Jammu & Kashmir & Habeas Corpus

GS-Paper-2 Governance (Mains)

After the abrogation of the special status (under Article 370 of the Constitution) of the erstwhile state of Jammu & Kashmir in August 2019, the Jammu & Kashmir High Court was confronted with an unprecedented number (250 plus) of habeas corpus petitions. The habeas corpus petitions were filed to challenge the detentions under the J&K Public Safety Act (PSA), 1978.

Background: After the abrogation of the special status, thousands of people were detained from across the Kashmir valley under the preventive detention law. Of these, several hundred were detained under the PSA. The other preventive detention laws under which people were booked are National Security Act (NSA) 1980 and Unlawful Activities (Prevention) Act 1967.

Status of Habeas Corpus Petitions Against PSA:

The records of cases dealt by the High Court show that 61% of the cases under the habeas corpus were dragged on over 3-4 hearings, which were later either dismissed or settled. However, in 17 cases, the court quashed the detention orders, due to lack of procedure followed by the government while invoking the PSA.

J&K Public Safety Act (PSA), 1978

Definition: It is a kind of preventive detention law, under which a person is taken into custody to prevent him or her from acting in any manner that is prejudicial to the security of the state or the maintenance of public order.

Period of Detention: Up to 2 years.

Enforcement: Detention order is passed either by Divisional Commissioner or the District Magistrate.

Challenging the Detention: The only way the administrative preventive detention order can be challenged is through a habeas corpus petition filed by relatives of the detained person.

he High Court and the Supreme Court have jurisdiction to hear such petitions and pass a final order seeking quashing of the PSA. However, if the order is quashed, there is no bar on the government passing another detention order under the PSA and detaining the person again.
There can be no prosecution or any legal proceeding against the official who has passed the order.

**Habeas Corpus**

It is a Latin term which literally means ‘to have the body of’. Under this the court issues an order to a person who has detained another person, to produce the body of the latter before it. The court then examines the cause and legality of detention.

This *writ* is a *bulwark of individual liberty* against arbitrary detention. The writ of habeas corpus *can be issued against both public authorities as well as private individuals*.

The writ, on the other hand, is not issued where the:

- detention is lawful,
- the proceeding is for contempt of a legislature or a court,
- detention is by a competent court, and
- detention is outside the jurisdiction of the court.