

[National Investigation Agency \(NIA\)](#) was set up after the Mumbai Terror Attacks in 2009 in order to deal more effectively with cases of terrorism.

The recent NIA Amendment Bill 2019 does some restructuring and defining of clauses in a few sections of the original NIA Bare Act 2008. In addition to redefining, or rather, clearly defining and adding clear provisions that constitute the Act which was originally brought about in 2008, the amendments made recently provides two (additional) essential provisions that can change the game of how intelligence and investigations take place in India (and abroad) and how effective it can be in handling crimes that are national and international.

What does this mean for the NIA and how exactly does this increase their scope, and what how important are the issues raised by the opposition in this case?

Increasing areas of jurisdiction for investigations

Section 3 in subsection (2) of the Bare Act, after the amendment, states that **“subject to any orders which the Central Government may make in this behalf, officers of the Agency shall have throughout India *“and, subject to any international treaty or domestic law of the concerned country, outside India”*** in relation to the investigation of Scheduled Offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which police officers have in connection with the investigation of offences committed therein.” This allows the NIA to make its investigations more effective in cases that don't limit to the territory of India.

Furthermore, the Bill has added that the NIA can also take up cases related to [cyber terrorism](#), **manufacture or sale of prohibited arms, counterfeit currency or banknotes, and offences under the Explosive Substances Act, 1908.**

The amendments made, give a tool to the NIA to investigate cases of cross border terrorism, also allowing arrests outside of India of persons who seem to be involved in crimes that affect the security or interests of the nation. Acts that involve cross border terrorism are easy for criminals to follow through due to the loopholes in the areas that NIA can run their investigations in. Smuggling of illegal goods, materials for explosives, etc., often provide a helping hand in acts of terrorism, and the NIA earlier was hindered due to limitations which are now removed.

To these provisions, however, there was a backlash of questions of uncertainty from the

opposition.

To begin with, questions regarding what exactly is the definition of “interest of India”? While primarily it may mean or relate to any activity that threatens the security of India, or likewise, Assaudin Owaisi (President of the All India Majlis-e-Ittehadul Muslimeen) pointed out that leaving definitions vague can bring trouble. He stated that leaving “interest of India” undefined is creating a tool which allows the government to even bring in people who write a blog against the ideology of the political party in power. He also questioned the undefined usage of the word “terrorism”.

While both these things can lead to a negative outcome, it is also to be noted that it is rather difficult to define these terms. Defining what “interest of India” means can be something that can keep the bill held down for days or even months. The difference in opinions over what constitutes as a security issue, or what harms “interest of India” is a subject matter. So is terrorism. Defining these two terms is something that needs sufficient time brainstorming, precisely, making sure that there is no scope for loopholes that people can escape from. This is especially true for words like “terrorism”. It is a case sensitive word, whose definition can be used to even go against the government maliciously with an altered or wrong interpretation of the definition of the language.

Given these additional provisions, another issue about the government misusing it has been brought up which primarily acclaims that the government will use religion as a basis to arrest people and that this Bill can indirectly prove to be a threat for minorities. Owaisi also stated in the Lok Sabha how when the victims are Muslim and the criminal a non-Muslim, minimal is done for justice in such situations. To this Amit Shah (president of the Bhartiya Janta Party (BJP)) said that the only intention to pass this bill is to help curb terrorism and that the government will not misuse it in the name of religion.

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There are two things that can be extracted from such rhetoric. Firstly, many claims that it is wrong to bring in the religious problem of Muslims and Hindus in every debate, which is a fair play when discussing issues of national security. But taken that India is a country with a high Hindu majority and a Muslim minority, religion is relevant or can be relevant in almost all cases. It must also be noted that while it isn't necessary to bring in religious rhetoric into every issue, the problem comes from a place of growing islamophobia worldwide and

concerns for the community in general. Acts of religious intolerances perpetuated repeatedly also give a push to the inclusion of religious issues with every situation, and all these problems need to be solved collectively. We cannot expect community representatives not to bring out religious issues when religious issues might be the ones that affect their community the most.

Secondly, the question of if the government is more likely to stick to its claim of not misusing these provisions. This can be assessed from a number of cases and situations but the answer somehow seems to remain a little ambiguous, along with hope. The current government which is run by the BJP has had many cases of accusations where their leaders and members say things that are now secular in nature, are involved in violent acts against religious minorities, etc. This type of precedent leaves the country and the opposition rather sceptical of if the government will stay true to their word. On the other hand, improving legal systems where crimes against religious minorities are recorded more effectively, the government adding more than ten different types of crimes against religious minorities to their lists where they register these cases shows that there are a possibility and truth in the words spoken by Amit Shah.

Another reason the government is likely to avoid religious biases with these provisions is that it may lead to unpopularity and downfall of their party. The results of these judgements, however, can only be seen with time.

Dealing with urgent cases - “special courts”, and the creation of a “police state?”

The amendments made to the Bare Act, also allow turning of normal session courts into special courts which can be used by the NIA for their trials. This can be seen as an attempt to make trials faster. Normally, setting up a special court takes time which affects trials negatively due to the time consumed. Many cases that might require fresh evidence or evidence that needs to be presented within a certain amount of time can be affected by the time special court setups take.

Furthermore, for cases or cases that require urgent trials can effectively use this provision to do so. Questions were however raised on this provision as well, stating that normal session courts already have many cases pending and burdened on them and that this provision will only burden these courts with more, making legal processes slow and weak. It is then contemplated, that this provision will again also be used only during emergency situations, or situations where the usage of sessions court is the last resort.

Other causes of resentment against the Bill were on the basis that it would be providing a base for the subcontinent to turn into a “police state”- especially when read beside other acts (such as that of Unlawful Activities Prevention Act) - because it gives NIA the power to go to any state without taking permission from the state police. However, that provision is provided with the view that it will be used in urgent cases where passing permissions through the state police might delay the process which might affect the case negatively. Assertions of previous mishandling of cases and harm were done to innocents by the NIA were also raised in the same respect, but to judge if these were done in malicious intentions or done by honest mistakes will be something that won't have an acceptable answer by all (at least for sometime in the near future). It is always easy to turn around the conditions of events and the way they are presented to change perceptions. It is hard to judge if such a provision will be misused unless we wait and see how it is being practised. Providing negative backlashes and disadvantages to every solution is possible, therefore waiting to see if there's misuse is the only issue. With that in line, it is also important that if misuse is noticed, strict action must be taken by the government wherever relevant.

A way forward

Despite these oppositions, the Bill was passed with minimal votes against it in the parliament. There can be different reasons for this behaviour but it is important to see this bill as a way forward, and as a step that will help create better investigation channels and intelligence systems within India.

N R Wasan, a former director in the NIA who helped with the proposal of the Bill stated that “All major countries have this provision for their concerned agencies. The US was able to prosecute David Coleman Headley in the 26/11 attacks because they had powers to register a case in a terror attack that had happened in a foreign country. Their nationals had been killed in the attack, and they took cognizance of the case. NIA does not have such powers.” While keeping in mind that not all of the requests sent in the proposal (or discussed) were granted with the Bill, proving that addition of these provisions was indeed the right thing to do can be the first step of the NIA along with proving it's credibility, into developing a more efficient system, with perhaps more provisions from the government.

As India moves forward with this bill, the government must ensure that it isn't misused and pull out provisions for justice when resources are being exploited. Along with that, the government must look forward to discussing serious matters, the definition of vague terms that can prove to be loopholes as much as concrete definitions can. In relation the same

issue, in section 6 subsection 2, rather than asking the State Government to forward the received report to the Central Government "as expeditiously as possible", a fixed time period should be decided. Leaving it to "as expeditiously as possible" might create hindrance in the approval process. A way out of these issues must be figured out.

Furthermore, provisions for the protection of victims and witnesses is also an important discussion that the government should initiate. All these things kept in mind, it is hoped that the colour added to the greys of the NIA Bare Act do not mix up to turn into something unpleasant.



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