

## Designating Individuals as Terrorists

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*The amendment to the UAPA has the potential to impinge on fundamental rights of individuals.*

Even by the standards of the draconian “national security” laws that have blotted the history of independent India, the Unlawful Activities (Prevention) Amendment Act, 2019 stands out. Much of the public discussion and concern about the amendment has focused on the power of the union government to declare any individual a “terrorist” for the purposes of the Unlawful Activities (Prevention) Act (UAPA), 1967, a move that must fill any right thinking citizen with dread.

The UAPA permits the union government to designate any organisation as a “terrorist organisation,” allowing the government to prosecute members and active supporters of such an organisation. This is not preceded by any hearing or procedure, but the organisation in question (or any person affected by such designation) is given a post-decisional hearing by a review committee (headed by a sitting or retired high court judge) to determine whether the designation should be continued or not.

The government has said in the Rajya Sabha that terrorist acts are committed not by organisations, but by individuals. Not designating individuals as terrorists, would give them an opportunity to circumvent the law and they would simply gather under a different name and keep up their terror activities, it added. Given that individuals who are members of terrorist organisations or who have in any way aided or abetted acts of terrorism could have been prosecuted under the UAPA prior to amendment, one wonders what purposes an amendment to designate an individual as “terrorist” serve.

One reason offered is that the United Nations Security Council (UNSC) now designates individuals as such, and India as a signatory of the United Nations Charter is bound to treat such individuals as terrorists. This justification explains the move partially, but does not answer why the union government is given the power to designate an individual as a terrorist, irrespective of a similar designation by the UNSC.

Just as problematic is the procedure adopted to designate an individual a “terrorist.” The amendment adopts the same procedure used to designate organisations as “terrorist organisations,” without any concern for the fact that an individual (even a terrorist), unlike an organisation, has their fundamental rights protected under the Constitution. Was the government unaware of Article 21 of the Constitution or did it simply choose to ignore it nonetheless?

Per se, the designation does not have any immediate legal consequences under the UAPA, though the negative consequences of such a designation are obvious. One does not even need to have been convicted of terrorism or even be facing trial for the commission of the offence of terrorism in order to be designated as such.

At a time when innocent Muslim men continue to be locked up for decades on flimsy terrorism charges and the National Investigation Agency wilfully weakens cases against those accused of terror attacks on Muslims, it is hard to imagine that somehow this law will be applied neutrally. The excuse that the amendments were necessary in light of “difficulties” in investigation and prosecution falls apart when examined seriously. Not one of the new provisions actually affects the investigation and prosecution of terrorist offences, which are largely sabotaged or marred by incompetence.

Just as worrying perhaps are the circumstances of the law’s passage. It was introduced in the Lok Sabha on 8 July and cleared in the Rajya Sabha on 2 August. It was not referred to any select committee, underwent little or no real scrutiny and was not the subject matter of much serious debate. In this respect, it is no different from the manner in which other bills have been jammed through Parliament simply because the government enjoys the numbers in the Lok Sabha and has support from regional parties in the Rajya Sabha. Parliament has become a mere formality and the unwarranted pride about “productivity” makes one question the relevance of the whole exercise. The opposition put up little more than token resistance in the matter, being in utter disarray after the results of the 2019 Lok Sabha elections, suggesting that democracy in India is in far worse shape than imagined.

It was only in 2018 that dissidents and activists across the country were charged with being “urban Naxals” and detained on vague charges with no bail. Tough laws are needed to combat terror, but these amendments can be misused. It is incumbent on the government to preserve fundamental rights while enacting legislation on this issue.

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