

NATIONAL SECURITY ACT, 1980 (रासुका)

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HISTORICAL BACKGROUND

This Act was introduced under India's first female Prime Minister Indira Gandhi, on September 23, 1980. However, the law's framework dates back to 1818, almost two centuries ago. In 1818, Bengal Regulation III was enacted to empower British government to arrest anyone for maintenance of public order without giving the person recourse to judicial proceedings.

After this Act, the British government enacted the Rowlatt Act 1919. The Rowlatt committee, approved after the first world war, recommended that the harsh and repressive provisions of the defense of the India Act be retained permanently on the statute books. The interesting feature of the Rowlatt Act 1919 was that they empowered the state to detain a citizen without giving the detainee any right to move the law courts and even the assistance of lawyers was denied to a detainee. The Jallian walla Bagh tragedy was a direct result of the protest against this Rowlatt Act.

Post Independence , the "PREVENTIVE DETENTION ACT "was enacted and it continued to be on the statute book until the "MAINTENANCE OF INTERNAL SECURITY ACT" was enacted in 1971. The MISA was repealed in 1977. The only period when India was without any preventive detention law i.e for three years period, beginning with the repeal of MISA to the promulgation of NSA in 1980.

PROVISIONS OF NATIONAL SECURITY ACT

APPLICABILITY

- a. It applies to the entirety of India, except Jammu & Kashmir. As in Jammu & Kashmir “ARMED FORCES SPECIAL ACT,1958” is enforced.

. As per the National Security Act, the grounds for the preventive detention of a person includes:

1. Acting in any manner prejudicial to the defense of India, the relations of India with the foreign power 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 a manner prejudicial to the security of the state or from acting in any manner prejudicial to the maintenance of supplies and services essential to the community, it is necessary to do.

DISCLOSURE OF GROUNDS OF DETENTION TO THE PERSON AFFECTED BY THE ORDER

If a person has been detained in pursuance of a detention order, the authority has the power to reveal the ground of detention within five days. In exceptional circumstances they can reveal it in ten days to the detained person.

CONSTITUTION OF ADVISORY BOARDS

1. The central government and each state government shall, whenever necessary, constitute one or more advisory board for the purpose of this Act.
2. Every board shall consist of three persons who are, or have been or are qualified to be appointed as of High court and such a person 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 a judge of a High court to be its Chairman , and in the

case of union territory, the appointment to the advisory board of any person who is a judge of the High court of a state government concerned.

REFERENCE TO ADVISORY BOARDS

Save as otherwise expressly provided in this Act, in every case where a detention order has been made under this Act, the appropriate government shall, within three weeks from the date of detention of a person under the order, place before the Advisory board constituted by it under section 9, 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 mentioned in sub-section(3) of section 3 also the report by such officer under sub –section (4) of that section.

PROCEDURE OF ADVISORY BOARDS

- 1.The Advisory board shall, after considering the materials placed before it and, after calling for such further information as it may deem necessary from the appropriate government or from any person called for the purpose through the appropriate government or from the person concerned, and if, in any particular case, it considers it essential so to do or if the person concerned desires to be heard, after hearing him in person, submit its report to the appropriate government within seven weeks from the date of detention of the person concerned.
2. The report of the Advisory board shall specify in a separate part thereof the opinion of the Advisory board as to whether or not there is sufficient cause for the detention of the person concerned.
3. When there is a difference of opinion among the members forming the Advisory board, the opinion of the majority of such members shall be deemed to be the opinion of the board.
4. Nothing in this section shall entitle any person against whom a detention order has been made to appear by any legal practitioner in any matter connected with the reference to the Advisory board, and the processing of the Advisory board

and its report, excepting that part of the report in which the opinion of the Advisory Board is specified, shall be confidential.

MAXIMUM PERIOD OF DETENTION

The state can detain any person for the maximum period of 12 months from the date of detention. The appropriate government has power to revoke or modify the detention order at any earlier time under this section.

REVOCAION OF DETENTION ORDERS

1. Without prejudice to the provisions of section 21 of the General clause Act, 1997, a detention order may, at any time, be revoked or modified-

(a) notwithstanding that the order has been made by an officer mentioned in sub-section (3) of section 3, by the state government to which that officer is subordinate or by the Central government,

(b) notwithstanding that the order has been made by a state government, by the central government.

2. The expiry or revocation of a detention order (hereafter in this sub-section referred as the earlier detention order) shall not [whether such earlier detention order has been made before or after the commencement of the of the National Security (second amendment) Act, 1984] bar the making of another detention order (hereafter in this sub-section referred to as the subsequent detention order) under section 3 against same person.

However, in a case where fresh facts have arisen after the revocation of the earlier detention order made against the person concerned, the maximum period for which such person may be detained in pursuance of the subsequent detention order shall, in no case extended beyond the expiry of a period of 12 months from the date on which such person was detained under earlier detention order.

PROTECTION OF ACTION

No suit or other legal proceeding shall lie against the central government or a state government, and no suit, prosecution or other legal proceeding shall lie against any person, for anything done or intended to be done in good faith in pursuance of this Act.

WHO HAS THE POWER

The order can be made by District Magistrate or a Commissioner of police under their respective jurisdictions.

The detention should be reported to the state government along with 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.

HOW IT DOES NOT VIOLATE THE FUNDAMENTAL RIGHTS

Typically, if a person is arrested, then he/she enjoys certain Rights bestowed by the Indian Constitution. The person has to be informed of the reason for arrest. Under Article 22 (1) [No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice] and under section 50 of the Criminal Procedure Code, the person arrested has to be informed. However in the case of the NSA, the person can be held up to ten days without being informed of the reason.

The goal is to prevent the individual from committing a crime.

The constitution of India under Article 22(3) (b) allows for the preventive detention and restriction on personal liberty for reason of state and public order.

RIGHTS OF PERSON DETAINED

1. No basic rights given to people detained under the NSA, including the right to be informed of the reason for the arrest.

2. Under the NSA, a person could be kept in the dark about the reason for his arrest for up to 5 days, in exceptional circumstances, it can be 10 days.
3. Even when providing the grounds for arrest, the government has the power to not disclose the ground of the matter of public interest.
4. Under NSA, the arrested person is not entitled to the aid of any legal practitioner in any matter connected with the proceeding before an advisory board, which is constituted by the government for dealing with NSA cases.

HOW DETENTION UNDER NSA IS DIFFERENT FROM NORMAL DETENTION?

DETENTION UNDER NSA	NORMAL DETENTION
A person detained under NSA does not have the right to take help from the legal practitioner.	A person who has been detained normally has the right to take help from the legal practitioner.
Under the NSA, a person can be detained for 10 days without informing him of the charges against him.	When a person is detained normally, he has a right to be informed of the grounds of his detention under Article 22(1).
A person detained under the NSA does not have the right to bail.	A person who has been detained normally has the right to bail.

EXPLOITATION OF THE ACT

The NSA Act is being misused by all the government in the country. The intended objective to prevent acts that harm our national security is set aside and is being used for self-interests. It is like the government is using the act as an extra-judicial power.

Section 50 of the criminal procedure (Crpc) states that the arrested individual should be informed the reason of arrest and the right to bail. The Indian Constitution states that under article 22 (1) [No person who is arrested shall be detained in custody without being informed, as soon as may be, of the grounds for such arrest nor shall he be denied the right to consult, and to be defended by, a legal practitioner of his choice]. However, none of these rights are given to the

person detained under the NSA. This Act provide neither transparency nor accountability of the government. It is similar to the Rowlatt Act of March 1919 where the British government decided to arm itself with more far-reaching powers, which went against the accepted principles of rules of law, to be able to suppress those nationalists who would refuse to be satisfied with the official reforms.

The National Crime Records Bureau (NCBR), which collects data related to crime in India, does not include cases under the NSA as no FIRs are registered in this regard. Thus, it is impossible to have an idea about the exact number of detentions that have been made under this Act.

CONCLUSION

The Act is made for the security of the country and to strengthen the power of the government. However, government is exploiting its power by fulfilling their own self-interests.

The legislature and judiciary must revisit the NSA,1980 to save the criminal justice system and its purpose to stop the crime and to not increase by applying arbitrariness. The situation is becoming even more sensitive as this period of three months may destroy many lives overnight. It's time for India to catch up with the international community and recognize that preventive detention must not be used as an ordinary or regular law and order measure. The government of India should also think about the human Rights of the citizens of India. Every accused person under this Act has the full Right to be heard and know the reasons for his detention. Consequently, this will strengthen the faith of the citizens of India towards the government and the system of this Country.

