



Challenges with National Security Act, 1980

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Why in News

In some cases it has been found that the **National Security Act-1980 (NSA)** was invoked to prevent the person from being released from judicial custody even if the accused had got bail.

The NSA empowers the state to detain a person without a formal charge and without trial.

Key Points

- **About the National Security Act, 1980:**
 - The NSA is a **preventive detention law**.
 - Preventive Detention involves the **detainment of a person in order to keep him/her from committing future crimes** and/or from escaping future prosecution.
 - **Article 22 (3) (b) of the Constitution** allows for preventive detention and restriction on personal liberty for reasons of state security and public order.
 - Further, **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.
 - **Gives Power to the Government:**
 - 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.
 - **Period of Confinement:** The maximum period for which one may be detained is **12 months**. But the term can be extended if the government finds fresh evidence.

- **Issues with the Act:**

- It is an **administrative** order passed either by the Divisional Commissioner or the District Magistrate (DM) and **not detention ordered by police** based on specific allegations or for a specific violation of the law.
- **Conditions when NSA can be evoked:**
 - Even if a **person is in police custody**, the DM can invoke NSA against him.
 - If a person has been **granted bail by a trial court**, he can be immediately detained under the NSA.
 - If the person has been **acquitted by the court**, the same person can be detained under the NSA.
- **Against the Constitutional Right:** The law also takes away an individual's **constitutional right (Article 22 of Indian Constitution)** to be produced before the magistrate within 24 hours as is the case when the accused is in police custody.

The detained person also **does not have the right to move a bail application before a criminal court.**
- **Immunity for Passing and Carrying Out Order:** The DM who passed the detention order is protected under the Act, no prosecution or any legal proceeding can be initiated against the official who carried out the orders.

- **Supreme Court Observation:**

- The Court has held that the preventive detention under NSA has to be strictly maintained with the **delicate balance between social security and citizen freedom.**
- It also held that 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**” has to be ensured.

- **Safeguard Against the Act:**

- Procedural safeguard under the NSA is granted under **Article 22 (5)**, where all the detained persons have the **right to make an effective representation before an independent advisory board.**

This advisory board consists of three members and the board is chaired by a member who is a judge of a High Court.
- **The writ of Habeas Corpus is also the protection** guaranteed under the Constitution against the unchecked state power of taking people into custody under the NSA.

Source:IE