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ON MONDAY, Lok Sabha passed the NIA Act Amendment Bill, which gives more powers to the National Investigation Agency and extends its jurisdiction beyond India's borders. The Bill was hotly debated, with the Opposition accusing the government of misusing the agency for political vendetta and turning India into a police state.

Home Minister Amit Shah assured the House that the Act would never be misused, but would be used to finish terrorism, irrespective of the terrorist's religion.

The NIA Act

The NIA Act, 2008, governs the functioning of India's premier counterterror agency. It was introduced by then Home Minister P Chidambaram in the wake of the 26/11 Mumbai terrorist attacks, and was passed with very little opposition.

The Act makes NIA the only truly federal agency in the country, along the lines of the FBI in the United States, and more powerful than the CBI. The CBI has to seek the permission of a state government before investigating a case against a central government employee in that state. If a crime is committed in a state, it has to wait for that state government or a court to call it in to investigate.

The NIA Act, on the other hand, gives the NIA powers to take suo motu cognisance of terrorist activity in any part of India and to register a case, to enter any state without needing permission from its government, and to investigate and arrest people.

The NIA can, however, only investigate cases which are listed in the Act's schedule, which largely deal with the security and integrity of the country. This means the NIA cannot probe murder and rape cases, which come under the Indian Penal Code (IPC).

Now beyond borders

The new Bill makes three broad additions to the NIA Act. It gives NIA extra-territorial jurisdiction; adds four more scheduled offences to the list of eight offences in the original Act; and gives powers to the government to designate sessions courts as special courts for trial of NIA cases.

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. Their nationals had been killed in the attack, and they took cognisance of the case. NIA does not have such powers,” former NIA special director N R Wasan, who had prepared the proposal for the Bill, said.

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.

Special courts, new offences

Earlier, setting up special courts in any state would take six to nine months since a proposal had to be made, High Courts' concurrence had to be obtained, a judge had to be nominated, and a court had to be set up. With existing sessions courts allowed to function as special courts, trial can start immediately.

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); cyber crimes (Section 66F of IT Act 2000); Explosive Substances Act, 2000. So far, the NIA can apply these sections to an accused only if the principal offence is part of its Schedule. Now, 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.

What has not changed

Not all NIA's suggestions have been accepted. 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.

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.

GS World Team...

NIA Amendment Bill, 2019

Why in the discussion?

- Recently, the National Investigation Agency (Amendment) Bill 2019 (NIA Bill 2019) was passed in the Lok Sabha. Now this bill will be sent to the Rajya Sabha.
- There were 278 votes in favor of the proposal whereas only 06 votes were cast against it. All amendment proposals brought on the bill were approved.
- Responding to the discussion on the Bill in the lower house, Home Minister G.Kishan Reddy said that while the country is dealing with the threat of terrorism, the purpose of the NIA Amendment Bill is to strengthen the investigation agency in national interest.
- It may be noted that the National Investigation Agency (NIA) has made provision for registering the case and directing the investigation in connection with any scheduled offense outside India.

- Through POTA the country was protected from terrorism, there was fear inside the terrorists, the boundaries of the country were protected. However, this law was dissolved in 2004.

About NIA

- The National Investigation Agency (NIA) is a federal investigation agency established by the Indian government to combat terrorism in India.
- After the 26/11 Mumbai terror attack in 2008, the NIA was formed.
- This agency acts as a Central Anti-Terrorism Law Enforcement Agency.
- This agency is empowered to deal with terrorist crimes in states without special permission from States.
- This agency came into being on December 31, 2008 with the implementation of the National Investigation Agency Bill, 2008, passed by the Parliament of India.

Expected Questions (Prelims Exams)

1. In the context of National Investigation Agency (NIA), consider the following statements-
1. NIA is a federal investigation agency established after 2008 Mumbai attack.
 2. It does not need the approval of the state to tackle the terrorism related activities in any state.
- Which of the above statement is/are correct?
- (a) Only 1 (b) Only 2
(c) Both 1 and 2 (d) Neither 1 nor 2

Expected Questions (Mains Exams)

- Q. Discuss the power given to NIA, established as a federal investigating agency, to make it more impactful through NIA (Amendment) Bill, 2019. (250 Words)

Note: Answer of Prelims Expected Question given on 16 July. is 1(c).

