



## J&K Public Safety Act

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The former Jammu and Kashmir Chief Minister Farooq Abdullah has been detained under the state's Public Safety Act (PSA).

### Public Safety Act

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- **Preventive Detention Law:** Under Jammu & Kashmir Public Safety Act, 1978, 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 public order.
- **Period of Detention:** Up to 2 years.
- **Enforcement:** Detention order is passed either by Divisional Commissioner or the District Magistrate.
- **Challenging the Detention:** The only way the 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 jurisdiction to hear such petitions and pass a final order seeking quashing of the PSA.
  - 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.
  - There can be **no prosecution or any legal proceeding against the official who has passed the order.**

### Habeas Corpus

- It is a Latin term which literally means '**to have the body of**'.
- This writ is a bulwark of **individual liberty** against arbitrary detention.
- The writ of habeas corpus can be issued against **both public authorities as well as private individuals.**

- The writ, on the other hand, is **not issued** where the:
  - detention is **lawful**,
  - the proceeding is for **contempt of a legislature or a court**,
  - detention is by a **competent court**, and
  - detention is **outside the jurisdiction** of the court.

**The similarity to the National Security Act (NSA)** that is used by other state governments for preventive detention.

- The NSA **empowers the Centre or a State government to detain a person to prevent him from acting in any manner prejudicial to national security.**
- The government can also detain a person to prevent him from disrupting public order or for maintenance of supplies and services essential to the community.
- The maximum period for which one may be detained is **12 months**. But the term can be extended if the government finds fresh evidence.

## Preventive Detention and Constitutional Provisions

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- Preventive detention involves the **detainment (confinement) of a person in order to keep them from committing future crimes** and/or from escaping future prosecution.
- It is **different from 'being arrested'**. 'Arrest' is done when a person is charged with a crime but the same is not the case for preventive detention.
  - Punitive detention** is punishment for illegal acts done.
- **Article 22(1)** of the Constitution states that no person who is arrested shall be denied the right to consult, and to be defended by, a legal practitioner of his choice.
  - However, under Preventive Detention Laws like the PSA, the detained person does not have the right to move a bail application before a criminal court, and cannot engage any lawyer to represent him or her before the detaining authority.

- When a person is arrested he/she has to be produced before a magistrate within the next 24 hours. However, in the case of 'preventive detention', a person can be detained for three months.
  - **Article 22(2)** states that every person arrested and detained shall be produced before the nearest magistrate within a period of 24 hours (excluding the time necessary for the journey from the place of arrest to the court) and no such person shall be detained beyond this period without the authority of a magistrate.
  - **Article 22(3)(b)** allows for preventive detention and restriction on personal liberty for reasons of state security and public order.
  - **Article 22(4)** states that no law providing for preventive detention shall authorise the detention of a person for a **longer period than three months unless:**
    - an **Advisory Board** reports sufficient cause for extended detention.
    - Such a person is detained in accordance with the **provisions of any law made by the Parliament.**

**Note:** The **44<sup>th</sup> Amendment Act of 1978** has reduced the period of detention without obtaining the opinion of an advisory board from three to two months. However, this provision has not yet been brought into force, hence, the original period of three months still continues.

### **Controversies**

- No democratic country in the world has made **preventive detention as an integral part** of the Constitution as has been done in India.
- The governments sometimes use such laws in an extra-judicial power. Also, there remains a fear of arbitrary detentions.
- However, 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.

**Source: IE**