

National Security Act 1980

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Manifest Pedagogy

Detention as an idea has been in news because of many issues like sedition, Unlawful Activities Prevention Act and the most recent one being National Security Act. Detention as a concept should be done in detail for mains and minute provisions of the Act may be asked in prelims.

In news

National Security Act was slapped on two in Madhya Pradesh

Placing it the syllabus

1. Indian Polity : Fundamental Rights
2. Internal Security

Static dimensions

1. History of Preventive Detention Laws in India
2. Constitutional provisions on Preventive Detention
3. National Security Act provisions

Current dimensions

1. Misuse of Preventive Detention Laws and need for changes

Content

What is NSA?

The National Security Act is a stringent law that allows preventive detention for months, if authorities are satisfied that a person is a threat to national security or law and

order. The person does not need to be charged during this period of detention. The goal is to prevent the individual from committing a crime.

Background

The NSA was introduced by Indira Gandhi after she came to power in 1980. The Act replaced the National Security Ordinance which too had been promulgated by the Indira Gandhi government three months earlier. The NSA was amended in 1984, 1985 and 1988 to consolidate some of the government's powers, besides increasing the possible periods of detention in Punjab and Chandigarh.

Provisions of NSA

- **Applicability: It applies to the entirety of India, except Jammu and Kashmir**
- As per the National Security Act, the grounds for preventive detention of a person include:
 1. Acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India.
 2. Regulating the continued presence of any foreigner in India or with a view to making arrangements for his expulsion from India.
 3. Preventing them from acting in any manner prejudicial to the security of the State or from acting in any manner prejudicial to the maintenance of public order or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community it is necessary so to do.
- Under the National Security Act, an individual can be detained without a charge for up to 12 months; the state government needs to be intimated that a person has been detained under the NSA.
- A person detained under the National Security Act can be

held for 10 days without being told the charges against them. The detained person can appeal before a high court advisory board but they are not allowed a lawyer during the trial.

- **Grounds of detention severable:** Where a person has been detained in pursuance of an order of detention [whether made before or after the commencement of the National Security (Second Amendment) Act, 1984] which has been made on two or more grounds, such order of detention shall be deemed to have been made separately on each of such grounds
- **Execution of detention orders-**A detention order may be executed any place in India in the manner provided for the execution of warrants of arrest under the Code of Criminal Procedure, 1973
- **Power to regulate place and conditions of detention,** Every person in respect of whom a detention order has been made shall be liable:
 1. To be detained in such place and under such conditions, including conditions as to maintenance, discipline and punishment for breaches of discipline, as the appropriate Government may, by general or special order, specify; and
 2. To be removed from one place of detention to another place of detention, whether within the same State or in another State, by order of the appropriate Government:
- **Detention orders not to be invalid or inoperative on certain grounds.** No detention order shall be invalid or inoperative merely by reason-
 1. that the person to be detained thereunder is outside the limits of the territorial jurisdiction of the Government or officer making the order, or
 2. that the place of detention of such person is outside the said limit.

- **Grounds of order of detention to be disclosed to persons affected by the order:**

1. It can be disclosed not later than five days and in exceptional circumstances and for reasons to be recorded in writing, not later than ten days from the date of detention, communicate to him the grounds on which the order has been made and shall afford him the earliest opportunity of making a representation against the order to the appropriate Government.
2. Under the act it is required for the authority to disclose facts which it considers to be against the public interest to disclose.

- **Constitution of Advisory Boards:**

1. The Central Government and each state Government, shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act.
2. Every such Board shall consist of three persons who are, or have been or are qualified to be appointed as, Judges of a High Court and such persons shall be appointed by the appropriate Government.
3. The appropriate Government shall appoint one of the members of the Advisory Board who is, or has been, Judge of a High Court to be its Chairman, and in the case of a Union territory the appointment to the Advisory Board of any person who is a Judge of the High Court of a State shall be with the previous approval of the State Government concerned.

- **Reference to Advisory Boards:** As provided in this Act, in every case where a detention order has been made under this Act, the appropriate Government shall, within 3 weeks from the date of detention of a person under the order, place before the Advisory Board constituted by it, the grounds on which the order has been made and the representation if any made by the person affected by the

order and in case where the order has been made by an officer.

▪ **Action upon the report of the Advisory Board:**

1. In any case where the Advisory Board has reported that there is, in its opinion, sufficient causes for the detention of a person, the appropriate Government may confirm the detention order and continue the detention of the person concerned for such period as it thinks fit.
2. In any case where the Advisory Board has reported that there is in its opinion, no sufficient cause for the detention of a person, the appropriate Government shall revoke the detention order and cause the person concerned to be released forthwith.

▪ **Protection of action:** No suit or other legal proceeding shall lie against the Central Government or a State Government, and no suit, prosecution or 8 taken in good faith. Government or a State Government, and no suit, prosecution or other legal proceeding shall lie against any person, for anything in good faith done or intended to be done in pursuance of this Act.

▪ **The maximum period of detention is 12 months**, but the detention should be reported to the State Government along with the grounds on which the order has been made. No such order shall remain in force for more than 12 days unless approved by the State Government.