Draconian Provisions of J&K Public Safety Act (PSA)

Why in news?

J&K former CM Farooq Abdullah has been detained under the Public Safety Act (PSA).

What is the J&K Public Safety Act (PSA)?

- The Jammu & Kashmir Public Safety Act, 1978 is a preventive detention law, under which a person is taken into custody to prevent him or her from acting in any manner that is prejudicial to "the security of the state or the maintenance of the public order".
- It is very similar to the National Security Act that is used by other state governments for preventive detention.
- By definition, preventive detention is meant to be preventive, not punitive.
- This broad definition is the most common ground used by a law enforcement agency when it slaps the PSA on an individual.
- It comes into force by an administrative order passed either by Divisional Commissioner or by the District Magistrate, and not by a detention order by police based on specific allegations or for a specific violation of laws.

What are the draconian provisions of the act?

- The PSA allows for the detention of a person without a formal charge and without trial.
- It can be slapped on a person already in police custody; on someone immediately after being granted bail by a court; or even on a person acquitted by the court. Detention can be up to two years.
- Unlike in police custody, a person who is detained under the PSA need not be produced before a magistrate within 24 hours of the detention.
- The detained person does not have the right to move a bail application before a criminal court, and cannot engage any lawyer to represent him or her before the detaining authority.
- The only way this administrative preventive detention order can be challenged is through a habeas corpus petition filed by relatives of the detained person.
- The High Court and the Supreme Court have the jurisdiction to hear such petitions and pass a final order seeking quashing of the PSA.

- However, if the order is quashed, there is no bar on the government passing another detention order under the PSA and detaining the person again.
- The District Magistrate who has passed the detention order has protection under the Act, which states that the order is considered "done in good faith".
- Therefore, there can be no prosecution or any legal proceeding against the official who has passed the order.
- Also, after an amendment, last year by the Governor, persons detained under the PSA in Jammu & Kashmir can now be detained in jails outside the state.

What are the discretionary powers of a DM under PSA?

- Generally, when a person is detained under the PSA, the DM communicates to the person within five days, in writing, the reason for the detention.
- In exceptional circumstances, the DM can take 10 days to communicate these grounds.
- This communication is important because it is on the basis of it that the detained person gets an opportunity of making a representation against the order.
- However, the DM also has the discretion not to disclose all the facts on the basis of which the detention is ordered, if he or she thinks that these facts are against "public interest".
- The DM has to place the detention order within four weeks before an advisory board, consisting of three members including a chairperson who is a former judge of the High Court.
- The DM also has to place the representation made by the detained person, the detained person too can make a representation before this advisory board.
- Within eight weeks from the date of detention, the board submits its report to the government, which will determine if the detention is in public interest and this report is binding on the government.

What constitutional safeguards are guaranteed to a detained person?

- Article 22(a) of the Constitution states that 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.
- Article 22(b) states that every person arrested and detained shall be produced before the nearest magistrate within a period of 24 hours (excluding the time necessary for the journey from the place of arrest to the court) and no such person shall be detained beyond this period without the authority of a magistrate.
- However, Article 22(3) (b) allows for preventive detention and restriction on

personal liberty for reasons of state security and public order.

- The Supreme Court has held that in order 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… is mandatory and vital".
- Therefore, the DM has to show that the detention order follows the procedure established by law; any violation of these procedural safeguards is to be termed violation of constitutional rights.
- Over the years, the Supreme Court has held that while detaining a person under the PSA, the DM is under a legal obligation to analyses all the circumstances and material before depriving that person of his or her personal liberty.
- It has also held that when a person already under police custody is slapped with the PSA, the DM has to record "compelling reasons" for detaining that person.
- While the DM can detain a person multiple times under the PSA, he or she has to produce fresh facts while passing the subsequent detention order.
- And all the material on the basis of which the detention order has been passed, the Supreme Court has held, should be provided to the detained person for making an effective representation, and the grounds of detention has to explain and communicate to the person in the language understood by the detained person.
- If these are not followed by the DM, it can be made the grounds, before the High Court, for quashing of a detention order.

Source: Indian Express

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