

# **National Investigation Agency Amendment Bill, 2019 - A Critical Analysis**

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## **ABSTARCT:**

National Investigation Agency is one of the prime and most important investigations of the country. It is a government agency which specializes in the investigating the crimes which fall within the ambit of terrorists activities. In the present scenario the work of this government agency is under question because of various politically motivated decisions that it took. Therefore it becomes very important to analyze the extent of its power. This agency is a fairly new agency as compared to the Central Bureau of Investigation yet during its short life it has been able to make a name for it is it for good or bad reasons. It becomes all the more important that it is discussed that how N.I.A is able to do so. It is also argued that the N.I.A is often puppet in the hands of the political bosses. What is the cause of such control and how the legislature is using this agency as tool for establishing its own motive? The basic cause and reason for its inception was to regulate the terrorist's acts and to also monitor the funding that is done to the various terrorist groups. But with the abrogation of article 370 this function of the N.I.A is also being put under question as it has tightened its grip over the various Kashmiri leaders.

## **1. INTRODUCTION**

The national investigation agency or as it is popularly called the NIA is one of the prime investigation agencies in the country. This is an agency which was established to combat with the ever increasing problem of terrorism. The national investigation agency is functioning as the Central Investigating Central Counter Terrorism Law Enforcement Agency i.e. it solely functions under the authority of the central government. This agency's main function is to look into the matters which tend to threaten the security of the country.

## **2. HISTORY AND ITS FORMATION**

India is the world largest democracies in terms of number of voters and has a population of approximately 1.2 billion people consisting of people belonging to all the major religions of the world. India shares its land border with country like Pakistan which is the breeding ground of many terror groups. The consequence of this geographical situation is that India has been a constant victim of cross border terrorism. The most recent and terrifying example of the cross terrorism were the Bombay terror attacks. On 26 September 2008 10 terrorists attacked the financial capital of India.<sup>1</sup> The gunmen attacked the landmark building of the city including the world famous Taj Hotels. On this fateful night one of the India's most iconic hotels the Taj

Mumbai along with some other landmark places were sieged by the terrorist. The Britons and the Americans tourists were reportedly the main targets. After the capture of the last terrorist Ajmal Kasab he disclosed that the all the slain terrorists including him were the members of the Lashkar-e-Taiba, a terrorist group based in Pakistan. These attacks were wake up call for the government as it brought forward the glaring loopholes in the national security of the country.

So therefore the government decided that there is a need to have an agency which is specifically working in to investigate various terror outfits and to look minutely into the issues affecting the national security. The heads of many enforcement agencies were brought into the loop and after some serious deliberation the government introduced the bill to bring the National Investigation Agency into the existence <sup>ii</sup>

### 3. NATIONAL INVESTIGATING AGENCY ACT , 2008

In order to achieve the goal of providing a centralized agency for curbing the problem of terrorism the UPA government introduced the bill in the parliament which led to the formation of the national investigation agency. The salient features of the act are

- The National investigating agency act 2008 when enacted was applicable to the whole of country. This was one of the few acts which were applicable to the State of Jammu and Kashmir prior to the abrogation of article 370. Some of the other acts are Armed forces [special powers] act 1990. Prevention of Terrorist activities act, etc.
- The National investigating agency has been given the same powers to investigate as it has been given to an investigating officer under Criminal Procedure Code. Any officer of the Agency who is equivalent to or above the rank of Sub-Inspector may, exercise in the entire country, any of the powers of the officer-in-charge of a police station in the area in which he is present for the time being.<sup>iii</sup> But such officer would be subject to the orders of the central government in this behalf.
- There has been a schedule created which contains all the offences which would be investigated by the National investigating agency only and no other agency could interfere in the investigating procedure of the agency. If any such offence is committed in any of the states it is the responsibility of the state government to forward the report to the Central Government as expeditiously as possible<sup>iv</sup>
- Apart from this government at the central level has the power to suo-moto start investigating the offence if there is strong evidence that the offence should be investigated by the NIA
- It is duty for the state government to send the report of the offence to the central government as expeditiously as possible and it is upon the central government to decide that whether the offence is scheduled or not with in fifteen days receiving of the report

- The central government also has the power to initiate the investigation the offences by the NIA which are connected with the scheduled offences also.
- The central government has the power to create special courts which would be given the power to hear the cases which would specifically deal with offences stated in the scheduled list. Any issue relating to the jurisdiction of the special court shall be referred to the Central Government and their decision in this matter shall be final.<sup>v</sup> The judge who is presiding over such courts will be appointed by the Chief Justice of the High court in whose jurisdiction the court is situated.
- If there is any threat to the security of the witnesses or fair trial is not possible then the Supreme Court has full authority to transfer the case from one special court to another within the same district or outside it.
- The special courts constituted under this act have full power to the take cognizance of the offence on receiving the report of the offence. They also have the power to start a summary trial of the offence. But this power could be exercised only in the offences which are punishable for a term not exceeding three years or with fine or with both.<sup>vi</sup>
- The special court would have the same rank as that of the court of sessions and it would as far as may be trying the offences according to the provisions given in the Criminal Procedure code.
- The trials taking place in the special courts will have precedence over all the trials which are taking place against the accused in the ordinary courts.

#### **4. NATIONAL INVESTIGATION AGENCY AMENDMENT BILL , 2019**

The bill seeks to broaden the NIA's powers and can be seen as part of NDA's policy of zero tolerance against terrorism<sup>vii</sup>. While giving the reply to the debate on the Bill to give powers to NIA to investigate the terror crimes relating to Indians and Indian interests abroad, in Lok Sabha, the Home Minister backed a strong NIA so as to strengthen the legal framework against terrorism.<sup>viii</sup> The prime minister extended his full support to the home minister stating that this amendment will strengthen the national investigating agency to curb the increasing effects of terrorism cross border or otherwise. Interestingly the act was passed by the parliament on 17 July 2019 and it was passed by a whopping majority of 278 in the Lok Sabha with only 6 voting against it.

#### **5. FEATURES OF AMENDMENT**

This act has widened the scope of jurisdiction of the agency and has also given some unlimited powers to the investigating agency when it comes to the investigation of certain scheduled offences.

##### **• JURISDICTION OF THE AGENCY:**

The original act of 2008 states in section 1 that the agency has the authorization to investigate all of the offences which has been committed by any citizen outside the country, by any person who is currently working under the authority of the government i.e he is in the payroll of the government and by the persons who are travelling in a ship registered in

India. In the original act there was no provision for authorizing the agency to investigate an offence which is committed outside the country. This amendment states that the officers having the power to investigate an offence which have been committed outside the country. NIA's jurisdiction will always be subjected to international treaties and domestic laws of other countries.<sup>ix</sup> Earlier the agency did not have any power to investigate the acts of terrors committed by the foreigners against Indians abroad but by virtue of this amendment the NIA will have complete authorization to investigate such acts even if it was committed by foreign nationals but the limitations of various treaties and international conventions would always be there.

## • SCHEDULED OFFENCES

The act provides a schedule which gives the list of acts and offences which could be tried by the National Investigation Agency only. By virtue of 2019 amendment the agency could now investigate some additional offences. Those offences are that of human trafficking, cyber terrorism, counterfeit currency notes, manufacture and sale of arms among others <sup>x</sup> This amendment has also extended the powers of the agency because now it can directly deal with the illegal transactions which take place in guise of the internet and counterfeit currency notes.

## • SPECIAL COURTS

The act of 2008 enabled the center government to make special courts to conduct the trial of the scheduled offences. These offences are to be specifically tried by the agency .But after this amendment the center government has been given the power to make any session court a special court for such offences. Now the center government could make any sessions court be special court for this act only.<sup>xi</sup>

## • AMENDMENTS DONE IN THE UNLAWFUL ASSEMBLY PREVENTION ACT

The Unlawful Activities (Prevention) Act was enacted by the government of India to regulate the activities which tend to affect the peace and tranquility of the nation. A national integration council was appointed to put reasonable restrictions on the people's right of freedom of speech and expression. This section puts reasonable restrictions on some fundamental rights of the people of India. According to the government the bill will provide some necessary teeth to the NIA. The government requested the house of the people to pass the bill unanimously.<sup>xii</sup> The salient features of the amendment are as follows:

1. The original UAPA act dictates that the central government has the power to declare certain outfits to be terrorist organizations. The central government by virtue of this amendment can now declare a person to be a terrorist. If a person is doing any act which is a threat to the national security that person could be termed to be a terrorist.

- India's most wanted, Lashkar-e-Taiba founder Hafiz Saeed and Jaish-e-Mohammad chief Masood Azhar, are likely to be the first two individuals to be designated as terrorists under the legislation, the officials said.<sup>xiii</sup> The national investigating agency had no jurisdiction to declare any single individual to be terrorists. He could only be declared so if he had any relation to a terrorist organization and that to which has been so stated by the central government.
2. Another amendment made by the government which provides unlimited power to the national investigating agency is that if a person has been declared to be terrorist then burden of proving his innocence will be on the accused himself. Under the Indian Evidence act section 101 states that the burden of proving the case would be on the person who has come to the court to get remedy. It means that the burden of proof would be on the person who has filed the case. But after this amendment if the national investigation agency is able to bring evidence which links the accused with the scheduled offence committed then the onus of proving that he is not a terrorist is on the accused. This provision has been given under section 43- E which has been added by this recent amendment
  3. Another amendment in the act states that the officers investigating under any of the provisions of the act would require the permission of only an officer who is equivalent to the rank of the Superintendent of the police , so as to allow any officer of the agency to require any personnel or authority of the Central Government or a State Government or a local authority or a bank, or a company, or a firm or any other institution, establishment, organization or any individual to furnish information in his or its possession in relation to such offence, on any of the points or matters, where the investigating officer has reason to believe that such information will be useful for, or relevant to, the purposes of this Act.<sup>xiv</sup>

## **6. CRITICISM OF AMENDMENTS :**

The current amendments made to the act has been criticized on the grounds that it violates the basic human rights of the individual and is also against the basic principles of criminal jurisprudence.

- **INCREASE IN JURISDICTION:**

On the face of this amendment it appears that know the national investigation agency could investigate against the offences which has been committed against Indians who are not in the country itself. But along with it there has also been rider attached that the officers would be subject to the international treaties. It does not cover the cases in which the offender is a person who is in a country which does not have any treaty or international cooperation with India. All an offender has to do is after committing the offence against the Indians is to acquire

the citizenship of a country which has no diplomatic ties with India or whose diplomatic ties are not at all friendly. The hands of the agency is still tied in such cases

- **PROVISIONS RELATING TO SPECIAL COURTS:**

The amendment allows the central government to give the status of special court to any session's court. But what will be the fun of having special courts if the center government could give the designation of a special court to any session's judge. So this provision although helpful in emergency situations where no special court is available downsizes the importance of special courts.

- **FUNCTIONING OF NIA:**

The basic function of NIA is to investigate the offence. This has been so enumerated in the section 3 of the act itself. None of the amendments be it the current one or the ones which have been done prior to this have given the agency the power to stop the commission of the offence itself. The most important and the basic function of an agency which currently deals with the issue of national security is to prevent the offences which has the power to disrupt the security of the country. There are provisions which deal with the sharing of Intel with other agencies but they are also not effective. The NIA Act is completely silent on information sharing, how information and intelligence is to be shared among various other enforcement agencies, and what would be NIA's relationship to other agencies that presently gather information relating to national security and terrorist activities.<sup>xv</sup>

- **SUPRETEDESCENCE NOT DEFINED PROPERLY:**

The national investigating agency would remain under the superintendence of the central government. This has been so given under the section 4 sub section 1 of the act itself. But the word superintendence has not been defined in the act itself. There is no provision in the act which sets a criteria on how is the government going to exercise its control and 'superintendence' over the agency. This at times plays against the agency because the common man has the perception that NIA is working as a puppet of the ruling party. The policing system in India is not very popular with the citizens. This act provided a great opportunity to change the way people look at the police. But due the fact that the word supretedence has not been defined properly this opportunity was wasted by the legislature<sup>xvi</sup>. NIA through this has lost a lot of credibility.

- **DELAY IN ACTION:**

When the act itself came into the existence many legal experts criticized the provision which stated that the central government would take 15 days to decide that whether the issue is to be investigated by the agency or not. The offences which are to be investigated by the agency are of serious nature so prompt action

on the behalf of the government is required. The same is the case with the legislature at the state level. The state government is required to send the report to the central government as expeditiously as possible. This has been so stated under section 6(2). The act has not clearly given the meaning to the word expeditiously. The state government can take as much time it wants to give the report to the central government.

- **VOILETION OF BASIC PRINCIPLES OF**

One of the basic principles of the Indian criminal justice system is that the “accused shall be presumed innocent until proven guilty”. But this current amendment has made an exception to this rule. Now this amendment has not been directly made by in the National Investigation Agency act 2008 itself. The amendment has been made in Unlawful activities prevention act. As discussed above that now the onus of proving that a person is not a terrorist would be on the accused itself. Since the offences under the UAPA have to be investigated by the NIA this amendment would lessen the burden of proof of the agency. It means that once it has been proved by expert opinion and other evidence that the accused is a terrorist then it is wholly and solely the responsibility of the accused to bring prove his innocence. The Indian Evidence act also states that the burden of proof would always be on the accused to prove guilt of the accused beyond reasonable doubts but this amendment breaks away from this centuries old principle. There was a very interesting case which relates to the Union territory of Jammu and Kashmir in which three persons were arrested in 1992 for Bombay blasts but later on they were acquitted and released after 23 years.

- **SERIOUS VOILETION OF HUMAN RIGHTS:**

The amendment of 2019 has also come under the radar for violating the human rights of the prisoners. The act states that within one month of the arrest the advisory board should be made to decide whether the detention of the accused should continue for more than one month or not. But many times it has been seen that the agency and its officers have by passed this provision. They do not set up the board and it leads to the extension of the detention. The amendment has not tried to remove this anomaly. Now that the agency has been given the power to declare any individual to be a terrorist it can misuse this power and keep the accused in the jail in the guise of this amended provision. The Geneva Convention and the Vienna convention clearly states that the prisoners have been given rights which includes the right to fair trial. These rights are also incorporated in the article 21 and 22 of the Constitution of India but the amendments behind the veil of national security tends to shake the basic human rights of a person

## **7. CONCLUSION :**

These amendments have been made to strengthen the internal and external security of the country because after the attacks on Pulwama and the Uri our country was in a vulnerable state. But this does not mean that the government could change the basic principles of the justice system of the country. The various procedural and structural deficiencies of the act still remain the same Under British-occupied India, freedom fighters were arrested under the Rowlatt Act for expressing their will to have a free motherland; but they did not stop struggling.<sup>xvii</sup> The amendments are appearing to be favoring the system of policing which was followed by the British Raj. The legislature should not pass any law which has the power to take away the life and liberty of an individual

## **SUGGESTIONS:**

The following suggestions should be followed by the government that will actually make the NIA a strong asset to the government:

1. The government should not interfere in the working of the agency. A lot of times it is observed that the government is using this agency to target its own political vendetta. Be it the arrest of the hurriyat leaders to the arrest and acquittal of some ordinary kashmiris after 23 years of being in jail the agency should be allowed to function without being a puppet in the hands of the ruling parties.
2. The amendments have been seen as forwarding the hindutva political narrative of the current government. The case of Aseemanand was also under the inquiry of the agency but till today no concrete action has been taken against him. But when it comes to the muslims who are not even remotely related to the terrorists they are put in jail without any provision of bail or furlough. The government should ensure that this tag of being a biased government investigating agency should be removed
3. The agency should have some checks on its powers. After the addition of section 43 A in the UAPA the all it is required by the agency and its officials is to bring expert opinion in the court which favors the narrative of the officers and the court is bound to presume that the accused is a terrorist. This gives some unprecedented powers to the NIA which could be used against anybody and everybody
4. The opinion of the expert under the Indian Evidence Act is not binding on the court but under UAPA the court is bound to presume that the accused is a terrorist. The experts appointed for giving evidence in these cases should be the ones which could be trusted by the government.
5. While doing any arrests the officials should keep in mind that with great power comes great responsibility. So whatever procedure is followed should

be followed keeping in mind the basic human rights of the individual and the principles enumerated in the constitution of India

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