Law and Practice of Preventive Detention
Md. Jalal Uddin
LL.B (Hons.), 5th Semester

Introduction:
Preventive detention is one of the most arguable topics of law in recent times. That’s why a lot of people tried to give a exact definition of it. But there is no authoritative definition of it. In the case A. K. Gopal v. State of Madras, the court held that, there is no authoritative definition of preventive detention. The word “Preventive” means that restrain, whose object is to prevent probable or possible activity, which is apprehended from a would be detent on ground of his past activities;

Detention means keeping back. Preventive detention means detention of a person only on suspicion in the mind of the executive authority without trial, without conviction by the court.

Preventive detention:
People are taken under detention when they commit any crime or they are taken under a trail for their criminal activities. That means detention is the result of committing any crime by an individual of a nation. But Preventive detention is quite contrary to it. In general law, no people can be arrested without being informed of the reason for which he is arrested and there is a specific time of 24 hours to place him before a magistrate. But in Preventive detention a person can be arrested any time without showing telling him any reason and can be taken in custody for a period of six months. In general sense, it can be said that Preventive detention is not imposed as the punishment for a crime, rather to prevent a person from committing a crime, if he is likely to commit a crime. Preventive detention is a special form of imprisonment.

Preventive detention in Bangladesh:
In the original constitution of Bangladesh there was no provision for Preventive detention. It was inserted by the 2nd amendment of the constitution in 1973. Preventive detention is legalized in Bangladesh by the article 26 and 33 of the constitution of Bangladesh. It states in article 33 that “safeguards as to arrest and detention.”

1. No person who is arrested shall be detained in custody neither being informed, the grounds for such arrest, nor shall he be permitted the right to consult and be defended by a legal practitioner of his choice.
2. Every person who is arrested and detained in custody shall be produced before the nearest magistrate within a period of 24 hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of magistrate, and no person shall be detained in custody beyond the said period of without the authority of a magistrate.
3. Nothing in clauses and shall apply to any person a) who for the time being is an enemy alien or b) who is arrested under any law providing for Preventive detention.
4. No law providing for Preventive detention shall authorized the detention of a person for a period exceeding 6 month unless an Advisory Board consisting of three persons, of whom two shall be persons who are, or have been, or are qualified to be appointee as, judges of the Supreme Court and the other shall be a person who is a senior officer in the service of the Republic. Has, after affording him an opportu-
nity of being heard in person, reported before the expiration of the said period of 6 months that there is, in its opinion, sufficient cause for such detention.

5. When any person is detained in pursuance of an order made under any law providing for Preventive detention, the authority making the order shall, as soon as may be, communicate to such person the ground on which the order has been made, and shall him the earliest opportunity of making a representation against the order.

6. Parliament may be law prescribes the procedure to be followed by an Advisory Board in an inquiry under clause.”

The Special Power Act 1974 of Bangladesh has also described the provision of Preventive Detention:

The parliament on February 9, 1974 enacted the Black Law “Special Power Act 1974 containing the provision of Preventive Detention. The Act says that any person can be arrested and detained by the executive authority if there is apprehension in mind of the authorities that he may commit “Prejudicial Act” which means:

1. To prejudice the sovereignty or defense of Bangladesh.
2. To prejudice the maintenance of friendly relation of Bangladesh with foreign states.
3. To prejudice the security of Bangladesh or to endanger public safety or public order.
4. To create or excite feelings of enmity or hatred between different communities' classes or section of people.
5. To interfere with or encourage with the administration of law or the maintenance of law and order.
6. To prejudice the maintenance of supplies and services essential to the community.
7. To cause fear or alarm to the public or to any section of the people.
8. To prejudice the economic or financial interests of the state.

So it is clear that though the first constitution of Bangladesh did not have the provision regarding Preventive Detention, it has been made as law for some unlawful opportunities taken by the second amendment of constitution and Special Power Act, 1974.

Preventive Detention; A weapon of oppression:

Preventive detention has both advantages and disadvantage as every other law. But the use of this power should be very limited or it may be a weapon of oppression very easily. In some corrupted countries, it has noe become a weapon to oppress people. In most democratic countries, this law is used only in emergencies. As for example, in U.S.A, this law is used only in emergencies.

The U.K declared this law illegal when there is no emergency. But in third world, it is used both at the time of emergencies and at peace for example, Bangladesh, Nigeria and so many other countries. When the rule of Preventive detention is used frequently, then there always remain higher chance of misusing it. So, it can be said that, excessive use of it can be harmful for the state and democracy.

There are some specific reasons why it is said as weapon of oppression.

Firstly, in Bangladesh without trial 6 months detention confers to the detainee. This is a bad process because now here in the world such a long period is found. In India the maximum period of detention is three months and in Pakistan the initial period of detention is three months.
Secondly, in 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 emergency, Preventive detention is applied for and also for specific purposes, but there is no specification in our constitution in this regard and can be restored to it in times of both peace and emergency.

Thirdly, we have not a fixed maximum period of detention neither in our constitution nor the Special Powers Act 1974. This is also a negative aspect of Preventive detention. In Pakistan the period of Preventive detention is eight months and in India maximum two years.

Fourthly, in Bangladesh a large number of political workers and leaders are detained without trial through the Preventive detention under the Special Power Act 1974 and known as a “Black Law”. But this picture of detention without trial is not found in western countries where this Preventive detention also exists.

Fifthly, the Preventive detention under the Special Power Act 1947 is keeping in line with the maintenance of Indian Security Act 1971 and the East Pakistan Public Safety Act 1958, but in Bangladesh the provision relating to Preventive detention made more draconian than these two. By 44th amendment the process of Preventive detention made a pit democratic in India constitution.

Sixthly, police officer after arresting any person prays before Magistrate court for remand (police custody for interrogation) and in most cases police apply brutal force and torture to extract information or obtain confession which is an extreme violation of human rights.

Seventhly, it is not clear whether a detained person can take the counsel of lawyer during the hearing in front of the Advisory Board. The Advisory Boards report is confidential except the part containing the opinion of the Advisory Board.

Eighthly, in practice persons detained under the Special Powers Act, 1974 is detained for days without producing them before the Magistrate.

Ninthly, many suspects who are not actually criminal, for wrong information they are kept inside the jail. Among them who are rich come outside through writ of Habeas Corpus in High Court Division but those who are poor, they have no chance.

In Aspect of Bangladesh:
From 1974 to present, this law is being used at a excessive rate and that’s why now a days it is a weapon to oppression in respect of this country, Preventive detention is established by the Special Power Act, 1974 and now it is known as Black Law. From 1974 to present, the SPA has been using successive government to stem the tide of political opposition. Though there is no authentic figure available but various press report indicates that around 25000 people were detained from February 1974 to August, 1975 under this act and similar number to 1985-1987. All the political parties when out of power make serious criticism of the law and promise in the election manifesto that they would repeal this black law if put into power. For example, the three alliances during the movement for fall of the autocratic Ershad regime had been very vocal that the Bangladesh Nationalist Party (B.N.P.) which came into power started emphasizing that it is a law of utmost necessity and government cannot work without it. Likewise, sheikh Hasina, Awami League Chairperson, declared before she came into power through the Parliament election held on 12th June in 1996 that she would repeal the law if came to power. But after assuming power she pulled her tone in
opposite direction by announcing that its efficacy to past governments justified its existence. Again BNP in its election manifesto in 2001 said that it would scrap this tyrannical law if came to power but they did not. The present government also has not repealed the Special Power Act, 1974.

The Act provides for the detention of individuals who might commit “prejudicial acts” against the State, under section 2(f) of the Act, include undermining the sovereignty or security of Bangladesh, creating or exciting feelings of enmity and hatred between different communities and interfering with the maintenance of law and order. The act provides no guidance on the burden of proof necessary for the government to conclude that an individual is likely to commit a prejudicial act. As a result, detention under the Special Power Act, 1974 generally rely on allegation with very little evidence.

There is little, if any, institutional checks against abusive use of the Act by government officials. Detention under the Act is generally performed at the behest of the District Magistrate or Additional District Magistrate in the area. In most districts, the district Magistrate is also the district administrator. An article 115 of the constitution of Bangladesh provides that subordinate courts are to be under the control of the executive. The failure of the separation of powers has meant that detention is often politically motivated within the districts. The ministry of home affairs is supported to provide a report within 30 days stating the grounds for detention of an individual. The act allows for initial detention of a period of one month, after which time an Advisory Board can indefinitely extend the detention for six months period at a time. Additionally detainees are denied the right to legal representation before the Advisory Board. The frequency, with which the Special Power Act has been used, has increased drastically since it introduction, in 1974 a total of 513 individuals were detained under the Act. In the first six month of 1999, 6650 individuals were detained under the Act. Various types of people are detained under the Act-Politicians, students, family members of opposition leaders and personal enemies of police personal and government administrators. This also proves that, now-a-days, it is good weapon to harass the people.

**Conclusion:**

Though Preventive Detention is a tool of constitution for social need, but now it is serving for the other purpose inguised its legal or theoretical purpose. The excessive use of laws of preventive detention affects the liability of the individual and as well as dangerous for a big community. The law related person should not forget that this law is for the protection of the society and state and not for steaming roll or upon the political counterparty.

**Bibliography:**

1. The Constitution of Bangladesh
2. Front page of Prothom Alo, 08 December, 2002
3. Law Quarterly Review, 2004 volume-122
4. Bangladesh Research Publications Journal
5. West Law Webpage