



Public Safety Act

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This article is based on **“Dissent as sedition”** which was published on The Indian Express on 11/02/2020. It talks about issues related to the Public Safety Act.

Recently, two former Jammu and Kashmir Chief Ministers have been detained under the state’s stringent Public Safety Act (PSA), which enables authorities to detain any individual for two years without trial.

The Union government argued that abrogation of Article 370 would bring in a new golden age in Jammu and Kashmir, including the extension of all rights under the Indian Constitution to the state. However, six months on, the government has continuously invoked the Public Safety Act.

What is Public Safety Act?

- The **Jammu & Kashmir Public Safety Act (PSA), 1978** is a preventive detention law, under which a person is taken into custody to prevent him or her from acting in any manner that is prejudicial to **“the security of the state or the maintenance of the public order”**.
 - It is very similar to the **National Security Act** that is used by other state governments for preventive detention.
- It comes into force by an administrative order passed either by Divisional Commissioner or the District Magistrate and not by a detention order by police based on specific allegations or for a specific violation of laws.

Issues with Public Safety Act

- **Detention Without Trial:** The PSA allows for the detention of a person **without a formal charge and without trial**.
 - It can be slapped on a person already in police custody; on someone **immediately after** being granted bail by a court.

- Unlike in normal circumstances, a person who is detained under the PSA **need not be produced before a magistrate within 24 hours of the detention.**
- **No Right to File Bail Application:** The detained person **does not have the right to move a bail application** before the court, and cannot engage any lawyer to represent him or her the detaining authority.
- **Limited legal remedies:** The only way this administrative preventive detention order can be challenged is through a **habeas corpus petition** filed by **relatives** of the detained person.
 - The High Court and the Supreme Court have the jurisdiction to hear such petitions.
 - However, if the order is quashed, there is **no bar on the government passing another detention order under the PSA** and detaining the person again.
- **Discretionary powers:** The District Magistrate who has passed the detention order has protection under the Act, which states that the order is considered **“done in good faith”**.
Therefore, officials are protected from any prosecutions or any legal proceedings.
- **Section 8 of the PSA:** It provides a vast number of reasons for detention, **ranging from “promoting, propagating, or attempting to create, feelings of enmity or hatred or disharmony on grounds of religion, race, caste, community, or region” to incitement, instigation, abetment and actual commission of such acts**, and leaves it to district collectors or district magistrates to decide, giving a 12-day period within which an advisory board has to approve the detention.
- **No Distinction Between Minor and Major Offences:** It allows detention for up to 1 year for disturbance of public order and 2 years for actions **“prejudicial to the security of the State”**.
- All these actions bear an unsettling resemblance to the British response to protests against the **Rowlatt Act of 1919**.

Supreme Court on Public Safety Act

- The Supreme Court has held that while detaining a person under the PSA, **the DM has a legal obligation to analyse all the circumstances** before depriving that person of his/her personal liberty.
- It has also held that when a person already under police custody is slapped with the PSA, the DM has to record **“compelling reasons”** for detaining that person.
- While the DM can detain a person **multiple times under the PSA**, he or she has to produce fresh facts while passing the subsequent detention order.
- Also, all the material on the basis of which the detention order has been passed, the Supreme Court has held, should be provided to the detained person for making an effective representation.

- The grounds of detention has to explain and communicate to the person in the language understood by the detained person.

Way Forward

- The report of the **Group of Interlocutors for Jammu and Kashmir** held that the sweeping powers in Public Safety Act make it open to misuse. It recommended:
 - The detention period should range from one week for minor offences to one month for major offences.
 - Assuming that actions **'prejudicial to the security of the State'** constitute far graver offences, three months' detention should be ample for proceeding to trial.
 - Juveniles should not be held under the PSA at all.
- Now that the state has become a union territory, PSA should have been brought in line with the all-India legislation.
- Regional leaders remain India's best bet in J&K, their continuing detention will not go well in pursuance of establishing peace and finding a political solution in J&K.
 - The government should urgently release all those in custody in J&K, restore the Internet, and put its actions to an accountable, political test in Kashmir.

The Supreme Court has held that in order to prevent misuse of this potentially dangerous power, the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, is mandatory and vital.

If citizens' right to criticise a government becomes a law and order threat, the future of the republic as a functioning democracy becomes an open question.

Drishti Mains Question

The provisions of the Public Safety Act 1978 encroach upon the established procedure of detention. Examine.