

INTERNATIONAL JOURNAL OF LAW
MANAGEMENT & HUMANITIES

[ISSN 2581-5369]

Volume 4 | Issue 3

2021

© 2021 *International Journal of Law Management & Humanities*

Follow this and additional works at: <https://www.ijlmh.com/>

Under the aegis of VidhiAagaz – Inking Your Brain (<https://www.vidhiaagaz.com>)

This Article is brought to you for “free” and “open access” by the International Journal of Law Management & Humanities at VidhiAagaz. It has been accepted for inclusion in International Journal of Law Management & Humanities after due review.

In case of **any suggestion or complaint**, please contact Gyan@vidhiaagaz.com.

To submit your Manuscript for Publication at **International Journal of Law Management & Humanities**, kindly email your Manuscript at submission@ijlmh.com.

Victims and Prevention Detention Laws

B. SURESH LAL¹

ABSTRACT

A total of 8,450 of them have been detained under the Goondas Act and the NSA since 2011. Activists claimed that many of these cases were later thrown out by the court. The procedure requires that within seven weeks of detention, the detainee should be brought before the Board, which has three retired judges as its members. When these avenues fail, the higher courts can be approached. The majority of the cases have been habeas corpus petitions on which the higher judiciary ruled in favour of the victims, coming down heavily on the States mainly for non-application of mind and procedural lapses. This article emphasised mainly how the victims of Prevention Detention are been treated in the society as well as what are the challenges they are facings in means of sustainability. The author has come out with the critical and detail evaluation what are the thing can be implemented to help out the victims of Preventive detention law and make the victims in pace of other normal citizens. Further the question of whether Preventive detention laws are really helpful to reduce the crime and reform the criminal.

Keywords – Victims, detention, preventive, detenue, detained.

I. PREVENTIVE DETENTION AND HUMAN RIGHTS

Apart from the measures and safeguards relating to preventive detention, the Citizens must follow the necessity of forbidding the crime in expanding further and reasonably support preventive detention, but cases show unlawful detention stating mechanism for prevention of cognizable offence. Ahmed Noormohmed Bhatti Vs. State of Gujarat² related to it.

The principle of **Audi Alteram Partem** which states that no one should be condemned unheard. A person whose right or interests are disputed or controverted him must be given a reasonable opportunity to defend – it reasonably defends the victims of unlawful preventive detention.

On detention, instances of inhuman treatment of prisoners have led to revolution of strict Human Rights Laws. It is an international concern lead under UDHR and in India the National Human Rights Commission has laid down several measures and directives. Some of the

¹ Author is an Advocate at Madras High Court, India.

² AIR 2005, SC 2115

important among them which could prevent the prisoners from inhuman treatment and restrict preventive detention in accordance to security of the Nation includes:

Detailed recording of facts leading to satisfaction of authority conveying the grounds of detention to the Detenu, people should be sensitized about various personal liberties. In case there is unlawful detention, need to have provision for interim relief/compensation. All the states must formulate rules under the Juvenile Justice Act 2006 and constitute necessary institutions as required under the law. Juvenile justice system should be distinct from criminal justices' system.

The NHRC has conducted a workshop on four thematic sessions covering detention in prisons and police custody, preventive detention. It was presided by former Attorney General of India Mr. Soli Sorabjee. It included participants like DGPs, DG of Prisons, Nodal officers of Human Rights Commission and representatives of selected NGOs.

Thus it may be derived that those who are reasonable for the national security or for the maintenance of public order must be the sole judges of what the National Security or Public order requires. It should be the responsibility of the detaining authority to detain a person with a view to prevent him from acting in a manner prejudicial to the maintenance of public order. It has always been the view of the court that detention of the individuals without trial for whatever short period of time is wholly inconsistent with the basic ideas of our Government and Judicial system. Anti-social activity can never furnish an adequate reason for invading the personal liberty of the citizens except in strict accordance with and necessity to suffice legal procedure requirements considering weightage of the crime and no injustice is done.

Snuffing Out Activism:

The government also used its police force to intimidate those who took part in the series of agitations against the Kudankulam Nuclear Power Plant. Reports say nearly 2.27 lakh people living in Idinthakarai, a fishing village, and its neighbourhood have been named in hundreds of cases under various sections of the law.

A total of 8,450 of them have been detained under the Goondas Act and the NSA since 2011. Activists claimed that many of these cases were later thrown out by the court.

The procedure requires that within seven weeks of detention, the detainee should be brought before the Board, which has three retired judges as its members. When these avenues fail, the higher courts can be approached. The majority of the cases have been habeas corpus petitions on which the higher judiciary ruled in favour of the victims, coming down heavily on the States mainly for non-application of mind and procedural lapses.

II. SAFEGUARDS TO THE VICTIMS OF PREVENTIVE DETENTION AVAILABLE UNDER ICCPR COMPARED WITH INDIAN CONSTITUTION

Each of the safeguards that apply to a person deprived of personal liberty under Article 9 of the ICCPR are intended to avoid unlawful or arbitrary conduct from the moment of the deprivation of freedom. This section of the paper addresses the issue of the safeguards under Article 9 of the ICCPR apply to a person in preventive detention.

ARTICLE 9(2) –RIGHT TO BE INFORMED OF THE REASONS FOR THE DETENTION (ARTICLE 22(1) & (5) INDIAN CONSTITUTION)

Article 9(2) of the ICCPR provides: Anyone who is arrested shall be informed, at the time of arrest, of the reasons for his arrest and shall be promptly informed of any charges against him.

Two rights exist:

1. Anyone who is arrested has the right to be informed at the time of arrest of the reasons for his arrest and
2. A person charged with an offence has the right to be promptly notified of a charge or charges against him.

ARTICLE 9(3) – TRIAL WITHIN A REASONABLE TIME (ART. 22(2) INDIAN CONSTITUTION)

Article 9(3) of the ICCPR³ provides: Anyone arrested or detained on a *criminal charge* shall be brought promptly before a judge or other officer authorized by law to exercise judicial power and shall be entitled to trial within a reasonable time or to release. It shall not be the general rule that persons awaiting trial shall be detained in custody, but release may be subject to guarantees to appear for trial, at any other stage of the judicial proceedings, and, should occasion arise, for execution of the judgment.

Article. 22(2) Indian Constitution states that every person who is arrested and detained in custody shall be produced before the nearest Magistrate within 24 hours and no such person shall be detained under custody beyond the said period without the authority of the magistrate, but in Article 22(3) states that the above provision is not applicable to any person arrested or detained provided under preventive detention

TN ACT 14 OF 1982 in Section 4 which says about Execution of detention order and in which

³ Everyone has the right to liberty and security of person. No one shall be subjected to arbitrary arrest or detention. No one shall be deprived of his liberty except on such grounds and in accordance with such procedure as are established by law.

manner the arrest warrant has to be executed has been dealt in this section.⁴ Also the Code of Criminal Procedure code provides protection for the same (**Central Act 2 of 1974**).⁵

Article 9(4) – Right to Challenge Detention (Art. 22(5) Indian Constitution)

Article 9(4) ICCPR provides: Anyone who is deprived of his liberty by arrest or detention shall be entitled to take proceedings before a court, in order that court may decide without delay on the lawfulness of his detention and order his release if the detention is not lawful. The principle of judicial control over detention stems from, and is analogous to, the English remedy of habeas corpus, enabling a person arrested or detained to challenge the validity of his detention before court, and obtain release if detention is unlawful. The right of judicial control ensures persons who are arrested and detained are given the right to judicial review of the lawfulness of the measure to which they are subjected.⁶

The right to review the lawfulness of detention contained in Article 9(4) of the ICCPR is applicable to *any* person arrested or detained, not just those charged with a criminal offence, and as such includes those in preventive detention.

Article 9(5) – Right to Compensation for Unlawful Arrest or Detention

Article 9(5) of the ICCPR provides: Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation. The ICCPR applies to all ‘unlawful detentions’. This would include detentions which are unlawful under the ICCPR, or detentions which are unlawful under a State’s own domestic law.⁷

III. SUPREME COURT ON HUMAN RIGHTS OF VICTIMS UNDER PREVENTIVE DETENTION

Respect for human rights lies at the heart of good governance. In a democratic society, it is the responsibility of the State to protect and promote human rights. All State institutions whether they are the police department, the army, the judiciary or civil administration have a duty to respect human rights, prevent human rights violations, and take active steps for the promotion of human rights.

⁴ “A detention order may be executed at any place in the State in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973”

⁵ The Tamil Nadu Prevention Of Dangerous Activities Of D*[Bootleggers, Cyber-Law Offenders, Drug-Offenders,] A*[Forest-Offenders] Goondas, B*[Immoral Traffic Offenders, E*[C*[Sand-Offenders, Sexual Offenders, Slum-Grabbers]] And Video Pirates] Act, 1982

⁶ *De Wilde, Ooms and Versyp (‘Vagrancy’) Vs. Belgium* (2832/66) [1970] ECHR 2 (18 November 1970), para. 76.

⁷ Stephen Bailey, “Rights in the Administration of Justice” in David Harris and Sarah Joseph (eds), *The International Covenant on Civil and Political Rights and United Kingdom Law* (1995).

The role of the police is especially significant in this respect. The police is charged with the responsibility of maintaining order and enforcing laws. Therefore, the onus of bringing those who break the law including laws which protect people's human rights before the criminal justice system lies on the police. Unfortunately, many a time, while discharging this duty, actions of the police conflict with human rights. Police officers are pressured to get quick results, often with unofficial guarantees that they may use any means possible to accomplish the task at hand. However, the police as protectors of the law have both a legal duty and a moral obligation to uphold human rights standards and act strictly in accordance with the law and the spirit of our Constitution.

The Constitution - the supreme law of our country - entitles everyone living in India to protection of their human rights. Part III, the chapter on Fundamental Rights, which is referred to as the heart of the Constitution, guarantees basic human rights to all. It pledges that the State will safeguard human rights and will protect citizens from undue invasions on their liberty, security and privacy.

The Supreme Court has over the years, explained and elaborated the scope of Fundamental Rights. They have strongly opposed intrusions upon them by agents of the State, by asserting that the rights and dignity of individuals must always be upheld. The Court has laid down certain directives for law enforcement. These directives deal with various aspects of police work at the station house or cutting-edge level, such as registration of a case; conduct of an investigation; carrying out of an arrest; treatment of an arrested person; grant of bail; questioning of a suspect; and protection of the rights of women, poor and the disadvantaged. They also have the force of law.⁸

An officer who willfully or inadvertently ignores Supreme Court directives can be tried in court under relevant provisions of the Indian Penal Code and under the Contempt of Courts Act, 1971.

The National Human Rights Commission [NHRC] too has issued guidelines for police officers. The Commission has been established under a special Act of Parliament to protect and promote the human rights of all people living in India. The National Human Rights Commission addresses violations of human rights by recommending registration of criminal cases against the guilty; disciplinary action against errant officers; and payment of compensation to the

⁸ Article 141 of the Constitution states that the law declared by the Supreme Court is binding on all courts in India. In *P.L.O Corp Vs.Labour Court* 1990 SCC 632, it has been held that this article recognizes the role and power of the Supreme Court to alter the law and in the course of performing this function, interpret legislation in such a manner that it may be harmonized with social changes.

victims. Because an overwhelming majority of complaints received by the National Human Rights Commission concern the police, the Commission has made it mandatory to report any case of custodial death or rape within 24 hours and to provide it with a video-film of the post-mortem examination. The Commission has also issued guidelines to the police on encounter deaths; lie detector tests; arrest; and police-public relations.

GUIDELINES OF THE NATIONAL HUMAN RIGHTS

The commissions are increasingly being subject to positive interpretation by the courts. This means that officers accused of violating human rights may be called upon to explain why these guidelines were not followed.

This compilation includes sixteen landmark judgments of the Supreme Court and four significant National Human Rights Commission guidelines dealing specifically with human rights and policing. While the directives/ guidelines mentioned here do comprise the core of the jurisprudence on human rights and policing, this is by no means an exhaustive list. The directives guidelines mentioned here lay out the correct procedure to be followed by Station House Officers in the conduct of their official duties.

No adherence to these judgments/guidelines is taken to be a sign of malafide intention and breach of good faith. It also invites legal and disciplinary action against the officer concerned.

The protection under of Cr.P.C ⁹only applies to acts done in the discharge of official duty. Assaulting a suspect during investigation; fabricating a false case; using abusive or threatening language; demanding a bribe; or indulging in unruly conduct is not a part of official duty. It is no part of an official's duty to commit an offence and never can be.¹⁰

IV. FUNDAMENTAL RIGHTS OF DETAINED PERSON

D.K Basu Vs. State of West Bengal ¹¹

D.K Basu - Executive Chairman of Legal Aid Services, West Bengal - wrote a letter to the Chief Justice of India, saying that torture and deaths in police custody are widespread and efforts are often made by the authorities to hush up the matter because of this, custodial crime goes unpunished and therefore flourishes. Some newspaper reports published in the Telegraph, Statesman and Indian Express newspapers were also attached to support the contention. Basu urged the Supreme Court to examine the issue in depth and (i) develop custody jurisprudence.

⁹ Immunity from prosecution for public servants without prior sanction of the government/ appointing authority for any offence alleged to have been committed in the discharge of official duty.

¹⁰ Ratan Lal & Dhirajlal, "Code of Criminal Procedure", Wadhwa & Company, Nagpur 2002, page 636

¹¹ AIR 1997 SC 610

And it lay down principles for awarding compensation to the victims of police atrocities (ii) formulate means to ensure accountability of those responsible for such occurrences. The Supreme Court treated the letter as a writ petition. While the writ was under consideration, the Supreme Court received another report about a death in police custody in Uttar Pradesh. This prompted the Court to issue notices to all state governments and the Law Commission of India to submit suggestions on how to combat this all-India problem.

Supreme Court's Observations

Custodial torture is a naked violation of human dignity, the Supreme Court said, "The situation is aggravated when violence occurs within the four walls of a police station by those who are supposed to protect citizens. The Court accepted that the police have a difficult task in light of the deteriorating law and order situation; political turmoil; student unrest; and terrorist and underworld activities. They agreed that the police have a legitimate right to arrest a criminal and to interrogate her/him in the course of investigation. However, the law does not permit the use of third-degree methods or torture on an accused person. Actions of the State must be right, just and fair; torture for extracting any kind of confession would neither be right nor just nor fair.

(i) The Right to Life guaranteed by our Constitution includes the right to live with human dignity. The State is not only obliged to prosecute those who violate fundamental rights, it also has a duty to pay monetary compensation to repair the wrong done by its agents in not being able to discharge their public duty of upholding people's rights.

Compensation, the Court said, is not be paid by way of damages as in a civil case [the victim is free to file a civil case to privately recover damages from the wrongdoer for loss of earning capacity] but under public law for breach of duty by the State in not being able to protect its citizens. However, there can be no strait-jacket formula as each case has its own peculiar facts and circumstances.

(ii) The Court recognized that the worst violations of human rights take place during investigation when the police use torture and third degree methods to get confessions. In such instances, arrests are either disguised by not recording them or showing detention as prolonged interrogation. The Court stressed that no matter what the circumstances, the State or its agents are not allowed to assault or torture people. They then laid down an elaborate set of guidelines in respect of arrest and interrogation. The Court directed that the guidelines, which are given below should be circulated to the Director General of Police and the Home Secretary of every state and union territory and it shall be their obligation to have them put up in every police

station at a conspicuous place.

In the above case The Hon'ble Apex court derived some guidelines but according to the research the researcher has mentioned only the following guidelines which are also applicable to detenues arrested under preventive detention laws.

Supreme Court Directives:

1. Use of third-degree methods or any form of torture to extract information is not permitted.
2. The arrested or detained person is entitled to inform a friend, relative or any other person interested in her/his welfare about the arrest and place of detention as soon as practicable. The arrested person must be made aware of this right as soon as he is arrested or detained
3. The arrested person may be allowed to meet her/his lawyer during interrogation but not throughout the interrogation an entry must be made in the diary at the place of detention in regard to the arrest. The name of the friend/relative of the arrested person who has been informed and the names of the police personnel in whose custody, the arrested person is being kept should be entered in the register.
4. Copies of all documents relating to the arrest including the memo of arrest should be sent to the Area Magistrate for her/his record.

V. FUNDAMENTAL RIGHTS OF DETAINED PERSON UNDER PREVENTIVE DETENTION ACT

Icchu Devi Choraria Vs. Union Of India¹²

Mahendra Choraria, who was accused with smuggling, was put in preventive detention by the customs department under a special act [COFEPOSA] the customs department detained him on the basis of two tape-recorded conversations, some documents and statements of several persons. Choraria argued before the supreme court in a writ petition that his detention was illegal because he was not provided with copies of statements, documents and other materials that were being relied upon to detain him. The petition maintained that undue delay in providing these materials amounted to denying him an opportunity to make a representation before a court against his detention. ¹³

Supreme Court Observations

¹² 1980 SCC 531

¹³ COFEPOSA- Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 is one of several special Acts.

Article 22 (5)¹⁴ of the Constitution lays down that whenever a person is preventively detained under a special law, the detaining authority should as soon as possible communicate to the arrested person, the grounds of detention and afford her/him the earliest opportunity to make a representation against the detention. The Supreme Court asserted that if the detaining authority wants to preventively detain a person, it must do so in accordance with the provisions of the Constitution and the law and if there is any breach of any such provision, the rule of law requires that the detenu [detained person] must be set at liberty. They said that it was the duty of the courts to satisfy them that all procedural safeguards have been observed in this respect. Though COFEPOSA was framed to eradicate the evil of smuggling, the Court said that it must not be forgotten that the power of preventive detention is a draconian power, justified only in the interest of public security and order and it is tolerated in a free society only as a necessary evil. Detaining people without trial constitutes an encroachment on personal liberty - one of the most cherished values of humankind. They said that personal liberty is a most precious possession; life without it would not be worth living. Therefore, the courts have a duty to uphold it. Prescribing the under-mentioned procedure, the Supreme Court affirmed that the law laid down in this case would be equally applicable in the event of preventive detention under any other Act.

Supreme Court Directives:

1. The detained person must be supplied copies of documents, statements and other materials on the basis of which s/he is being detained, without delay.
2. The authorities who have preventively detained a person must consider the representation of the detained person against the detention as soon as possible. The burden of proving that the detention is in accordance with the procedure established by law lies on the detaining authority.

The reason for immediate consideration of the representation is too obvious to be stressed - the personal liberty of a person is at stake and any delay would not only be an indifferent act on the part of the Authorities, but would also be unconstitutional, violating the right enshrined under Article 22(5) of the Constitution of India of a Detenu to have his representation considered with reasonable expedition. The unexplained delay in sending the remarks, in our considered view, would have the effect of vitiating the continued detention.¹⁵

¹⁴ 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 grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order.”

¹⁵ *M.Thangammal vs. The State of Tamil Nadu and others* in HCP (MD)No.618 of 2014 (judgement dated

Mr. Markandan Vs. State of Tamilnadu¹⁶

In the Above case it was held that the representation dated 8.11.2009 and rejected the same by order dated 11.12.2009 and though it is mentioned in the order that the representation is undated, in the bracket, it has been stated that the representation was received on 10.11.2009 and hence it pertains only to the representation dated 8.11.2009. In the rejection order dated 11.12.2009, there is no proper consideration of the requests made in the representation seeking for copies of documents and particulars. Further, though the representation was received on 10.11.2009, it was considered only on 11.12.2009 i.e., nearly after a month and there is no explanation offered by the Detaining Authority for the said delay. In such circumstances, the submission of the learned Senior Counsel that there was inordinate delay in the disposal of the representation and the Detaining Authority has not bestowed proper attention to the requests made in the representation and the rejection was made in a casual manner and that would render the order of detention of Jai shankar invalid in law is well founded and, on this ground, also it is vitiated. For all the reasons stated above, we hold that the detention orders dated 24.10.2009 passed in all the five cases are liable to be set aside.

Madhav Hayawadanrao Hoskot Vs. State Of Maharashtra¹⁷

According to preventive detention laws in India and Article 22(3) of Indian Constitution, detainee has no legal opportunity to get legal assistance which is the procedure established by law. Hence, we may say that Article 21¹⁸ of The Indian Constitution is not violated here, but the procedure established by law under Art 21 must be just, fair and reasonable it is held by our Hon'ble Supreme Court in Menaka Gandhi Vs. U.O.I. In this research the researcher analysing the lapses in preventive detention laws which consist procedural violations and procedural safeguards guaranteed under Article 21 of Indian Constitution with support of the above case.

Procedural safeguards are the indispensable essence of liberty. In fact, the history of personal liberty is largely the history of procedural safeguards and right to a hearing has a human-right ring. In India, because of poverty and illiteracy, the people are unable to protect and defend their rights; observance of fundamental rights is not regarded as good politics and their transgression as bad politics. To sum up, 'procedure' in Article 21 means fair, not formal

20.08.2014)

¹⁶ HCP.No.1968/2009 Madras High Court (Judgement dated 20.1.2010)

¹⁷ 1978 AIR 1548, 1979 SCR (1) 192

¹⁸ no person shall be deprived of his life or personal liberty except according to procedures established by law. The state and its citizens have to take responsibility for the right to clean the environment because we live in this environment. It gives us shelter, food, water, light, etc. so we keep our environment safe and clean and pollution-free.

procedure. 'Law' is reasonable law, not any enacted piece one component of fair procedure is natural justice.

The other ingredient of fair procedure to a prisoner, who has to seek his liberation through the court process, is lawyer's services. Judicial justice, with procedural intricacies, legal submissions and critical examination of evidence, leans upon professional expertise; and a failure of equal justice under the law is on the cards where such supportive skill is absent for one side. Our judicature, moulded by Anglo-American models and our judicial process, engineered by kindred legal technology, compel the collaboration of lawyer-power or steering the wheels of equal justice under the law. A free legal service to the needy is part of the English criminal justice system. And the American jurist, Prof. Vance of Yale, sounded sense for India too when he said

"What does it profit a poor and ignorant man that he is equal to his strong antagonist before the law if there is no one to inform him what the law is? Or that the courts are open to him on the same terms as to all other persons when he has not the wherewithal to pay the admission fee?"

The widespread insistence on free legal assistance, where liberty is in jeopardy, is obvious from the Universal Declaration of Human Rights Article 8. Everyone has the right to an effective remedy by the competent national tribunals for acts violating the fundamental rights granted by the Constitution or by law.

Art.14(3) ¹⁹of the International Covenant on Civil and Political Rights guarantees to everyone the right to choose his legal assistance of his choice.

Francis Coralie Mullin vs. Union territory of Delhi²⁰

According to Indian Constitution Article 22(1), the right to 'consult and be defended by a legal practitioner of his choice' is not available to any person detained under the law relating to prevention detention but in the above case Hon'ble Justice Bhagwati.J, held that the preventive detention law should also satisfy the test of Article 21. Thus, the right of legal aid was made available to the detenu to consult a legal counsel of his choice.

A.K. Roy, Etc Vs. Union Of India And Anr²¹

According to Article 22(3) of Indian Constitution, detenues under Preventive detention laws

¹⁹ "the right to be tried in, his presence, and to defend himself in person or through legal assistance of his own choosing; to be informed, if he does not have legal assistance, of his right; and to have legal assistance assigned to him in any case where the interests of justice shall require, and without payment by him in any such case if he does not have sufficient means to pay for it."

²⁰ AIR 746, 1981 SC

²¹ AIR 710, 1982 SCR (2) 272

are not eligible to engage a legal practitioner to defend the case before the advisory board but that should not bar the friend of the detenu appear before the advisory board to assist the detenu which is also held in the above case and further emphasised that even a friend of the detenu can make effective representation²² and emphasis was supplied to the above dictum. The learned Judge further observed that "A 'friendly' representation would certainly have been provided if it had been so demanded".

VI. COMPENSATION TO THE VICTIMS OF PREVENTIVE DETENTION LAWS IN INDIA

In India Victim Compensation is an emerging concept, no prescribed law or no provision in any criminal law speaks about the compensation to the victims of crime, but under Article 21 of the Indian Constitution the judiciary awarded compensation to the victims to ensure the right to life and livelihood of the people guaranteed under Part III of the Constitution.

In the case of **N. Sengodan Vs. Secretary to Government of Tamil Nadu, Home (Prohibition and Excise) Department**,²³ Hon'ble Supreme Court directed the Tamil Nadu government to pay Rs.2 lakh to Sengodan for having detained him on the grounds that he was predisposed to committing crimes. Sengodan, a retired police inspector in Salem district, was arrested on the charge of attempting to form an association for police personnel.

But he denied having resorted to any act that led to any resentment in the mind of any personnel in the police service or having propagated anything seditious. Justice Sudhansu Jyoti Mukhopadhaya, in his ruling on July 1, 2013, pointed out that the state had "grossly abused legal power to punish the appellant to destroy his reputation in a manner non-oriented by law by detaining him under the Tamil Nadu Act 14 of 1982 [Goondas Act] in lodging a criminal case based on wrong statements, which were fully unwarranted.

Victim's right to get compensation to unlawful arrest and detention is guaranteed under ICCPR **Article 9(5)** is provides²⁴ the compensation remedy available to victims of illegal detention.

The ICCPR applies to all 'unlawful detentions'. This would include detentions which are unlawful under the ICCPR, or detentions which are unlawful under a State's own domestic law the Article refers to 'lawful' and 'unlawful' arrest and detention arguably militates in favor of a restrictive interpretation of the word 'arbitrary', that is, contrary to a procedure established by law. If the narrow interpretation of 'arbitrary' is correct, preventive detention is permissible

²² "it is not fair, and the statute does not exclude that right, that the detenu should not even be allowed to take the aid of a friend, whenever demanded, the Advisory Boards must grant that facility"

²³ Civil Appeal No. 4815 of 2013 SCC

²⁴ "Anyone who has been the victim of unlawful arrest or detention shall have an enforceable right to compensation"

under the ICCPR once it is within the scope of, and in accordance with, the legislative or executive authorization permitting the detention to occur. Preventive detention, even as a result of despotic, tyrannical, objectively unreasonable legislation, would therefore be acceptable under this Article of the ICCPR.

Compensation to the victims of preventive detention is also recommended under National Human Rights Commission on Detention approved by National Human right commission²⁵ in which para.18, recommended that in case the detenu is found unlawfully detained there is a need to have provision for interim relief/ compensation.

VII. CONCLUSION & SUGGESTIONS

In India Criminal Justice System is exercised on the basis of Rehabilitation Theory, which means the object of penal laws is to reform the criminal instead of punishing them. Hence the question has raised wheatear PDL's is really helpful to reduce the crime and reform the criminal? According to PDL's the arrested persons were not given by any opportunities to prove their innocents. In other criminal Laws the first judicial incarnation is only 15 days, meanwhile the Court can also grant Bail to the accused if the Court satisfied. But the persons arrested under PDL's has to be in prison up to 3 months, means what is the justification given by the Act for putting the person behind the bar. What happens if he is in jail for 15 days or 3 months, crime is not reducing? Hence the time limit of the Advisory Board must be reduced; as same as 15 days i.e., normal remand period. Article 21 says Just, Fair and Reasonable, what is the fairness behind keeping a person for 3 months.

- Victim compensation must be inserted in all Criminal laws, especially in Preventive Detention Laws because detenu himself/ herself is a victim under Preventive detention Laws in India.
- Tortious Liability of the State has to be followed in case of misusing the preventive Detention Laws by the authorities.

²⁵ NHRC Meeting held on 19th Nov, 2008