



Public Safety Act: J&K

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Why in News

Ahead of the Home Minister's visit, around 700 people have been detained in the union territory of Jammu and Kashmir (J&K) and a few under the stringent **Jammu & Kashmir Public Safety Act (PSA), 1978**.

Key Points

- **About:**

Under PSA, an individual **can be detained on the basis of an executive order for a maximum of two years, without trial**, if their act is prejudicial to the security of the State or the maintenance of public order.

- **Enforcement:**

Detention order is **passed either by the 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**.

- **Issues with PSA:**
 - **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 before the detaining authority.
 - **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.
 - It **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.
- **Supreme Court on Public Safety Act:**
 - The **Supreme Court** (SC) 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, **should be provided to the detained person** for making an effective representation.
 - The **grounds of detention** have to explain and communicate to the person **in the language understood by the detained person.**

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.
- It 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.

Way Forward

- 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 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.

Source: TH