



## NIA Amendment Bill, 2019

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This article is based on **“NIA amendment bill infringes upon state authority, must be reconsidered”** that appeared in The Indian Express on 26<sup>th</sup> July 2019. It critically analyses the recent amendments done in National investigation Agency Act 2008.

The Bill that seeks to amend the National Investigation Agency (NIA) Act, 2008, has been passed by both Houses of Parliament and awaits the Presidential assent and notification prior to becoming law.

However, the amendments are being alleged as an encroachment upon the rights of states to conduct investigations into a class of cases which may affect public order by the Union government. Thereby going against the notion of federalism.

### What are the proposed amendments?

- The amendment bill seeks to widen the authority of the NIA in terms of the crimes that it can investigate irrespective of the place of occurrence of the crime.
- It expands the ambit of the list of crimes that the agency can investigate, including human trafficking, counterfeit currency, manufacture or sale of prohibited arms, cyber-terrorism, and offences under the Explosive Substances Act.
- Secondly, it extends the NIA's jurisdiction outside India, subject however to international treaties and domestic laws of the concerned foreign nation.
- Third, the Bill allows for the constitution of special courts by the Centre in order to conduct trials.

### What is the National Investigation Agency?

- The National Investigation Agency (NIA) is a central agency established by the Indian Government to combat terror in India. It acts as the **Central Counter-Terrorism Law Enforcement Agency**.
- The agency is empowered to deal with terror-related crimes across states **without special permission from the states**.

- Since a large number of terrorist incidents are found to have complex inter-State and international linkages, and possible connection with organised crime, for example, the smuggling of arms and drugs, circulation of fake Indian currency etc.
- It was for these reasons that an agency at the Central level was created for investigation of offences related to terrorism and certain other Actpost 2008 Mumbai terror attacks
- Crimes like Terror offences, offences against atomic and nuclear facilities, and offences such as waging war against the country, amongst others, were included in this list of offences.

## What are the issues in the proposed amendments?

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- Under **schedule VII** of the Constitution, the maintenance of public order and police forces are matters of state list.
- However, Criminal law forms part of the concurrent list and national security comes under the domains of union list.
- According to the recent amendment to the NIA Act, the **Central government gets the authority to have the NIA take over the investigation of crimes**, which involve allegations of human trafficking, offences under the Explosives Act, and certain offences under the Arms Act.
  - However, not every criminal offence in the above act is a threat to national security and sovereignty and consequently, states have the competence to deal with the same.
- The Amendment Bill puts Section 66F of the Information Technology Act into the Schedule listing offences.
  - **Section 66F deals with cyber terrorism.**
  - But India does not have a Data Protection Act and there is no definition of terrorism.
- The amendment to the NIA Act also gives the agency authority to investigate crimes committed by persons which are against Indian citizens or “affecting the interest of India”.
  - However, the term **“affecting the interest of India” is undefined and can be misused** by governments to curb freedom of speech and expression.
  - Further, the laws, under which the NIA has the authority to investigate, themselves do not mention “affecting the interest of India” as an offence.
  - This amounts to 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.

Therefore, the NIA Amendment Bill, 2019 is neither sound on the principles of Indian federalism nor on the established principles of criminal law.

Given the Lok Sabha also passed the **Unlawful Activities (Prevention) Amendment Bill 2019**, which though gives a big push to India's internal security machinery. But these amendments combinedly may lead to the creation of a police state. In this context, these amendments must be thoroughly reviewed.

***Drishti input***

The NIA Amendment Bill, 2019 is neither sound on the principles of Indian federalism nor on the established principles of criminal law. Comment?

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