

WHAT IS NIA?

- It is a central agency mandated to investigate all the offences affecting the sovereignty, security & integrity of India, friendly relations with foreign states & the offences under the statutory laws enacted to implement international treaties, agreements, conventions & resolutions of the United Nations, its agencies & other international organisations.
- These include terror acts & their possible links with crimes like smuggling of arms, drugs and fake Indian currency and infiltration from across the borders.
- The agency has the power to search, seize, arrest and prosecute those involved in such offences.
- Headquartered in Delhi, the NIA has its branches in Hyderabad, Guwahati, Kochi, Lucknow, Mumbai, Kolkata, Raipur, Jammu, Chandigarh, Ranchi, Chennai, Imphal, Bengaluru and Patna.

NEED OF THE NIA

- Police in the states has limitations of the jurisdiction, confined to the state borders. While extremists are acting across the borders & they are acting effectively in between the border fringes between two states
- Interconnecting links between organised crimes are unbreakable for the police of one state. It needs to have an agency having national level jurisdiction
- Issues of human & drug trafficking at cross border level needs an investigating agency having overseas jurisdiction.
- NIA 2008 act makes the National Investigation Agency — federal agency in the country, along the lines of the FBI in the United States, more powerful than the CBI.
- It gives the NIA powers to take suo motu cognisance of terror activities in any part of India and register a case, to enter any state without permission from the state government, & to investigate and arrest people



COVERAGE OF LAWS

- Agency's ambit offenses comes under Atomic Energy Act, Unlawful Activities Prevention Act, Anti-Hijacking Act, Suppression of Unlawful Acts against Safety of Civil Aviation Act, SAARC Convention (Suppression of Terrorism) Act, Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, Weapons of Mass Destruction and their Delivery

Systems (Prohibition of Unlawful Activities) Act and several sections under the Indian Penal Code.

- The entire Chapter VI of the IPC, comprising sections 121 to 130, deals with offences against the state.
- Section 121 deals with waging or attempting to wage war or abetting waging of war against the government of India.

- Section 124 deals with assaulting the President, the Governor, and so on with intent to compel or restrain the exercise of any lawful power.
- Section 124-A deals with sedition. Sections 489A to 489E deal with offences connected with counterfeiting currency notes.
- The NIA (Amendment) Bill, 2019, adds the Explosives Substances Act, 1908, Sections 370 & 370A of the IPC, Sub-section (1AA) of Section 25 of Chapter V of the Arms Act, 1959, & Section 66F of Chapter XI of the Information Technology Act, 2000.
- Sections 370 & 370A deal with trafficking of persons & minors for sexual exploitation or forced labour.
- Sub-section 1AA of Section 25 of Arms Act deals with the offence of the manufacture, sale, and transfer of any prohibited arms or ammunition.
- Section 66F of IT Act deals with the punishment for cyber terrorism.
- Some new offences added to the Schedule of the NIA Act may have nothing to do with countering terrorism; for instance, the offence of trafficking of persons & minors for sexual exploitation or forced labour.
- The offence obviously has all-India ramifications & timely punishment to perpetrators would meet to an extent India's obligations under relevant international treaties.
- The NIA was set up in 2009, a year after the Mumbai terror attacks that claimed 166 lives
- A special court in New Delhi will preside over such cases, according to the Act.
- Section 15 of the Act leaves no doubt that the act of smuggling of gold to India from abroad would attract the said provision only if it was done 'with intent to threaten or likely to threaten the economic security of India.'
- According to Supreme Court the intention to destroy economic security, & not just the knowledge, was required to justify the slapping of the Act.
- It is not clear why the Centre wants to bring this offence under the NIA Act; the existing investigation machinery has not been totally ineffective in bringing perpetrators to book.
- In September 2020, the Centre empowered the NIA to also probe offences under the Narcotic Drugs & Psychotropic Substances Act that are connected to terror cases.

JURISDICTION

- At present NIA is functioning as the Central Counter Terrorism Law Enforcement Agency in India.
- Govt Made provisions for establishment of a National Investigation Agency in a concurrent jurisdiction framework, with provisions for taking up specific cases under specific Acts for investigation
- The offences added to the NIA Act Schedule are human trafficking (Sections 370, 370A of IPC, 1860); manufacture or sale of prohibited arms (Section

25[1AA] of Arms Act, 1959); cybercrimes (Section 66F of IT Act 2000); Explosive Substances Act, 2000 — NIA can apply these sections to an accused only if the principal offence is part of its Schedule.

- It can prosecute people in standalone cases under these Acts. For example, a person being prosecuted under UAPA could be slapped with Arms Act sections, but the NIA so far could not prosecute him under the Arms Act alone.
- A key proposal was to include the Ranbir Penal Code, applicable in J&K, as a special provision under the Schedule of the Act.
- The NIA believes that while prosecuting people from Kashmir for offences committed in that state (it is probing alleged terror funding and organised stone-pelting), it could face challenges of jurisdiction. (Repealed in 2019)
- The Ranbir CrPC varies slightly from the CrPC.
- A statement recorded under Section 161 of the CrPC is not signed. Under RCrPC, it is. Such procedural differences can impact a prosecution case in court.
- The law under which the agency operates extends to the whole of India and also applies to Indian citizens outside the country; persons in the service of the government wherever they are posted; persons on ships and aircraft registered in India wherever they may be; persons who commit a scheduled offence beyond India against the Indian citizen or affecting the interest of India.

NATIONAL INVESTIGATION AGENCY AMENDMENT ACT 2019 & 2023

- The National Investigation Agency is now able to probe terror cases abroad as the Union Home Ministry issued a notification on the National Investigation Agency (Amendment) Bill, 2019 governing the anti-terror probe organisation.
- The latest amendments to the NIA Act will allow the agency to probe terrorist activities against Indians and Indian interests abroad, cybercrimes & cases of human trafficking.
- The amendments will enable the NIA to additionally investigate offences related to human trafficking, counterfeit currency, manufacture or sale of prohibited arms, cyber-terrorism, & offenses under the Explosive Substances Act, 1908.
- The Unlawful Activities (Prevention) Amendment (UAPA), also passed in 2019, allows an NIA officer to conduct raids, and seize properties that are suspected to be linked to terrorist activities without taking prior permission of the Director General of Police of a state.
- The investigating officer only requires sanction from the Director General of NIA.
- In giving NIA extra- territorial jurisdiction, the Bill allows the agency to register a case when Indians living abroad or India's assets based in a foreign country come under attack from terrorists.

- 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
- The Bill also states that the Centre may designate Sessions Courts as Special Courts for the trial of Scheduled Offences.
- The Centre is required to consult the Chief Justice of the High Court under which a Sessions Court is functioning before designating it as a Special Court.
- State governments may also designate Sessions Courts as Special Courts for the trial of Scheduled Offences under the Act.

WHY EXTRA-TERRESTRIAL JURISDICTION?

- NIA in its original act had no extra-territorial jurisdiction. This lacuna was a reason why the case against the Italian Marines who had shot dead an Indian fisherman off the coast of Kerala in 2012 hit an initial spot of rough weather.
- The accused argued that the offence had taken place in international waters, and thus NIA had no jurisdiction.
- It was after India proved that the offence had taken place in Indian waters that the case could proceed.
- The new provision will allow the NIA to register cases if an Indian embassy comes under attack abroad, or if Indian underwater cables of communication in international waters are sabotaged
- While the outcome of such cases will continue to depend on how much diplomatic leverage India has with that country, the Bill empowers it to begin the process.
- The IPC does have provisions of extra-territorial jurisdiction, but it is limited to Indians committing crime abroad.
- The State of Chhattisgarh filed a suit in the Supreme Court for a declaration that the National Investigation Agency (NIA) Act of 2008 gives arbitrary police powers to the Centre and remains a threat to the federal structure of governance.
- The provisions of the Act does not require the Centre to take prior consent from the State before taking over an investigation of a case in that State.
- The provisions of Sections 6 called into question read: "Investigation of Scheduled Offences.—(4) Where the Central Government is of the opinion that the offence is a Scheduled Offence and it is a fit case to be investigated by the Agency, it shall direct the Agency to investigate the said offence.
- Where any direction has been given under sub-section (4) or sub-section (5), the State Govt & any police officer of the State Govt investigating the offence shall not proceed with the investigation & shall forthwith transmit the relevant documents and records to the Agency."

- Sec 7 - Power to transfer investigation to State Government.—While investigating any offence under this Act, the Agency, having regard to the gravity of the offence and other relevant factors, may—
(a) if it is expedient to do so, request the State Government to associate itself with the investigation; or
(b) with the previous approval of the Central Govt, transfer the case to the State Govt for investigation & trial of the offence."
- Section 8: "Power to investigate connected offences. While investigating any Scheduled Offence, the Agency may also investigate any other offence which the accused is alleged to have committed if the offence is connected with the Scheduled Offence."
- Section 10: "Power of State Government to investigate Scheduled Offences. Nothing contained in this Act shall affect the powers of the State Govt to investigate & prosecute any Scheduled Offence or other offences under any law for the time being in force."

CRITICISM

- The reason for restricting the scope of the NIA to a category of offences : – Under the Constitution, the maintenance of public order and police forces are matters upon which state governments, and not the Union, may legislate.
- Criminal law & procedure are enshrined in concurrent list.
- As far as ordinary criminal investigations & prosecutions are concerned, it is clear that the state governments have the authority to prosecute such crimes.
- Not every criminal offence is a threat to national security and sovereignty and consequently, states have the competence to deal with the same.
- Not all offences related to explosives may be a threat to national security, nor does an offence under the Arms Act automatically become related to terror activity.
- A state govt would be well within its right to prosecute such offences alone.
- The NIA is effectively under the control of the Union government and its recent prosecution of certain cases has been questioned due to allegations of bias.
- The amendment to the NIA Act empowers agency to investigate crimes committed against Indian citizens or "affecting the interest of India". This term is undefined & is a recipe for misuse by govts which may conflate critical voices and dissent with adversely affecting India's interests.
- The laws under which the NIA has the authority to investigate themselves do not mention "affecting the interest of India" as an offence.

- It is criticised as mere the creation of a substantively new (and vague) offence under the guise of giving more procedural powers to an agency under the control of the Union government.
- NIA with so many functions & with a limited power & confined expertise may not play the efficient role against the cross border terrorism , so it is better to have highly skilled and expert Anti Terrorism Agency
- NIA needs a well defined jurisdiction, avoiding it's jurisdictional overlapping with police administration.
- NIA has no extended support based institutions in its extended jurisdiction in recent amendment of 2019
- NIA has no milestone achievements in practicing it's investigation at extended overseas jurisdiction
- It has a very limited staff to deal with the extended jurisdiction under 2019 amendments.
- NIA needs collaborative support of police at local level at institution level of administration and investigation, because police has wider understanding of the criminal behaviour of people in a specific area .
- Extended overseas jurisdiction of NIA cannot empower it unless Gol, endeavours in deepening its bilateral and multilateral ties with superpowers.
- Practice of overseas jurisprudence of NIA depends on the extradition treaties signed with the other counterparts.
- Govt will have to take care of the autonomy of the NIA .
- Emergence of NIA is outcome of a catastrophic organised terror attack . It has long term impact on its organisational set up & functional jurisdiction.
- Autonomy of different institutions, is an essential factor to grow them independently and to build cooperation and instruments of coordination among them
- Powers focus only on investigation, not prevention
- Provision has to be made for the sharing, collection, collation, analysis and dissemination of intelligence
- Given the expanded definition of what constitutes a "terrorist act" in the recently amended Unlawful Activities (Prevention) Act, 1967, the concern remains that the NIA may investigate all kinds of activities that until now have lain in the exclusive jurisdiction of the State.
- The term terrorist activity needs to be redefine .
- As pointed out by numerous committees, the failing of the CBI in relation to combating corruption has been that it is strictly an investigative agency.
- In order for the NIA to be effective in preventing federal crime, it needs to be able to warehouse, process and coordinate the flow of critical information.
- The U.S. Federal Bureau of Investigation was significantly restructured after 9/11 so that it could engage in, and collaborate with others on, counterintelligence activities.
- It was accepted that prevention is best served by the acquisition of information and then acting on that information.
- The NIA Act is silent on information sharing, how information and intelligence is to be obtained, and on the NIA's relationship to other agencies that presently gather information.
- The scheme of the Act is based on the Central government first making a determination that an event on the ground is actually a Scheduled Offence and then secondly, deciding whether it wishes to direct the NIA to investigate it.
- These determinations are made by the political executive rather than the professional expert.
- For confidence to build in policing bodies, the decision making process needs to be outside all extraneous political considerations and in the hands of a professional expert
- Section 4(1) of the Act states that, "the superintendence of the Agency shall vest in the Central Government" without defining what superintendence means.
- Delay is institutionalisation: Section 6(2) of the Act states that once the State govt receives a report on a Scheduled Offence, it shall forward the report to the Central govt as expeditiously as possible.
- It repeats the systemic shortcomings of other police agencies in India, it is potentially open to political interference.
- The only way to potentially make the NIA different and much more effective is to debate its shortfalls openly and honestly, draw in a variety of voices, and incorporate checks and balances that will minimise the possibility of failure.
- The idea of an NIA with exclusive staff under the Central govt enjoying the powers and privileges of police officers under a State govt, in the investigation of certain offences, may be seen as striking at the root of federalism, which recognises that State legislatures have the exclusive competence to legislate on law and order, a State subject under the Constitution.
- Besides, the NIA Act amendment does not envisage displacing State governments during an investigation as the NIA may, if it is expedient to do so, request the State govt concerned to associate with it in the investigation or even transfer the case to State government.

POTENTIAL OF MISUSE

- The scope of cyber terrorism, as outlined under the Information Technology Act, is so broad that any govt under the NIA Act would be tempted to misuse it against political opponents.
- Section 66F (A) of the IT Act seeks to punish anyone with intent to threaten the unity, integrity, security and sovereignty of India or to strike terror in the people or any section of the people by denying or cause the denial of access to any person authorised

to access a computer resource; or attempting to penetrate or access a computer resource without authorisation or exceeding authorised access; or introducing or causing to introduce any computer contaminant.

- The provision can be invoked against any person who, by means of such conduct, causes or is likely to cause death or injuries to persons or damage to or destruction of property.
- It can also be invoked against anyone who disrupts or knows that such conduct is likely to cause damage or disruption of supplies or services essential to the life of the community or adversely affect the critical information infrastructure, specified under Section 70.
- Under Section 66F (B), anyone who knowingly or intentionally penetrates or accesses a computer resource without authorisation or exceeding authorised access, and by means of such conduct obtains access to information, data or computer database that is restricted for reasons of the security of the state or foreign relations; or any restricted information, data or computer database, with reasons to believe that such information, data or computer database so obtained may be used to cause or likely to cause injury to the interests of the sovereignty and integrity of India, the security of the state, friendly relations with foreign states, public order, decency or morality, or in relation to contempt of court, defamation or incitement to an offence, or to the advantage of any foreign nation, group of individuals or otherwise, commits the offence of cyber terrorism.
- The Supreme Court struck down Section 66A of the IT Act dealing with punishment for sending offensive messages through communication service, and so on, as unconstitutional for being overbroad and vague.
- The same ground may hold good against Section 66F, if challenged in a court of law.

CONSTITUTIONAL VALIDITY OF NIA

- Due to the constitutional difficulties posed by creating a Central Law Enforcement Agency, the Law Ministry advised the MHA that the setting up of such an agency should be included in the Terms of Reference of the new Commission on Centre- State Relations.
- Section 6(3) of the Act states that the "Central Govt shall determine ... within 15 days ... whether the offence is a Scheduled Offence or not and also

whether, having regard to the gravity of the offence and other relevant factors, it is a fit case to be investigated by the Agency

- The term "other relevant factors" is not well defined.

SPECIAL COURT

- The Act allows the central govt to constitute Special Courts for the trial of scheduled offences. The central government may designate Sessions Courts as Special Courts for the trial of scheduled offences.
- The central govt is required to consult the Chief Justice of the High Court under which the Sessions Court is functioning, before designating it as a Special Court.
- When more than one Special Court has been designated for any area, the senior-most judge will distribute cases among the courts.
- State governments may also designate Sessions Courts as Special Courts for the trial of scheduled offences.
- The agency is handicapped by way of logistics and infrastructure.
- While designating the special court, only high court and supreme court should get the whole powers, there should not be interference of any political executive.
- Even the officer with lower rank from NIA can overpower the higher rank officers at states - may create tussle between state and national agencies.

HOW DOES IT TAKE UP PROBE?

- Section 6 of the Act, State govts can refer the cases pertaining to the scheduled offences registered at any police station to the Central gov for NIA investigation.
- After assessing the details made available, the Centre can then direct the agency to take over the case.
- State govt are required to extend all assistance to the NIA.
- Central govt may, suo motu, direct the agency to take up/over the probe.
- Where the Central govt finds that a scheduled offence has been committed at any place outside India to which this Act extends, it can also direct the NIA to register the case and take up investigation
- While investigating any scheduled offence, the agency can also investigate any other offence which the accused is alleged to have committed if the offence is connected to the scheduled offence.