

THE TERRORIST TAG: ON THE LATEST AMENDMENTS TO THE NIA ACT

Relevant for: Indian Polity | Topic: Indian Constitution - Amendments, Schedules, and Important Articles

The idea of designating an individual as a terrorist, as the [latest amendments](#) to the Unlawful Activities (Prevention) Act propose to do, may appear innocuous. However, designating an individual as a terrorist raises serious constitutional questions and has the potential for misuse. The practice of designating individuals under anti-terrorism laws, prevalent in several countries, is seen as being necessary because banned groups tend to change their names and continue to operate. However, there is no set procedure for designating an individual a terrorist. Parliament must consider whether an individual can be called a 'terrorist' prior to conviction in a court of law. The absence of a judicial determination may render the provision vulnerable to invalidation. There ought to be a distinction between an individual and an organisation, as the former enjoys the right to life and liberty. The likely adverse consequences of a terrorist tag may be worse for individuals than for organisations. Further, individuals may be subjected to arrest and detention; even after obtaining bail from the courts, they may have their travel and movements restricted, besides carrying the taint. This makes it vital that individuals have a faster means of redress than groups. Unfortunately, there is no change in the process of getting an entity removed from the list. Just as any organisation getting the tag, individuals, too, will have to apply to the Centre to get their names removed.

A wrongful designation will cause irreparable damage to a person's reputation, career and livelihood. Union Home Minister Amit Shah's warning that his government would not spare terrorists or their sympathisers, and his reference to 'urban Maoists', are portentous about the possibility of misuse. It has been argued by some members in Parliament that the Bill contains anti-federal features. The provision to empower the head of the National Investigation Agency to approve the forfeiture of property of those involved in terrorism cases obviously overrides a function of the State government. At present, the approval has to be given by the State police head. Also, there will be a section allowing NIA Inspectors to investigate terrorism cases, as against a Deputy Superintendent of Police or an Assistant Commissioner. This significantly enhances the scope for misuse. The 2004 amendments to the Unlawful Activities (Prevention) Act, 1967, made it a comprehensive anti-terror law that provided for punishing acts of terrorism, as well as for designating groups as 'terrorist organisations'. Parliament further amended it in 2008 and 2013 to strengthen the legal framework to combat terror. While none will question the need for stringent laws that show 'zero tolerance' towards terrorism, the government should be mindful of its obligations to preserve fundamental rights while enacting legislation on the subject.

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