



Delhi Authorises Preventive Detention Powers Under National Security Act Amid Debate on Liberty and Security

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Recent Development and Background:

- Recently, the **Home Department of the Delhi Government** authorised the **Delhi Police Commissioner** to exercise preventive detention powers under **Section 3(2) of the National Security Act (NSA), 1980**.
- The move has renewed public and constitutional debate regarding the balance between **national security requirements** and the protection of **individual liberty and fundamental rights**.
- The National Security Act allows the government to detain individuals **before the commission of an offence** when authorities believe that such detention is necessary to prevent activities harmful to national security, public order, or essential services.
- Unlike ordinary criminal law, where detention follows an alleged offence and requires judicial proceedings, **preventive detention** is based on the possibility of future harmful actions.

National Security Act (NSA), 1980: Overview and Purpose:

Meaning and Legislative Objective:

- The **National Security Act, 1980** is a preventive detention law enacted to empower the **Central Government, State Governments, and authorised officials** to detain individuals in order to protect:
 - **Defence of India.**
 - **Security of the State.**
 - **Public order.**
 - **Foreign relations of India.**
 - **Maintenance of essential supplies and services.**
- The primary objective of the Act is **prevention rather than punishment**.
- It seeks to prevent anticipated threats before they occur.
- It does not function as a substitute for criminal prosecution after an offence has been committed.

Nature of Preventive Detention under NSA:

- **Preventive detention** refers to the detention of a person to prevent them from committing acts that may adversely affect:
 - National security.
 - Public order.
 - Essential services.
 - Other legally protected interests.
- The person detained under the NSA is not necessarily accused of a past crime; instead, authorities act on the basis of a future threat assessment.
- The law gives wide powers to executive authorities, making constitutional safeguards extremely important.

Preventive Detention in India: Constitutional Framework:

Article 22 of the Constitution:

- **Article 22** of the Indian Constitution provides protection against arbitrary arrest and detention.
- It also recognises **preventive detention** as an exception to ordinary arrest protections.
- The Constitution permits preventive detention but places procedural safeguards to prevent misuse of executive power.

Constitutional Safeguards:

- The detained person must be informed of the grounds of detention as soon as possible.
- The detainee must be provided an opportunity to make a representation against the detention order.
- The detention must be reviewed by an **Advisory Board** within the constitutionally prescribed period.
- The government cannot unnecessarily extend detention without following statutory procedures.

Key Features of the National Security Act:

Detention Period:

- Under the NSA, a person can initially be detained for a period of up to **3 months**.
- The detention period may be extended up to **12 months** after review by the appropriate mechanism.
- The extension of detention depends upon the satisfaction of authorities and compliance with statutory safeguards.

Grounds for Detention:

- Authorities may issue a detention order when they are satisfied that such detention is necessary to prevent a person from acting in a manner prejudicial to:
 - **Defence of India.**
 - **Security of the State.**
 - **Public order.**
 - **Foreign relations of India.**
 - **Maintenance of essential supplies and services.**
- The subjective satisfaction of the detaining authority plays a significant role in preventive detention cases.
- However, such satisfaction is not completely beyond judicial review.

Advisory Board Mechanism:

Composition and Role:

- Every detention order under the NSA is subject to review by an **Advisory Board**.
- The Advisory Board consists of members who are qualified to become **High Court Judges**.
- The Board examines whether sufficient grounds exist for continuing the detention.

Importance of Advisory Review:

- The Advisory Board acts as an institutional safeguard against arbitrary detention.
- It ensures that executive decisions involving personal liberty receive independent examination.
- Continued detention beyond the prescribed period cannot occur without the Board's approval.

Right of Representation under NSA:

Opportunity to Challenge Detention:

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- A person detained under the NSA has the right to submit a representation against the detention order.
- This right provides an opportunity for the detainee to challenge:
- Legality of detention.
- Adequacy of grounds.
- Procedural violations.

Limitations on Disclosure of Grounds:

- The government may withhold certain facts if disclosure is considered against **public interest**.
- This provision creates a balance between:
- Protection of sensitive information.
- Right of the detainee to effectively challenge detention.

Difference Between Preventive Detention and Ordinary Arrest:

Preventive Detention:

- Preventive detention is based on the possibility of future harmful actions.
- The purpose is to prevent a potential threat before it materialises.
- Initial detention does not require a criminal trial.
- It is governed by preventive detention laws such as the **National Security Act, 1980**.

Ordinary Criminal Arrest:

- Ordinary arrest generally follows the commission or alleged commission of an offence.
- The accused is investigated and prosecuted through the criminal justice system.
- The person is normally required to be produced before a magistrate within **24 hours** of arrest, subject to constitutional and legal exceptions.

Issues and Concerns Related to the National Security Act:

Risk of Misuse of Preventive Detention Powers:

- The **National Security Act, 1980** provides wide discretionary powers to executive authorities, creating concerns regarding possible misuse.
- Broad powers of detention may sometimes result in:
- **Arbitrary detention.**
- Politically motivated actions.
- Excessive restriction on individual freedom.
- Since preventive detention is based on the assessment of future threats, there is a possibility that subjective satisfaction of authorities may become a source of misuse.

Impact on Personal Liberty:

- Preventive detention directly affects the **Right to Life and Personal Liberty** guaranteed under **Article 21** of the Constitution.
- Unlike ordinary criminal proceedings, a person can be detained without a regular trial at the initial stage.
- The absence of immediate judicial determination raises concerns regarding:
- Protection of individual rights.
- Presumption of innocence.
- Fair procedure established by law.

Limited Immediate Judicial Oversight:

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- Under ordinary criminal law, an arrested person must generally be produced before a magistrate within **24 hours**.
- However, preventive detention under the **NSA** does not require immediate production before a magistrate.
- This reduces immediate judicial scrutiny over executive decisions.
- The role of courts generally begins after examining whether:
 - Procedural safeguards were followed.
 - The detention order was legally valid.
 - Relevant material was considered by authorities.

Possibility of Extended Detention:

- A person detained under the **NSA** may remain in preventive custody for up to **12 months**, subject to statutory review.
- Long periods of detention without trial raise concerns about:
 - Personal freedom.
 - Rehabilitation opportunities.
 - Impact on family and social life.
- Therefore, periodic review and strict compliance with safeguards are necessary.

Lack of Transparency:

- Authorities may refuse to disclose certain grounds or facts of detention if disclosure is considered against **public interest**.
- While protecting sensitive information is necessary for national security, excessive withholding may:
 - Limit the detainee's ability to challenge the detention.
 - Reduce accountability of executive authorities.
 - Affect principles of natural justice.

Balancing National Security and Civil Liberties:

- The primary constitutional challenge is maintaining a balance between:
 - **National security.**
 - **Public order.**
 - **Individual liberty.**
 - **Democratic freedoms.**
- A strong security framework must operate within constitutional limits to preserve the **Rule of Law**.

Judicial Position on Preventive Detention in India:

Constitutional Interpretation by the Supreme Court:

- The **Supreme Court of India** has repeatedly recognised that preventive detention laws are constitutionally valid but must be applied with caution.
- Courts have emphasised that preventive detention should be used as an **exceptional measure** and not as a substitute for ordinary criminal law.
- Judicial review remains available to examine whether:
 - The detention order follows legal requirements.
 - Relevant material was considered.
 - Constitutional safeguards were violated.

Important Supreme Court Judgments:

A.K. Gopalan v. State of Madras (1950):

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- The Supreme Court initially adopted a narrow interpretation of **Article 21** and held that personal liberty could be restricted through a procedure established by law.
- The judgment represented the early constitutional approach towards preventive detention.

Maneka Gandhi v. Union of India (1978):

- The Supreme Court expanded the interpretation of **Article 21** by holding that the procedure restricting personal liberty must be:
 - **Just.**
 - **Fair.**
 - **Reasonable.**
- This judgment strengthened the protection of individual liberty against arbitrary state action.

A.K. Roy v. Union of India (1982):

- The Supreme Court examined the constitutional validity of the **National Security Act, 1980**.
- The Court recognised preventive detention as constitutionally permissible but emphasised strict compliance with procedural safeguards.

Rekha v. State of Tamil Nad(2011):

- The Supreme Court observed that preventive detention cannot be used as a substitute for ordinary criminal law.
- Authorities must demonstrate a genuine necessity for preventive detention rather than relying on routine or mechanical grounds.

Khudiram Das v. State of West Bengal (1975):

- The Supreme Court held that the subjective satisfaction of the detaining authority is subject to judicial review.
- Courts can examine whether the detention order suffers from:
 - Non-application of mind.
 - Irrelevant considerations.
 - Malafide intention.

Preventive Detention and Fundamental Rights:

Relationship with Article 21:

- **Article 21** protects every person's life and personal liberty except according to a procedure established by law.
- Preventive detention creates a constitutional tension between:
 - State responsibility to maintain security.
 - Individual right to freedom.

Relationship with Article 22:

- **Article 22** specifically provides safeguards against arbitrary arrest and detention.
- It creates a separate constitutional framework for preventive detention by permitting limited exceptions to ordinary arrest protections.
- The provision reflects the constitutional intention to balance:
 - Executive power.
 - Individual liberty.

- National security requirements.

Need for Proportionality:

- Preventive detention measures must satisfy the principle of **proportionality**.
- Restrictions on liberty should not exceed what is necessary to achieve legitimate security objectives.
- Authorities must ensure that detention is:
 - Necessary.
 - Reasonable.
 - Based on credible material.

Preventive Detention Laws in India:

Major Preventive Detention Legislations:

- India has enacted several preventive detention laws after independence to address different security concerns.
- Important laws include:
 - **National Security Act, 1980.**
 - **Jammand Kashmir Public Safety Act, 1978.**
 - **Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974.**
 - **Unlawful Activities (Prevention) Act, 1967**, which contains certain preventive security provisions.

Constitutional Position:

- Preventive detention laws are permitted under the Constitution, but their implementation must comply with:
 - **Fundamental Rights.**
 - **Judicial review.**
 - **Principles of natural justice.**
 - **Constitutional morality.**

Way Forward for Ensuring Security with Constitutional Safeguards:

Strengthening Constitutional Protection:

- The use of **preventive detention laws** should strictly follow the safeguards provided under **Article 22** of the Constitution.
- Authorities must ensure that detention orders are based on:
 - **Relevant material.**
 - **Objective assessment.**
 - **Genuine threat perception.**
- Preventive detention should remain an **exceptional measure** and should not replace ordinary criminal investigation and prosecution.

Ensuring Judicial and Legislative Oversight:

- Regular review of preventive detention laws by the **Legislature and Judiciary** is necessary to ensure that they remain consistent with constitutional values.
- Courts should continue to examine whether detention orders:
 - Follow procedural requirements.
 - Protect fundamental rights.
 - Maintain proportionality between security objectives and individual liberty.
- Parliamentary scrutiny can help improve transparency and accountability in the implementation of preventive detention laws.

Promoting Transparency and Accountability:

- Authorities should maintain proper records and provide clear reasons for detention wherever disclosure does not harm public interest.
- Internal review mechanisms should be strengthened to prevent arbitrary use of detention powers.
- Officials exercising preventive detention powers should receive regular training regarding:
 - Constitutional limitations.
 - Human rights standards.
 - Principles of fair administrative action.

Maintaining Proportionality in Security Measures:

- National security concerns must be balanced with the protection of **civil liberties** and **democratic freedoms**.
- Preventive detention should be applied only when:
 - Less restrictive measures are insufficient.
 - There is credible evidence of an imminent threat.
 - Public interest clearly requires such action.
- A proportional approach strengthens public trust in security institutions.

Value Addition for UPSC:

Constitutional Provisions Related to Preventive Detention:

- **Article 22 of the Constitution:**
 - Provides safeguards against arbitrary arrest and detention.
 - Recognises preventive detention as an exception to ordinary arrest protections.
 - Requires communication of grounds of detention and provides the right to make representation.
- **Article 21 of the Constitution:**
 - Guarantees the **Right to Life and Personal Liberty**.
 - The Supreme Court has interpreted it to include principles of fairness, reasonableness, and due process.
- **Article 19 of the Constitution:**
 - Protects fundamental freedoms, including speech and movement, which may be indirectly affected by preventive detention.

Important Supreme Court Principles:

- **Preventive detention is not a punishment:**
 - Its purpose is prevention of future harmful activities rather than punishment for past conduct.
- **Exceptional nature of preventive detention:**
 - Preventive detention must be used cautiously because it permits restriction of liberty without a regular criminal trial.
- **Judicial review remains available:**
 - Courts can examine whether detention orders are based on relevant considerations and comply with constitutional safeguards.

Comparison with Democratic Principles:

- A democratic state must maintain equilibrium between:
 - **National Security.**
 - **Individual Liberty.**
 - **Rule of Law.**
 - **Human Rights Protection.**

- Excessive reliance on preventive detention may weaken constitutional freedoms, while complete absence of such powers may create challenges in dealing with extraordinary threats.

Conclusion:

- The **National Security Act, 1980** provides the government with an important legal instrument to address threats to **national security, public order, and essential services**.
- However, preventive detention involves a direct limitation on personal liberty and therefore requires strict adherence to constitutional safeguards.
- The effectiveness of the NSA depends not only on the existence of strong security powers but also on responsible use, transparency, accountability, and judicial oversight.
- A constitutional democracy must ensure that measures taken for security purposes remain proportionate, lawful, and consistent with the principles of **liberty, dignity, and the Rule of Law**