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National Security Act

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Why is in news? Punjab Advocate General Vinod Ghai has said the National Security Act has been invoked in the case of self-styled Sikh preacher and on-the-run Waris Punjab De chief Amritpal Singh.

About National Security Act, 1980

The National Security Act was passed by the Parliament in 1980 and has been amended several times since then. NSA “empowers the state to detain a person without a formal charge and without trial”.

Under the Act, a person is taken into custody to prevent them from acting in any manner prejudicial to “the security of the state” or for “maintenance of the public order”.

It is an administrative order passed either by the Divisional Commissioner or the District Magistrate (DM) – and not detention ordered by police based on specific allegations or for a specific violation of the law.

Even if a person is in police custody, the District Magistrate can slap NSA against them. Or, if a person has been granted bail by a trial court, they can be immediately detained under the NSA.

If the person has been acquitted by the court, the same person can be detained under the NSA. The law takes away an individual’s constitutional right to be produced before the magistrate within 24 hours, as is the case when the accused is in police custody.

The detained person also does not have the right to move a bail application before a criminal court.

Grounds for detention

NSA can be invoked to prevent a person from acting in any manner prejudicial to the defence of India, relations of India with foreign powers or the security of India.

Among others, it can also be applied to prevent a person from acting in any manner prejudicial to the maintenance of supply and services essential to the community.

An individual can be detained without a charge for a maximum period of 12 months. The detained person can be held for 10 to 12 days in special circumstances without being told the charges against them.

Protection available under the Act

The Indian Constitution allows both preventive detention and the right of protection against arrest and detention in certain cases, enshrined under Article 22 of the Constitution.

However, Article 22(3) provides that the rights available to an arrested person will not be applicable in case of preventive detention, thus an exception is carved out.

One crucial procedural safeguard under the NSA is granted under Article 22(5), where all the detained persons have the right to make an effective representation before an independent advisory board, which consists of three

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members; and the board is chaired by a member who is, or has been, a judge of a high court.

Notably, in a 2021 investigation of The Indian Express it was found that in all the 120 cases before the Allahabad High Court in the previous three years, the board upheld the detention.

The DM who passes the detention order is protected under the Act: no prosecution or any legal proceeding can be initiated against the official who carries out the orders.

Therefore, the writ of habeas corpus is the available remedy under the Constitution against the state's power of taking people into custody under the NSA.

Therefore, a habeas corpus petition has been filed in Singh's case in Punjab and Haryana High Court by Imaan Singh Khara, the legal advisor of Waris Punjab De.

What the top court says

The Supreme Court in earlier cases had held that 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" has to be ensured.

Criticism against NSA

An advocate practising in the Punjab and Haryana High Court at Chandigarh, told that human rights groups have said in the past that the Act vitiates Article 22 of the Constitution and various provisions under the CrPC that safeguard the interest of an arrested person, namely that the arrested person should be informed regarding the ground of arrest and his right to consult a legal practitioner.

Further, under the CrPC, the arrested person has to be produced before the nearest Magistrate within 24 hours, but the NSA carves out an exception.

Some human rights groups argue that it is often misused by authorities to silence political opponents or those who are critical of the government. There have been calls for the Act to be repealed or amended to prevent its abuse.

But there is an opposing view as well. They say the Act cannot be construed to be a draconian law as it protects the larger interest of the state, and is therefore likely to stay.