



Habeas Corpus Cases in Jammu & Kashmir

Why in News

After the [abrogation of the special status](#) (under Article 370 of the Constitution) of the erstwhile state of Jammu & Kashmir in August 2019, the Jammu & Kashmir High Court was confronted with an unprecedented number (250 plus) of **habeas corpus** petitions.

- The habeas corpus petitions were filed to challenge the detentions under the [J&K Public Safety Act \(PSA\), 1978](#).

Key Points

- **Background:** After the abrogation of the special status, thousands of people were detained from across the Kashmir valley under the [preventive detention law](#). Of these, several hundred were detained under the PSA.
 - The other preventive detention laws under which people were booked are [National Security Act \(NSA\) 1980](#) and [Unlawful Activities \(Prevention\) Act 1967](#).
- **Status of Habeas Corpus Petitions Against PSA:**
 - The records of cases dealt by the High Court show that 61% of the cases under the habeas corpus were dragged on over 3-4 hearings, which were later either dismissed or settled.
 - However, in 17 cases, the court quashed the detention orders, due to lack of procedure followed by the government while invoking the PSA.
- **J&K Public Safety Act (PSA), 1978**
 - **Definition:** It is a kind of **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 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'**. Under this the court issues an order to a person who has detained another person, to produce the body of the latter before it. The court then examines the cause and legality of detention.

- 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.

Source: IE

PDF Refernece URL: <https://www.drishtias.com/printpdf/habeas-corporus-cases-in-jammu-kashmir>

