Concerns with UAPA Tribunals

What is the issue?

- Amendments to the Unlawful Activities (Prevention) Act, 1967 (UAPA) were passed recently. Click here to know more.
- A close reading of UAPA Tribunal orders shows how fundamental principles of fair procedure are being ignored.

How do UAPA works?

- Before the 2019 amendments, the UAPA could be used to ban associations and not individuals.
- To this end, the UAPA required and still requires that the ban must clearly spell out the grounds on which the government has arrived at its opinion.
- It may then be contested by the banned association before a Tribunal, consisting of a sitting High Court judge.
- As a number of judgments have held, the task of a UAPA Tribunal is to carefully scrutinise the government's decision.
- In doing so, it should keep in mind that banning an organisation or a group infringes the crucial fundamental freedoms of speech and association.

What are the shortfalls?

- A close reading of UAPA Tribunal orders makes it clear that the requirement of judicial scrutiny is not implemented in true spirit.
- The tribunal makes it easy for the government to prove its case.
- In effect, the tribunal departs from some of the most fundamental principles of fair procedure.
- They act as little more than judicial rubber stamps.
- This is made evident by a recent UAPA Tribunal Order (on August 23, 2019) confirming the government's ban on the Jamaat-e-Islami, Jammu and Kashmir ("JeI, J&K").

What was the charge on JeI, J&K?

- The government's ban on the JeI, J&K was based on its opinion that the association was -

i. supporting extremism and militancy

ii. indulging in anti-national and subversive activities
iii. indulging in activities to disrupt the territorial integrity of the nation

- In support of this opinion, the government said that there were a large number of First Information Reports (FIRs) against various members of the association.
- Among other things, the JeI, J&K responded that for almost all of the FIRs in question, the people accused had nothing to do with the association.
- It was also argued that this could be proven by looking at the association's membership register.
- But, the membership register had been seized by the government.

Why is the ban on JeI contentious?

- If the government proves the case with sufficient evidence of wrongdoing against JeI's members, it could be resolved straightforwardly.
- However, the government resorts to the "sealed cover jurisprudence", submitting material that it claimed was too sensitive to be disclosed.
- The material on the basis of which the ban is justified is crucial for the association to defend itself.
- But, notably, the evidence was not disclosed even to the association and its lawyers, who were contesting the ban.
- More worryingly, the UAPA Tribunal took a decision on the legality of a ban by looking at secret material that is withheld even from the association.
- It was said that the evidence in the sealed covers was carefully examined and the tribunal was convinced of them to be "credible documents."
- The association's request to the government to produce the membership register also failed as the government submitted even this piece of evidence in a sealed cover.

What is the larger concern?

- In essence, the fundamental freedoms of speech and association have been violated on the basis of secret evidence.
- The most basic rules of procedural justice and fairness seem to have been compromised.
- Courts seem to be acting to legitimise and enable governmental overreach, rather than protecting citizens and the rights of citizens against the government.

Source: The Hindu



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