



Preventive Detention and National Security Act, 1980

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Why in News?

Climate Activist Sonam Wangchuk was detained under the [National Security Act \(NSA\), 1980](#), which allows the government **to act pre-emptively** against individuals considered a threat to **public order or national security**.

- He has been leading demonstrations demanding [statehood for Ladakh and Sixth Schedule protections](#).

What is Preventive Detention?

- **About:** [Preventive detention](#) means holding a person **not for a crime already committed**, but to prevent possible future actions that may threaten public order, security, or essential supplies.
 - **Preventive detention** is anticipatory, imposed based on the likelihood of harmful actions in the future, while **punitive detention** is imposed as punishment after conviction through due legal process.
- **Constitutional Provisions:** [Article 22](#) explicitly permits preventive detention in India. A person can be detained for up to 3 months without approval from an Advisory Board (comprising High Court-qualified judges).
 - For detention beyond 3 months, approval of an Advisory Board is required.
 - Parliament may prescribe conditions for detention beyond 3 months, set maximum periods, and lay down Advisory Board procedures.
 - The detained person must be informed of the grounds of detention, though certain facts may be withheld in the public interest.
 - The detainee should be given the earliest opportunity to challenge the order through a representation.
- **Significance:** Preventive detention supports **Article 355**, which mandates that the Union must protect states against **external aggression and internal disturbances** and ensure state governments function according to the Constitution.
- **Key Laws Related to Preventive Detention in India:**
 - **National Security Act (NSA), 1980:** For state security and maintaining public order.
 - [Unlawful Activities \(Prevention\) Amendment Act, 1967](#): To combat terrorism and unlawful activities.
 - [Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974](#): To curb smuggling and foreign exchange violations.
 - **State-specific Public Safety Acts** – To prevent threats to state security or public order.
- **Supreme Court on Preventive Detention:**
 - **Ameena Begum vs The State of Telangana (2023):** The court held that **preventive detention is an exceptional measure** meant for emergency situations and **should not be used routinely**.
 - **Rekha vs State of Tamil Nadu (2011):** SC ruled that preventive detention is an exception to **Article 21** and should be applied rarely and only in exceptional cases.

- **Anukul Chandra Pradhan, Advocate v. Union Of India & Ors (1997):** Emphasised that the purpose of preventive detention is to **prevent harm to the security of the state, rather than to impose punishment.**

What is the National Security Act, 1980?

- **Background:** Preventive detention in India dates back to colonial times, when it was used to curb dissent during wars. After Independence, Parliament enacted the Preventive Detention Act, 1950, followed by the Maintenance of Internal Security Act (MISA), 1971, which was widely misused during the Emergency before being repealed in 1978.
 - In **1980, the National Security Act (NSA)** was introduced. It empowers the Centre, states, District Magistrates, and authorised Police Commissioners to detain individuals to **prevent actions “prejudicial to India’s defence, foreign relations, security, public order, or essential supplies.”**
- **Detention Orders:** A detention order under the NSA functions like a **warrant of arrest**. Once detained, a person can be held in designated places, moved across states, and subjected to conditions set by the government.
- **Procedural Requirements:** **Grounds of detention must be communicated within 5 to 15 days. The detainee can submit a representation to the government. An Advisory Board of High Court judges must review the case within 3 weeks.**
 - If the Board finds “no sufficient cause,” the detainee must be released.
 - Maximum detention period is 12 months, though it can be revoked earlier.
- **Limitations of Safeguards:** Detainees cannot have legal representation before the Advisory Board. The government can withhold certain facts citing “public interest.” These provisions leave considerable discretion in the hands of authorities, raising concerns about potential misuse.

Frequently Asked Questions (FAQs)

1. What is preventive detention under Indian law?

Ans: Holding a person to prevent potential threats to public order, security, or essential supplies, not as punishment.

2. Which constitutional provision governs preventive detention in India?

Ans: **Article 22** permits preventive detention, allowing up to **3 months without Advisory Board approval** and longer detention with review by an Advisory Board of High Court judges.

3. What is the National Security Act, 1980?

Ans: The NSA is a preventive detention law that allows authorities to detain individuals to protect India’s security, public order, and essential supplies.

UPSC Civil Services Examination, Previous Year Questions (PYQs)

Prelims

Q. Consider the following statements:

1. According to the Constitution of India, the Central Government has a duty to protect States from internal disturbances.
2. The Constitution of India exempts the States from providing legal counsel to a person being held under preventive detention.

3. According to the Prevention of Terrorism Act (POTA), 2002, a confession made by the accused to the police cannot be used as evidence.

How many of the above statements are correct?

- (a) Only one
- (b) Only two
- (c) All three
- (d) None

Ans: B

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