Art.50

criticisms of illegitimacy that have been levelled against the opaque, executive controlled U.S. national security detention regime in operation on Guantanamo . The final argument in favour of the pretrial detention framework is that it appears to work. It appears to have worked in France where the 1995 Paris metro bombers were brought to trial in 1999.[64] It also appears that to have worked in Spain, where the authorizes have arrested, integrated, and brought to trial a number of individual involved in the Madrid train bombings.[65] Critics of the pre-trial detention framework of 'preventive detention' argue however, that there are difficulties in using the criminal law as an anti- terrorism tool, and the criminal law system to determine who should be preventively detained such critics suggest that effective counter – terrorism measures prevent to torments act from taking place at all, a and this prospective orientation fundamentally at odds with the criminal laws primarily retrospective focus son punishing individuals past acts. This may be an accurate description of the primary focus of the criminal justice system generally. But is far from the whole story in the whole story in the terrorism context. Some critics of the pre-trial detention framework also argue that it would be foolhardy to rely entirely Upon a pre-trial detention scheme because of the evidentiary and procedural challenges.

According to **the Special Powers Act, 1974**, preventive detention has its strong basis on any threat or violation of sovereignty of our state. Section 2 (F) defines prejudicial acts & in its (i) & (iii) recognizes acts that are prejudicial to our sovereignty.

"prejudicial act" means any act which is intended or likely-

(i) to prejudice the sovereignty or defence of Bangladesh;

(iii) to prejudice the security of Bangladesh or to endanger public safety or the maintenance of public order;

Moreover, Section 2 (F) (ii) recognizes acts that are harmful to the relation between international communities as-

(ii) to prejudice the maintenance of friendly relations of Bangladesh with foreign states;

[64] http://soholarlycommons-law.northwesten.edu/jcic (accessed on 25-11-16)

[65]

8.3 International Recognition of Preventive Detention

International human rights law is founded on the principle that human rights are universal; and in becoming a party to human rights instruments with enforcement mechanisms, such as the ECHR, or the International Covenant on Civil and Political Rights (ICCPR)[66] a state appears to be voluntarily accepting certain limitations on its sovereignty. However, throughout the case law, both in the UK's domestic courts and at Strasbourg, there is a theme of the concept of territorial sovereignty side-lining human rights obligations in the context of immigration control. In this sphere, a lower standard of human rights protection appears to be permissible, and the state's "undeniable sovereign right to control aliens' entry into and residence in their territory"[67] allows treatment of non-citizens which would not be permitted in relation to citizens without being characterised as being discriminatory. The alien does not have a right to reside in the territory of the state, and although the ECHR may provide him with a right not to be removed, his remaining in the state can entail some unpleasant consequences for him, from which human rights norms appear to offer little protection. When comparing this area of state activity to other areas impacted by human rights norms, this seems strange. At this stage of the development of human rights jurisprudence, it would be difficult to imagine a state arguing a defence of sovereignty in other human rights cases, an argument which in theory could be attempted in relation to any human rights issue. The state, in becoming a party to the human rights instrument, has agreed to bind itself in a manner which, it could be argued, is a curtailment of its sovereignty but the consent to be bound can itself, as an expression of the will of the democratic polity, be seen as an indication that this is consistent with the sovereignty of the state.[68] The concept of state sovereignty is intimately bound up with territoriality and the idea of the nation state, defining itself through, inter alia, the power to exclude and include, and a monopoly on the legitimate use of violence.[69] Cornelisse

[66] It should be noted that the Human Rights Committee, the supervisor of state parties' obligations under the ICCPR, only has competency to receive individual petition if the state party has ratified the First Optional Protocol to the ICCPR, which recognises the right of individual petition.

[67] Saadi v United Kingdom (n 60) para 64.

[68] For example, see arguments raised in Ryan Goodman, 'Human Rights Treaties, Invalid Reservations, and State Consent' (2002) 96 The American Journal of International Law 531.

[69] Galina Cornelisse, Immigration Detention and Human Rights: Rethinking Territorial Sovereignty: Volume 19 of Immigration and Asylum Law and Policy in Europe (Martinus Nijhoff 2010) pt 1 ch 2 Limiting Sovereign

tracks the development of the concept of territorial sovereignty from Medieval Europe to the present day, finding that the process of establishing an independent territorial state system, which began with the Peace of Westphalia, coincided with the development of the concept of a sovereign body politic uniting the ruler and the ruled, and that the two concepts fused to create the modern sovereign nation state. Rousseau's conception of popular sovereignty, which according to Cornelisse "cannot be outdone", accepts the absolutist nature of sovereignty which Hobbes' theory entailed, but the absolute power is vested in the people, who only exist if they exist within a community: "The state is the community, but as the people possess exclusive and omnipotent sovereignty that is inalienable, government is merely the executor of the general will of the community." Cornelisse argues that, just as the general will of the community was replaced by Hegel with the national will, nationalism shaped the role of the State, which became associated with the nation: "by the end of the nineteenth century, sovereignty, territory and the identity of the political community became inextricably linked." The influence of these philosophers can be seen in the discourse which justifies indefinite immigration detention for the purpose of preventing crime. The Hobbesian social contract comes into existence because people decide to give up their rights to the Sovereign in order to gain protection to remove them from lives that were "nasty, brutish and short."[70] The security-based analysis of crime, which sees crime as a natural, rational choice, can be viewed as a school of criminology that has its roots in Hobbesian philosophy. It can provide a philosophical underpinning for the use of preventive detention measures against non-citizens. A Hobbesian security-based analysis may determine that aliens residing in the territory of the state are not party to the social contract and therefore are liable to experience the coercive powers of the state in order to prevent crime, but are not beneficiaries of the contract, save for the indirect benefit that they may derive from the state's exercise of power establishing law and order.

[70] Thomas Hobbes, Leviathan (Oxford World's Classics 2008) 84.

CHAPTER 9

9.1 Recommendation

The above discussion reveals the truth that preventive detention is an abnormal measure to detain a person which is serious violation of personal liberty of a citizen. Under this law the detaining authority upon its discretion, may detain any body and the law provides all immunities to the detaining authority. As a result, the detaining authority misuses their power e.g. they exercise arbitrary and malicious discretion in order to perpetuate rule. Considering the above discussion, I notice the following recommendations which may give relief to the people from the pangs of this repressive law.

1. Government should take initiative to stop arbitrary arrest and detention by repeal or amending all provision providing for preventive detention.
2. An option of judicial review should be given to those who are arrested under such laws.
3. Since our constitution gives the authority of making preventive detention laws, so the constitution must contain provision describing the certain specific period when the law shall be exercised i.e. only in time of grave emergency or war.
4. Article 33 (3) (b) of the constitution deprived the detainee from the fundamental rights ensure by article 33(2) which provides that every person who is arrested and detained in custody shall be produced before the magistrate within 24 hours and right to counsel under article 33 (1) of the constitution and these are fundamental human rights guaranteed by constitution itself. So such a provision should be repealed and it is the clear violation of these rights.
5. The detenu shall be informed immediately about the grounds of his detention with facts and particular's which enable him to make effective representation.
6. The opportunity to challenge the legality of their detention order before a court of justice should provide towards all detenu who are detained under preventive detention laws.
7. The detenu shall not be subject to torture and other ill treatment in detention.
8. All allegations of oppressions should be quickly and immediately investigated.

9. The government should bring a provision in the constitution ensuring the right to get compensation at least the person who is detained unlawfully in peace time as article 9 (5) of the international Convention of civil and political rights.
10. The orders and directions should be obeyed totally, immediately and strictly.
11. Judicial detention is better to executive detention. In order to ensure the proper functioning of democratic environment and to continue the standard of human rights preventive detention should be restricted.
12. There must be constitutional provisions describing sure limited period when the powers of preventive detention exercised.
13. All rational legal and human opportunities should be provided to the detenu.
14. The detenu must not be maintain with those who are regular convicts.
15. He/she will be well informed as early as possible about the reasons behind his/her arrest.
16. The detenu must be permitted immediate and regular access to lawyer, family members and unbiased medical board.
17. Police should not be used for political reason
18. Judiciary and administration require to be free from corruption.
19. Establishing a legal aid clinic in few police stations on pilot basis.

The above recommendations should be practiced and ensured thereby.

9.2 Concluding Analysis

Findings of the Study: The researcher came up with the below mentioned major findings of the research paper:

- ☛ The reasoning behind the powers of arrest without warrant is that prevention is the most effective approach to control crime, but preventive detention is a peculiar determine in the sense that it imposes restriction on the liberty of a citizen to the extent that a person who has not committed any crime but presumed that he is about to commit any prejudicial act. Government or executive authority have no right to curtail any citizen's fundamental right in the name of state security.
- ☛ The preventive detention laws allow unrestricted powers to the government authorities to detain a person. According to section 3 subsection 2 of the Special Powers Act, 1974 even

after acquittal in the criminal case a person may be detained. The principle which is followed in step of granting bail cannot apply in case of preventive detention. Bail may be granted if the court examines that there is no material to show the action of the accused. But there can be an order of detention if the authority considers that detention is necessary to prevent the detenue from repeating similar activities which is completely violation of fundamental rights and human rights as well.

- The phrase 'as soon as may be' in Article 33(4) of our Constitution is an unpredictable phrase. For using such kind of unclear phrase, the law enforcement agency can exercise illegal powers.
- Constitution of Bangladesh provides that the initial period of detention in six months without trial which means the detainee can be detained for six months. Nowhere in the world such extensive period of opening detention is not found except Bangladesh since it is direct foray of personal liberty, personal dignity, freedom of movement and expression.
- Neither Article 33(4) nor 33(5) of the Constitution of Bangladesh permit a detainee to communicate with his lawyers and family members. This in turn convey the danger of facilitating the torture of detainees, mostly political detainee. To communicate with lawyer and family member is a fundamental right and is a part of fair trial.
- Any arrested person must show before magistrate within 24 hours. But under the Special Powers Act, 1974, without bringing before magistrate within twenty-four hours, a suspected detainee can put in detention custody month after month which is completely violation of human rights and natural justice as well

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