

AN ANALYSIS OF THE NATIONAL SECURITY ACT IN ITS APPLICATION IN THE STATE OF UP

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1. INTRODUCTION AND METHODOLOGY

The preventive detention landscape in Uttar Pradesh is unique in the sense that U.P. does not have a State preventive detention law. In the absence of a State legislation dealing with preventive detention the authorities in the State of U.P. rely more heavily upon Central laws to fulfil their preventive detention requirements, primary amongst them being the National Security Act, 1980 ('NSA'). This is evident from the fact that U.P. and M.P. (another major state which lacks an effective local law for preventive detention) account for the maximum detentions under the NSA, as per available data.

This paper attempts to study in further detail the provisions of the NSA as they are being implemented in the State of U.P. It discusses the provisions of the NSA and how these provisions have been interpreted and implemented by the Allahabad High Court and the Supreme Court. In order to keep the focus firmly on the State of U.P., the Supreme Court judgments discussed are ones which emanate from the State of U.P., barring a few extremely important landmark decisions.

1.1 Lack of Factual Data

The judicial analysis is also interwoven with facts and data and corroborated with interviews conducted with practicing lawyers of the Allahabad High Court, whose names and details are not revealed to maintain anonymity. It must however be stressed that granular data regarding the number of cases under these legislations in the State of U.P. is not publicly available with the National Crime Records Bureau. Infact the latest NCRB Reports on Crime in India do not public State-wise data on NSA detentions. Such data was published only for two years, i.e. 2014 and 2015, it shows that U.P. registered 221 and 253 cases under the NSA in 2014 and 2015 respectively. This accounted for more than half the instances of usage of the NSA in India.

The U.P. State Crime Records Bureau neither has a website nor does it put out crime statistics in the public domain. In order to overcome the lack of publicly available data the author filed a number of RTI Applications, with some basic data request such as:

1. Director General of Police
 - (i) Copy of all reports published by the State Crime Records Bureau between 2017 to 2022
 - (ii) Number of detention orders received by the UP State Advisory Board for Detentions under the NSA in the year 2022
 - (iii) Number of detention orders overturned by the UP State Advisory Board for Detentions under the NSA in the year 2022
2. National Crime Records Bureau
 - (i) Number of cases registered under the NSA in the State of U.P. in the years 2018, 2019, 2020, 2021 and 2022
 - (ii) Number of cases registered under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 in the State of U.P. in the years 2018, 2019, 2020, 2021 and 2022
3. Department of Home Affairs
 - (i) Number of detention order received by the UP State Advisory Board for detentions under the National Security Act, 1980 in the year 2022.
 - (ii) Number of detention orders overturned by the UP State Advisory Board for Detentions under the National Security Act, 1980 in the year 2022.

The response to all the above RTI queries was that the data was not available. Therefore, the author had no choice other than to work with the sparse data that was publicly available such as news reports, academic writings, etc. and rely heavily on reported judicial decisions. The author examined about 200 judgments pronounced by the Allahabad High Court and the Supreme Court in the course of writing this paper in order to better understand the implementation of the NSA in the State of UP.

2. NATIONAL SECURITY ACT, 1980 AND ITS APPLICATION IN THE STATE OF U.P.

The laws relating to preventive detention in India can trace their roots back to the colonial era where legislations such as the Bengal State Prisoners Regulation, III of 1818 and the Anarchical and Revolutionary Crimes Act, 1919 (popularly known as the Rowlatt Act) were used by the British government to curb nationalist sentiments and stabilize their administration in India. Independent India did not rid itself of the concept of preventive detention, but implicitly accepting its necessity the Constitution of India, 1950 incorporated certain safeguards to preventive detention and granted them the status of fundamental rights.¹ In the first three decades of independence preventive detention was primarily dealt by the Preventive Detention Act, 1950 and later the controversial Maintenance of Internal Security Act, 1971 which gained notoriety during the emergency era and was later repealed by the Janata Dal government in 1977. However, upon coming back into power Indira Gandhi first promulgated the National Security Ordinance and later the NSA which provided for preventive detention.

Preventive detention is based not on facts proved either by applying the test of preponderance of probabilities or of reasonable doubt but on the subjective satisfaction of the detaining authority that it is necessary to detain a particular person in order to prevent him from acting in a manner prejudicial to certain stated objects.² Due to the ease with which the power of preventive detention could be abused, the Constitution as well as the legislation itself, have imposed a number of procedural safeguards to ensure that the rights of citizens are not trampled upon by the State for frivolous or minor reasons. Judicial decisions have time and again emphasised strict compliance with these safeguards,³ which are discussed below:

2.1 Subjective Satisfaction of Detaining Authority

As noted by the Supreme Court in *A.K. Roy*, the order of detention is based not on proven facts but on the subjective satisfaction of the detaining authority. This satisfaction cannot be subjected to objective tests and courts cannot exercise appellate powers over such authorities. Thus, an order has to be proper on its face and has to be passed by a competent authority in good faith. But when circumstances appear which raise a doubt whether the officer concerned had misconceived his own powers, then the courts must interfere and enquire into the process.⁴ Though courts cannot substitute their own opinion on the facts of the case,⁵ that does not create a bar on the courts from looking into the records of the case.⁶

A detention order can be based on past conduct of the detainee, but in that case the antecedent history has to be proximate in time and must have a rational connection with the conclusion that the detention of the person is necessary.⁷ Although past events may be relevant, events

¹ Article 22, Constitution of India, 1950.

² *A.K. Roy v. Union of India*, AIR 1982 SC 710.

³ *Rekha v. State of Tamil Nadu through Secretary to Government and another*, 2011 (73) ACC 936 (SC).

⁴ *Ajay Dixit v. State of UP*, 1985 AIR SC 18 = (1984) 4 SCC 400.

⁵ *Nanha Singh v. Suptd. District Jail, Kanpur*, 1984 (21) ACC 63

⁶ *Awad Kumar Shukla v. Supd. of Central Jail, Naini, Allahabad*, 1983 (20) ACC 88

⁷ *Ranjeet Singh Vaish v. State of U.P. through Secretary, Home Department-Lucknow and others*, 2003 (Suppl.) ACC 769 (HC-LB).

occurring subsequent to passing of the detention order cannot be used to challenge the subjective satisfaction of the detaining authority.⁸ However such events may be relevant to challenge the continued detention of the detenu.⁹

It is not necessary that there must always be commission of an offence for a detention order to be passed, provided the detaining authority is satisfied that detention of the detenu is necessary for the purposes listed in the Act.¹⁰ Similarly the pendency of court proceedings in respect of the underlying crime is no bar to passing a detention order.¹¹ Even a solitary incident may be enough to show the potential of the detenu to indulge in prejudicial activities in the future and thus warrant a detention order.¹² Other smaller issues have been held to not prejudice the subjective satisfaction of the detaining authority such as similarity in the language between the proposal of the sponsoring authority and the detention order¹³ or not bringing to the notice of the detaining authority that the detenu was acquitted in some of the large number of cases registered against him.¹⁴ Infact even after acquittal of accused on the ground which was made the basis of detention, detention order can be passed on subjective satisfaction of detaining authority that prosecution failed due to witnesses being in awe of the accused.¹⁵

Although not given in the context of the NSA, the Supreme Court in *Sadhu Roy v. State of West Bengal*,¹⁶ laid down certain guidelines for judging the validity of an order of detention passed under a law relating to preventive detention.¹⁷ There are well recognised judicial tests

⁸ *Ashok Kumar Gupta v. District Magistrate, Jalaun*, 1998 (37) ACC 792; *Pradeep v. District Magistrate, Bulandshahr (Detaining Authority) and others*, 2003 (47) ACC 244 (HC). Although subsequent grant of bail has been used to justify the satisfaction of the Detaining Authority that the detenu was likely to be released on bail, see *Raju v. District Magistrate, Mathura and others*, 2003 (47) ACC 578 (HC).

⁹ *Binod Singh v. D.M., Dhanbad*, 1986 (23) ACC 567 (SC).

¹⁰ *Deepak Sharma v. D.M. Aligarh*, 1998 (37) ACC 200.

¹¹ *Janu v. State of U.P. and others*, 2012 (78) ACC 434 (Alld.)

¹² *Bhanu Sharan v. Superintendent, Central Jail, Naini, Allahabad and others*, 2002 (45) ACC 599 (HC); *Murli Prasad v. State of U.P.*, 1997 (Suppl) ACC 254

¹³ *Riyazuddin v. State of U.P. and others*, 2017 (99) ACC 434 (H.C.)

¹⁴ *Manohar Singh v. Union of India*, 1999 (1) ACC 117

¹⁵ *Puneet v. State of U.P.*, 1999 (38) ACC 338.

¹⁶ AIR 1975 SC 919.

¹⁷ These Guidelines are:

"1. The discharge or acquittal by a criminal court is not necessary a bar to preventive detention on the same facts for "security" purposes. But if such discharge or acquittal proceeds on the footing that the charge is false or baseless preventive detention on the same condemned facts may be vulnerable on the ground that the power under the Maintenance Of internal Security Act has been exercised in a mala fide or colorable manner.

2. The executive authority may act on subjective satisfaction and is immunized from judicial dissection of the sufficiency of the materials.

3. The satisfaction, though attenuated by 'subjectivity' must be real and rational, not random divination, must flow from an advertence to relevant factors, not be a mock recital or mechanical chant of statutorily sanctified phrases.

4. The executive conclusion regarding futuristic (prejudicial activities of the detenu and its nexus with his past conduct is acceptable but not invulnerable. The court can lift the verbal veil to discover the true face.

5. One test to check upon the colorable nature or mindless mood of the alleged satisfaction of the authority is to see if the articulated 'grounds' are too groundless to induce credence in any reasonable man or too frivolous to be brushed aside as fictitious by a responsible instrumentality. The Court must see through mere sleights of mind played by the detaining authority.

to determine the correctness of the 'subjective satisfaction' of the detaining authority. They are the usual administrative law tests 'where power is couched in subjective language. There is, of course, the requisite emphasis in the context of personal liberty'.¹⁸

2.2 Detention Order Held Invalid

It is well settled that the validity of the subjective satisfaction of the detaining authority can be questioned on a number of grounds,¹⁹ such as:

- A. Subjective satisfaction based on misapprehension of facts and on materials which did not exist;²⁰
- B. Serious doubt regarding the genuineness of subjective satisfaction;²¹
- C. Satisfaction of DM based on irrelevant and extraneous matters;²²
- D. Non application of mind by the detaining authority;²³
- E. Facts kept back from DM while passing the detention order;²⁴
- F. Wrong facts placed before the detaining authority;²⁵
- G. Grounds on which the detention order was passed have become stale (which means there is no live causal link between the past activities and the need for preventive detention);²⁶

Below is a list of fact situations where detention orders in the State of UP have been struck down primarily by the Allahabad High Court, and in some cases by the Supreme Court, on the grounds that the subjective satisfaction of the detaining authority was not properly exercised:

- A. Not placing the telegram sent on behalf of the detenu to the SSP which could have had a bearing on his non involvement in the crime;²⁷
- B. Prejudicial activities contained in the CR (Crime) but no averment that order of detention not founded on the CR;²⁸

6. More concretely if witnesses are frightened off by a desperate criminal, the Court may discharge for deficient evidence but on being convinced (on police or other materials coming within his ken) that witnesses had been scared of testifying, the District Magistrate may still Invoke his preventive power to protect society. 7. But if on a rational or fair consideration of the police version at probative circumstances he would or should necessarily have rejected it, the routinisation of the satisfaction couched in correct diction, cannot carry conviction about its reality or fidelity, as against factitious terminological; conformity. And on a charge of mala fides or misuse of power being made, the Court can go behind the facade and reach at the factum."

¹⁸ *Ayya @ Ayub v. State of U.P.*, 1990 (27) ACC 42 (SC).

¹⁹ *Nanha Singh v. Suptd. District Jail, Kanpur*, 1984 (21) ACC 63 = *Syed Mohd Aslam v. State of U.P.*, 1985 (22) ACC 37 (Sum).

²⁰ *Ashfaq alias Bhoore v. State of U.P.*, 1984 (21) ACC 192

²¹ *Shahzada v. Suptd. District Jail*, 1984 (21) ACC 126

²² *Ranjit Singh v. State of U.P.*, 1985 (Suppl) ACC 404. Also see *Manruddin Shiek alias Bablu Bhai v. State of U.P. and others*, 2012 (78) ACC 694 (Alld.)

²³ *Anant Sakharam Raut v. State of Maharashtra*, 1986 (23) ACC 559 (SC).

²⁴ *Santosh Kumar alias Mausmi v. Suptd. Dist. Jail, Kanpur*, 1985 (22) ACC 58 (Sum); *Brijbasi Pathak v. State of U.P.*, 1985 (Suppl) ACC 273

²⁵ *Abdul Gaffar @ Lala v. District Magistrate, Rae Bareli*, 2000 (Suppl) ACC 483

²⁶ *Ram Kirpal Singh v. State of U.P.*, 1985 (Suppl) ACC 357; *Vijay Singh v. State of U.P.*, 1998 (37) ACC 194.

²⁷ *Ayya @ Ayub v. State of U.P.*, 1990 (27) ACC 42 (SC).

²⁸ *Reoti Raman Shukla alias Shyam Das alias Shyamu v. Union of India and others*, 2002 (45) ACC 618 (HC-LB)

- C. Confidential letters placed before the detaining authority contained extraneous material touching the character of the detenu;²⁹
- D. Revocation of the detention order of a co-accused not considered by detaining authority;³⁰
- E. Detaining authority brought into consideration the fact that the detenu was a man of criminal tendency although there was no basis for this fact as no other cases were registered against him;³¹
- F. Order of detention mentions two reasons but in grounds of detention the detaining authority has considered only one reason to justify the detention, which shows casualness;³²
- G. Fact that the detenu, a murder accused, was not picked out in the TIP, was not brought to the notice of the detaining authority;³³
- H. Detention on the basis of case crime, but orders passed by the Magistrate under section 156(3) not brought to the notice of the detaining authority;³⁴
- I. Nothing on record to show that it was necessary to pass the detention order when normal criminal prosecution would have been enough;³⁵
- J. Where cross-FIRs were registered, both rival versions were either not placed before or not considered by the detaining authority;³⁶
- K. The TV programme 'India's Most Wanted' could not have been utilised as the backbone of the detention order, since facts were already considered in the previous detention which had already been revoked;³⁷
- L. Mob attacked and burnt a mosque and the Holy Quran but there was no material to suggest that the detenu was leading the mob, shows non-application of mind;³⁸
- M. Grounds of detention merely contain a recital that the detenu was in jail, but no recital that there was a real possibility of him being released on bail, recording of it subsequently will also not validate the order;³⁹
- N. Contemporaneous implication in a single incident leading to the registration of multiple crimes cannot be the basis to form valid subjective satisfaction that the detenu would indulge in actions prejudicial to the maintenance of public order;⁴⁰
- O. Detention order passed under political influence;⁴¹

²⁹ *Vashishta Narain Karvariya v. State of U.P.*, 1990 (27) ACC 648 (SC)

³⁰ *Jagdish Prasad Kasana @ Jaggi v. State of U.P. and others*, 2000 (41) ACC 735

³¹ *Sabir v. District Magistrate, Rae Bareilly and another*, 2000 (Suppl) ACC 266 (LB); *See also Sartaj Ali and others v. State of U.P. and others*, 2000 (Suppl) ACC 28 (LB)

³² *Upendra Singh v. Adhyakcha Janpad Karagar, Ghazipur and others*, 2000 (Suppl) ACC 825

³³ *Vikram Pratap Singh v. State of U.P.*, 1985 (Suppl) ACC 370

³⁴ *Shamshul Haq v. Superintendent Division District Jail, Azamgarh and others*, 2002 (Suppl.) ACC 130 (HC).

³⁵ *Deepak Singh v. Union of India and others*, 2019 (107) ACC 18 (H.C.) (Sum.)

³⁶ *Baura v. State of U.P. and others*, 2005 (51) ACC 812 (HC). Also see *Ashok Kumar v. State of U.P. and others*, 2008 (62) ACC 887 (HC); *Inamul Haq, Engineer v. Superintendent, Division/District Jail, Azamgarh and others*, 2001 (43) ACC 67 (HC).

³⁷ *Sushil Moonchh (Sushil alias Moonchh) v. Union of India and others*, 2001 (42) ACC 26 (H.C.-L.B.).

³⁸ *Charan Singh @ Pappu v. Union of India and others*, 2014 (84) ACC 168 (H.C.)

³⁹ *Surjeet @ Bhola v. Union of India and others*, 2017 (100) ACC 843 (H.C.)

⁴⁰ *Sanju Yadav alias Sanjay v. State of u.p. and others*, 2018 (102) ACC 763 (HC)

⁴¹ *Jang Bahadur Yadav v. State of U.P. and others*, 2013 (80) ACC 360 (Allid.)

- P. Proposal and acceptance by the detaining authority were flimsily tailored only to punish the young men for mustering the courage to teach a lesson to the constables who were drunk with power;⁴²
- Q. Grounds were vague since there was an allegation of threatening witnesses but names of witnesses were not given;⁴³
- R. Order does not disclose any specific involvement of the petitioner in crimes alleged viz. two incidents in February and April while the order was passed in end of August;⁴⁴
- S. Detention order passed on alleged grounds which had become one or two years old.⁴⁵ Although a delay of seven months⁴⁶ and three and half months⁴⁷ when unexplained has been held to be enough to vitiate the order, however a gap of merely 56 days was held not to vitiate the detention order.⁴⁸ In another case detention was quashed as the State could not show that the lecture delivered by the detenu had a deleterious effect on public order which continued to exist for upto 2 months;⁴⁹

2.2.1 Detention of person already in Jail

There is no prohibition against passing a detention order against a person who is already in jail. This is one of the main reasons why the NSA is often invoked by the State to ensure that persons continue to remain in jail even if they are able to secure bail. This is why the Courts have repeatedly held that detention orders against persons already in jail have to be scrutinized with great caution.⁵⁰ To ensure its validity such an order has to satisfy the following tests:

- A. the detaining authority passing the order must be aware of the fact that the detenu is actually in custody;
- B. the detaining authority has reason to believe on the basis of reliable material placed before it (a) that there is a real possibility of the detenu being released on bail, and (b) that on being so released the detenu would in all probability indulge in prejudicial activity; and
- C. it is felt essential to detain the detenu to prevent him from indulging in prejudicial activities.⁵¹

It is important to emphasise that all three of the conditions above have to be satisfied for a valid detention order. Thus, a detention order cannot be upheld if any one of the conditions are not satisfied.⁵² A detention order against a person already in jail will be valid only if the

⁴² *Bandoo Bedia v. State of U.P. and others*, 2003 (46) ACC 1173 (HC).

⁴³ *Avadhesh Chandra Dixit v. Suptd. District Jail, Farukhabad*, 1989 (26) ACC 55 (H); *Devendra alias Nikku v. District Magistrate, Dehradun*, 1982 (19) ACC 195

⁴⁴ *Anil Kumar Srivastava v. Supdt. Dist. Jail, Lucknow*, 1987 (24) ACC 22 (LB)(H).

⁴⁵ *Ram Kirpal Singh v. State of U.P.*, 1985 (Suppl) ACC 357; *Vijay Singh v. State of U.P.*, 1998 (37) ACC 194.

⁴⁶ *Dharma Dutt Tiwari v. State of U.P. and others*, 2003 (46) ACC 694 (HC-LB).

⁴⁷ *Waseem v. State of U.P. and others*, 2004 (50) ACC 931 (H.C.-L.B.).

⁴⁸ *Saeed v. District Magistrate, Kanpur Nagar and others*, 2004 (49) ACC 77 (HC).

⁴⁹ *Nuzhat Parveen v. State of U.P. and another*, 2020 (113) ACC 7 (H.C.)

⁵⁰ *Yogendra Murari v. State of U.P.*, 1988 (25) ACC 349 (SC)

⁵¹ *Kamarunnissa v. Union Of India And Ors*, 1991 AIR 1640, 1990 SCR Supl. (1) 457.

⁵² *Ayya Alias Ayub v. State of U.P.*, 1990 (27) ACC 42 (SC); *Anand Prakash v. State of U.P.*, 1990 (27) ACC 67 (SC); *Rukhsana v. State of U.P.*, 1988 (25) ACC 122; *Pankaj Singh v. Union of India and others*, 2017 (101) ACC

authority passes an order after recording satisfaction of all the above conditions. Such an order cannot be struck down only on the ground that the proper course for the authority was to oppose the bail and if bail is granted notwithstanding such opposition, to question it before a higher court.⁵³ It should be noted that although lack of a bail application may indicate that there is no real possibility of the detenu being released on bail,⁵⁴ the pendency of a bail application is not necessary for recording satisfaction that the detenu may be released on bail.⁵⁵

Some instances where detention orders have been struck down in the specific circumstance of the detenu already being in jail are given below:

- A. Detention order directs arrest of detenu who is already in jail, shows detaining authorities were ignorant;⁵⁶
- B. Copy of pending bail application was not placed before the detaining authority;⁵⁷
- C. Detaining authority never tried to find out whether the detenu was in custody, on bail or absconding;⁵⁸
- D. Order of detention passed after rejection of bail application was vitiated since it was based on no evidence;⁵⁹
- E. Grounds of detention averred that detaining authority is aware of pendency of bail application, when there was no application pending;⁶⁰
- F. No material relating to the previous cases in which the detenu was bailed out was brought to the notice of the detaining authority;⁶¹
- G. Detention order passed just one hour after release of petitioner on bail using non genuine and cooked up grounds.⁶²

Key Takeaways

- Detention order may be passed even if the detenu is already in jail

905 (H.C.); *Ankit Tiwari v. Union of India and others*, 2017 (101) ACC 364 (H.C.); *Harish Kasana v. State of U.P.*, 1998 (37) ACC 724; *Govind Singh v. State of U.P. and others*, 2000 (Suppl) ACC 294.

⁵³ *Kamarunnissa v. Union Of India And Ors*, 1991 AIR 1640, 1990 SCR Supl. (1) 457.

⁵⁴ *Agya Ram Verma v. Union of India and others*, 2002 (45) ACC 872 (HC-LB); *Malkhan Singh (Thakur) v. State of U.P.*, 2002 (45) ACC 433 (HC); *Sukhdeo Singh v. District Magistrate and others*, 2001 (42) ACC 377 (HC); *Raj Nath Pandey v. District Magistrate, Faizabad and others*, 2003 (46) ACC 572 (HC); *Zair v. District Magistrate, Hardoi and others*, 2003 (Suppl.) ACC 724 (HC).

⁵⁵ *Raju v. District Magistrate, Mathura and others*, 2003 (47) ACC 578 (HC). Further, non mentioning of the date of filing bail application and its rejection is not material and detention order cannot be vitiated on this ground alone. *Shakir Husain @ Shakul v. Union of India and others*, 2005 (51) ACC 90 (HC).

⁵⁶ *Nazar Mohammad v. District Magistrate*, 1989 (26) ACC 524. Also *Akhilesh Kumar Gupta v. District Magistrate, Jalaun*, 1990 (27) ACC 245

⁵⁷ *Inamul Haq, Engineer v. Superintendent, Division/District Jail, Azamgarh and others*, 2001 (43) ACC 67 (HC); *Shakil Akhtar v. State of U.P.*, 1991 (28) ACC 511

⁵⁸ *Vijai Singh v. State of U.P.*, 1998 (37) ACC 194

⁵⁹ *Israr @ Asrar Alam Sheru v. State of U.P. and others*, 2001 (Suppl.) ACC 661(HC).

⁶⁰ *Sohan Lal v. District Magistrate, Unnao and others*, 2003 (46) ACC 526 (HC-LB).

⁶¹ *Dablu Rai alias Dilip Rai v. State of U.P and others*, 2016 (94) ACC 247 (H.C.).

⁶² *Milan Kumar v. State of U.P.*, 1988 (25) ACC 41.

- Subjective satisfaction of detaining authority can be challenged if it has been improperly exercised
- Courts have carved out a number of grounds to challenge the subjective satisfaction of the detaining authority such as consideration of irrelevant and extraneous matters, non application of mind, absence of relevant facts or reliance on incorrect facts, ground becoming stale, etc.

2.3 Lack of Data

Unlike in certain other States such as Andhra Pradesh and Tamil Nadu, Uttar Pradesh does not provide any information in the public domain regarding the number of detention orders that have been passed under the NSA in any given year. Although the National Crime Records Bureau (NCRB) in its Crime in India Report 2021 reported that there were a total of 483 detentions under the NSA in the various States and UTs, it does not give a Statewise break-up of the numbers and RTI applications to the NCRB requesting such information⁶³ was replied to stating that the information is not available with the NCRB. This situation has seriously handicapped any efforts to obtain definitive statistics on the implementation of the NSA in the State of UP such as the number of detentions every year, how many representations are received and whether they are decided positively or negatively, etc.

2.4 Grounds of Detention

NSA permits detention to prevent a person from acting in any manner prejudicial (i) to the defence of India, the relations of India with foreign powers, or the security of India,⁶⁴ and (ii) the security of the State or the maintenance of public order or the maintenance of supplies and services essential to the community.⁶⁵ It also states that in case a person is detained on more than one ground then the order of detention will be deemed to have been made on each of those grounds separately such that if one of the grounds is deemed to be invalid the order of detention would still be valid on the other grounds.⁶⁶

The expressions the 'defence of India', 'security of India', 'security of the State', and 'relations of India with foreign powers' used in section 3 were challenged in *A.K. Roy* for being vague. The challenge was rejected on the ground that these are concepts which are difficult to encase within the strait-jacket of a definition and any such attempt instead of lending them a definite

⁶³ The specific questions that were asked were the following:

“1. Number of cases registered under the U.P. Gangsters and Anti Social Activities (Prevention) Act, 1986 in the State of U.P. in the years 2018, 2019,2020, 2021 and 2022.

2. Number of cases registered under the National Security Act, 1980 in the State of U.P. in the years 2018, 2019, 2020, 2021 and 2022.

3. Number of cases registered under the Prevention of Illicit Traffic in Narcotic Drugs and Psychotropic Substances Act, 1988 in the State of U.P. in theyears 2018, 2019, 2020, 2021 and 2022.”

⁶⁴ Section 3(1) of the NSA.

⁶⁵ Section 3(2) of the NSA.

⁶⁶ Section 5A of the NSA.

meaning, would either rob them of their intended amplitude or make it necessary to frame further definitions of the terms defined. It was further held that even though the concepts may appear vague at first, it may not be difficult to apply them in practical life, and any scope for error in such application was found to be within the realm of acceptability since there is no area of the adjudicative process which does not involve a possibility of error. However, the constitutionality of such vague terms was upheld on the condition that the courts must strive to give these concepts a narrower construction than what the literal words suggest.⁶⁷

An analysis of various judicial pronouncements reveals that most detentions under the NSA are made on the ground of ‘maintenance of public order’, the meaning of which is one of the most important concepts in the entire jurisprudence around the NSA. The question that often arises is whether the actions of a detenu affect merely ‘law and order’, which is not a situation where the NSA would be applicable or do they affect ‘public order’ in which case the application of NSA would be justified. The basic principle that has been emphasised by a number of judicial pronouncements is that any contravention ‘of law’ would almost always affect ‘order’, but whether it affects ‘public order’ would depend on its affect on the community or the public at large.⁶⁸ The distinction between law and order and public order is one of degree and reach of the act in the society.⁶⁹ Generally speaking, if the act is restricted to a particular individual due to enmity, it would be limited to breach of law and order only.⁷⁰ Public order is considered to be synonymous with public safety and tranquillity. It is the absence of any disorder of local significance in contradiction to national upheavals, such as revolution, civil strife, war, affecting the security of the State.⁷¹ An activity which adversely affects the even tempo of public life certainly has, apart from law and order, a nexus with public order as well.⁷²

The best way to understand the esoteric distinction between what actions constitute breach of public order as opposed to mere breach of law and order is through illustrations. To that end, given below are two detailed lists illustrating circumstances which have been considered to be (i) breaches of public order (List 1); and (ii) mere breaches of law and order (List 2):

2.4.1 List I - Breach of Public Order

- A. Demanding chauth and goondagardi fee from shopkeepers and contractors;⁷³
- B. Gunda taxes being collected and villagers threatened to be burned and killed if evidence is given against detenu;⁷⁴
- C. Realization of goonda tax, two separate incidents of assault and murder for refusal to pay, threat to kill witness, abduction of a police constable are activities that affect public order;⁷⁵
- D. Involvement in various crimes, but acquitted because witnesses did not depose against him out of fear of being shot dead;⁷⁶

⁶⁷ *A.K. Roy v. Union of India*, AIR 1982 SC 710.

⁶⁸ *Ajay Dixit v. State of UP*, 1985 (22) ACC 1 (SC) (Sum); *Ashok Kumar v. Delhi Administration*, 1982 (19) ACC 262 (SC); *State of U.P. v. Hari Shanker Tiwari*, 1987 (24) ACC 203 (SC).

⁶⁹ *Smt. Victoria Fernandes v. Lalmal Sawma*, 1992 (29) ACC 143.

⁷⁰ *Zaka Ullah v. Superintendent, District Jail, Basti and others*, 2005 (51) ACC 361 (HC).

⁷¹ *Chandan Vishwakarma v. State of U.P. and others*, 2019 (108) ACC 33 (H.C.)

⁷² *Ashfaq alias Bhoore v. State of U.P.*, 1984 (21) ACC 192(HC).

⁷³ *Sharad Kumar Tyagi v. State of U.P.*, 1989 (26) ACC 268 (SC).

⁷⁴ *Brij Nandan v. District Magistrate Jalaun at Orai and others*, 2002 (45) ACC 194 (HC).

⁷⁵ *Naushey v. District Magistrate, Jalaun at Orai and others*, 2002 (45) ACC 200 (HC).

- E. Manufacture of forged motor vehicle permits, certificates, passport, etc. and also recovery of opium from his residence;⁷⁷
- F. Armed dacoity of two roadways buses;⁷⁸
- G. Forming a gang to loot persons going to a bank to deposit money, affects the tempo of life;⁷⁹
- H. Criminal conspiracy to commit murder, dacoity etc.—Having a place for collection of criminals—Dacoity committed—Recovery of looted money with pistol, cartridges and knife—Caused panic in the locality;⁸⁰
- I. Petitioners extended threats to people in general and Provincial Armed Constabulary had to be employed which clearly shows that the even tempo of the community was affected;⁸¹
- J. Commission of dacoity in broad daylight on the National Highway;⁸²
- K. Huge number of travelers cheques found at the press of detenu;⁸³
- L. Killing one prisoner and injuring another when they were being taken from police lock-up to the Court causing panic in the bazaar leading to closing of shops;⁸⁴
- M. Stopped a bus on NH-2 and started indiscriminate firing causing serious injuries to constables present in the bus. They took away an accused from judicial custody while looting two police rifles.⁸⁵
- N. Grabbing of Gaon Sabha property;⁸⁶
- O. Crime committed not as a result of personal enmity but as part of organized crime;⁸⁷
- P. Detenu was an active worker of an organisation supplying cartridges to the organisation to uproot the existing Government in Nepal as well as organizing Maoist terrorist activities in India;⁸⁸
- Q. Trading of a huge amount of fake currency;⁸⁹
- R. Illegal construction using substandard material while constructing 261 flats without getting the layout/map sanctioned;⁹⁰
- S. Kidnapping and detaining the victims in a jungle and releasing them on payment of ransom after negotiations;⁹¹
- T. Murder in full view of the family members of the deceased and villagers. Neck chopped off and body dragged for 3 km and chopped into pieces and thrown in canal. Threats to the informant and eye witnesses. Complete disruption of public order.⁹²
- U. Inhuman murder which caused a reaction upon the public of the region. There was Chakkajam by a large mob which burnt houses and caused serious commotion in the adjoining areas including the village of the accused-persons.⁹³
- V. Petitioner along with his associates came to place of the deceased, abused him and shot him on his head. All of them exhorted the villagers and ran away. Dead body was taken to the police station and

⁷⁶ *Guchchan v. District Magistrate*, 1984 (21) ACC 50 (Sum)

⁷⁷ *Devendra Kumar Goel v. State of U.P.*, 1985 (22) ACC 36 (Sum). Although in this case detention was set aside for non compliance of provisions of section 10.

⁷⁸ *Masroor alias Kalia v. District Magistrate, Moradabad*, 1984 (21) ACC 71.

⁷⁹ *Ganga Prasad Dubey v. State of U.P.*, 1990 (27) ACC 307

⁸⁰ *Praveen Dubey v. State of U. P. and others*, 2003 (46) ACC 446 (HC)

⁸¹ *Harbansh v. District Magistrate*, 1990 (27) ACC 162

⁸² *Rajan Lal Sharma v. Distt. Magistrate, Moradabad*, 1985 (22) ACC 25; *Sihwar Chand v. State of U.P.*, 1999 (39) ACC 924.

⁸³ *Deepak Sharma v. D.M. Aligarh*, 1998 (37) ACC 200.

⁸⁴ *Rana @ Parvinder v. Union of India and others*, 2002 (44) ACC 757 (HC)

⁸⁵ *Ajeet Singh v. Union of India and others*, 2017 (99) ACC 473 (H.C.)

⁸⁶ *Rakesh Singh v. State of U.P. and others*, 2002 (44) ACC 740 (HC).

⁸⁷ *Manoj Singh v. Union of India and others*, 2004 (50) ACC 6 (HC).

⁸⁸ *Mahadeo Prasad Sharma v. Union of India and others*, 2003 (Suppl.) ACC 385 (HC)

⁸⁹ *Jafar Husain v. Union of India*, 2009 (65) ACC 14 (HC)

⁹⁰ *Jasbir Maan v. State of U.P. and others*, 2020 (113) ACC 584 (H.C.).

⁹¹ *Raies @ Yogendra Singh Yadav v. State of U.P. and others*, 2002 (Suppl.) ACC 548 (HC).

⁹² *Rakshpal Singh v. State of Uttar Pradesh*, 2000 (41) ACC 614.

⁹³ *Irshad v. State of U.P. and others*, 2005 (51) ACC 372 (HC)

the National Highway remained blocked for several hours. People indulged in acts of arson and rioting on the highway and the police of various police stations had to be called to control the situation.⁹⁴

- W. Insulting government authorities and disturbing an official meeting has sufficient potential to disturb public order;⁹⁵
- X. Forming a gang to smuggle forest produce and attack a police party, affects the tempo of life of the community living in the hills;⁹⁶
- Y. Running a gang and killing protected animals by stealthily entering into the sanctuary and stealing precious wood;⁹⁷

2.4.2 List II – Breach of Law and Order

- A. Petitioner employee of Jal Sansthan and office-bearer of employees' Union threatening to go on hunger-strike which could cause disruption in the water supply to the entire city;⁹⁸
- B. Threatening a person to close down his transport business, investigation on in a murder case, threatening witnesses in the criminal case, extortion, etc.;⁹⁹
- C. Mere movement of a person who is released on bail causes terror without any further overt act;¹⁰⁰
- D. Two persons killed and one sustained serious injuries. Main shooter not brought within the purview of the NSA but a detention order passed against the associates against whom no more serious allegations have been made;¹⁰¹
- E. Allegations against the detenu related to an individual family, not sufficient to disturb the public tranquillity to make out a case of public order;¹⁰²
- F. Grounds of detention were a result of personal enmity and had nothing to do with public order nor against public at large;¹⁰³
- G. Nothing on record to show that by getting the answer books evaluated by incompetent persons the petitioner created any problem to the maintenance of public order;¹⁰⁴
- H. Petitioner made a tunnel in an unknown house, to take benefit of an oil pipeline for pilferage of petroleum product;¹⁰⁵

2.4.3 Lines Get Blurred

A mere perusal of the lists above would show that the distinction between 'public order' and 'law and order' is a thin one and sometimes it even overlaps, as acts of a similar nature, committed in different contexts and circumstances may cause different reactions.¹⁰⁶ It is therefore not the nature or quality of the act but the circumstances or background in the context of which it is done that has to be taken into account.¹⁰⁷ The distinction between law and order and public order is so fickle that there are a number of instances where the High Court has given seemingly contrary orders in similar factual circumstances. An illustrative table showing such circumstances is given below:

⁹⁴ *Bachha alias Nihal Pasi v. Union of India and others*, 2012 (78) ACC 580 (All.)

⁹⁵ *Govind Singh v. State of U.P. and others*, 2000 (Suppl) ACC 294.

⁹⁶ *Shamsher Ahmad v. D.M. Nainital*, 1993 (30) ACC 620

⁹⁷ *Inam v. State of U.P. and others*, 2003 (47) ACC 220 (HC).

⁹⁸ *Santosh Kumar Mehrotra v. Superintendent, Central Jail, Allahabad*, 1987 (24) ACC 64

⁹⁹ *Ashok Dixit v. Union of India*, 1985 (22) ACC 43 (Sum)

¹⁰⁰ *Virendra Shukla v. State of U.P.*, 1998 (36) ACC 664

¹⁰¹ *Mannu Lal and others v. State of U.P. and others*, 2004 (49) ACC 900 (HC).

¹⁰² *Bachau Yadav @ Bachchan Yadav v. State of U.P. and others*, 2004 (50) ACC 105 (HC).

¹⁰³ *Abhiram Yadav v. State of U.P. and others*, 2004 (50) ACC 30 (HC).

¹⁰⁴ *Ram Pratap Singh v. Union of India and others*, 2007 (59) ACC 385 (HC).

¹⁰⁵ *Ram Hari v. Union of India and others*, 2019 (106) ACC 13 (HC) (Sum.)

¹⁰⁶ *Gaurav Singh v. Union of India Through Ministry of Home Government of India and others*, 2004 (50) ACC 729 (HC).

¹⁰⁷ *Shushil Kumar v. State of U.P.*, 1982 (19) ACC 249 (HC).

Comparative Table

Offence	Held to affect Public Order	Held to affect merely Law and Order (hence not Public Order)
Mob violence	<p>On exhortation of the detenu 70-80 villagers armed with lathis attacked the police force and indulged in stone pelting. Shop keepers pulled down their shutters and members of general public hid themselves in their houses;¹⁰⁸</p> <p>Petitioner alongwith 50-60 associates formed an unlawful assembly and led a demonstration protesting against the arrest of the accused who had raped and murdered a minor. Detenu also assaulted the father of the deceased by firing at him;¹⁰⁹</p> <p>Detenu and his associates, became belligerent, armed with lathi, danda, iron rod, sword and country made pistol, etc., jumped on the road and committed arson and sabotage at different places. Even employees who were deployed for maintaining law and order sustained injuries;¹¹⁰</p>	<p>State wise closure strike organized by Samajwadi Party due to which there was allegation of lawless disorderly immoral behaviour in which the detenu and a mob injured 7 police personnel;¹¹¹</p> <p>Mob was not organized nor any distinguishable act done by the detenus and no casualty happened in the incident;¹¹²</p> <p>Members from the public suddenly gathered in large numbers, only because some public authorities and officials were assaulted;¹¹³</p>
Threat of communal tension	<p>Leading a mob which was making an issue on tearing of the pages of the Holy Quran;¹¹⁴</p> <p>Detenu was the District President of Hindu Yuva Vahini and was habitually involved in flaring and spreading communal riots, several houses of Muslims were looted and set ablaze;¹¹⁵</p> <p>Detenu assembled hundreds of Muslim Youths and shouted slogans, delivered inflammatory speeches and incited people to loot and arson. Situation was controlled only when P.A.C., R.P.F. and Police forces were deployed;¹¹⁶</p> <p>Inflammatory communications flaring up disaffection between two communities;¹¹⁷</p>	<p>Instigating one community to attack another community but assaulting only one person at night;¹¹⁹</p> <p>Detenu merely made a plan once to generate a religious quarrel between Hindus and Muslims;¹²⁰</p> <p>Merely because the assailants were Muslims and the victims were Hindus does not mean that it was a communal incident;¹²¹</p> <p>Alleged clash not shown to be communal in nature, persons indulged in brick batting but escaped seeing the police and they never challenged the</p>

¹⁰⁸ *Dablu Rai alias Dilip Rai v. State of U.P and others*, 2016 (94) ACC 247 (H.C.).

¹⁰⁹ *Shahzad S/o. Hazi Istiyaque v. Superintendent, District Jail, Ferozabad and others*, 2010 (70) ACC 677 (H.C.)

¹¹⁰ *Chandrasekhar alias Ravan v. State of U.P. and another*, 2019 (108) ACC 38 (H.C.) (Sum.).

¹¹¹ *Kamlesh Pathak v. District Magistrate, Auraiya and others*, 2009 (66) ACC 743 (HC).

¹¹² *Jai Pal v. Union of India and others*, 2020 (110) ACC 457 (H.C.)

¹¹³ *Deepu alias Kuldeep Yadav v. Union of India and others*, 2018 (103) ACC 557 (HC).

¹¹⁴ *Abdul Salman @ Salman v. State of U.P. and others*, 2008 (62) ACC 97 (HC).

¹¹⁵ *Sujeet Kumar Singh v. Union of India and others*, 2007 (57) ACC 825 (HC).

¹¹⁶ *Ziyaul Hasan v. State of U.P. and others*, 2007 (57) ACC 377 (HC)

¹¹⁷ *Sayeed v. State of U.P. through Secretary Home, Govt. of U.P., Lucknow and others*, 2014 (85) ACC 833 (HC).

	Rape and murder of girl of another community which was bound to affect social peace; ¹¹⁸	authority of the police; ¹²²
Assault or firing on police personnel	<p>Creating disturbance in Collectorate, threatening bidders not to bid for liquor shops in a particular area and firing at the police with a country made pistol;¹²³</p> <p>Creating panic and firing upon a police party, number of cases registered against the detenu and creating a reign of terror and disturbing the tempo of life;¹²⁴</p> <p>Throwing bombs on the police;¹²⁵</p> <p>Firing on the police;¹²⁶</p> <p>Detenu allegedly a dare devil criminal and liquor smuggler started firing on police personnel. Fire arms and cartridges recovered from his possession;¹²⁷</p>	<p>Alleged act of committing murder of the deceased or assault by fire arms on a police party;¹²⁸</p> <p>Disturbance caused by the assault on the policemen in the fair did not cause any disturbance to the public order specially because the constables were drunk with power;¹²⁹</p>
Throwing Acid on a woman	Detenu harassing a girl due to a one-sided love affair, threw acid on her face causing severe burn injuries. Occurrence is in a sensitive district prone to communal riots due to which there was a possibility of disturbance in communal harmony as the accused was a Muslim boy and victim was a Hindu girl; ¹³⁰	Single incident of throwing acid on a girl student causing her death and injury to a number of other girls; ¹³¹
Rape (with or without murder)	Detenu along with his associates entered the house, stripped naked the niece of the complainant and threw her naked outside the house. On raising an alarm many neighbours assembled and the	Mid-night rape committed at pistol point on the wife of the informant who was then murdered; ¹³⁶

¹¹⁹ *Ramesh Jogi v. State of U.P.*, 1986 (23) ACC 282

¹²⁰ *Indra Pal v. Union of India*, 1995 (32) ACC 40 (H)

¹²¹ *Nizamuddin v. State of U.P. and others*, 2002 (44) ACC 593 (HC); *Shiv Prasad Singh v. Union of India and others*, 2003 (46) ACC 444 (HC)

¹¹⁸ *Salam Waris @ Gatte v. State of U.P. and others*, 2009 (66) ACC 792 (HC)

¹²² *Aashif v. State of U.P. and others*, 2020 (110) ACC 102 (H.C.)

¹²³ *Vashishth Narain Karwaria alsia Bhukhal Maharaj v. P.C. Chaturvedi, D.M. Allahabad*, 1988 (25) ACC 363.

¹²⁴ *Zaki Ahmad v. State of U.P.*, 1988 (25) ACC 172.

¹²⁵ *Gajendra Singh v. District Magistrate*, 1985 (22) ACC 419. But detention was vitiated in this case on other ground that detaining authority was influenced by non-existent matter.

¹²⁶ *Suresh Jaiswal v. D.M. Lucknow*, 1986 (23) ACC 582 (LB).

¹²⁷ *Pankaj S/o Kishan Singh v. State of Uttar Pradesh and others*, 2016 (92) ACC 816 (H.C.)

¹²⁸ *Ainul Haq v. Jail Superintendent, Central Jail, Naini and others*, 2004 (48) ACC 480 (HC).

¹²⁹ *Bandoo Bedia v. State of U.P. and others*, 2003 (46) ACC 1173 (HC).

¹³⁰ *Sajid v. State of Uttar Pradesh and others*, 2015 (90) ACC 888 (H.C.).

¹³¹ *Sanjiv Yadav v. Union of India*, 1986 (23) ACC 288

	<p>detenue along with his associates ran away, firing their arms;¹³²</p> <p>Rape of a minor dalit girl followed by threats to kill her and others who gathered hearing her cries;¹³³</p> <p>Rape committed which created a fear psychosis in the adjoining localities;¹³⁴</p> <p>Forcible abduction and gang rape clearly relates to disturbance of public order;¹³⁵</p>	
Election related offences	Arriving with lathi, tamancha, ballam and rifle at a polling station and preventing people from casting their vote; ¹³⁷	Single criminal act emanating from an election rivalry; ¹³⁸
Cow Slaughter	<p>Slaughtering of a large number of calves in an area inhabited by different communities. Disturbing communal harmony, is an act prejudicial to public order.¹³⁹</p> <p>Detenue slaughtered a cow. Incident caused communal tension disturbing communal amity and harmony essential for the progress of the nation. Public order affected.¹⁴⁰</p> <p>Petitioners found slaughtering cows at 12.30 in the night and also fired upon the police force. Atmosphere of communal tension gripped the area. Maintenance of public order badly affected.¹⁴¹</p> <p>It is immaterial whether cows were slaughtered inside the house. Feelings of the persons of Hindu community were badly hurt. Slaughtering</p>	<p>A solitary cow appeared to have been slaughtered within the confines of one's house, body parts including beef were not taken out for sale and secrecy was maintained so as to avoid public gaze. Demonstrations, appeared to be a consequence of spread of information and rumours, not direct consequence of the act. Act of the petitioner did not have the potential to breach public order but that was just a case of breach of law and order.¹⁴³</p> <p>Slaughtering cows and consumption of beef cannot attract provisions of the NSA. It would be an offence under the Cow Slaughter Act.¹⁴⁴</p>

¹³⁶ *Ved Prakash @ Raju Tiwari v. Union of India and others*, 2001 (Suppl.) ACC 475 (H.C.-L.B.)

¹³² *Pappu v. State of U.P. and others*, 2007 (57) ACC 912 (HC)

¹³³ *Santosh v. District Magistrate, Agra and others*, 2003 (46) ACC 304 (HC).

¹³⁴ *Kaleem v. Union of India and others*, 2003 (46) ACC 682 (HC-LB)

¹³⁵ *Guddu @ Shamsher v. State of U.P. and others*, 2001 (42) ACC 370 (HC); *Dinesh Kumar Gupta v. Union of India and others*, 2003 (46) ACC 115 (HC-LB); *Rajesh Kumar Sharma v. State of U.P.*, 2003 (46) ACC 951 (HC).

¹³⁷ *Jitendra Prasad v. State of U.P.*, 1999 (38) ACC 7 (H)

¹³⁸ *Ram Shlok Pandey through his friend Santosh Kumar Pandey v. Union of India through Secy. Govt. of India, Ministry of Homes and others*, 2016 (95) ACC 781 (H.C.-L.B.)

¹³⁹ *Idris v. Union of India and others*, 2000 (40) ACC 799 (Although detention quashed on ground of delay). Also see *Tauqeer v. State of U.P. and others*, 2002 (44) ACC 1088 (HC).

¹⁴⁰ *Shaukat Ali v. Union of India and others*, 2002 (45) ACC 1121 (HC); *Parvez v. Union of India and others*, 2002 (44) ACC 1059 (HC); *Guddu Panchhi v. District Magistrate, Kanpur Nagar and others*, 2004 (49) ACC 660 (HC); *Faeem v. State of U.P. and others*, 2003 (47) ACC 240 (HC); *Raees v. District Magistrate, Kanpur Nagar and others*, 2004 (49) ACC 657 (HC); *Riyazuddin v. State of U.P. and others*, 2017 (99) ACC 434 (H.C.); *Zishan v. Superintendent District Jail, Muzaffarnagar and others*, 2010 (68) ACC 556 (H.C.).

¹⁴¹ *Farid v. Union of India and others*, 2004 (50) ACC 732 (HC).

	done in broad daylight in the knowledge of the entire locality. ¹⁴²	
Violence in the open market	<p>Detenu and his companions beating up a person in their house and on another day throwing a bomb in a market place and threatening people not to advance against him. Could be a ground for detention.¹⁴⁵</p> <p>Single dare devil criminal act of murder. Incident took place in Katra Bajar market which is a public place and was witnessed by large numbers of general public. Manner of committing act created terror in the mind of the general public.¹⁴⁶</p> <p>Act of petitioner in killing the brother of the shopkeeper in a shop in a busy market area for refusal to pay goonda tax to the petitioner and his associates cannot be said to be merely a law and order problem. It amounts to disturbance of public order.¹⁴⁷</p>	Threatening some individuals in the open market with a pistol. Not a breach of public order. ¹⁴⁸
Violence in a public place	<p>Broad daylight incident of firing with the intention to murder a CDO. Firing done in an open public place, impact on general public would be tremendous. Case of disturbance of public order.¹⁴⁹</p> <p>Firing of shots at 6 o'clock in a densely populated mohalla created terror in the locality and public order was disturbed.¹⁵⁰</p> <p>Detenu not new to the criminal world. Murder at a petrol pump, a public place. Terror created in public at large. Circumstances suggest breach of public safety.¹⁵¹</p>	<p>Shooting incident took place on account of previous enmity with the deceased and his family members, although people of the locality and passers-by started running and closed their doors;¹⁵⁶</p> <p>Murder in broad daylight, threatening witnesses and forcing them to file affidavits in a murder case;¹⁵⁷</p>

¹⁴³ *Faiyyaz Quraishi v. Union of India and others*, 2019 (109) ACC 401 (H.C.); *Saeed v. State of U.P. and others*, 2007 (57) ACC 673 (HC); *Nafees Qureshi v. Union of India and others*, 2017 (100) ACC 12 (H.C.) (Sum.).

¹⁴⁴ *Shahid Quraishi alias Maimber v. State of U.P. and others*, 2020 (111) ACC 485 (H.C.)

¹⁴² *Naeem v. District Magistrate, Agra and others*, 2003 (47) ACC 185 (HC).

¹⁴⁵ *Suleman v. State of U.P.*, 1985 (22) ACC 367

¹⁴⁶ *Sanjay @ Saju v. Union of India and others*, 2004 (49) ACC 621 (HC)

¹⁴⁷ *Sarvesh Yadav v. State of U.P. and others*, 2012 (78) ACC 647 (Alld.)

¹⁴⁸ *Kali Charan alias Terha v. State of U.P.*, 1985 (Suppl) ACC 267.

¹⁴⁹ *Rajvanshi Yadav v. State of U.P.*, 1998 (37) ACC 597.

¹⁵⁰ *Lal Singh v. State of U.P.*, 1999 (39) ACC 34 (H) (HC).

¹⁵¹ *Ramdhir Singh v. State of U.P.*, 1997 (Suppl) ACC 641 (H) (HC).

	<p>Dare-devil act of robbery committed in broad day light in a busy locality along with associates. Public order affected.¹⁵²</p> <p>Broad daylight murder was a serious criminal act. Incident occurred on a road in a densely populated area of the village spreading fear and terror among the public. Materially affected public peace.¹⁵³</p> <p>Murder committed in a crowded city area. After committing the crime in a dare-devil manner the petitioners left the scene flaunting their weapons so as to threaten all around.¹⁵⁴</p> <p>Petitioner and his associates killed a hotel owner in a public place in front of the Railway Station. Likelihood of the petitioner repeating his activity on his release on bail, would disturb the maintenance of public order.¹⁵⁵</p>	
General acts of violence	<p>Surrounding and attacking a vehicle with pistols, bombs and a revolver in a medical college campus causing serious injuries to those in the car and damage to the car. Makes out a case of disturbing public order.¹⁵⁸</p> <p>Fired at one person and later with his associates armed with deadly fire arms and bombs attacked other victims and killed one person creating panic and terror in the locality;¹⁵⁹</p> <p>Murder of the Principal of a college created terror in the locality. No one dared to give evidence and the Police who went to arrest was fired on. College lying closed due to terror, it is a case of breach of public order not merely of law and order.¹⁶⁰</p> <p>Petitioner a police constable, shot dead a person of his own village by a licensed gun. Public terrorized badly.¹⁶¹</p> <p>Murder of one person. Dead body cut into pieces and thrown in the river which created</p>	<p>Murderous assault along with five others;¹⁷¹</p> <p>Assault by fire arms confined to the deceased only due to previous enmity;¹⁷²</p> <p>Involvement in a murder trial;¹⁷³</p> <p>Allegation of entering someone's house and firing a pistol, etc. for which he was already in jail;¹⁷⁴</p> <p>Murder of tenant to get premises vacated causing people to panic;¹⁷⁵</p> <p>Single case of firing a country-made pistol and throwing bombs at rival party. FIRs registered by both sides but only the FIR registered against the petitioner was placed before the DM;¹⁷⁶</p> <p>Threatening witnesses about which reports were lodged;¹⁷⁷</p>

¹⁵⁶ *Gappu @ Virendra Yadav v. State of U.P. and others*, 2003 (Suppl.) ACC 698 (HC).

¹⁵⁷ *Sheshdar Misra v. Superintendent Central Jail, Naini*, 1985 (Suppl) ACC 304 (FB).

¹⁵² *Abhay Kumar Srivastava v. State of U.P. and others*, 2003 (47) ACC 363 (HC).

¹⁵³ *Raj Bahadur Singh @ Raja Bhaiya v. State of U.P. Through Home Secretary Secretariat, U.P. Lucknow and others*, 2006 (56) ACC 20 (H) (HC).

¹⁵⁴ *Dillan v. State of U.P. and others*, 2006 (55) ACC 747 (HC) 2006 (44) AIC 831 (HC).

¹⁵⁵ *Rajiv Mishra @ Raju Mishra v. State of U.P. and others*, 2009 (65) ACC 346 (HC).

¹⁵⁸ *Mordhawaj v. District Magistrate, Kanpur Nagar*, 1998 (37) ACC 846.

¹⁵⁹ *Hari Kishun Yadav v. Union of India and others*, 2003 (46) ACC 305 (HC).

¹⁶⁰ *Baburam v. State of U.P. and others*, 2003 (46) ACC 82 (HC).

¹⁶¹ *Harish Chandra Rai v. Union of India*, 2002 (45) ACC 20 (H) (HC).

	<p>panic in the locality and spread terror in the vicinity. Entire public terrorized and nobody dared to report the incident.¹⁶²</p> <p>Notorious criminal minded person with several cases of robbery, murder and possession of illicit arms pending against him. Established from material that upon release on bail he would indulge in similar activities.¹⁶³</p> <p>Services terminated by the principal, the informant of the murder case, due to lapses and misconduct of the detinue. Son of the principal murdered and dead body recovered in the presence of the detinue from his house. Act affects the tempo of life and public order jeopardized.¹⁶⁴</p> <p>One person died and another sustained serious injuries due to indiscriminate firing by the petitioner and his associates.¹⁶⁵</p> <p>Petitioner assaulted and insulted the professor in presence of his wife and other students and threatened to disrupt the functioning of the University. Such an act sent shock waves in the campus and would be deemed to be a breach of public order.¹⁶⁶</p> <p>Petitioner abducted an eight year old female child and committed her murder in a brutal manner for no rhyme or reason and threw her dead body in a river.¹⁶⁷</p> <p>Six or seven persons including the petitioner started indiscriminate firing resulting in the death a person on the spot.¹⁶⁸</p> <p>Petitioner committed murder of two persons in brutal manner in broad-day light as a result of which shops in the nearby area were closed and</p>	<p>Serious injuries caused by firing shots as a result of personal enmity;¹⁷⁸</p> <p>Incident resulting in loss of life of one person and injuring two persons;¹⁷⁹</p> <p>Victim shot dead after a brief altercation; no additional force deployed in the area;¹⁸⁰</p> <p>Two persons done to death due to personal enmity and incident arising out of a simple matter;¹⁸¹</p> <p>Petitioner alongwith his associates fired gunshot resulting in 'J' dying on the spot;¹⁸²</p> <p>Incidents relating to IPC and Arms Act but detinue not even named in the first FIR;¹⁸³</p> <p>Solitary incident of murder arising on account of a dispute regarding accounts of the partnership;¹⁸⁴</p> <p>Single incident of murder due to personal animosity;¹⁸⁵</p> <p>Petitioner and his associates allegedly targeted the members of their opponent family, as a result of which two persons died, no stranger or innocent person was injured;¹⁸⁶</p> <p>Crime was allegedly committed by the petitioners due to enmity and the incident did not take place on a busy road but occurred near the house of the petitioners;¹⁸⁷</p> <p>A solitary instance of robbery is not</p>
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¹⁷¹ *Syed Mohd. Aslam v. State of U.P.*, 1985 (22) ACC 127

¹⁷² *Ghanshyam Nishad v. Suptd. Central Jail, Naini, Allahabad*, 1988 (25) ACC 397

¹⁷³ *Arvind Kumar Shukla v. State of U.P.*, 1985 (Suppl) ACC 243

¹⁷⁴ *Komal v. State of U.P.*, 1985 (Suppl) ACC 236

¹⁷⁵ *Virendra Shukla v. State of U.P.*, 1998 (36) ACC 664

¹⁷⁶ *Munna Jaiswal v. District Magistrate Varanasi*, 1986 (23) ACC 6 (Sum)

¹⁷⁷ *Jiwan Singh v. State of U.P.*, 1999 (39) ACC 139

¹⁶² *Tej Bhan Singh v. Union of India and others*, 2002 (44) ACC 529 (HC).

¹⁶³ *Abhay Kumar Srivastava v. State of U.P. and others*, 2003 (47) ACC 363 (HC).

¹⁶⁴ *Gaurav Singh v. Union of India Through Ministry of Home Government of India and others*, 2004 (50) ACC 729 (HC)

¹⁶⁵ *Ambrish Rai v. State of U.P. and others*, 2003 (Suppl.) ACC 896 HC).

¹⁶⁶ *Anand Kumar Singh v. State of U.P. and others*, 2009 (64) ACC 785 (HC).

¹⁶⁷ *Janu v. State of U.P. and others*, 2012 (78) ACC 434 (Alld.)

¹⁶⁸ *Minna @ Minta @ Jasveer v. State of Uttar Pradesh and others*, 2015 (90) ACC 523 (H.C.).

	<p>people ran for taking shelter after leaving their vehicles etc.¹⁶⁹</p> <p>Attack by petitioner and other accused persons with fire-arms and bombs in which two people lost their life. There was an enmity between the parties and the crime was committed in a brutal manner on a public highway and terror was created by the activities of the petitioner.¹⁷⁰</p>	<p>relevant for sustaining the orders of detention.¹⁸⁸</p>
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A perusal of the above tables would lead to the conclusion that although broad principles regarding which circumstances affect public order and which affect merely law and order have been laid down on a number of occasions, the application of these principles to real life situations is not as straightforward and perhaps takes into account other factors, not all of which may be capable of quantification.

2.4.4 Essential Commodities

Another ground for preventive detention under the NSA is to prevent the person from acting in a manner prejudicial to the maintenance of supplies and services essential to the community. Restricting the meaning of the phrase ‘maintenance of supplies and services essential to the community’ the Supreme Court in *A.K. Roy* added a condition that the supplies and services that are regarded as essential to the community have to be published and publicised either by a law, order or notification. Thus persons can be detained under this clause only in respect of the supplies and services which have been notified in this respect.¹⁸⁹ In pursuance of this direction, the Ministry of Home Affairs issued a notification containing a list of 16 items, the disruption of which could warrant invocation of this clause.¹⁹⁰ Relying upon this clause the Allahabad High Court on several occasions upheld detention orders passed on the ground that the detenu was involved in cutting electricity wires and causing a disruption in the supply of electricity.¹⁹¹ Interestingly in all of these cases the High Court did not uphold the detention orders merely on the ground of disruption of essential supplies, but

¹⁷⁸ *Deepak Sharma v. Superintendent, Distt. Jail, Meerut and others*, 2003 (46) ACC 264 (HC)

¹⁷⁹ *Suresh Chandra Katore v. State of U. P. and others*, 2001 (43) ACC 408 (HC).

¹⁸⁰ *Awadhesh Singh v. Union of India and others*, 2004 (49) ACC 658 (HC).

¹⁸¹ *Vishnu Kant Mishra alias Pappu (In Jail) v. State of U.P. and others*, 2003 (47) ACC 4 (H) (HC).

¹⁸² *Aleem v. State of U.P.*, 2004 (49) ACC 14 (Sum.) (HC).

¹⁸³ *Yuvraj Singh s/o Kanchan Singh v. State of U.P. and others*, 2002 (45) ACC 998 (HC).

¹⁸⁴ *Vinay Kumar Sahu v. State of U.P. and others*, 2003 (46) ACC 1013 (HC).

¹⁸⁵ *Atiq Ahmad v. State of U.P. and others*, 2001 (Suppl.) ACC 601 (HC).

¹⁸⁶ *Vipin v. State of U.P. and others*, 2004 (Suppl.) ACC 141 (HC).

¹⁸⁷ *Zaka Ullah v. Superintendent, District Jail, Basti and others*, 2005 (51) ACC 361 (HC) = 2005 (27) AIC 451 (HC).

¹⁶⁹ *Ashok Yadav v. State of U.P. and others*, 2019 (108) ACC 44 (H.C.) (Sum.)

¹⁷⁰ *Ashok Yadav v. State of U.P. and others*, 2019 (106) ACC 736 (H.C.)

¹⁸⁸ *Adab @ Irfan v. State of U.P. and others*, 2019 (107) ACC 19 (H.C.) (Sum.).

¹⁸⁹ *A.K. Roy v. Union of India*, AIR 1982 SC 710.

¹⁹⁰ <https://egazette.gov.in/WriteReadData/1982/E-0948-1982-0024-41162.pdf>

¹⁹¹ *Sandeep Dwivedi etc. v. State of U.P. and others*, 2004 (49) ACC 913 (HC); *Jwala Singh Kanchhi v. State of U.P. and others*, 2002 (45) ACC 1120; *Iqbal Husain v. District Magistrate, Budaun and others*, 2003 (46) ACC 85 (HC); *Jwala Singh Kanchhi v. State of U.P. and others*, 2002 (45) ACC 1120 (HC).

brought in the concept of public order and justified the detention on the ground that disruption of supply of electricity would affect public order. However, in the case of *Morad Ali v. Union of India and others*,¹⁹² for a similar offence of cutting electrical wire the detention order was upheld on the ground that the actions of the detenu were prejudicial to the maintenance of electric supply, an essential service to the community, without any reference to the concept of public order.

Key Takeaways

- There is a very fine distinction between acts which affect ‘public order’ and those that affect mere ‘law and order’
- Judicial decisions on whether a particular act affects public order or merely law and order can be very confusing since they often have to take into account other factors as well
- For certain actions such as mob violence, threat of communal tension, assault or firing on police personnel, throwing acid on a woman, rape, election related offences, cow slaughter, violence, etc. there are diametrically opposite decisions of the Allahabad High Court

2.5 Use of NSA by the State of UP

As is clear from the discussion above, there is a lot of scope for subjectivity and a clear lack of consistency in judicial decision, which is precisely what various governments try to take advantage of in invoking the NSA in cases where the invocation of the Act may not be warranted. The indiscriminate use of the NSA by the State of U.P. in cases where it was not warranted was illustrated by an investigation undertaken by the Indian Express which examined a 120 *Habeas Corpus* petitions decided by the Allahabad High Court over a 3 year period between January 2018 and December 2020. It was found that the Allahabad High Court struck down the detention orders in 94 of the 120 cases analysed.¹⁹³ This high rate of success in petitions filed before the High Court also seems to corroborate the opinions expressed by various Advocates practicing in the Allahabad High Court in one-on-one interactions with the author. Even the Supreme Court of India expressed its displeasure on the indiscriminate use of the NSA when the Act was invoked in a revenue recovery matter stating ‘That such a proposal was made, received the imprimatur of the senior officer(s) and even of the Advisory Board does not reflect well on the manner in which the authorities exercise their mind by invoking the provisions of the said Act’.¹⁹⁴

¹⁹² 2002 (Suppl) ACC 266 (HC).

¹⁹³ <https://indianexpress.com/article/express-exclusive/national-security-act-uttar-pradesh-police-detentions-cow-slaughter-ban-7260425/>

¹⁹⁴ *Yusuf Malik v. Union of India, Supreme Court, W.P. (Crl.) No. 16 of 2023, Order Dt. 11-4-2023.*

Although latest data regarding the number of NSA cases in the State of UP is not available, however data from the NCRB from the years 2014 and 2015 shows that UP alone registers more NSA cases than all other States combined.¹⁹⁵

As per a statement given by the Additional Chief Secretary (Home), between January 1 to August 19 in the year 2020, 139 people were detained under the NSA, out of which 76 were for cow slaughter cases, 37 for heinous crimes, 6 for crimes against women and children and 20 for other offences.¹⁹⁶ The UP police issued two separate circulars in 2020 (Circular No 14 of 2020 dated April 18, 2020 and Circular No 30 of 2020 dated September 17, 2020) saying that NSA should be invoked in cow slaughter cases, even though a number of judgments of the Allahabad High Court¹⁹⁷ have quashed the detention under NSA in such cases.

2.6 Who can pass a Detention Order

A detention order can be made by the Central Government or the State Government, provided that in light of circumstances prevailing or likely to prevail in any area, the State Government may by written order, and for a specified period direct the District Magistrate or the Commissioner of Police to issue such orders.¹⁹⁸ The Commissioner of Police or District Magistrate cannot pass an order of detention on the grounds of ‘defence of India’, ‘relations of India with foreign powers’, or ‘security of India’, but can only detain persons for activities prejudicial to the security of the State, maintenance of public order or maintenance of essential supplies and services.¹⁹⁹ An ADM even if exercising the powers of a DM, cannot pass an order of detention.²⁰⁰ In case an order is passed by an officer as contemplated in section 3(3) of the NSA, such officer shall forthwith report the detention, grounds and any other relevant material to the State Government for its approval, which approval must be received within 12 days, else the order becomes ineffective, except in exceptional cases where the order shall become ineffective after 20 days.²⁰¹ The period of twelve days would not include the day of making the detention order.²⁰²

In U.P. the State Government has issued successive Notifications empowering all the District Magistrates of the State to exercise powers of detention and justified this delegation on the ground that ‘in the past, there have been incidents of violence in certain districts of Uttar Pradesh and as a reaction thereto similar incidents have occurred in other parts of the State and are likely to occur in other parts of the State also’.²⁰³ It may be worth noting that the justification given for delegating the power is verbatim in the last three notifications that are

¹⁹⁵ <https://ncrb.gov.in/crime-in-india-all-previous-publications.html>

¹⁹⁶ <https://indianexpress.com/article/india/in-uttar-pradesh-more-than-half-of-nsa-arrests-this-year-were-for-cow-slaughter-6591315/>

¹⁹⁷ *Faiyyaz Quraishi v. Union of India and others*, 2019 (109) ACC 401 (H.C.); *Saeed v. State of U.P. and others*, 2007 (57) ACC 673 (HC); *Nafees Qureshi v. Union of India and others*, 2017 (100) ACC 12 (H.C.) (Sum.), *Shahid Quraishi alias Maimber v. State of U.P. and others*, 2020 (111) ACC 485 (H.C.).

¹⁹⁸ Section 3(3).

¹⁹⁹ *Syed Mohd Nadeem v. Superintendent, District Jail, Agra and others*, 2001 (Suppl.) ACC 43 (HC).

²⁰⁰ *Vishisht Narain Karvaria v. State of U.P.*, 1981 (18) ACC 383 = *Gaurav v. Union of India*, 2000 (41) ACC 445.

²⁰¹ Section 3(4) of the NSA. See *Ranbir Singh v. T. George Joseph, D.M. Meerut*, 1988 (25) ACC 126 (SC).

²⁰² *Jitender Tyagi v. Delhi Administration*, 1989 (26) ACC 672 (SC).

²⁰³ Notification No. 111/1/80-CX-7–T.C.-III, dated October 14, 2022

available on the website of the Directorate of Printing and Stationary, Government of U.P.²⁰⁴ Although notifications are not available on the website for the period before January 2022, it appears from an analysis of the case laws that have been cited above, that this power to detain has been given to the District Magistrates in the State of UP for a long time, as most of the detention orders in the cases analyzed have been issued by the District Magistrates of the relevant district.

2.7 Reporting of Detention to the State and Central Government

In case the order of detention has been made by the State Government, it is obligated to report the fact of detention together with the grounds and other material particulars to the Central Government within seven days.²⁰⁵ Failure to send such a report within 7 days would make the detention order illegal.²⁰⁶ Although the statute does not provide for any action on behalf of the Central Government, judicial decisions have imposed an obligation upon the Central Government to not only scrutinize the report but also effectively dispose it off within the meaning of section 14 of the NSA. A mere scrutiny of the report would fall short of its actual disposal, and in the absence of such disposal the detention order would be rendered invalid.²⁰⁷ The disposal is also required to be done expeditiously without any delay and in case of an unexplained delay, of even a week, the order of detention may be set aside.²⁰⁸

2.8 Advisory Boards

In order to comply with the requirements of Article 22(4) the NSA also provides for the constitution of Advisory Boards²⁰⁹ before which the grounds of every detention order and the representation, if any made by the detenu, are required to be placed within three weeks of the date of detention.²¹⁰ The expression required to be cannot be interpreted to mean that the materials have to be considered by the Advisory Board within three weeks.²¹¹ Non compliance of the provision by not placing the representation before the Board²¹² or exceeding the time period of three weeks would also vitiate the detention,²¹³ and the period of 21 days has to be counted from the date of detention not the date of the detention order or date of service of the order.²¹⁴

The Board may call for further information from the appropriate Government or any person concerned and submit its report within a period of seven weeks from the date of detention.²¹⁵

²⁰⁴ <https://dpsup.up.gov.in/en/gazettearchive?Gazettelistslug=en-extra-ordinary-gazette>

²⁰⁵ Section 3(5) of the NSA.

²⁰⁶ *Guru Charan Singh v. Suptd. Central Jail, Bareilly*, 1986 (23) ACC 33.

²⁰⁷ *Kashi Nath Yadav v. Union of India*, 1985 (Suppl) ACC 237 (HC).

²⁰⁸ *Vijay Pal v. Union of India and others*, 2009 (66) ACC 146 (HC).

²⁰⁹ Section 9 of the NSA. Section also provides that the Board shall consist of three persons who are, or have been, or are qualified to be appointed as, Judges of a High Court. The Chairman of the Board shall be a person who is or has been a Judge of the High Court.

²¹⁰ Section 11 of the NSA.

²¹¹ *Raisuddin alias Babu Tamchi v. State of U.P.*, 1983 (20) ACC 388 (SC).

²¹² *Irfan alias Gama v. State of Uttar Pradesh*, 1985 ACC (Suppl) 195. See also *Madan Bhaiyya @ Madan Gopal v. Superintendent, Central Jail, Tihar Jail, Delhi and others*, 2000 (41) ACC 397 (HC).

²¹³ *Faishal Malik v. State of U.P.*, 1984 (21) ACC 317 (HC).

²¹⁴ *Sushil Kumar v. State of U.P.*, 1982 (19) ACC 248.

²¹⁵ Section 11 of the NSA.

The detenu may offer oral and documentary evidence in rebuttal of the allegations but neither the detenu nor the Government have the right to appear before the Advisory Board through a legal practitioner.²¹⁶ However, where the detaining authority was represented by officials and legal officers and the detenu's request to be represented by a legal practitioner was rejected, the continued detention was held to be illegal.²¹⁷ Further, even though there is no right to appear before the Advisory Board through a legal practitioner, there is no bar against the representation being made on behalf of the detenu by an Advocate.²¹⁸ It has also been held that detention cannot be challenged on the ground of parity, i.e. other detenus who were detained on similar grounds were released under section 12 or 14, as the consideration for detention is inherently subjective.²¹⁹

If the Advisory Board opines that there are sufficient grounds for detention, the appropriate Government has the discretion to confirm the detention order and continue the detention.²²⁰ However before confirming the detention the State Government has to apply its mind afresh to all the material including the report of the Board, and such application of mind has to be reflected on the record. Where the confirmation order was passed while considering the report of some other person, the continued detention was set aside for want of application of mind.²²¹ On the other hand if the Advisory Board opines that there is no sufficient cause for detention of a person, the appropriate Government is obligated under law to release such person.²²² The maximum period for which a person may be detained under the NSA after the detention is confirmed by the Advisory Board is twelve months, which shall be counted from the date of detention.²²³

In UP the Advisory Board is notified by the Governor, and currently consists of a sitting Judge of the Allahabad High Court as the Chairman along with two retired Judges as members.²²⁴ Interestingly the Advisory Board is appointed by the Governor on the *recommendation* of the Allahabad High Court, which shows that the judiciary has a major role to play in the appointments made to the Advisory Board. The appointment of the Advisory Board on the recommendation of the Chief Justice of the High Court was provided for in section 3 of the Constitution (Forty Fourth) Amendment Act, 1978, however even though other provisions of the Act were brought into force²²⁵ on various dates, section 3 of the Act, 1978 was never brought into force.

Although data for the State of UP is not separately available, the annual NCRB report on Crime in India gives the following figures of the number of detainees released by the Advisory Board:

²¹⁶ *A.K. Roy v. Union of India*, AIR 1982 SC 710.

²¹⁷ *Hazi Inayat Ali v. Superintendent/District Jail, Muzaffarnagar and others*, 2018 (Suppl.) ACC 868 (HC)

²¹⁸ *Piara Singh v. State of Punjab*, 1986 (24) ACC 478 (SC).

²¹⁹ *Chandresh Paswan v. State of U.P.*, 1999 (38) ACC 721 (H.C.-FB)

²²⁰ Section 12 of the NSA.

²²¹ *Manohar v. State of U.P. and others*, 2019 (109) ACC 421 (H.C.)

²²² *Deepak Sharma v. D.M. Aligarh*, 1998 (37) ACC 200.

²²³ *Nafis v. State of U.P.*, 1988 (25) ACC 416 (LB).

²²⁴ Notification no. 111/1/3//80-CX-7(T.C.-III), dated September 7, 2022; Notification no. 111/1/3//80-CX-7(T.C.-III), dated January 21, 2021, etc.

²²⁵ Sections 2, 4 to 16, 22, 23, 25 to 29, 31 to 42, 44 and 45 came into force on 30 April 1977; Sections 17 to 21 and 30 came into force on 1 August 1979; and Sections 24 and 43 came into force on 6 September 1979.

Year	Number of Persons Detained	Persons released by Board
2021	480 (Total 110683)	242
2020 (page 1237)	741 (Total 89405)	410
2019 (page 1211)	489 (Total 106612)	279
2018 (page 1211)	697 (Total 98768)	334
2017 (page 1211)	487 (Total 67084)	229

The above figures suggest that Advisory Boards overturn more than 50% of the detention orders passed in all of India.

Key Takeaways

- The High Court appears to have some role in the constitution of the Advisory Board
- Advisory Boards nationwide seem to overturn more than half the cases referred to them

2.9 Service of Grounds of Detention

In keeping with the requirements of Article 22(5) of the Constitution of India, 1950 the NSA provides that the grounds of detention²²⁶ must be communicated to the detainee by the detention authority as soon as may be and ordinarily not later than five days,²²⁷ and also afford the detainee an opportunity to make a representation against the detention.²²⁸ The detenu has a right to make a representation to the detaining authority only till the time that the State Government approves the detention.²²⁹ Once the order is approved by the State Government, the detaining authority cannot modify or revoke the detention order.²³⁰ Thereafter the representations can be made to both the State Government as well as the Central Government.²³¹

The grounds of detention would also include material forming the basis of the satisfaction of the detaining authority²³² alongwith materials relevant for making a representation by the detenu.²³³

²²⁶ Other than those, the disclosure of which is considered to be against public interest.

²²⁷ The period can be extended to fifteen days in exceptional circumstances. But there is no obligation to communicate the circumstances and reasons for the delay, *State of Rajasthan v. Talib Khan*, 1997 (1) ACC 166 (SC).

²²⁸ Section 8 of the NSA.

²²⁹ *Sushil Singh v. D.M. Kheri and others*, 2003 (46) ACC 398 (HC-LB).

²³⁰ *Km. Indu Mishra v. Union of India and others*, 2012 (77) ACC 18 (Alld.-F.B.).

²³¹ *Km. Indu Mishra v. Union of India and others*, 2012 (77) ACC 18 (Alld.-F.B.); *Azim Uddin alias Aji v. Suptd. District Jail, Meerut*, 1996 (33) ACC 916 (HC); *Madan Chauhan v. State of U.P.*, 1997 (34) ACC 323

²³² *Taj v. State of U.P.*, 1997 (34) ACC 208; *Saivraj Singh v. State of U.P.*, 1982 (19) ACC 10 (Sum)

²³³ *Mumtaz Khan v. District Magistrate, Moradabad*, 1982 (19) ACC 3

Further the Courts have provided that the family members of the detenu must immediately be informed about the order of detention, the fact that the detenu has been taken in custody, the place of detention, including the place where the detenu is transferred from time to time.²³⁴ Over the years the courts, while following the general premise of interpreting preventive detention laws strictly, have struck down detention orders on a number of grounds such as:

- A. specifying the period of detention in the order itself;²³⁵
- B. failure to inform the detenu of his right to make a representation against the detention;²³⁶
- C. failure to inform the detenu of his right to make a representation to both the appropriate government as well as the Central Government;²³⁷
- D. informing the detenu that he has an option to make a representation to the detaining authority instead of a right to make a representation;²³⁸
- E. Detenu did not understand the language in which the grounds of detention were supplied;²³⁹
- F. Order of detention not served for two years without any reasons for non service of order;²⁴⁰
- G. Report of sponsoring authority not supplied to the detenu.²⁴¹

However not every minor defect would affect the validity of the detention order; challenges to detention orders have been rejected and detention orders held valid in the following circumstances:

- A. Copy of order supplied to detenu did not have the signature of the DM;²⁴²
- B. Non supply of date of statements of the witnesses;²⁴³
- C. Non supply of Local Intelligence Unit (LIU) report, which is a confidential document;²⁴⁴
- D. Non supply of copies of statements of witnesses who had turned hostile in a stale case, which anyways could not be considered as a ground for detention;²⁴⁵
- E. Non-supply of power of delegation under which the detaining authority passed the order of detention.²⁴⁶

²³⁴ *A.K. Roy v. Union of India*, AIR 1982 SC 710.

²³⁵ *Ashok Kumar v. Delhi Administration*, 1982 (19) ACC 262 (SC); *Moradhawaj v. District Magistrate, Kanpur Nagar*, 1998 (37) ACC 846.

²³⁶ *Vijay Kumar Mishra v. Superintendent, District Jail, Gorakhpur and others*, 2002 (45) ACC 334 (HC); *Bhura v. District Magistrate, Aligarh and others*, 2003 (46) ACC 301 (HC).] ; *Ravindra Singh v. Supdt. District Jail, Bulandshahr and others*, 2002 (44) ACC 251 (HC); *Ashish Seth v. District Magistrate Lakhimpur-Kheri and others*, 2002 (Suppl.) ACC 950 (H.C.–L.B.).

²³⁷ *Azim Uddin alias Aji v. Suptd. District Jail, Meerut*, 1996 (33) ACC 916 (HC); *Madan Chauhan v. State of U.P.*, 1997 (34) ACC 323

²³⁸ *Mohammad Jaid v. District Magistrate, Sitapur and others*, 2002 (45) ACC 611 (HC–LB); *Mohd. Yusuf alias Munday v. Union of India and others*, 2002 (Suppl.) ACC 297 (HC-LB).

²³⁹ *Surjeet Singh v. Union of India*, 1981 (18) ACC 44 (Sum) (SC)

²⁴⁰ *Simmi alias Syed Ali Haider v. State of U.P.*, 1985 (Suppl) ACC 409

²⁴¹ *Ashok Kumar v. State of U.P. and others*, 2001 (43) ACC 337 (H.C.–L.B.)

²⁴² *Hakim Singh v. State of U.P.*, 1988 (25) ACC 43

²⁴³ *Ashu Tomar @ Ashish v. State of U.P.*, 1998 (2) ACC 108

²⁴⁴ *Kareshpal @ Billu v. District Magistrate, Meerut and others*, 2002 (44) ACC 526 (HC).

²⁴⁵ *Suresh Chandra Katare v. State of U. P. and others*, 2001 (43) ACC 409 (HC).

Key Takeaways

- Detention order have been struck down if the grounds of detention are not properly communicated to the detenu
- Every minor infraction in communicating the grounds of detention cannot vitiate the detention order

2.10 Representation and Revocation

A detention order may at any time be revoked or modified at any time, although revocation of an order does not bar the making of a subsequent detention order against the same person. However, in case the subsequent detention order has been made in the absence of any fresh facts, the subsequent order cannot be valid beyond twelve months from the date of detention under the earlier order.²⁴⁷ Thus the NSA clearly enables passing an order of detention subsequently even without any fresh material.²⁴⁸

One of the most important rights that are provided to the detenu both under the Constitution as well as statutorily is the right to be to make a representation against the detention. The representation may be made both to the State Government as well as the Central Government; a mere endorsement at the bottom of a representation sent to the State Government that a copy is being sent to the Central Government has been held to amount to a representation to the Central Government as well.²⁴⁹ Detention orders have been struck down where the procedure adopted by the authorities has resulted in the detenu being unable to enjoy the full benefit of this right, such as where the detaining authority did not make any effort to verify the averments made in the representation instead decided it mechanically,²⁵⁰ or a second representation was kept pending²⁵¹ or was disposed of by simply reiterating its earlier stand by the Central Government.²⁵²

It must be noted that the Constitution provides the detenu a fundamental right to be afforded an opportunity not only to make a representation but an opportunity to make a representation at the *earliest opportunity*, which means that any unexplained or inordinate delay results in a violation of the fundamental right of the detenu and lead to the detention order being set aside.²⁵³ It is not the duration of the delay which is relevant but the explanation or reason for the delay that is determinative of whether the fundamental right of the detenu has been

²⁴⁶ *Sachin @ Banti Etc. v. State of U.P. and others*, 2003 (47) ACC 315 (HC).

²⁴⁷ Section 14 of the NSA.

²⁴⁸ *Jiwan Singh v. State of U.P.*, 1999 (38) ACC 139

²⁴⁹ *Mohd. Naseem v. Superintendent, Central Jail, Naini, Allahabad and others*, 2003 (46) ACC 860 (HC). See also *Mohd. Anees @ Guddu v. State of Uttar Pradesh, Through Principal Secretary, Home Department, Lucknow and others*, 2003 (47) ACC 803 (HC).

²⁵⁰ *Padam Singh v. District Magistrate, Agra and others*, 2001 (Suppl.) ACC 628 (HC).

²⁵¹ *Mohammad Alam v. Superintendent, District Jail, Moradabad*, 1984 (21) ACC 58 (HC).

²⁵² *Vikky @ Vikrant Tyage v. Adhikshak District Jail, Muzaffar Nagar and others*, 2004 (49) ACC 142 (HC).

²⁵³ *Piara Singh v. State of Punjab*, 1986 (24) ACC 478 (SC); *Kamla Bai v. Commissioner of Police, Nagpur*, 1993 (30) ACC 503 (SC), etc.

breached or not.²⁵⁴ It must be emphasized that the consideration with regard to whether the delay would be fatal to the detention or not is completely dependent on the facts of the particular case. There have been cases where unexplained delay of even two to three days has been held to be fatal,²⁵⁵ while in other cases delay of even upto 20 days at the level of the Central Government has been held to be justified.²⁵⁶ Below are two lists, one which illustrates circumstances in which delay has been considered fatal to the detention, and the other containing circumstances which have not been considered fatal.

2.10.1 Circumstances where delay was fatal to the detention:

- A. Representation was neither allowed nor rejected, but merely kept pending;²⁵⁷
- B. Delay of two months merely because the concerned Minister was not available;²⁵⁸
- C. Failure to find out the status of the representation which was duly dispatched to the D.M. and State Government but did not reach them;²⁵⁹
- D. Instead of sending a representation to the Union of India, the representation addressed to the Home Secretary, State of U.P. was sent;²⁶⁰
- E. Unnecessary wastage of time by calling for comments from the D.M. before forwarding the same to the Government;²⁶¹
- F. Delay of 40 days merely because the dealing assistant was on leave;²⁶²
- G. Delay of 8 days by the police station to submit comments on the representation, especially since it was the base station from where the recommendation for the detention had emanated;²⁶³
- H. State Government delayed its decision since it was awaiting the opinion of the Advisory Board;²⁶⁴

2.10.2 Circumstances where delay was justified:

- A. Delay caused equally due to the detenu and his pairakar;²⁶⁵

²⁵⁴ *Harish Chandra Rai v. Union of India*, 2002 (45) ACC (H) 20 (HC).

²⁵⁵ *Bhonal Nath Singh v. State of U.P.*, 1987 (24) ACC 261 (LB). Also see *Nihal (Nihal Kasai) v. Union of India and others*, 2002 (45) ACC 424 (HC-LB), (4 days); *Syed Mehtab Alam v. Superintendent Central Jail, Naini, Allahabad and others*, 2004 (49) ACC 745 (HC), (5 days); *Aftab Ahmad v. District Magistrate, Gonda and others*, 2002 (45) ACC 422 (HC-LB), (5 days); *Vishal @ Panda v. District Magistrate, Mainpuri and others*, 2004 (50) ACC 928 (H.C.-L.B.), (6 days); *Sonu @ Firoz v. State of U.P. and others*, 2020 (110) ACC 2 (H.C.) (Sum.), (6 days); *Mohd. Alam v. State of U.P.*, 1999 (1) ACC 845, (13 days); *Sohrab v. Union of India*, 2000 (41) ACC 681, (16 days); *Ram Veer v. Suptd. District Jail, Moradabad*, 1996 (33) ACC 92; *Bachau Yadav v. District Magistrate, Ghazipur and others*, 2004 (50) ACC 31 (HC).

²⁵⁶ *Dinesh Tiwari v. State of U.P.*, 1999 (39) ACC 37 (H). Also see *Saud v. State of U.P. and others*, 2000 (Suppl) ACC 323; *Rakesh Singh v. State of U.P. and others*, 2002 (44) ACC 740 (HC); *Atikur Rahaman @ Atiq Kirana v. Union of India and others*, 2009 (66) ACC 864 (HC).

²⁵⁷ *Abid v. Union of India*, 2004 (49) ACC 15 (Sum.) (HC).

²⁵⁸ *Chandresh Paswan v. State of U.P.*, 1999 (38) ACC 721 (HC-LB).

²⁵⁹ *Mohd. Aquil v. State of U.P. and others*, 2002 (44) ACC 301 (H.C.-L.B.).

²⁶⁰ *Sher Singh v. Union of India and others*, 2003 (46) ACC 380 (HC-LB).

²⁶¹ *Saleem v. Union of India and others*, 2002 (Suppl.) ACC 286 (HC-LB).

²⁶² *Shera v. Union of India and others*, 2010 (69) ACC 9 (H.C.); *Sonu v. Union of India and others*, 2010 (69) ACC 12 (H.C.)

²⁶³ *Ashutosh Bhatt @ Tipu v. Union of India and others*, 2019 (109) ACC 577 (H.C.).

²⁶⁴ *Ankit Ashok Jalan v. Union of India*, (2020) 16 SCC 127.

²⁶⁵ *Shahzada v. Suptd. District Jail*, 1984 (21) ACC 126.

- B. Delay of less than a month due to police administration being busy in Magh Mela preparations;²⁶⁶
- C. Delay of 5 days in communicating the rejection of the representation;²⁶⁷
- D. Dealing assistant on holiday for three days after the representation was received and next three days were holidays;²⁶⁸
- E. Normal postal delay due to which representation took twenty days to reach;²⁶⁹
- F. Representation received on 31-3-1989, Extra information asked for after 13 days, supplied after another 7 days and representation decided after another 8 days.²⁷⁰

Key Takeaways

- Detention may be set aside on the ground of unnecessary delay in deciding the representation of the detenu
- Emphasis is not the amount of delay, but whether the delay is justified or not
- Judicial decisions provide little clarity on whether what circumstances would constitute unnecessary delay

2.10.3 Power to regulate place and conditions of detention

The appropriate government has been given the power to specify the conditions for detention of the persons against whom preventive detention orders have been made including conditions relating to maintenance, discipline and punishment for breaches, etc.²⁷¹ Although not specified in the NSA, the Supreme Court in *A.K. Roy* has directed that persons who are detained under the National Security Act must be segregated from the convicts and kept in a separate part of the place of detention.²⁷²

2.10.4 Exploiting the Loopholes

The provisions of the NSA give wide ranging powers to the Executive to deprive a person of their liberty without the traditional safeguards provided under penal laws of the country. These powers have often been used to detain individuals for actions which may be mere law and order issues rather than a serious issue involving maintenance of public order. A perusal of the case laws over the years indicates that the Act has mostly been used in cases involving regular penal offences, though in recent years it appears that the State of U.P. has invoked the NSA in cases of communal violence as well as cow slaughter on an increasing basis.²⁷³ This

²⁶⁶ *Abhishek malviya alias Munnu v. State of U.P.*, 1990 (27) ACC 187

²⁶⁷ *Ravindra Singh @ Rinku Singh @ Randiya v. State of U.P. and others*, 2009 (67) ACC 151 (HC).

²⁶⁸ *Ramesh Singh @ Kaka v. Union of India and others*, 2011 (72) ACC 383 (H.C.).

²⁶⁹ *Sonu Tiwari v. Union of India and others*, 2013 (82) ACC 155 (Alld.)

²⁷⁰ *Ganga Prasad Dubey v. State of U.P.*, 1990 (27) ACC 307.

²⁷¹ Section 5 of the NSA.

²⁷² *A.K. Roy v. Union of India*, AIR 1982 SC 710.

²⁷³ <https://scroll.in/latest/991506/one-third-of-nsa-cases-in-uttar-pradesh-were-against-individuals-accused-of-cow-slaughter-report>

recent increase in cases involving cow slaughter was also noticed from a random sampling of a few detention orders perused during interviews with advocates practicing in the Allahabad High Court. It is clear from a perusal of the 'Cow Slaughter' section of the Table given in this Chapter, that the Courts have been fairly inconsistent in their stand on whether detention orders should be upheld or not in cases of cow slaughter and communal violence.

The Allahabad High Court has a pendency of over 10 lakh cases,²⁷⁴ the highest of any High Court in the country.²⁷⁵ This large case load on the judiciary as well as the inertia of the legal process often leads to major delays in the delivery of justice to the public in general including persons detained under the NSA. A recent study has found that on average the Allahabad High Court took 276 days to give a final decision on a detention order and detenus spent an average of 314 days in detention before being released either due to an order of the High Court or the maximum detention period lapsed.²⁷⁶ Such a wait of 75% of the maximum period of detention before any relief can be obtained through the High Court, does not bode well for any judicial system.

Although the judiciary has in principle interpreted the procedural safeguards contained in the legislation in a strict manner so as to reign in the Executive's indiscriminate use of the NSA,²⁷⁷ however, the inconsistent treatment of subjective provisions and especially the interpretation of the term public order (as is evident from the Table above) as well as the long delays in disposing *Habeas Corpus* petitions by the High Court leaves plenty of scope for the Executive to exploit the draconian provisions of the NSA.

3. CONCLUSION

The State of UP uses the NSA much more frequently than other States due to the absence of local preventive detention legislations in UP. Since preventive detention inherently deprives individuals of a number of rights that they are otherwise entitled to under the normal criminal justice procedure, the High Court of Allahabad has generally been strict in enforcing the safeguards contained in the NSA in order to overturn detention orders which do not strictly comply with the procedure provided under the NSA. This trend is evident from the number of judgments where detention orders have been overturned due to infirmities in the subjective satisfaction of the detaining authority, deficiency in supplying the grounds of detention, delay in disposal of representation, non-reporting of the detention order to the Central Government, etc.

However, the High Court has been somewhat inconsistent in its interpretation of the phrase 'public order' and has often given seemingly contradictory judgments in similar fact situations such as in case of violence in public places, cow slaughter cases, rape, assault on police personnel, communal and mob violence, etc. Similar inconsistency can be seen in deciding whether in a given set of circumstances, there has been an unnecessary delay in deciding the representation of detenu, which would otherwise entitle the detenu to immediate release.

²⁷⁴ <https://www.allahabadhighcourt.in/jclock.html>

²⁷⁵ <https://njdg.ecourts.gov.in/hcnjdgnew/>

²⁷⁶ <https://article-14.com/post/new-study-reveals-how-the-national-security-act-denies-justice-fairness-to-detenus-in-uttar-pradesh-64a46e730c007>

²⁷⁷ <https://indianexpress.com/article/express-exclusive/national-security-act-uttar-pradesh-police-detentions-cow-slaughter-ban-7260425/>

This inconsistency in judicial pronouncements examining the various stages of the detention process coupled with the delays in the judicial process ensure that there may still be enough scope for misuse of the legislation if the State so desires. Further, the lack of available data on the actual number of detentions made under the NSA as well as the number of detentions overturned by the Advisory Boards make it difficult to make any empirical deductions about the workings of the police and the applicability of the NSA in the State of UP.