

## Chapter V

### PREVENTIVE DETENTION LAWS

Measures of preventive detention for certain purposes are expressly authorised by the Constitution, subject to certain safeguards. The range of such measures particularly when one takes into account some of the more recent legislation is not confined to national security or the maintenance public order, it extends also to social and economic offences. At present there are three central statutes dealing with Prevention detention—the two directed against economic offenders and the one against others. The Conservation of Foreign Exchange and preventive of Smuggling Activities Act, 1974 is concerned with the detention of a person to prevent him from acting in any manner prejudicial to the conservation or augmentation of foreign exchange or to prevent him from engaging in activities relating to smuggling of goods. The Prevention of Blackmarketing and Maintenance of Supplies of Essential Commodities Act, 1980 is directed against persons committing acts prejudicial to the maintenance of supplies of essential commodities, as defined by the Commodities Act, 1955, to the community. The National Security Act, 1980 covers such persons whose activities are prejudicial to defence of India, foreign relations, public order, and maintenance supplies and services essential to the community (except those commodities which are covered by the PBMSEC Act, 1980).

These statutes make a person liable to detention without trial and without following the normal judicial procedure prescribed for offences under the Code of Criminal Procedure, the Police Act or the state laws. Of course, these preventive laws are not directly germane to this study, since these laws not specifically aim at habitual offenders. The emphasis is not so much on the habitual criminality or persistence in crime as on the prevention of certain prejudicial acts. However, preventive detention can be used as a substitute for conventional procedure in dealing with the habitual offenders.

The detention of a person under these statutes is in the subjective satisfaction of the executive that the activities of the persons are prejudicial to the matters specified in the statutes. In other words, the executive enjoys a wide discretion to detain a person under preventive detention. Constitution and the statutes giving power of detention to the executive provides certain safeguards to the individual. Since

the liberty of the individual is involved, the courts strictly interpret these procedural safeguards and a slight deviation from these safeguards leads to his freedom in the hands of the courts.

The courts do not enquire into the truthfulness and the adequacy of materials with the detaining authority to justify detention of a person. The courts, however, do interfere if the action of the executive in detaining a person is based on bad faith or on irrelevant considerations. The cases are in legion where the courts have quashed the action of the executive either because of not following the procedure strictly or because the authority acted in bad faith or on considerations which were not germane to the detention of a person. In a work of the present kind, it is not advisable to mention either the refinements of the law or the mass of case law which has occurred. Reference may be made to the undernoted material for such a study.<sup>1</sup> As stated earlier, preventive detention is often used as a substitute for prosecuting a person for an offence. This has given rise to some difficulty. The general view is that the mere fact that criminal proceedings instituted against a person have resulted in his acquittal for want of evidence, it does not mean that he could not then be detained under preventive detention on the basis of those very incidents. This is on the ground that a preventive measure "is based on a reasonable prognosis of the future behaviour of a person based on his past conduct in the light of surrounding circumstances and subjective satisfaction."<sup>2</sup> Further, a detention order is not bad on the ground that the person could have been tried under ordinary criminal law. However, what is stated is not a universal rule. There have been a few cases when a prior court case, or lack of it led the court to quash a detention order.

In *Srilal Shaw v. State of Bengal*,<sup>3</sup> a preventive detention order was issued against a person mainly on the ground that he had stolen railway property. A criminal case filed against him was dropped and detention order was passed. The court held the order to be bad for the court thought that it was a typical case where for no apparent reason person could easily be prosecuted under the ordinary criminal law was being preventively detained. Again, in *L. K. Das v. State of West Bengal*,<sup>4</sup> it was held that the power of detention could not be used on "simple, solitary incident" of theft of the railway property, the proper course

1. M.P. Jain, *Judicial Creativity and Preventive Detention in India*, (1975) *Jour. of Malaysian and Comp. Law* 261; Seervai, *I Constitutional Law of India* 519-563 (1975); Seervai, *III Constitutional Law of India* 1684-1703 (1979); M.P. Jain, *Constitutional Law of India* 506-24 (1978).

2. *Ibid.* at 280.

3. A.I.R. 1975 S.C. 393

4. A.I.R. 1975 S.C. 753.

was to prosecute the person in a criminal court. In *Biram Chand v. State of U.P.*,<sup>5</sup> a detention order was declared to be bad because it was passed during the course of prosecution of the person in a court on certain charges. Two parallel proceedings, namely, prosecution and detention, should not be resorted to simultaneously against a person. *Noor Chand v. State of West Bengal*,<sup>6</sup> a person was detained after he was discharged in a criminal trial. The Supreme Court struck down the detention order as the fact of discharge from a criminal case was a relevant material which the detaining authority ought not to disregard altogether. In justification of these rulings M.P. Jain rightly says :

The court have been conscious of the danger that the executive may tend to shy away from court proceeding for bringing home to the person concerned his guilt in the normal manner, and instead adopt the easier strategy of issuing preventive detention orders based on its subjective satisfaction. Such a tendency, if allowed unchecked, may pose a danger to the democratic way of life.<sup>7</sup>

However, as stated above, the above cases may be regarded as exceptions to the general rule that an acquittal in a criminal court or the possibility of prosecution of an individual is not a bar to the detention of a person under preventive detention. In the recent case of *Saraswathi Sheshagiri v. State of Kerala*<sup>8</sup>, the court emphasised that the possibility of a prosecution or the absence of it is not an absolute bar to an order of preventive detention. Thus, the law here is in a fluid state. It will depend on the facts of a case and the feeling of the court whether an acquittal in a court of law should not prevent the executive from passing a detention order on the basis of the same incident, or whether the executive was abusing its powers in detaining a person and not prosecuting him.

It may be noted that measures against black marketeers and hoarders also fall explicitly within section 110 of the Criminal Procedure Code, having regard to its very wide language, particularly clause (f) of that section 110 power and the power of prevention detention. In the case of preventive detention, a person can be detained merely on suspicion and the executive has not to justify its action before an adjudicatory body whether there was sufficient material in its possession justifying detention, except that it has to show it did not act *malafide*

5. A.I.R. 1974 S.C. 1161.

6. A.I.R. 1974 S.C. 2120.

7. *Supra* note 1 at 281.

8. A.I.R. 1982 S.C. 1165

or on irrelevant considerations. On the other hand, for an action under section 110 the police has to produce sufficient material to the satisfaction of the magistrate in support of its action. Secondly, preventive detention is a much more drastic action than section 110 action. For under the former the person is incarcerated and he loses his personal liberty more or less. But under section 110 he remains a free member of the society except that his freedom is fettered in a restrictive way.