# PREVENTIVE DETENTION, VIOLATION OF INDIVIDUAL HUMAN RIGHTS: AN OVERVIEW FROM BANGLADESH PERSPECTIVE

**Md. Nazir Ahmed***

ABSTRACT

*Preventive detention is the most debatable issues of law in our country. Preventive detention means detention of a person without trial and without conviction by a court, but merely on suspicion in the minds of the executive authority. 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, specially in the third world countries. It is sorry to mention that Bangladesh is one of them. In my paper discussion I want to highlight its definition, history, its nature and justification, our constitutional safeguards and to put some recommendations to protect the human rights violation through preventive detention. In this paper I would like to show how Preventive detention infringes the human rights i, e rights of a person and liberty of a citizen due to misapplication of Preventive detention in Bangladesh and in what extant such right is violated, drawbacks of preventive detention, validity of the preventive detention and finally to stop the misuses of preventive detention in order to protect personal liberty from invasion, which is the basic human rights of citizens. Its also examines social necessity of the law of the preventive detention for our country. Preventive detention should be used sparingly only in exceptional circumstances.*

***Keywords: Preventive Detention, Detenu, Wrongful Arrest, Human Rights, Violation. Government, State***

## 1. INTRODUCTION

Preventive detention is the most arguable topics of law in recent time. That's why a lot of people tried to give a exact definition of it. But there is no authoritative definition of it. In

* Senior Lecturer, Department of Law, Prime University, Mirpur-1, Dhaka-1216 & M.Phil Fellow, Department of Law, Rajshahi University.

the case A.K. Gopalan v. State of Madras' (AIR 1950, SC-27) 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 (Sunil Kumar Samaddar VS Superintendent of Hoagly jail).

"Detention" means keeping back (Alamgir VS State AIR 1957). Preventive detention means detention of a person only on suspicion in the mind of the executive authority without trail, without conviction by the court (Patel, T-1993)

Human rights are inherent in human person and which can be claimed by any person for the very reason that he is a human being and without none can live as human being. These rights come with birth and applicable to all people throughout the world irrespective of their race, colour, sex, language or political or other opinion. (Halim, ,Md. Abdul, 2006). Liberty itself is the gift of the society and it can be curtailed or circumscribed only in the interest of society. (Chowdhury, Badrul Haider, (1990) Personal liberty can be curtailed for the interest and security of the state and nation, because the enjoyment of personal liberty itself is dependent on the safe security of the state. Moreover, all international and regional documents of human rights recognize and make provisions for derogation of rights in case of emergency and of national crisis. However, when such right is curtailed arbitrarily then the question of violation is raised. Everywhere human rights are being violated which has been started from the very beginning of human civilization. Preventive detention curtails the liberty of citizens to the extents that a person who has not committed any offence but may be presumed that he is about to commit any prejudicial act and convicted without trial. Since it is based upon the presumption of the executive and carries with the risk of abuse and that's why it becomes a culture of violation of human rights through preventive detention all over the world, especially in the 3rd world countries like Bangladesh, Sri-Lanka, Pakistan, India etc.

Preventive detention is an abnormal measure whereby the executive is authorized to impose restrain upon the liberty of a man who may not have committed a crime but who, it is apprehended, is about to commit acts that are prejudical to public safety. (Brohi A.K, 1958)

In Bangladesh, this practice is very popular among all the successive government in order to perpetuate their rule and suppress opposition movement. For the very reason that, in guise of preventive detention law, the executive authority exercises wide discretionary power regarding arrest and detention to any person as they wish .

**1.2. Objectives**

1. To find out the acted and general conditions of the detainee.
2. To ensure the fatuity of the detainee.

3. To give some suggestions about the present difficulties of preventive detention.
4. To show how human rights are violated by abuse of preventive detention in Bangladesh.
5. Give some recommendations for the improvement of the present law regarding preventive detention.

## 2. METHODOLOGY

This paper is of qualitative in nature. Content analysis method has been applied in this article. Information or data has been collected from the secondary sources like facts, figures, data, books, journals, reports, opinion, internet and so on. Relevant judicial decision has been collected from various sources. A number of books have been studied and consulted to find the necessary information. Various national and international articles by different authors have been critically observed.

## 3. FINDINGS AND ANALYSIS

### 3.1. Preventive Detention: Meaning and Definition:

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. (Patel, T-1993) Preventive detention is not to punish an individual for any wrong done by him but to prevent him from acting in a manner prejudicial to the state. It is a pre-trial internment. Although there exist preventive detention law directly or indirectly all over the world but there is no authoritative definition of the term preventive detention due to difference in application of the law during emergencies or in both time of peace and emergencies.

In Rex v. Halliday; Exparte Zolding (Rex vs Halliday, Exparte Zolding 1917 ) case the expression preventive detention was used for the first time in Britain.
(Bhuiyan, Md. Jahid Hossain, 2004) without trial and convection by the court but merely on suspicion in the minds of the executive authority. In Rex v. Halliday, Lord Finlay quoted that, it (preventive detention) is not a punitive but a precautionary measure. Thus preventive detention is a precautionary measure adopted by the executive for the greater interest of the nation and state. In Gopalon V. State of Madras (A.K- Gopalan vs State of Madras AIR 1950) Justice Mukherjee pointed out "the preventive detention is a precautionary measure. The object is not to punish a man for having done something but intercept him before he does it and to prevent him from doing it. No offence is proved nor any charge formulated and the justification is suspicion or reasonable probability and not criminal conviction. To quote A. K. Brohi, Preventive detention is an abnormal measure where by the executive is authorized to impose restrains upon the liberty of a man who may not have committed a crime bot who it is apprehended, is about to commit acts that prejudicial to public safety (Halim, Md. Abdul, 2006).

Preventive detention is a peculiar measure in the sense that it imposes restriction on the liberty of a citizen to the extent that a person who has not committed any offence but

presumed that he is about to commit any prejudicial act. Preventive detention is a serious encroachment upon the personal liberty of a person for the simple reason that unlike ordinary arrest or imprisonment, preventive detention is effected without trial "Preventative detention means this is a detention of a person without trial in such circumstances that the evidence in the possession of the authorities is not sufficient to draw up a legal charge or secure the conviction of the detent by legal proof. Preventive detention laws legal instrument applied by the executive primarily to detain any person without any charge in trial. (Banglapedia: Islam, Shirajul, 2003).

**3.2. Nature of Preventive Detention:**

Everything is different form others for its own nature, so the nature of preventive detention is different form others detention, namely punitive detention. Because, detention may be of two types punitive detention and preventive detention. The term preventive detention is used in contradiction to punitive detention. Preventive detention is the detention of a person without trial in such circumstances that the evidence in the possession of the authorities is not sufficient to draw up a legal charge or secure the conviction of detenu by legal proof; but all the same, it is justified, no offence is proved nor any charge formulated but the justification is dictated by suspicion it is an anticipatory measure and doesn't relate to an offence while criminal proceeding is to punish persons for an offence committed by him. Thus preventive detention is detention of a person without trial and conviction by a court, but merely on suspicion in the minds of the executive authority. Justice Mukharjee described the distinction between preventive and punitive detention, by which one can easily understand the nature of both. He observed "A person is punitively detained only after a trial for committing a crime and after his guilt has been established in a competent court of justice, Preventive detention on the other hand, is not a punitive but a precautionary measure. The object is not to punish a man for having done something but to intercept him before he does it and to prevent him from doing it. No offence is proved; nor any charge formulated and the justification is suspicion or reasonable probability and not criminal conviction which only can be warranted by legal evidence.( Quoted by Sharifuddin, Pirzada, 1964) According to justice Vinan Bose, preventive detention has three special features.

1. It is an detention not imprisonment,
2. It is detention by the executive authority without trial or inquiry by a court, and
3. The object is preventive and not punitive.

Thus it is a precautionary measure and its object not to punish but to prevent doing something prejudice act against public (Quoted by Sharifuddin, Pirzada, 1964) Justice Mukharjee defined preventive detention as which consists in restraining a man from committing a crime , which he may commit but has not yet omitted, or doing some act injurious to members of the community which he may do but has not yet done. Thus when a person comes within the satisfaction of executive e.g. the government authority that a person is going commit prejudicial act against state or public interest, he may be

detained through preventive detention to prevent/defend him from doing such act. (Section 2 of The Special Powers Act 1974.) Though the act itself mentioned that prejudicial act against Bangladesh but it's a matter of sorrow that no government can realize the distinction between the government and state, the act says for prejudice act against the state, not to the government. (Mohsan, A. F.M, 2003)

But Preventive detention is an abnormal measure whereby the executive is authorized to impose restraints upon the liberty of a man who may not have committed a crime but who, it is apprehended, is about to commit acts that are prejudicial to public safety etc. In Ram krishna v. state of Delhi (Ram Krishana vs State of Delhi AIR 1953). The Indian Supreme Court observed: "Preventive detention is a serious invasion of personal liberty and such meager safeguard as the constitution has provided against the improper exercise of the power must be jealously watched and enforced by the court. Since the preventive detention laws allow much unlimited powers to the executive authorities to arrest and detention a person, as a result every government use this law in order to protect their political interest, stability etc. in the name of the security and interest of the state. Consequently many times detaining authorities violate fundamental rights of the citizen and abuse the powers given under preventive detention laws to satisfy the government.

**3.3. Justification of Preventive Detention:**

Though preventive detention is a serious invasion of personal liberty and an abnormal measure of curtailing personal liberty of an individual but many country contain or enact preventive detention law either in war or in peace time. What is the justification or philosophy behind enacting such law?

Preventive detention in case of emergency of war is well recognized because national security and interest are more important than the personal liberty of citizen. Personal liberty depends upon the safe security of the state. In considering the justification for preventive detention Lord Atkinson in *Rex v.* Halliday observed "where preventive justice is putted in force some suffering and inconvenience may be caused to the suspected person. This is inevitable. But the sufferings is inflicted for something much more important than his liberty or convenience, namely for securing the public safety and the defense of the realm. Similar View also exposed by Lord Alfred Denning. He said that "if there are traitors in our midst, we cannot afford to until we catch them in the act of blowing up our bridges or giving our military secrets to the enemy. We cannot run the risk of leaving them at large. We must detain them on suspicion (Bhuiyan, Md. Jahid Hossain, 2004)

Mr. Abdul Jalil former M.P has said, "The Special Powers Act was introduced to combat looting of police station, setting fire on jute godowns, slogan Muslim Bengal, Noxalite activities and above all to combat the nefarious tendency to destroy the sovereignty of the state (Sufian, Md. Ashraful Arafat, 2008) Though there are justifications behind the

practice of preventive detention in peace time but in times of peace preventive detention is not at all known in all democratic countries specially developed countries.

**3.4. History of Preventive Detention:**

In the case Rex.vs. Halliday, the expression, the word Preventive detention was used in Britain first time. Preventive detention was first introduced in our sub-continent in 1818 by the Bengal State Prisoners Registration (iii). The Presidencies of Madras and Bombay made similar regulations in 1819 and 1827. In 1935 through government of India Act, provided for scope of Preventive detention and under the Defense of India Ordinance was promulgated. Afterward it was transferred into the Defense India Act 1939 and continued until the time of 2nd world war. Defense Act, 1915 also provided the scope Preventive detention. The Indian Constitution empowers the parliament to legislate on preventive subject to limitation laid down by Article 229. In India the Preventive detention was enacted in 1950 as named "Preventive Detention Act, 1950". Afterward it was amended and replaced by Maintenance of Internal Security Act, (MISA) 1971. Preventive detention also introduced by Foreign Exchange and Prevention of Smuggling Activities Act (COFEPOSA) 1974, National Security Act 1980, The Essential Services Maintenance Act (EMS) 1981, and lastly by the Terrorist and Disruptive Activities (Prevention) Act 1985. In Pakistan through Public Safety Ordinance Act 1949, Public Safety Act (Amendment) 1950, Public Safety Ordinance 1952 and lastly The Security of Pakistan Act 1952 were provided Preventive detention in various ways. The constitution of Pakistan of 1956 and 1962 empowered and also constitution of 1973 empowered parliament of Pakistan to enact Preventive detention laws.

In Bangladesh the original constitution, there was no provision introducing for Preventive detention. But through 4th amendment by "The Special Powers Act 1974" (9thFebruary) enacted Preventive detention act which was an anti-people black law still continuing.

**3.5. Preventive Detention in the Light of Bangladesh Constitution:**

The first constitution of Bangladesh had no provision of preventive detention. It has been added on the constitution by the 2nd amendment of the constitution in 1973. Preventive detention has been legalized in Bangladesh by the article 33 of the Constitution of Bangladesh. It has been stated in article 33 that "Safeguards as to arrest and detention.

(1) No person who is arrested shall be detained in custody without being informed, as soon as may not be of the grounds for such arrest, nor shall be denied 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 twenty four hours of such arrest, excluding the time necessary for the journey from the place of arrest to the court of the magistrate, and no such person shall be detained in custody beyond the said period 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 or detained under any law providing for preventive detention.
(4) No law providing for preventive detention shall authorize the detention of a person for a period exceeding six months unless an advisory board consisting of three persons, of whom two shall be persons who are, or have been, or are qualified to be appointed 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 opportunity of being heard in person, reported before the expiration of the said period of six 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 grounds on which the order has been made, and shall afford 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 Powers Act 1974 has also described the provision of preventive detention.

The Parliament on February 9, 1974 enacted the black law, "Special Powers Act, 1974" containing the provisions of preventive detention. The Act says that any person can be arrested and detained by the executive authority if there is apprehension in the mind of the authorities that he may commit "prejudicial act" which means-

- To prejudice the sovereignty or defense of Bangladesh,
- To prejudice the maintenance of friendly relations of Bangladesh with foreign States,
- To prejudice the security of Bangladesh or to endanger public safety or the maintenance of public order,
- To create or excite feelings of enmity or hatred between different communities, classes or sections of people,
- To interfere with or encourage or incite interference with the administration of law or the maintenance of law and order,
- To prejudice the maintenance of supplies and services essential to the community,
- To cause fear or alarm to the public or to any section of the people,
- To prejudice the economic or financial interests of the state.

**3.5. Preventive Detention; A Weapon of Oppression:**

Preventive detention has both some advantages and disadvantages as every others law. But, the use of this power should be very limited or it may be a weapon of oppression very easily.

In some third world's corrupted countries, it has already a weapon to oppress people. In most democratic countries, this law can be used only in emergencies. As for example, in the U.S.A, this law can be used only in emergencies. There are some specific reasons why it can be said as weapon of oppression?

Firstly, in Bangladesh without trial six months detention can conferred to the detainee. This is a bad process because now here in the world such a long period is not found anywhere. In India, this time is three months (Article 22 of Indian Constitution.) 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. (Article 10 (7) of present Pakistan Constitution.) 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 and can be restored to in times of both peace and emergency.

Thirdly, we have not a fixed maximum period of detention not in our constitution or in the Special Powers Act 1974. This is also a negative aspect of Preventive detention. In Pakistan the period of Preventive detention is eight (8) months in a year 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 Powers Act 1974 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 Powers Act 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 those of twos. By 44$^{th}$ amendment the process of Preventive detention made something democratic in Indian constitution.

Sixthly, police officer after arresting any person prays before magistrate court for remand and in maximum cases police gets remand and starting bodily, mentally torture which is a violation of international human rights law. (Article 7 of International Covenant on Civil and Political Rights prohibits torture and ill treatment.)

Seventhly, there is nothing entitled against who a detention order has been made to appear by lawyer in any matter connected with the reference to the Advisory Board, (Section 11 of The Special Powers Act 1974.) and its report excepting that part of the report in which opinion of the Advisory Board is specified shall be confidential.
Eighthly, if any person is actually criminal that he or she would be arrested under general law and magistrate can punish him or her but if it is happen then he or she must bring before magistrate within 24 hours. But not to bring within 24 hours before the magistrate, a suspected is arrest under the Special Powers Act 1974. Because by this a person without bring before magistrate can put in prison month after month.

Ninthly, many suspected people who are not actually criminal, for wrong information they 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.

**3.6. Preventive detention in Bangladesh & constitutional safeguards:**
In our constitution Article 33 deals with the rights of an arrested person. Article 33 confers three constitutional rights or safeguards upon a person arrested. Sub article (1) and (2) deals with;
He or she cannot detain in custody without being informed, as soon as may be of the grounds of his arrest.
He or she has the right to be produced before the nearest magistrate within 24 hours and cannot detain in custody beyond the period of 24 hours without authority of the magistrate.
He or she have the rights to consult and be defended by a legal practitioner of his choice and- Sub article (3), (4), (5), (6) deals with four constitutional safeguards for detention. They are:

**1. Review by an advisory board:**
No law providing for preventive detention shall have any authority of detention of a person for a period exceeding six months unless an advisory board consisting of three persons, of whom two shall be person who are, or have been or are qualified to be appointed as, judges of the supreme court and the other shall be a person who is a senior officer in service of the republic. No person can be detained more than 6 months without authority of the advisory board, if the board give their opinion that, there is sufficient grounds for such detention only than the authority can detain the suspect more than 6 months. If the grounds of detention are not placed before the advisory board within 120 days from the date of detention, the detention will be illegal. (**Sayedur Rahman Khalifa vs Secretary Home Affairs, 1986)** The opinion of the majority of the Advisory Board shall be deemed as an opinion of the board if there is a difference opinion among the members.

**2. Right to communication of grounds of detention:**
Article 33(5) of our constitution and also in Indian constitution Article 22(5), in Pakistan constitution Article 33(5) says that the detaining authority must communicate as soon as may be to the detenu about the grounds of detention. "As soon as" means a reasonable time. According to the Special Powers Act the grounds must be communicated within 5 days from the date of detention. (Nazir Ali vs Secretary Home Affairs, 1990) Where the person arrested in illiterate, the grounds may be communicated to him verbally. Where he is literate, they are to be made in the language, which the detenu could understand.

**3. Rights of representation against the order of detention:**
It is the rights of the arrested person to engage counsel and the consul will help the person to defend him. Article 33(1) of our constitution provides that the detaining authority must afford the detenu the earliest opportunity of making representation against his detention. The person arrested has a right to have purposeful interview with the legal practitioner out of the hearing of the police or jail stuff through it may be within their presence.

**4. Judicial control-satisfaction of detaining authority:**
The question of a person being detained under the law of preventive detention is left to be determined upon the subjective satisfaction of the detaining authority. This satisfaction is a matter into the existence of which the courts will not set on foot any inquiry unless it is alleged that the order of detention is a malafide one. ( Section 34 of The Special Powers Act 1974) As the High Court in the case of Ranabir Das vs. Ministry of Home observer, "A detention order is made malafide when it is made contrary to the object and purpose of the act or when the detaining authority permits him to be influenced by conditions which he ought not to permit. In the case of Habibullah Khan vs. S.A. Ahmed the appellate division held that it is not only that the government is satisfied that the detention is necessary, but it is also for the court to be satisfied that the detention is necessary in the public interest. In Krisna Gopal vs. Govt. of Bangladesh, the Appellate Division held that an order which is going to deprive a man of personal liberty cannot be allowed to be dealt with in a careless manner, and if it is done so, the court will be justified in interfering with such order. The court held the detention order unlawfully.

**3.7. The law itself contains the serious violation of human rights:**
Provisions contain by the preventive detention are the direct violation of human rights for the following reasons
Firstly, in Bangladesh our constitution provides that the initial period of detention is 6 (six) months without trial which means the detainee can be detained 6 (six) months. No where in the world such long period of initial is found because it is direct encroachment of personal liberty.
Secondly, in Bangladesh there is no fixed maximum period of detention .Thus, neither our constitution nor the Special Powers, Act 1974 specifies any fixed period, which

means that a person can be detained for an indefinite period once the advisory board opines that there exists sufficient course for such detention.

Thirdly, the detention has no right to consult and defend by legal practitioner at his choice. There is nothing entitled him to appear by lawyer in any matter connected with the reference to the advisory board, and its report exception that part of the report in which opinion of the advisory board is specified shall be confidential .

Fourthly, any arrested person must bring before magistrate within 24 hours. But under this law without bring before magistrate within 24 hours, a suspected (detainee) can put in prison month after month.

Lastly, preventive detention in case of emergency is well recognized in democratic countries, which indicates that it is a method resorted to in emergency. For example, in USA and UK, it is specifically mentioned that only in time of emergency such law would be applied. But it is unfortunate that our constitution does not provide for such specification and this is why preventive detention is resorted to in times of both peace and emergency.

**3.8. 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 to protection of law, personal liberty and safe guards ,as to arrest and detention, are not ensured by the constitution itself for the detainee, detained under preventive detention laws. 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 government always in 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. More over 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 governments 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 governments 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.

**3.9. Year basis number of detenus 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 Vs, 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 (Daily Jugantar. May 30, 2000).

4. RECOMMENDATIONS

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 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 provided 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 entirely, immediately and strictly.
11. Judicial detention is preferable to executive detention. In order to ensure the proper functioning of democratic environment and to maintain the standard of human rights preventive detention should be restricted.
12. There must be constitutional provisions describing certain limited period when the powers of preventive detention exercised.
13. All reasonable opportunities should be provided to the detenu.
14. The detenu must not be kept with those who are regular convicts.
15. He or she will be informed as early as possible about the reasons behind his or her arrest.
16. The relatives of the detenu should be promptly of the detention and transfer of detenu.
17. The detenu must be allowed immediate and regular access to lawyer, family members and unbiased medical board.
18. Police should not be used for political motives.
19. Judiciary and administration need to be free from corruption.
20. Establishing a legal aid clinic in few police stations on pilot basis. The above recommendations should be ensured and practiced.

Eventually, the government may add aforesaid provision in our constitution or in the laws providing for preventive detention which will specifically mentioned that the preventive detention law can not be used by government except in times of emergency, war or external aggression.

## 5. CONCLUSION

All ready I have mentioned that government may exercise preventive detention only in case of grave emergency and government can not violated one's fundamental rights which is prescribed in Bangladesh constitution. Though preventive detention is a tool of constitution for social needs, but now it is working for others purpose behind its legal or theoretical purpose. The excessive use of laws of preventive detention, affects the liberty 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 society and state and not for the oppression to the people who are in different community or thought. The philosophy lying behind the preventive detention is the safety of the community at large, but may create an atmosphere which affects the community in general and liberty of the person

in particular. The government should remember that in an organized society it exists for the welfare of the people. The power of detention is available no doubt, but it should be used only in exceptional circumstances. So, in order to show respect and follow the constitution, exercise the Practice of true democracy every government should give its attention to establish the fundamental human right of the citizens but not to violate their rights. Government should remember that in an organized society preventive detention exists for the welfare of people but not to encroach their basic human rights.

## REFERENCES

Islam, Shirajul (Ed.). (2003). Banglapedia: *National Encyclopedia of Bangladesh.* Dhaka, Asiatic Society of Bangladesh.

Bhuiyan, Md. Jahid Hossain. (2004). *Preventive Dentation and Violation of Human Rights Bangladesh, India & Pakistan, Bangladesh.* Journal of Law Vol. 8 no 1 & 2 June and December.

Chowdhury, Badrul Haider. (1990). *The Long Echoes.* Dhaka, Naima Haider.

Delhi Transport Corporation VS D.T.C Mazdoor Congress (1991)

Halim, Md. Abdul. (2006). *Constitution, Constitutional Law & Politics,* 3rd Ed. Dhaka, Human Development Foundation.

Mohsan , A. F.M. (2003). *Shangbidhanik Ainer Mulnitee.* Dhaka: Kamrul Book House.

Patel, T. (1993). "*Personal Liberty under the constitution of India*". Delhi.

Sharifuddin, Pirzada. (1964). *Fundamental Rights and Constitutional Remedies in Paikstant*. Lahore: All Paikstan Legal Decision.

Sufian, Md. Ashraful Arafat. (2008). *Preventive Dentation in Bangladesh: A General Discussion.* Dhaka: Bangladesh Research Publications Journal, Vol-1, No-2.