



Impact of Public Safety Act on the life of Kashmiri Citizens

Syed Mohammad Murtaza Rizvi, School of Law, Lovely Professional University, Phagwara, India, syedm.murtazarizvi@gmail.com

Dr. Meenu Chopra, Assistant Professor, School of Law, Lovely Professional University, Phagwara, India, menu.18500@lpu.co.in

Abstract: It has been more than 4 decades since the enactment of Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred as JK Public Safety Act or PSA), which in fact is given in the hand of the Administration or the executive body of the State and not the Judicial Body. Since its inception, it was enacted to protect the society from timber smugglers. But later, within a decade it is noticed that PSA was used to detain the political leaders. Moving further in timeline, it is noticed that PSA is being used to detain the normal individuals, hence, it is used and quoted as unbridled Act in the hands of the existing Government. Since, the enactment of the Act, it is observed that, despite the proper Criminal Procedure Code or Indian Penal code or Forest Act, in the time of emergencies or even at the time of protest, the Administration without any charge or fair trial start detaining the political leaders or normal individuals. In this research paper it will be observed to what extent PSA is a necessity or is it just an unbridled powered Act.

Keywords: Public Safety Act (PSA), Illegal Detentions, Article 370, Kashmir, Abrogation, Unbridled, Lawless law

I. INTRODUCTION:

"In every infraction of law having a penal sanction by itself is a ground for detention, danger looms large that the normal criminal trials and criminal courts set up for administering justice will be substituted by detention laws often described as lawless laws¹."

There are certain Acts which come under the heads of National Security Laws² and Anti – Terror Laws in India. After the Independence, as framers were drafting the Constitution, at the same time, the Legislation was drafting or it can be said, thinking about such laws which will curtail the right of individuals in the interest of "security of the State or maintain public order," which will give the authorities unregulated and unchecked powers. One of the first Act passed after the Independence of India was Preventive Detention Act, 1950 (1950-1956)³. The National Security Laws, here Preventive Detention Act, 1950, was temporary in nature, i.e., this Act was passed with a "sunset clause."⁴ The other laws which come under the National Security Laws are/were Armed Forces (Special Power) Act, 1958, Unlawful Activities and Prevention Act, 1967, Maintenance of Internal Security Act, 1975 (MISA), National Security Act, 1980, Terrorist and Disruptive Act, 1985 (TADA), The Prevention of Terrorism Act, 2002 (POTA) and National Investigation Act, 2008 (NIA).⁵ These were certain laws/methods which were used in pre-independence area, i.e., by British Rulers against the individuals especially against the freedom fighters who raised voice against the tyrant and unbridled British rule.

The Jammu and Kashmir Public Safety Act, 1978 (hereinafter referred as J&K Public Safety Act, 1978 or PSA) is one such Acts which comes under the Preventive Detention Laws and is considered to be unbridled law in the hands of the authorities, as it is considered to violate the fundamental rights, basic human rights, basic principles of criminal procedure and natural justice. How and why?

On midnight of 05th August 2019, around 12:30 A.M, all communication were cut off by the Government, not a single telephone or mobile network or internet was working. There was no communication with outside the State. Hence, the darkest time witnessed by the J&K valley. At least it was due to satellite

¹ Justice D. A. Desai and P. N. Bhagwati of the Supreme Court of India in *Jaya Mala vs. Home Secretary, Government of Jammu and Kashmir* (1982).

² There is no specific exhaustive definition for it! The issue was first addressed in the case of *Mohd. Iqbal M. Shaikh v. State of Maharashtra* wherein it was held that it is majorly not possible to give an exact definition and lay down its constituents. India's National Security Laws: [https://blog.finology.in/Legal-news/indian-national-security-act#:~:text=National%20Security%20Act%20\(1980%2D%20present,Preventive%20Detention%20Act%20of%201950.&text=The%20maximum%20period%20of%20detention,extended%20if%20provided%20fresh%20evidence](https://blog.finology.in/Legal-news/indian-national-security-act#:~:text=National%20Security%20Act%20(1980%2D%20present,Preventive%20Detention%20Act%20of%201950.&text=The%20maximum%20period%20of%20detention,extended%20if%20provided%20fresh%20evidence). Visited on 22/12/2020.

³ The Preventive Detention Act, 1950 was repealed in 1956.

⁴ Sunset Clause: A sunset provision, or sunset law, is a clause in a statute, regulation, or similar piece of legislation that expires automatically. A sunset provision provides for an automatic repeal of the entire or sections of the law once a specific date is reached. <https://www.investopedia.com/terms/s/sunsetprovision.asp#:~:text=A%20sunset%20provision%2C%20or%20sunset,a%20specific%20date%20is%20reached>. Visited on 22/12/2020.

⁵ All these Acts were repealed after some period of time because all these Acts had a sunset clause except Armed Forces (Special Power) Act, 1958 and National Security Act, 1980, which are still applicable all over India.

connection the citizens of the valley were able to watch the news. It was between the 05th of August 2019 to 20th August 2019 that many prominent political leaders and lawyers⁶ were detained under PSA. It took almost 6 to 12 months to fight to quash the illegal detentions under PSA be it the High Court of the Union Territory or the Supreme Court of India.

The Security forces in J&K routinely use the PSA to trample international fair trial standards and ignore even the limited safeguards afforded in the PSA. PSA detainees are regularly detained illegally and / or held incommunicado before detention orders are issued, resulting in an increased risk of torture or ill-treatment in police custody. Further, Amnesty International's research established that police have to meet monthly and quarterly "targets" or quotas of detention. As a result, security forces detain persons on the basis of vague and general allegations⁷. It is widely understood amongst the legal community in Srinagar that confessions and disclosure statements made in police custody are a result of torture and other ill-treatment. This follows a pattern of torture and ill-treatment of detainees in J&K documented by Amnesty International and others throughout the recent decades of the conflict. In December 2010, A US embassy cable referring to a confidential briefing by the International Committee of the Red Cross (ICRC) to US diplomats in New Delhi in 2005 was published by Wikileaks. According to this cable, the ICRC had made a confidential assessment, based on visits to detention centres in J&K between 2002 and 2004, that there was systematic prisoner abuse in the state, and that the Government of India condoned the torture⁸.

1.1. RESEARCH METHODOLOGY:

To meet the end of this research article, the researcher is going to doctrinal research and in empirical the research has used interview method. The researcher will use the primary sources, that is the Bare Act itself Jammu & Kashmir Public Safety Act, 1978, then for the rights of the arrested persons the Constitution Law of India and Code of Criminal Procedure Code, 1973. Then the researcher will use the secondary sources, that is the books and articles published related to the impact of the Act itself. And, in interview method the researcher has interacted with Advocates dealing with PSA cases at J&K High Court.

1.2. KASHMIR PRIOR INDEPENDENCE OF INDIA:

It would be incomplete if it is not mentioned or talked about the situation of Kashmir especially prior and latter to Independence of India. Kashmir Valley has always been ruled by the dominant power existing at that time, since the rule of the Mughal Empire from 15th century to the annexation to the then Sikh Kingdom of Punjab in 1819, then to the then Dogra Rule of Jammu in 1846 and to then rule of the British Empire in later part of 19th century⁹. It was during the British Rule when the whole Kashmir Valley was sold to Raja Gulab Singh for half a million rupees, hence, the creation of State of Jammu and Kashmir¹⁰. It was considered to be a Princely State under the Maharaja Rule until the Indian Independence in 1947.

1.3. KASHMIR AFTER INDEPENDENCE OF INDIA:

India became independent from the British Rule on August 15th, 1947. It is the same year India and Pakistan were partitioned in two separate countries. The option was provided to the then Maharaja, Hari Singh, of Kashmir to either choose Pakistan or India or to remain independent. The Maharaja at that time thought choosing Kashmir as an independent nation. The independent thought of the then Maharaja was faced with the intervention of the Pashtun Tribesmen, due to which he had to ask for help from Indian Government, hence signing the Instrument of Accession¹¹ on October 27th, 1947. The Instrument of Accession was the

⁶ Insight Turkey 2019/04 by SET Vakfi İktisadi İşletmesi, chapter 5 pg. 41

⁷ Amnesty International on A 'Lawless Law' Detentions under J&K Public Safety Act, pg. 24

⁸ Ibid. pg. 26

⁹ Britannica on Kashmir (History of Kashmir): Thus, the Kashmir region in its contemporary form dates from 1846, when, by the treaties of Lahore and Amritsar at the conclusion of the First Sikh War, Raja Gulab Singh, the Dogra ruler of Jammu, was created maharaja (ruling prince) of an extensive but somewhat ill-defined Himalayan kingdom "to the eastward of the River Indus and westward of the River Ravi." The creation of this princely state helped the British safeguard their northern flank in their advance to the Indus and beyond during the latter part of the 19th century. The state thus formed part of a complex political buffer zone interposed by the British between their Indian empire and the empires of Russia and China to the north. For Gulab Singh, confirmation of title to these mountain territories marked the culmination of almost a quarter century of campaigning and diplomatic negotiation among the petty hill kingdoms along the northern borderlands of the Sikh empire of the Punjab. [Kashmir | History, People, & Conflict | Britannica](#), visited on 06th February 2021.

¹⁰ Thought.co on Kashmir History and Background: Afghan invaders followed the Moghuls in the 18th century, who were themselves driven out by Sikhs from Punjab. Britain invaded in the 19th century and sold the entire Kashmir Valley for half a million rupees (or three rupees per Kashmiri) to the brutal repressive ruler of Jammu, the Hindu Gulab Singh. It was under Singh that the Kashmir Valley became part of the state of Jammu and Kashmir. [History and Background of the Kashmir Conflict \(thoughtco.com\)](#), visited on 06th February 2021.

¹¹ Economic Times on Instrument of Accession: From 1947 till date: The Instrument of Accession (IoA) is a legal document executed by Maharaja Hari Singh, the then ruler of the princely state of Jammu & Kashmir, on October 26, 1947, declaring that the state accedes to India. The IoA gave India's Parliament the power to legislate in respect of J&K only on the matters of defence, external affairs and communications. Apart from defence, communications, and external affairs, the IoA mentions ancillary subjects that include elections to the dominion legislature. [Article 370: Instrument of Accession: From 1947 till date - The Economic Times \(indiatimes.com\)](#), visited on 09th February 2021.

only document evident that the Indian Government holds sovereignty to the State of Jammu and Kashmir and Maharaja no longer holds the power over the State.

Since then, Indian Army is looming in Kashmir. It was not settled until a 1949 cease-fire brokered by the United Nations and a resolution calling for a referendum, or plebiscite, allowing Kashmiris to decide their future for themselves. India has never implemented the resolution¹².

1.4. HISTORY OF THE ACT:

The J&K Public Safety Act of 1978 comes under the National Security Laws and originates from the preventive detention measures used during the British Rule. One of the preventive detention laws prevalent was the Defence of India Act, 1915^{13,14} which was used to suppress the revolutionary acts. Later, Public Security Act was used in 1946 against the Quit Kashmir Movement. This Public Security Act was replaced by the Preventive Detention Act which was for temporary period but was further ratified in 1958 followed by numerous amendments eventually enacting the Jammu and Kashmir Safety Ordinance Act in 1977. This ordinance was later amended into Jammu and Kashmir Public Safety Act, 1978 enacted by the then Chief Minister, Sheikh Abdullah. The main reason behind the enactment of such law was due to the growing timber smuggling in the State of J&K. The Act received assent of the Governor on 8th April 1978. It was enacted by the State Legislature in the 29th Year of Republic of India¹⁵.

1.5. GROWING DETENTIONS UNDER PSA:

It is quite boggling to notice that the objective of the Act was to prevent timber smuggling in Kashmir, that was the reason it was enacted for but later on it is being stamped on the political leaders to prevent doing anything against the ruling party. It was first Sheikh Mohammad Abdullah, the then political patriarch, as he is called, of the State of Jammu and Kashmir to stamp it on a bus driver who was fighting the elections against Sheikh Abdullah¹⁶. The brief information is, it was the President of Kashmir Drivers Motor Association (KDMA), namely Ghulam Nabi on whom first detention apart from the timber smuggling was slapped. Rather it can be called a political strategy or vendetta, as Ghulam Nabi stood against Sheikh Abdullah in previous election on Janta Party ticket¹⁷.

Since then, PSA is more used as a tool to detain the political leaders and normal individuals with an excuse that “they are acting in against the public interest” or “it is in the interest of the public safety to detain them”. In an Amnesty Report of 2010, “A Lawless Law: Detentions under the Public Safety Act”, around 20,000 have been detained under PSA since its enactment. More recently, since the abrogation of Article – 370 of the Indian Constitution, around 400 people, including political leaders of the valley have been detained till February 2020.

The local newspapers have been able to report the recent detentions since decades especially the prominent local newspaper ‘Greater Kashmir’¹⁸ has reported the detentions that take place in the valley

¹² In 1965, India and Pakistan fought their second of three major wars since 1947 over Kashmir. The United States was largely to blame for setting the stage for war. The cease-fire three weeks later was not substantial beyond a demand that both sides put down their arms and a pledge to send international observers to Kashmir. Pakistan renewed its call for a referendum by Kashmir's mostly Muslim population of 5 million to decide the region's future, in accordance with a 1949 UN resolution. India continued to resist conducting such a plebiscite. The 1965 war, in sum, settled nothing and merely put off future conflicts. (Read more about the Second Kashmir War.) [History and Background of the Kashmir Conflict \(thoughtco.com\)](#), visited on 09th February 2021.

¹³ An Article of Scroll.in on In Kashmir, a law of smugglers has become a way to keep people ‘out of circulation’: The Public Safety Act is frequently described as a “black Act” and “a lawless law”, a phrase first used in a Supreme Court judgement in 1982. Such a law has been used in other countries and by other regimes too – Ireland during the civil war in 1923, the apartheid government in South Africa in 1953, Nepal under King Gyanendra in 1990. Some trace the origins of the law in Jammu and Kashmir to the Defence of India Act passed by the imperial government in 1915 and used to curb political dissent. [In Kashmir, a law for timber smugglers has become a way to keep people 'out of circulation' \(scroll.in\)](#), visited on 23rd February 2021.

¹⁴ An Article by Syed Junaid Hashmi on Countercurrents.org: One of the most draconian laws applicable in Jammu and Kashmir, Public Safety Act (PSA), that is being liberally used as a repressive measure to scuttle any dissent, often also for victimising innocent youth, ironically finds its roots in the Defence of India Act (DIA) during the British rule. In fact, the PSA happens to be a more punitive form of the DIA that was described by various National leaders including Mahatma Gandhi as draconian and a black law enacted by Britishers to suppress Indian freedom struggle. [Jammu And Kashmir Public Safety Act-1978 By Syed Junaid Hashmi \(countercurrents.org\)](#), visited on 23rd February 2021.

¹⁵ The 1978 PSA was amended in 1987, 1990, 2012, and as recently as August 2018 to allow individuals to be detained outside the state.

¹⁶ The bus driver's offence, such as it was, seemed to have been to fight the elections of 1977 against the state's political patriarch, Sheikh Muhammad Abdullah. He was the first prisoner held a new law enacted that year, the Public Safety Act, giving the state the power to arrest people for no actual crime. [PSA has been used over the decades in Kashmir as a quick-fix, but longterm damage on the republic will be serious - India News , Firstpost](#), visited on 11th February 2021.

¹⁷ The Wire on How Public Safety Act continues to haunt Kashmir: The law was first brought by the government led by Sheikh Abdullah in 1978 to use against timber smugglers. However, the first person to be booked under the law was then president of Kashmir Motor Drivers Association (KMDA), Ghulam Nabi who had stood against Abdullah in the previous election on Janta Party ticket, thus marking the long political abuse of the Act which has continued till date. [How the Public Safety Act Continues to Haunt Kashmir \(thewire.in\)](#), visited on 12th February 2021.

¹⁸ Greater Kashmir is an English Daily Newspaper printed and published from Srinagar. Website: [www.greaterkashmir.com](#).

and it is Amnesty International who were able to collect in their article¹⁹ the detentions in the valley from National Crime Record Bureau (NCRB)²⁰ from 1990 to 2008.

| Year | NCRB (Detainees as of 31st December) | Greater Kashmir (Year Wise Detentions) |
|-------------|--|---|
| 1990 | NA | 941 |
| 1991 | NA | 1070 |
| 1992 | NA | 976 |
| 1993 | NA | 1112 |
| 1994 | NA | 2118 |
| 1995 | 799 | 1819 |
| 1995 | 1022 | 1560 |
| 1997 | 725 | 414 |
| 1998 | 303 | 460 |
| 1999 | 269 | 441 |
| 2000 | 497 | 503 |
| 2001 | 416 | 318 |
| 2002 | 444 | 504 |
| 2003 | 397 | 401 |
| 2004 | 451 | 510 |
| 2005 | 377 | 402 |
| 2006 | 369 | 920 |
| 2007 | 275 | NA |
| 2008 | 266 | NA |

These records were collected by Amnesty International during their survey for the article of the Lawless Law the Detentions under J&K Public Safety Act.

II. BRIEF DESCRIPTION AND RISING ISSUES WITHIN PSA:

“Whereas it is necessary in the interest of the security of the State and public order to make law providing for the measures hereinafter appearing.” This statement is the first sentence used in the introductory part of the J&K Public Safety Act, 1978. PSA contains in total 5 chapters which include 24 sections. The first chapter is the preliminary part which describes the title and the definitions within the Act. There are certain points of discussion which rise while discussing about the other four chapters of the Act, not only about the chapters or sections that are contained within the Act but what is done in the garb of the Act. Further, whatever is done in the garb of objective of the Act, how is that in consonance to the other laws which are existing along with the Act?

2.1 PROCEDURE OF THE DETENTION ORDER:

The detention of persons is explained under Section – 08 the Act. Section – 08, sub - section - 1, states, the Government may if satisfied with respect to any person that with a view to preventing him from acting in any manner prejudicial to the security of the State or the maintenance of the public order, certain orders can be made by Divisional Commissioner or District Magistrate to direct the detention of persons without providing any right to be heard. Only on mere “satisfaction” of any of the two officers, the individual may be detained. If a glance is made at the contrasting Chapter – VIII of Code of Criminal Procedure, 1973, from section – 106 to section 124, where the Judicial Magistrate, District Magistrate or Executive Magistrate orders the apprehended offender to furnish bond or even submit undertaking to the effect why that person should not be asked to execute a bond. Then under Section – 124A of Indian Penal Code, 1860, where sedition is done by any person, i.e., speaking, inciting, excites, hatred or contempt against the Government is punishable for imprisonment for life. Section – 08, sub- section – 1, clause a – 1 states that, the Government may if satisfied with respect of such person who smuggles, abets, engages, conceals, harbours timber or liquor, it is necessary so to do, make an order directing that person be detained. As explained in the introduction, this Act was initially enacted for the prevention of smuggling of timber but before the enactment of this Act, The Conversation of Foreign Exchange and Prevention of Smuggling Act, 1974, was

¹⁹ Amnesty International on A ‘Lawless Law’ Detentions under J&K Public Safety Act, page 30.

²⁰ An Indian Government Agency responsible for collecting and analysing crime data as defined by the Indian Penal Code and Special and Local Laws. Website: www.ncrb.gov.in.

already in force, why such separate Act was needed to enact, that too with the direct detention order from the Government, is still a lingering question! Moreover, Forest Act, Samvat 1987 was already in force. Under Section – 08, clause – 2, Divisional Commissioners or District Magistrates can exercise the powers conferred by the said sub – section, who shall forthwith report the fact to the Government together with the grounds on which the order has been made and such other particulars as in his opinion have a bearing on the matter, which is to be approved by the Government within 12 days after which no detention order shall remain in force. That is to say, no investigation or trial before the Judicial Magistrate takes place but straight away a detention order of a person on mere apprehension is passed, which are mentioned as grounds in sub – section 4. The only time Code of Criminal Procedure Code, 1973 comes into play here is when the detention order is to be executed under Section – 9 of the Act. If Code of Criminal Procedure Code is used, then why is it used partially?

2.2 DETAINEES WHO ARE PERMANENT RESIDENTS NOT TO BE LODGED IN JAILS OUTSIDE J&K:

The Section – 10 of the Act states that, against whom the detention order has been made under section – 8 of the Act, that person shall be liable to shall be detained in any place and under any such conditions including the conditions to the maintenance of discipline and further he can be removed from one place to other place of detention by the order of the Government. Further the proviso of this section states that the detainees who are the permanent residents of the State shall not be lodged in jails outside the State. But in recent reports more than 150 people have been lodged outside the Union Territory of J&K²¹. Sources in J&K Police told The Indian Express that “more than 800 people have been arrested” over the past few days. “Today, 35 out of these 800 have been sent to jail outside the state in a special flight,” the source said. He added that Dr Mubeen Shah is among those sent outside the state. Shah is Kashmir’s noted business leader and former head of Kashmir Chamber of Commerce and Industry. He was arrested from his home in Srinagar on August 5. The official also said Mohammad Yasin Khan and Mian Abdul Qayoom have also been sent to a jail outside the state. While Khan is also a well-known trade leader and head of Kashmir Economic Alliance, Qayoom is the Kashmir Bar Association President. The source said all those sent outside the state have been booked under the Public Safety Act²².

Further, section - 11 and section – 12 of this Act nullify the Proviso under Section – 10 of the said Act. Section – 11 states that, the order of detention will not be invalid whatsoever because one of the grounds of the detention is or are vague, non – existent, non – relevant, not connected or not even in proximity with such detainee. Furthermore, section – 12 states that the order of detention will not be invalid if the detainee will be outside the territorial limits of State or if the detainee is lodged in jail outside the State. The Legislation has incorporated the proviso for the residents that they cannot lodge them in jails which are outside J&K, but then the Legislation itself nullifies the proviso in the upcoming sections.

In July 2018, the amendment was made in the Act with the intention to omit the proviso of Section – 10, hence widening the detention powers under the Act. for instance, the detention of IAS topper 2010 and later on launching his own Political Party Jammu and Kashmir People’s Movement (JKPM), who was boarding the flight to Istanbul on 15th August 2019, was stopped and sent back to Kashmir, detaining him under PSA on a mere social media statement²³. Prior to amendment 2018, the power could not have been executed by the administration of the State.

2.3 TIME FOR DISCLOSING GROUNDS OF DETENTION:

Under section - 13 of the Act, the grounds of detention are not be disclosed to the detainee in ordinary circumstances not less than five days and in exceptional circumstances it may extend to ten day, which may give a chance to detainee for representation against the order of Government, but how the representation is made by the detainee, there no mention of it. Further, if the authorities deem it in public interest, it is not mandatory on them to disclose any grounds of detention to the detainee.

²¹ The J&K Director General of Police Dilbag Singh said in an interview to The Hindu that August 5 onwards, around 3,000 cases were reported where young men were picked up and released subsequently in the Kashmir Valley. Around 800 remain in detention and nearly 150 are lodged in jails outside J&K: [‘J&K youth being sent to jails outside State’ - The Hindu](#). Visited on 23/12/2020.

²² [Prisoners lodged in J&K shifted outside the state | India News,The Indian Express](#), visited on 23/12/2020

²³ The Wire on Govt cites Shah Faesal’s ‘Soft Separatism’ on Social Media as a Reason for PSA Booking: He was detained at the Delhi airport on August 15 as he tried to board a flight and was sent back to Srinagar and put under detention. Faesal had been bound for Istanbul when he was stopped from boarding the flight, according to the PTI report of the time. Faesal has become the eighth politician from Kashmir to be booked under the PSA, which has been described as “lawless law” by the Amnesty International. [Govt Cites Shah Faesal's 'Soft Separatism' on Social Media as Reason For PSA Booking \(thewire.in\)](#), visited on 18th February 2021.

In contrast, under section – 50 of Code of Criminal Procedure Code, 1973, the grounds of arrest are to be disclosed while making the arrest and further, the arrest information is to be conveyed to the family members or nearest friend.

Principle 16(1) of the UN Body of Principles for the Protection of all Persons under Any Form of Detention or Imprisonment requires, “promptly after arrest and after each transfer from one place of detention or imprisonment to another, a detained or imprisoned person shall be entitled to notify or to require the competent authority to notify members of his family or other appropriate persons of his choice of his arrest, detention or imprisonment or of the transfer and of the place where he is kept in custody.”²⁴

2.4 ADVISORY BOARD AND ITS PROCEDURE:

The Advisory Board is governed from section – 14 to section – 17 of the Act. It is constituted under section – 14. The reference from the Government to the Advisory Board is to be made within 4 weeks from the date of the detention order, the representation if any made by the detainee. The Advisory Board should confirm the order, after hearing the detainee, if he wants to be heard submit its report within six weeks to the Government. The report of the Advisory Board shall be binding on the Government. But under sub – section 16, clause – 5 of the Act, bars the detainee to be represented by an Advocate or an Attorney which goes totally against Article – 22 of the Indian Constitution. Further, the part of the report in which the opinion of the Advisory Board is specified, shall be confidential. Doesn't a society need any judicial scrutiny or transparency here? Isn't here an apprehension that anything can be done by the Government and Advisory Board? Moreover, does not detainee need a chance to properly represent himself?

The only remedy that family or friend can opt is the writ of Habeas Corpus under Article – 32 or Article – 226 of the Indian Constitution. As per the article published by the Indian Express on 04th of August 2020, 250 plus habeas corpus writ petitions have been filed before Jammu and Kashmir High Court, challenging the detentions orders under Public Safety Act and that too filed within the first seven weeks of the abrogation of Article – 370 on 05th August 2020²⁵.

2.5 MAXIMUM PERIOD OF DETENTION:

Once the detention order is confirmed under section – 17 of the Act, the maximum period of detention is mentioned under section – 18 of the Act. The section states that, the maximum period of detention shall be, three months which may extend to twelve months in the case of persons acting in any manner prejudicial to the maintenance of public order, twelve months from the date of detention in the case of the persons indulging in smuggling of timber and six months in the first instance which may be extended up to two years from the date of detention in the case of persons acting in any manner prejudicial to the security of the State.

These detention periods are without any trial or investigation. Further, if under section – 57 of the Code of Criminal Procedure, 1973 and Article – 22(2) of the Indian Constitution, the right of the accused to be produced before the Magistrate within 24 hours from the time of arrest, isn't the right of the detainee violated?

Even where the detention may not be secret or incommunicado, PSA detainees are often held illegally – for lengthy interrogation without any legal basis and without being formally detained under the PSA or arrested in a criminal offence. Such detentions without legal basis are deemed arbitrary (Category I) by the UN WGAD. As no PSA detention order is issued at this stage, the interrogation period cannot be considered part of the PSA detention regime. Article 22(2) of the Constitution of India requires that all persons apprehended in criminal proceedings be produced before a magistrate within 24 hours from the time they were apprehended. Lawyers have informed Amnesty International that this rarely takes place during the 2-12-day period of interrogation that is standard, thus making the custody not only unlawful under international law but also illegal and unconstitutional under India's own laws²⁶.

2.6 NO SUIT AGAINST THE OFFICIALS ANYTHING DONE UNDER THIS ACT:

Under section – 22 of the Act, no suit, prosecution, or any legal proceedings shall lie against any person for anything done or intended to be done in good faith in pursuance of this Act. Now, the detainees who are released after 6 months or a year, having no charge against them but just under the apprehension or mere order of the Government, an individual gets detained and loses his one year under detention doing nothing. After the detention is proved to be faulty, can't authorities or Government at least pay a compensation or reinstate the victim like it is done under Code of Criminal Procedure, 1973?

²⁴ Amnesty International on A 'Lawless Law' Detentions under J&K Public Safety Act, pg. 30

²⁵ The Indian Express: [J&K: Most habeas corpus cases dragged on as court slammed govt on due process | India News, The Indian Express](#) visited on 23/12/2020.

²⁶ Amnesty International on A 'Lawless Law' Detentions under J&K Public Safety Act, pg. 29

As per the reports, since the abrogation of Article -370 of the Indian Constitution, that is, from 05th August 2019 to February 2020, around 400 people have been detained under PSA²⁷. In the upcoming chapters of this paper, the researcher will try to attain the hypothesis of this dissertation and possibly all the questions like the necessary of detention order against individual and prominent figures under this Act, were there acts enough to override the rights of the arrested persons provided under Indian Constitution and the Code of Criminal Procedure, 1973, etc., which possibly arise going through the paper will have an answer in the conclusion of the chapter.

III. RECORD OF PSA DETENTIONS: EFFECT OF PSA ON KASHMIR:

As it is observed till now, since ancient era, Kashmir has been in the hands of the dominant powers, from Mughal era to the present Government, there has been sudden change of rules, orders and governance and may be that is what the societies face. But there is something that should not be experienced by the citizens of the valley and that is the fear from the Administration. Any society needs a proper judicial scrutiny, a proper judicial process no matter how criminal one may be.

Since the first detention to attain a political motive of the President of Kashmir Motor Drivers Association in 1977, many cases have been reported in which the individuals have simply criticized the Government. The next case to be observed after 1977 detention of the KMDA President is of Abdul Rashid Hajam in 1987, who was detained for being the member of Jammat-e-Islami (JEI) and for having incited the public against the Government²⁸. Then the other case of Altaf Ahmad Shah, a correspondent of Urdu bi-weekly, Jammu and Kashmir Bar Associations President Mian Abdul Qayoom in 1990 and other cases which were investigated by Asia Watch²⁹.

In a research conducted by Amnesty International, it has been observed that the use of PSA on individuals have spiked since 2008, when the citizens protested the Shopian Rape Case and Machill Fake Encounter. It has been reported to be grossly abused by the administration. Amnesty International requested the record of number of detention cases through a Right to Information (RTI) from the State Home Department and it has been replied that around 17,000 cases have been registered under PSA since 1980. But the numbers remain contended as Jammu and Kashmir High Court Bar Association contest the number of cases registered under PSA to be around 40,000 since 1989³⁰³¹. Another record that has been recorded by Amnesty International revealed in 2011 report that around 340 cases were registered under PSA during the short span of two months, that is January 2010 – February 2010. The Economic Times reports total number of cases registered under PSA to be around 400 in 2010 year alone.

It is known that Juveniles are not to be tried under the strict laws especially the law which is abused mostly. But it has been claimed by Late Advocate Babar Qadri that, the number of children detained under PSA are more than 1000, despite the 2012 amendment made to the Act. It has been further reported that, the number of boys and men booked under PSA are around 13,000, including a physical challenged boy, who was detained on the allegation of stone throwing.³²

However, global human rights organisations such as Commonwealth Human Rights Initiative (CHRI) and Amnesty International have noted in their reports that responses by various government authorities to applications filed under the Right to Information (RTI) Act, 2005 suggest that no Rules have so far been framed to lay down procedures for the implementation of the provisions of the PSA. An Amnesty report published earlier this year, which analysed over 200 case studies of PSA detainees between 2012 and 2018, said former Chief Minister Mehbooba Mufti had informed the J&K Assembly in January 2017 that between 2007 and 2016, over 2,400 PSA detention orders were passed, of which about 58% were quashed

²⁷ The Hindu, the Rajya Sabha was informed in February 2020 that around 400 people have been detained under this Act since the abrogation of the Article – 370 of the Indian Constitution Article of The Hindu Newspaper, 05th February 2020, [389 people in detention in J&K under Public Safety Act: Centre - The Hindu](#), visited on 21st December 2020.

²⁸ Human Rights in India: Kashmir under Siege by James Goldstone, Patricia Gossman, pg. 117

²⁹ Ibid.

³⁰ Insight Turkey 2019/04 by SET Vakfı İktisadi İşletmesi, pages: 55-6

³¹ “Analysing the operationalization of the PSA, it clearly violates the standards of justice as mentioned under several international humanitarian norms such as the International Convention on Civil and Political Rights, the Universal Declaration on Human Rights, and the Convention against Torture. It denies detainees’ various rights such as being informed of the reasons of arrest, access to judicial authority, judicial review, and the right to a fair trial. It maintains provisions biased toward the side of the police, and gives them immunity from the prosecution. This feature promotes injustice and encourages police officials to go to the extent to detain a person under the PSA. In this context, fabricated First Information Reports (FIRs), biased judgements, vague reasons, and unsubstantial evidence are rampant in the PSA dossiers.” Ibid, pg. 59

³² Ibid, pages 57-8

by the courts. Also, Mehbooba told the Assembly in January 2018 that 525 people had been detained under the PSA in 2016, and 201 in 2017³³.

The Public Safety Act has been used to detain the people from all kinds of spheres, be it an advocate, political leader, political activists, or a normal individual. The Act detains people who are directly involved in the act of violence and also against the people who are not directly involved in violence. Many people who raise and claim for the Azad (Independent) Kashmir are seen to have been detained under the Act. In relation to Belarus, it has been reported in a report by Amnesty International, the United Nation Working Group on Arbitrary Detention has asked to consider the legal framework of regarding administrative detention which equally applies to India to give priority to, "Ensure that administrative detention is not used to repress peaceful demonstrations, the dissemination of information or the exercise of freedom of opinion or expression"³⁴. In 2004 a journalist namely Mohammad Maqbool Khokar was booked under PSA on an allegation that he was passing on the photographs of press conference organised by army officials at a camp and snaps of various hartals to Pakistan's agency. But in fact, those pictures were clicked during an air show and other from army helicopter. Since 2004 he was released and then further detained on other grounds like espionage, assisting militants, etc. He was eventually released on bail in 2008 and has not detained ever since. It has been reported that the detention related Mohammad Maqbool Khokar were raised by United Nations Special Rapporteur in relation to freedom of expression, but Government has been seen to pay no heed³⁵.

The political leaders have also been detained under PSA. The notion is that they are make anti-national statements and to cripple their political motives. Usually, the grounds of detention against the detenu political person are vague and hardly any case is made out of it. Shabeer Ahmad Shah, a leader of Jammu and Kashmir Democratic Freedom Part has reportedly spent almost 25 years under detention on the grounds that he expresses his political ideology for Independent Kashmir³⁶. During the period 2008 to 2010, he was reportedly detained under six detentions. His first detention was quashed in 2008 on vague grounds. Then he was detained again as soon as he was released from detention, then his detention was quashed again on vague grounds. It is reported that apart from making his release difficult, his health is deteriorating under detention³⁷. Masrat Alam Bhat, a chairman of Jammu and Kashmir Muslim League has been reportedly under detention for nine years without trial. In between April 2007 to April 2010, he spent two and half years under detention for eight separate PSA detentions. In 2007, he was detained on raising anti-Indian slogans and for inciting the public to do the same. This detention was quashed by the Court on the ground that he was not given opportunity to make an effective representation. Then he was detained again in 2008. This time High Court quashed the detention on being detained on the same ground and not furnishing the material. Then after three months he was arrested under different criminal charge and was not produced before the Magistrate for three weeks. He was further released on bail and re-arrested again. Eventually in 2010 he was granted bail. Then he was detained again under PSA in the end of December 2010 which was challenged before the High Court³⁸.

The Advocates who are the member of Bar Association, Srinagar have also been under PSA detentions. Since 1990, the detention of the detention was passed against the President of Bar Association, Mian Abdul Qayoom. In 2008, it has been reported that he was detained again under PSA, along with General Secretary of Bar Association Ghulam Nabi Shaheen³⁹ and others. It has been reported by Amnesty International that the Jammu and Kashmir Bar Association has played a vital role in dealing with the human rights cases and visiting jails to keep a check on human rights violation. It may be a play on the Government side to intimidate the member of Bar Association who take up human rights cases. In 2010, Mian Abdul Qayoom was detained on the ground that he is turning the members of the Bar into the secessionist members indulging in illegal activities. But his detention order was revoked by the Government after he filed the

³³ An Article on Indian Express; Explained: What is J&K Public Safety Act (PSA)? <https://indianexpress.com/article/explained/explained-what-is-the-jk-psa-under-which-shah-faaisal-has-been-detained-5905119/>, visited don 17th February 2021.

³⁴ Amnesty International on A 'Lawless Law' Detentions under J&K Public Safety Act, page 41.

³⁵ Ibid., page 42.

³⁶ Ibid., page 43.

³⁷ Ibid.

³⁸ Ibid. page 44.

³⁹ The General Secretary of the Bar Association, Ghulam Nabi Shaheen, is being held in administrative detention, reportedly on similar grounds as well as for organizing public rallies seeking the release of Mian Qayoom. He has been in detention since 18 July 2010. Although the High Court quashed his detention on 18 September 2010, he was detained under a second PSA detention order that was also quashed on 29 December 2010. However, he was immediately rearrested from the prison itself in connection with an FIR registered in Jammu and taken to JIC Jammu. A third detention order was issued in February 2011 and a habeas corpus petition challenging the detention is pending in the High Court. Another lawyer, Mohammad Shafi Reshi, was also detained in September 2010. Although the Government is reported to have revoked his detention order on 23 November, the police also immediately rearrested Reshi outside the prison on a criminal charge. Reshi was reportedly released on 28 January 2011 on bail. Ibid., page 51.

petition for quashing of his detention order. Later, in 2010 he was again detained under PSA with six different cases, but J&K High Court quashed the detention order. Later, he was detained again under PSA for raging war against the State⁴⁰.

It is apt here to mention that, in the Introduction chapter 1.2, it is mentioned that Jammu and Kashmir entered into an instrument of Accession with India. This Instrument of Accession was involuntary, voluntary and absolute. As a result of this Instrument, Jammu and Kashmir became the part of Union of India. This Instrument was subject to the confirmation from the people of the State and the Instrument was confirmed by the people of the State through their Constituent Assembly on 17th November 1957. The State of Jammu and Kashmir was given its own Constitution. Section – 3 of the Constitution of Jammu and Kashmir stated that, “the State of Jammu and Kashmir is an integral part of the Union of India”. This granted the State of Jammu and Kashmir a special status and therefore, Article – 370 was inserted in the Indian Constitution. By way of Article – 370, Article – 35A was inserted in the Indian Constitution which defined the permanent residents of the State and certain special rights and privileges available to the people of the State, which included, right to sell and purchase immovable property, seeking employment and other State benefits⁴¹. In the year 2018, the State Government was in the hands of two parties, Peoples Democratic Party (PDP) and Bharti Janta Party (BJP) which broke on 19th June 2018 when BJP pulled out its coalition. Following which Mehbooba Mufti (Chief Minister at that time) tendered resignation and State was ruled by Governor. In July 2019, there was sudden panic in whole of the State as army was seen being deployed and uncertain news were circulated. In August 2019, many leaders of different parties were outside Governor’s Office to clear the situation but Governor himself clarified that there was nothing to worry about. But on 5th August 2019, a historical event took place in relation to the State of Jammu and Kashmir, **Article - 370 of the Indian Constitution was abrogated** by the Parliament, which granted the Special Status to the then State of Jammu and Kashmir. The whole State was put under curfew for almost 2 months and Jammu and Kashmir Reorganization Act, 2019 was passed which changed the State of Jammu and Kashmir into a Union Territory of Jammu and Kashmir. During this time, many political leaders including the son and grandson namely Farooq Abdullah and Omar Abdullah of the then political patriarch Sheikh Mohammad Abdullah, (who was responsible for bringing the Act into force), were also booked under PSA. Some other political leaders detained under the Act are Mehbooba Mufti (Former Chief Minister of the then State of Jammu and Kashmir), Shah Faesal (Topper of IAS 2010, Former Leader of Peoples Movement Party), Ali Muhammad Sagar (Member of NC Party) and PPP Party Member Sartaj Madani. All these politicians were detained for six months since the abrogation of Article – 370 of Indian Constitution. Apart from all the political leaders, Mian Abdul Qayoom, Nazir Ahmad Ronga, Ghulam Nabi Shaheen (Members of Jammu and Kashmir Bar Association) were also detained under PSA. As already mentioned in the previous chapter that around 400⁴² detentions have recorded since 05th August 2019 to February 2021.

IV. INTERVIEW WITH ADVOCATES:

The researcher was fortunate enough to interview two Advocates who are working at J&K High Court. The Advocates have dealt and are dealing with PSA cases since a decade. The researcher has tried to know about their perspective regarding PSA, about the detention of political leaders and about the detenus who are detained under PSA.

The following is the interview⁴³ with the Advocates:

(A) Interview with Advocate Zubair Zia, Advocate at J&K High Court.

Q) The Act has mentioned “public order” and “security of the State”, what is the meaning of these two when it comes to implementation by the authorities?

R) “Public Order” is used for the persons who are involved in stone pelting and offences like riots and the minimum detention starts with three months extending to one year, while as, “security of the State” is used to detain people who are involved in militancy and the like offences, and the minimum detention period starts with 6 months extending to two years.

Q) How do people get detained under the Act? Who are those people? What are the grounds?

⁴⁰ Ibid.

⁴¹ Dr. J. N. Pandey, Constitutional Law of India, 51st Edition, Chapter – 38, Special Provisions Relating to Jammu and Kashmir, pages 775 – 778.

⁴² The Hindu, the Rajya Sabha was informed in February 2020 that around 400 people have been detained under this Act since the abrogation of the Article – 370 of the Indian Constitution Article of The Hindu Newspaper, 05th February 2020, [389 people in detention in J&K under Public Safety Act: Centre - The Hindu](#), visited on 21st December 2020.

⁴³ Where Q) represents the question from the researcher and R) represents the reply from the Advocate.

R) Usually, the people involved in stone pelting, who are under trial, against whom there are multiple F.I.R.s get detained under PSA. If they are released on bail, as soon as they are released, the officials detain them under PSA.

Q) Are most of the detenus illiterate?

R) Some are illiterate, some are graduate. One detenu was even a doctor.

Q) PSA was enacted for timber smugglers and the like, but are there detentions for timber smuggling?

R) Very less, usually detentions are under public order and security of the State.

Q) Is the procedure of the Advisory Board adequate? Does detenu get a proper representation or proper right of hearing?

R) I have not seen the procedure of Advisory Board or the Board working justly. It is the right of the detenu to make a representation but since they do not know how to make representation, we as counsels do it. We usually try to make representation to District Magistrate who has passed the order and to Home Secretary Department to cancel the order, but I have not ever seen a reply from any of the two. The representation remains as an annexure in a habeas corpus petition that we tried to make a representation.

Q) How is the treatment towards the detenu while detenu is under detention?

R) I cannot reply on that. But I would say it is fine.

Q) After the Amendment, 2018 of PSA, do the authorities keep the detenus in the valley or outside?

R) Before the Amendment, 2018 of PSA, there was one detenu who was kept under detention at Haryana. Now, the detenus are transferred to different States.

Q) Do juveniles get detained under PSA? What is the impact on them?

R) Yes, juveniles have been detained under PSA, especially in 2019, there were 5 cases of juvenile belonging from Shopian, Anantnag and different districts.

Q) After how much time does a detention under PSA gets quashed?

R) Before abrogation in 2019, it took 6-7 months but now, there are detenus who are detained in 2019 and they are still under detention. Before 2019, Justice Attar used to quash detentions, during Justice Attar's tenure, he heard PSA cases and almost 36 detentions were quashed, but now, Judges ignore to even hear PSA cases.

Q) During abrogation of Article – 370, what was the reason to detain political leaders?

R) Why are you asking about political leaders, they were detained so that they cannot raise voice or take out rallies during the period. The main concern are the citizens, individuals, during that time 700 PSA cases of students, cancer patients, were filed before the Court.

Q) Are detenus able to continue with their life normally after their detention is quashed or when they are released from detention?

R) I do not think they are able to continue with their life like before.

Q) Do the detenu's whose detention gets quashed, compensated for illegal detention?

R) No, they do not. Families just want them back alive, that is all that matters for them.

Q) I will ask this last question, whether PSA is a preventive in nature or punishing in nature? Do we need laws like these? Should laws like these be abolished?

R) PSA is punishing in nature. It needs to be abolished.

(B) Interview with Advocate Kaiser Ali, Advocate at J&K High Court.

Q) The Act has mentioned "public order" and "security of the State", what is the meaning of these two when it comes to implementation by the authorities?

R) In "Public Order" is used to detain people who are involved in stone pelting and offences like riots, and also political leaders, which are not hardcore offences, the minimum detention starts with three months extending to one year, while as, "security of the State" is used to detain people who are involved in militancy,

OGW⁴⁴ and the like offences, and the minimum detention period starts with 6 months extending to two years.

Q) How do people get detained under the Act? Who are those people? What are the grounds?

R) Anyone can be detained under PSA as I told you before, it may be a person involved in stone pelting or the like.

Q) PSA was enacted for timber smugglers and the like, but are there detentions for timber smuggling?

R) I do not think PSA is used for timber smugglers; people are usually detained under public order and security of the State.

Q) For how much time a person is under detention?

R) I have a client who has been under detention since 2013. First, he was charged with section – 302 of Indian Penal Code but in 2016 he got acquitted. Then later, he was detained under PSA, which got quashed in 2017 but he was again detained under PSA in 2018, which was quashed but again he is under detention since 2019. So, you see, detention period can be extended in this manner.

Q) Is the procedure of the Advisory Board adequate? Does detenu get a proper representation or proper right of hearing?

R) I do not think Advisory Board plays even any role. It works on the dossier provided by the police officials and the same is confirmed by them. There is clear non – application of mind.

Q) How is the treatment towards the detenu while detenu is under detention?

R) I would say, detenus are not treated normally.

Q) After the Amendment, 2018 of PSA, do the authorities keep the detenus in the valley or outside?

R) Since 2019, the detenus are shifted to different States.

Q) Do juveniles get detained under PSA? What is the impact on them?

R) Yes, juveniles have been detained under PSA, especially from 2019 the juveniles are detained and shifted outside the valley.

Q) After how much time does a detention under PSA gets quashed?

R) It usually took 7 months but now Judges usually avoid hearing PSA cases. Till then the detenu is under detention.

Q) During abrogation of Article – 370, what was the reason to detain political leaders?

R) The political leaders were detained so that they will not be able to take rallies for bringing the Statehood back to the valley, it was a measure to gag them, so they will not be able to speak about anything.

Q) Are detenus able to continue with their life normally after their detention is quashed or when they are released from detention?

R) A person who has been under detention for 7 to 8 years, it is not easy to continue with normal life, to get back in the family seems difficult.

Q) Do the detenu's whose detention gets quashed, compensated for illegal detention?

R) No, I have not seen that happening.

Q) I will ask this last question, whether PSA is a preventive in nature or punishing in nature? Do we need laws like these? Should laws like these be abolished?

R) PSA is punishing in nature and it needs to be abolished.

⁴⁴ Over Ground Workers: who are involved in militancy or who help militants.

V. CONCLUSION:

As for the researcher's opinion, with all the procedural and the substantial laws already enacted in the valley, the enactment PSA was not necessary. It is recorded that total geographical area of Jammu and Kashmir Union Territory is 101387 sq. kms. out of which 20230 sq. kms. is covered by forests. It is obvious a law is needed in the valley that should punish the offenders who smuggle timber. In the previous year, during pandemic, it has been reported that, "Since the lockdown, 130 people have been arrested and 62 FIRs registered; 14 vehicles and 27 horses have been seized⁴⁵." But for that, J&K Forest Act, Samvat 1987 (1930 A.D) was already in force, the then State Government could have easily made amendments in the Act and made it stricter. But the Government chose to enact the harsh PSA into force. Fine, but on the threshold, it was not necessary to use the Act in a way to suppress anyone who wants to stand in the elections against the ruling party at that time. And it is not even necessary to detain the citizens of the valley to suppress their perspective. Isn't it their right to speak their minds under Article – 19 (1)(a) of the Indian Constitution? Yes, then it should never be an option to use such a law to gag the citizens of the valley who want to speak. In the researcher's opinion, such a harsh law does not need to be implemented in such a way that normal people fear to speak what they feel or what they have been suffering. On midnight of 05th August 2019, around 12:30 A.M, all communication were cut off by the Government, not a single telephone or mobile network or internet was working. There was no communication with outside the State. Hence, the darkest time witnessed by the J&K valley. At least it was due to satellite connection the citizens of the valley were able to watch the news. It was between the 05th of August 2019 to 20th August 2019 that many prominent political leaders and lawyers⁴⁶ were detained under PSA. It took almost 6 to 12 months to fight to quash the illegal detentions under PSA be it the High Court of the Union Territory or the Supreme Court of India.

The detention records take us to another question; what is the impact of PSA of Kashmiri Citizens, the youth, the growing buds of the valley especially the ones who have suffered from the illegal detentions? What are they going through? In a book *Insight Turkey 2019/04*⁴⁷, it has been noted that, "While the PSA has come under vocal criticism for being a 'lawless law' by authorizing all kinds of humanitarian and legal abuses, it should also be criticized for its overwhelming negative impact on detainees. For instance, children who are released following detention suffer from several mental disorders, including violent outbursts. In addition, feelings of depression, social withdrawal, anxiety, fear, worthlessness, etc. are being experienced by the detained children who underwent different forms of torture during their detention. The severity of their distress can be evidenced from the statement of one child detained under the PSA, 'Now I won't pelt stones, now I want to wear an explosive laden jacket and blow myself up.' Commenting on its barbarity, former union law minister Ram Jethmalani referred to the PSA as "something we have not heard even in Nazi Germany". This shows us that, since decades, the citizens of the valley have been like the dirt where only the beasts have stamped on, by their power, by ruling in any way they want, PSA and what it has done is a big example of it.

While **interviewing the Advocates**, the researcher observed that PSA is more used against the citizens of the valley on the public order, especially who have already some cases registered under any other law. It has been observed that as soon as the individual gets acquitted or even when the individual is released on bail, the officials try to detain the individual on some other grounds. It is further observed that, **juveniles have also been detained** under PSA and shifted outside the residential limits of the detenu. It is also observed that the officials who pass the detention order do not apply mind while passing the detention order, and the detenu is not given proper representation before the Advisory Board and **Advisory Board plays a dormant role**, due to which several habeas corpus petitions are filed before J&K High Court. After the period of invalid detention, the detenu finds it hard to adjust in the normal life like before and there is **no compensation scheme for illegal detention**. It is further observed that the detention of political leader especially at the abrogation of Article – 370 was to **prevent them from raising any voice against the abrogation** and moreover, political activists and individuals **were detained overnight**. It is also in the opinion of the Advocates that **PSA is punishing** in nature, either it needs to be abolished or it needs to be properly amended.

In the end, the researcher would like to conclude and ask himself by saying, the nation is growing towards the modern era, the advanced technology which has been the dream of every nation, specifically this nation with sustainable development goals, where the future lies in the hands of the youth, where every state is a part of nation; it is not necessary to directly slap PSA on mere apprehension on the citizens especially the youths of the valley. If it was used by the British rule in the past times, it is not necessary to

⁴⁵ An Article by The Third Pole on Timber smugglers loot Kashmir's forests during pandemic lockdown: The operation is still going on, according to Tawheed Ahmad Deva, conservator of forests for the south circle <https://www.thethirdpole.net/en/nature/timber-smugglers-endanger-kashmirs-forests-during-pandemic-lockdown/>, visited on 18th February 2021.

⁴⁶ Ibid. pg. 16, footnote 26, chapter 5 pg. 41

⁴⁷ *Insight Turkey 2019/04* by SET Vakfı İktisadi İşletmesi, pages: 59-60

use such a harsh law against the individuals of the independent nation. It is not necessary to leave them with scars for their lifetime. There is always a way to reform the society when the leading citizens or people in power want to develop the nation collectively.

REFERENCES:

1. Jammu and Kashmir Public Safety Act, 1978.
2. An Article by Amnesty International: A 'Lawless Law' Detentions under J&K Public Safety Act.
3. Google Book, Insight Turkey 2019/04, Fall 2019, Volume 21, No. 04.
4. Book, Constitutional Law of India, by J. N. Pandey, 51st edition.
5. Book, Code of Criminal Procedure, 1973, by Ratanlal and Dhirajlal, 21st Edition.
6. An Article on Indian Express; Explained: What is J&K Public Safety Act (PSA)? <https://indianexpress.com/article/explained/explained-what-is-the-jk-psa-under-which-shah-faesar-has-been-detained-5905119/>, visited on 17th February 2021.
7. An Article of Scroll.in on In Kashmir, a law of smugglers has become a way to keep people 'out of circulation'. [In Kashmir, a law for timber smugglers has become a way to keep people 'out of circulation' \(scroll.in\)](https://scroll.in/article/2021/02/23/kashmir-smugglers-law-keep-people-out-circulation), visited on 23rd of February 2021.
8. An Article by Syed Junaid Hashmi on Countercurrent.org [Jammu And Kashmir Public Safety Act-1978 By Syed Junaid Hashmi \(countercurrents.org\)](https://countercurrents.org/2021/02/23/jammu-and-kashmir-public-safety-act-1978-by-syed-junaid-hashmi/), visited on 23rd February 2021.
9. An Article by The Third Pole on Timber smugglers loot Kashmir's forests during pandemic lockdown: <https://www.thethirdpole.net/en/nature/timber-smugglers-endanger-kashmirs-forests-during-pandemic-lockdown/>, visited on 18th February 2021.
10. Article of The Hindu Newspaper, 05th February 2020, [389 people in detention in J&K under Public Safety Act: Centre - The Hindu](https://www.thehindu.com/news/national/kashmir/389-people-in-detention-in-j&k-under-public-safety-act-centre-the-hindu/article.html), visited on 21st December 2020.
11. The Wire on Govt cites Shah Faesal's 'Soft Separatism' on Social Media as a Reason for PSA Booking: [Govt Cites Shah Faesal's 'Soft Separatism' on Social Media as Reason For PSA Booking \(thewire.in\)](https://thewire.in/govt-cites-shah-faesal-soft-separatism-social-media-reason-psa-booking), visited on 18th February 2021.
12. An Article on Indian Express: [Prisoners lodged in J&K shifted outside the state | India News, The Indian Express](https://indianexpress.com/article/india/prisoners-lodged-in-j&k-shifted-outside-the-state-7348477/), visited on 23/12/2020.
13. An Article of The Hindu: ['J&K youth being sent to jails outside State' - The Hindu](https://www.thehindu.com/news/national/kashmir/j&k-youth-being-sent-to-jails-outside-state-the-hindu/article.html). Visited on 23/12/2020.
14. Article of The Wire on How Public Safety Act continues to haunt Kashmir. [How the Public Safety Act Continues to Haunt Kashmir \(thewire.in\)](https://thewire.in/kashmir/how-public-safety-act-continues-to-haunt-kashmir), visited on 12th February 2021.
15. Britannica on Kashmir (History of Kashmir): [Kashmir | History, People, & Conflict | Britannica](https://www.britannica.com/place/kashmir), visited on 06th February 2021.
16. Economic Times on Instrument of Accession: From 1947 till date: [Article 370: Instrument of Accession: From 1947 till date - The Economic Times \(indiatimes.com\)](https://economictimes.indiatimes.com/news/india/instrument-of-accession-from-1947-till-date-the-economic-times/articleshow/8548477.cms), visited on 09th February 2021.
17. Thought.co on Kashmir History and Background: [History and Background of the Kashmir Conflict \(thoughtco.com\)](https://www.thoughtco.com/kashmir-history-and-background-1378477.html), visited on 06th February 2021.