

3. Habeas Corpus Petition – Polity

Climate activist Sonam Wangchuk's wife, has filed a habeas corpus petition in the Supreme Court of India seeking his immediate release from preventive detention under the National Security Act (NSA), 1980. Sonam Wangchuk, an education reformer and climate activist from Ladakh, was detained under the NSA, 1980, following violent protests linked to the ongoing agitation over Ladakh's statehood and environmental concerns.

Introduction to the National Security Act (NSA), 1980

Nature of the Law – The National Security Act (NSA), 1980 is a preventive detention law designed to empower the government to detain individuals in order to prevent potential threats to public order, national security, foreign relations, or essential supplies and services.

Legislative Intent – The Act was enacted to consolidate and streamline earlier preventive detention laws such as the Maintenance of Internal Security Act (MISA), 1971, which was repealed in 1977.

The NSA reflects the State's power to maintain internal stability, especially in times of potential unrest or security challenges.

Understanding Preventive Detention

Definition – Preventive detention refers to the detention of an individual not for an offence already committed, but to prevent possible future acts deemed prejudicial to national interests or public safety.

Distinction from Punitive Detention –

1. **Preventive Detention** – Pre-emptive and precautionary in nature; based on suspicion of future conduct.
2. **Punitive Detention** – Imposed after conviction for a crime; retributive and penal in nature.

Constitutional Basis – Article 22(3)–(7) of the Indian Constitution specifically authorizes preventive detention laws. Parliament and State Legislatures have concurrent powers to enact such laws for reasons of national security, public order, or essential services.

Empowering Provision – Section 3 of the NSA

Authority to Detain – Section 3(1) empowers the Central Government, State Government, or authorized District Magistrate/Commissioner of Police to issue preventive detention orders.

Grounds for Detention –

A person may be detained if their actions are deemed –

1. Prejudicial to the defence of India, relations with foreign powers, or security of India.
2. Prejudicial to the maintenance of public order.
3. Harmful to the maintenance of essential supplies and services.

Procedural Requirements –

1. The detention order must be based on vital and relevant material.
2. The detaining authority must record its reasons for satisfaction ("subjective satisfaction").
3. The grounds of detention must be communicated to the detainee as soon as possible to enable representation before the Advisory Board.

Duration – Detention can be for a period of up to 12 months. Initial detention is limited to 3 months, extendable after Advisory Board approval (comprising sitting High Court judges).

Procedural and Constitutional Safeguards

Grounds to be Communicated – Detainees must be informed of the reasons for detention within five days, extendable to fifteen days in exceptional cases (Section 8 of the Act).

Right to Representation – The detainee has a right to make a representation to the appropriate government and the Advisory Board for revocation of the order.

Advisory Board Mechanism –

1. Constituted under Section 9 of the NSA.
2. Headed by a sitting judge of the High Court.

3. Reviews whether sufficient cause exists for detention.
4. If the Board finds no sufficient cause, the person must be released immediately.

Central Oversight – States are required to report detentions to the Central Government, which exercises supervisory control.

Judicial Interpretation and Safeguards

(a) Judicial View on Preventive Detention – The Supreme Court has consistently described preventive detention as a “drastic and extraordinary measure”, permissible only under strict procedural compliance. It directly limits the fundamental right to personal liberty guaranteed under Article 21 of the Constitution.

(b) Key Judicial Principles

Subjective Satisfaction – The court will not substitute its opinion for that of the detaining authority but will review whether the satisfaction was based on relevant and proximate material, and not remote or irrelevant factors.

Grounds Must Be Specific and Proximate – Vague or stale grounds invalidate detention. (e.g., A.K. Roy v. Union of India, 1982; Rameshwar Shaw v. District Magistrate, 1964)

Application of Mind – Detention orders must show clear application of mind. Any mechanical or routine issuance is liable to be quashed (Rekha v. State of Tamil Nadu, 2011).

Non-Misuse for Punitive Purpose – Courts emphasize that preventive detention cannot be used as a substitute for criminal prosecution or as punishment for past conduct (Ankul Chandra Pradhan v. Union of India, 1996).

Article 21 and Due Process – The court reaffirms that even preventive detention must satisfy the “procedure established by law” under Article 21, and such procedure must be just, fair, and reasonable (Maneka Gandhi v. Union of India, 1978).

Scope of Judicial Review

Courts do not question the merits of detention but review procedural and constitutional compliance. They examine –

1. Whether the detaining authority’s subjective satisfaction was reached based on relevant, fresh, and sufficient material.
2. Whether there was unreasonable delay in communicating the grounds or in deciding the representation.
3. Whether the authority acted maliciously, arbitrarily, or mechanically.

If any of these are violated, the detention order can be quashed through a writ of Habeas Corpus.

Writ of Habeas Corpus – Judicial Remedy

Meaning and Origin – The phrase Habeas Corpus literally means “to have the body of”. It is a judicial order directing that a detained person be brought before the court to examine the legality of their detention.

Constitutional Basis

Article 32 – Issued by the Supreme Court for enforcement of Fundamental Rights.

Article 226 – Issued by High Courts, both for Fundamental Rights and for broader “any other purpose”.

Purpose – Acts as a constitutional safeguard against arbitrary executive action. Ensures personal liberty, accountability, and judicial oversight. Can be issued against both public and private authorities detaining a person unlawfully.

Scope

The court can order –

1. Immediate production of the detainee.
2. Examination of grounds of detention.
3. Release if detention is illegal or unconstitutional.

Limitations on Issuance

A writ of Habeas Corpus cannot be issued when –

1. The detention is lawful and within statutory limits.
2. The detention is ordered by a competent court.
3. The detention is related to contempt of court or legislature.
4. The detainee is outside the territorial jurisdiction of the court.

Balance Between Security and Liberty

Constitutional Dilemma – Preventive detention laws, though constitutionally permitted, exist in tension with fundamental liberties. The judiciary's role is to ensure that the balance between state security and personal liberty is not disturbed.

Judicial Reminder – As per A.K. Roy v. Union of India (1982), "Liberty of the individual must be balanced against the security of the State."

Practical Safeguard – The periodic review system and Habeas Corpus remedy act as twin protections against prolonged or arbitrary detention.

Relevance and Contemporary Context

Security and Public Order Challenges – NSA remains a tool for state governments during times of communal unrest, terrorism threats, or smuggling of essential goods.

Controversies – The Act has faced criticism for misuse against political activists, journalists, and protestors, raising concerns over executive overreach and civil liberties.

Judicial Vigilance – Courts have repeatedly reminded authorities that preventive detention cannot be a substitute for normal legal procedures, and any deviation from statutory safeguards will render detention unconstitutional.

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