Conclusion and Suggestions
Chapter-VI

CONCLUSION AND SUGGESTIONS

To conclude it is submitted that the Preventive detention is the arch enemy of the right to personal liberty. It envisages detention without trial which is against the basic canons of criminal jurisprudents. At times when the liberty of the individuals crosses the limit and threatens the very existence of the State and at that point of time it fails to control the enjoyment of individual’s liberty, then the State uses the preventive detention measures. This measure is not unknown in the dictatorial and the democratic regimes; the capitalist, the socialist and the communist governments. However, there was a difference in the exercise of the said power; some countries tried to handle this measure carefully and cautiously. They adopted it casually and only in grave situation affecting the very existence of the State. They used the measure indiscriminately in time of war and peace. And thus in such countries the right to personal liberty remained in eclipse.

Now coming to the Indian experience, before Independence, the British regime in order to establish a strong foothold in India used the preventive detention measure for an indefinite period, when Indian got independence the provincial legislatures enacted laws relating to preventive detention. Though the freedom fighters were aiming towards securing better rights to the citizens of Free India, yet it was unfortunate that the preventive detention measure at the central level was put into force immediately after the commencement of the Constitution of India. Sardar Patel, who piloted the first Bill with respect to preventive detention, conceded that he had two sleepless nights before introducing such a Bill in Parliament. The Preventive Detention Act, 1950, was amended thrice to give some more protection to the person detained under the Act. In the beginning the Act was renewed every year; thereafter, every two years; and finally, every three years Parliament continued the operation of the Act. The Act of 1950 came to and ends in the year 1969. But thereafter no vacuum was created in the area of preventive
detention. The state legislatures immediately passed laws relating to preventive detention. This state of affairs continued until the Maintenance of Internal Security Act, 1971, came into force. This Act was amended thrice so as to impose more restrictions on the persons detained under the Act and to allow the executive a free hand in matters of preventive detention. On June 27, 1975, the Presidential order gave blanks power to the executive authority to deal with persons preventively detained. It imposed a blanket ban on the detenue to claim any safeguard against the measure. This resulted in the 19 months emergency. During the period between 26-27 June, 1975 a large numbers of persons were put behind the bars without trial and without affording to them any basic safeguards. Brief survey of the Preventive Detention in this country shows that this law has been misused and innocent citizens oppose to be establishment were sent to Jail on flimsy ground. Therefore, this law should be escarped and repeal.

The Supreme Court of India during Emergency has failed to protect the rights of the citizens and has not been able to protect the citizens from torture and ill treatment. In Kashmir the Preventive Detention Laws have been blatantly misused and the arbitrary arrest and detention of those peacefully voicing dissent is continuing in Jammu and Kashmir, India, with the Public Security Act (PSA) increasingly being used to punish those who criticise the government, Amnesty International warned today. Political activists were detained and beaten last week following public protests over the killing of six women. Amnesty International is calling for the immediate release of those who remain in detention and considers them to be prisoners of conscience, held solely for the peaceful exercise of their right to freedom of expression and association. On 8 June 2001 an unidentified attacker threw a hand grenade at a group of women picnicking at a shrine in Chara-e-Sharief. Four women were killed outright and two more died later of their injuries. Local observes believe that the attacker was a member of the Special Operations Group (SOG) which is a division of the police created to deal with militancy. Amnesty International urges the government of Jammu and Kashmir to immediately initiate an independent, impartial and transparent inquiry into
this incident. Several associates of the Human Rights Front, including their patron Mr. Untoo, were taken from their homes at around 4:00 a.m. on the 9th June and held in detention until that evening. At the same time members of the Islamic Students League were also picked up and placed in preventive detention. A two year detention order was issued for Shakil Ahmad Bakhsi, a student leader under the Public Safety Act. Dr. Hubbi, a leader of the All Parties Hurriyet Conference (APHC) and Vice-Chairman of the Jammu and Kashmir People’s Conference, and his wife attended a demonstration on Saturday 9 June. At the demonstration the couple were beaten by police and Dr. Hubbi was taken into preventive detention. A two year detention order was issued against Dr. Hubbi’s who is now being held in Kotbalwal jail. There are reports that the home of Dr. Hubbi’s brother, Abdul Kabir Hubbi, was also raided by the SOG on the night of 12 June. Dr. Hubbi, who has no connections with the armed opposition, has served earlier periods in preventive detention, including eight months in 1999-2000 along with 25 other leaders of the APHC. Other APHC leaders including Shahidul Islam and Javed Ahmad Mir were also arrested. Amnesty International has also seen reports that APHC leader Sheikh Abdul Aziz was stopped from attending the demonstration by the police at Awantipora and that, together with activists Mukhtar Waza, Zahoor Sheikh and Khalil Ahmad Khalil, he was beaten by Police. Amnesty International is concerned about the widespread use of excessive force by the police when detaining activists. In March 2001, Syed Shah Geelani, who is known to the authorities as having a serious heart disease, was pushed to the floor and beaten unconscious by police when he was being released from detention. Amnesty International is also concerned that the PSA continues to be abused in Jammu and Kashmir to detain opposition politicians. AI is aware of many cases of activist being held for years without recourse to the judicial process. As most people detained under the PSA are denied access to lawyers and family members, they also run a high risk of being subjected to torture or ill-treatment. The Jammu and Kashmir Public Safety Act of 1978 is the main law relating to preventive detention in Jammu and Kashmir and permits administrative detention
without trial for a period of up to one year if a person is deemed likely to act in a way “prejudicial to the maintenance of public order” or up to two years if their actions are likely to be “prejudicial to the safety of the state”.¹

Integrity and unity of the nation depends on the quality of the judiciary to a great extent. The Supreme Court performance in the last decades has not been up to the expectation of the people of India. I subscribe to the view of Mr. Rajiv Dhavan when he says in his book “Justice on Trial: The Supreme Court Today”, that the court has failed to fulfil its assigned role and that it is a “dying institution”.² The standard of Supreme Court of India has fallen for the reason that the judges are appointed in the High Court from the panels of the State and the judiciary does not attract talented worthy lawyers for being appointed as Judge. A government panel advocate appointed in the High Court becomes a judge of the High Court then on the basis of seniority, he goes up to the Supreme Court. So, most of the judges are politically committed the people in power and therefore, they deliver such judgements which can guarantee them jobs even after retirement from the Supreme Court of India.

The existence of Supreme Court gives the people in general and the opposition groups in particular an easy feeling that there is an independent authority to check the arbitrary and extreme actions of the party in power and to uphold the constitution. An erosion of the authority of the court would deprive them of this sense of security and may entail political upheavals. By and large, the judiciary is still held in high esteem and its authority, impartiality and commitment to constitutional values is widely recognised. The judiciary being the guarantee of democracy, rule of law and human rights under our Constitution, any dilution of its authority or diminution of its status is bound to endanger the delicate balance of our republic.

In the beginning, the court denied freedom to Gopalan,³ but in the subsequent cases it stood firmly on the side of personal freedom and social

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³ A.K. Gopalan vs. State of Madras, 1950 I SCR, 88
progress and change. Even if one among the several grounds for detention was vague or irrelevant, it set the detenu at liberty. This progressive interpretation of law was virtually halted when, during the internal emergency, Shivakant Sukla's case, the court rejected the writ of habeas corpus and shut its doors for such writs. This deviation from the unimpeachable standards of judicial review, for which there was a controlling authority in the *Makhan Singh* decision of the court, greatly damaged the credibility of the judicial system as a guardian of human rights and fundamental freedoms. However, the court soon asserted itself in the sphere of civil liberties and made full use of the principles of natural justice and procedural fairness in the subsequent cases. The principle of procedural fairness was first enunciated in *Bank Nationalisation* and culminated in *Maneka Gandhi*’s case. The court consciously gave judicial review a creative and civil libertarian content, and its activism revived public confidence in the judicial process.

Independent of the Constitution, there is no sphere which is exclusively within the ambit of the executive and out of bound for the judicial branch. For practical purposes, there may be such a sphere but its boundaries can never be really drawn, and it varies from society to society, depending upon the circumstances. The recent judicial activism of the Supreme Court may be justified in view of the increasing inefficiency of administration, lack of political will and societal apathy towards the plight of the poor and the weak.

Those who operate the political system also play an important role in creating social harmony and promoting social justice. The success of a system largely depends on the human element that operates it. Even the best of systems fails to deliver the goods if it is operated by incompetent people, and even an archaic system can adapt itself to modern conditions and work

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satisfactorily if those in charge of it have a sense of urgency, dedication and awareness of responsibility.\textsuperscript{8}

The Preventive Detention Laws should not be used in a democracy and the submission of researches is all the acts and statutes which have been used for serving the interest of the people in power should be repeal, this will be in consciousness with the wishes of the founding father of the Constitution who believed in person liberty and a society established according to the rule of law.

Recently the Supreme Court of India has granted compensation for Illegal Detention without trial for months or years is bad, for it takes away a slice of the detenu’s life; and the legal system which permits this outrage surely owes it to the detenue that he be compensated financially if his detention is declared illegal. Suits for damages for wrongful imprisonment offer no remedies because the statutes sanctioning preventive detention protect the erring officials and the government.\textsuperscript{9} A safer remedy is that, while releasing the detenu, the Court should have the power to determine damages and award compensation. However, the Supreme Court hesitated to recognise the principle of monetary compensation for violation of fundamental rights, even though it acknowledged the inadequacy of conventional judicial remedies in such situations.
