

2. India's preventive detention laws

Prelims Syllabus: Governance - Policies

Mains Syllabus: GS-III Challenges to internal security through communication networks, role of media and social networking sites in internal security challenges, basics of cyber security; money-laundering and its prevention.



Why in News?

- The Supreme Court's observation that preventive detention laws are a colonial legacy and confer arbitrary powers on the state is one more iteration of the perennial threat to personal liberty that such laws pose.

Observation previously made by the Apex Court:

- The State should not arbitrarily resort to "preventive detention" to deal with all and sundry "law and order" problems, which could be dealt with by the ordinary laws of the country.
- Whenever an order under a preventive detention law is challenged, one of the questions the court must ask in deciding its legality is: was the ordinary law of the land sufficient to deal with the situation? If the answer is in the affirmative, the detention order will be illegal.
- The court said two drunks fighting on a road was a law and order problem, and not 'public disorder'. The solution here was not preventive detention.

About National Security Act:

- It 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.
- It was promulgated on September 23, 1980, during the Indira Gandhi government.
- **As per the National Security Act, the grounds for preventive detention of a person include:**
 - ✓ Acting in any manner prejudicial to the defence of India, the relations of India with foreign powers, or the security of India.
 - ✓ Regulating the continued presence of any foreigner in India or with a view to making arrangements for his expulsion from India.
 - ✓ 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.

Duration:

- 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.
- No such order shall remain in force for more than 12 days unless approved by the State Government.
- 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.

History of preventive detention in India:

- Preventive detention laws in India date back to early days of the colonial era when the Bengal Regulation III of 1818 was enacted to empower the government to arrest anyone for defence or maintenance of public order without giving the person recourse to judicial proceedings.
- A century later, the British government enacted the Rowlatt Acts of 1919 that allowed confinement of a suspect without trial.

Constitution of Advisory Boards:

- The Central Government and each State Government shall, whenever necessary, constitute one or more Advisory Boards for the purposes of this Act.
- 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.
- The appropriate Government shall appoint one of the members of the Advisory Board who is, or has been, a 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.

Concerns associated with NSA and how is it different from normal arrests?

- In the normal course, if a person is arrested, he or she is guaranteed certain basic rights.
 - ✓ These include the right to be informed of the reason for the arrest.
 - ✓ Section 50 of the Criminal Procedure Code (Cr.PC) mandates that the person arrested has to be informed of the grounds of arrest, and the right to bail.
 - ✓ Sections 56 and 76 of the Cr.PC also provide that a person has to be produced before a court within 24 hours of arrest.
 - ✓ Additionally, Article 22(1) of the Constitution says an arrested person cannot be denied the right to consult, and to be defended by, a legal practitioner of his choice.
- But none of these rights are available to a person detained under the NSA.
 - ✓ A person could be kept in the dark about the reasons for his arrest for up to five days and in exceptional circumstances not later than 10 days.
 - ✓ Even when providing the grounds for arrest, the government can withhold information which it considers to be against public interest to disclose.
 - ✓ The arrested person is also not entitled to the aid of any legal practitioner in any matter connected with the proceedings before an advisory board, which is constituted by the government for dealing with NSA cases.