

UPSC Syllabus Topic : GS Paper 2 – Governance – Criminal Justice System of India

Jammu and Kashmir High Court's Judgment on Journalist's Bail Sheds Light on UAPA's Application

Overview: The Jammu and Kashmir High Court's recent judgment granting bail to journalist Fahad Shah, who faced charges under the Unlawful Activities (Prevention) Act (UAPA) and the Foreign Contribution (Regulation) Act (FCRA), brings attention to the broader issue of UAPA's application. The court partially set aside the charges, emphasizing the need for a meticulous interpretation and application of UAPA to safeguard personal liberty.

Understanding UAPA and Key Sections:

- **UAPA Objective:** Aims at preventing unlawful activities and associations in India.
- **Section 43-D (5):** Restricts courts from granting bail if police materials establish accusations as 'prime facie true.'
- **Section 18:** Provides punishment for conspiracy and acts preparatory to a terrorist act.
- **Section 13:** Covers activities advocating, abetting, advising, or inciting unlawful activities.

Observations of the High Court:

1. **Defamation as Terrorism:** Treating defamation as terrorism may create a new category of offense with broad implications for criminal laws.
2. **Differentiated Implementation of UAPA:** Emphasized judicial prudence in enforcing anti-terror laws, stressing the importance of not compromising liberty without evidence of a 'clear and present danger.'
3. **Bail Under UAPA:** Critiqued procedural aspects, particularly Section 43-D (5), arguing against the easy release prevention for those not directly linked to potential threats.

Issues Highlighted by the Case:

1. **Arrests of Unconnected Individuals:** Concerns raised about arrests of individuals unrelated to actual incidents of violence or lacking direct connections. In this case, the publication of an article was deemed an act of terror, affecting India's reputation.
2. **Lack of Discussion on Compensation:** The judgment does not address compensation or state accountability for wrongful arrests, raising concerns about due process and justice.

The Fahad Shah case underscores the complex challenges in applying UAPA, shedding light on potential misuses and the importance of safeguarding individual liberties within the framework of anti-terror laws.