

THE LOWDOWN ON NATIONAL SECURITY ACT

Relevant for: Indian Polity | Topic: Indian Constitution - Amendments, Schedules, and Important Articles

On February 8, the Congress-led government in Madhya Pradesh invoked the National Security Act (NSA) against three men accused of killing a cow near Kharkhali village. This and a spate of recent cases, in which different State governments have invoked the stringent provisions of the NSA to detain citizens for questionable offences, have brought the focus back on the potential abuse of the controversial law. Put simply, the NSA empowers the Centre or a State government to detain a person to prevent him from acting in any manner prejudicial to national security. The government can also detain a person to prevent him from disrupting public order or for maintenance of supplies and services essential to the community. The maximum period for which one may be detained is 12 months. But the term can be extended if the government finds fresh evidence.

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. Post-independence India got its first preventive detention rule when the government of Prime Minister Jawaharlal Nehru enacted the Preventive Detention Act of 1950. The NSA is a close iteration of the 1950 Act. After the Preventive Detention Act expired on December 31, 1969, the then Prime Minister, Indira Gandhi, brought in the controversial Maintenance of Internal Security Act (MISA) in 1971 giving similar powers to the government. Though the MISA was repealed in 1977 after the Janata Party came to power, the successive government, led by Mrs. Gandhi, brought in the NSA.

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 provides 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.

The National Crime Records Bureau (NCRB), which collects and analyses crime data in the country, does not include cases under the NSA in its data as no FIRs are registered. Hence, no figures are available for the exact number of detentions under the NSA. In January, the BJP government in Uttar Pradesh arrested three persons under the NSA in connection with an alleged cow-slaughter incident in Bulandshahr. In December last year, a Manipur journalist, who had posted an alleged offensive Facebook post on the Chief Minister, was detained for 12 months under the NSA. Experts say these cases point to the fact that governments sometimes use it as an extra-judicial power. It is time to reconsider the law, they argue, because in four decades of its existence, the NSA has been in the news for all the wrong reasons.

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