The UP and Indore district administration invoked the National Security Act (NSA), 1980, against four persons accused of instigating residents of a locality to pelt stones and chase away health workers.

Health workers were in the locality to trace the contact history of a Covid-19 patient.

National Security Act, 1980

- The NSA is a preventive detention law.
  - Preventive Detention involves the detainment (containment) of a person in order to keep him/her from committing future crimes and/or from escaping future prosecution.
  - Article 22 (3) (b) of the Constitution allows for preventive detention and restriction on personal liberty for reasons of state security and public order.
  - Further, Article 22(4) states that no law providing for preventive detention shall authorise the detention of a person for a longer period than three months unless:
    - An Advisory Board reports sufficient cause for extended detention.
    - The 44th Amendment Act of 1978 has reduced the period of detention without obtaining the opinion of an advisory board from three to two months. However, this provision has not yet been brought into force, hence, the original period of three months still continues.
    - Such a person is detained in accordance with the provisions of any law made by the Parliament.

- History
  - Preventive detention laws in India date back to early days of the colonial era when the Bengal Regulation III of 1818 was enacted to empower the government to arrest anyone for defence or maintenance of public order without giving the person recourse to judicial proceedings.
  - A century later, the British government enacted the Rowlatt Acts of 1919 that allowed confinement of a suspect without trial.
  - Post-independence, India got its first preventive detention rule when the government of Prime Minister Jawaharlal Nehru enacted the Preventive Detention Act of 1950 (expired in 1969). The NSA is a close iteration of the 1950 Act.

- Gives Power to the Government
  - The NSA empowers the Centre or a State government to detain a person to prevent him from acting in any manner prejudicial to national security.
  - The government can also detain a person to prevent him from disrupting public order or for maintenance of supplies and services essential to the community.

- Period of Confinement: The maximum period for which one may be detained is 12 months. But the term can be extended if the government finds fresh evidence.

- No Basic Rights to People Detained under the NSA, including:
  - The right to be informed of the reason for the arrest (Section 50 of the Criminal Procedure Code -Cr.PC).
  - Under the NSA, a person could be kept in the dark about the reasons for his arrest for up to five days, and in exceptional circumstances upto ten days.
Even when providing the grounds for arrest, the government can withhold information which it considers to be against public interest to disclose.

- Sections 56 and 76 of the Cr. PC also provides that a **person has to be produced before a court within 24 hours of arrest.**
- **Article 22(1) of the Constitution** says an arrested person cannot be denied the right to consult, and to be defended by, a legal practitioner of his choice.
- Under the NSA, the arrested person is not entitled to the aid of any legal practitioner in any matter connected with the proceedings before an advisory board, which is constituted by the government for dealing with NSA cases.

**Criticism against the NSA Act**

- **No Record of Detentions under the NSA:** The National Crime Records Bureau (NCRB), which collects and analyses crime data in the country, does not include cases under the NSA in its data as no FIRs are registered. Hence, no figures are available for the exact number of detentions under the NSA.
- In recent cases, different State governments have invoked the stringent provisions of the NSA to detain citizens for questionable offences.
- Some experts argue that the governments sometimes use the NSA as an **extra-judicial power.**
- NSA has come under wide criticism for its **misuse by the authorities.** Experts describe the validity of the Act even during peacetime as 'anachronism'.

**Conclusion**

It needs to be noted that the Act is 40 years old. Changes are required to ensure that the Act is not used arbitrarily. Arbitrary use of the Act hampers democracy and basic rights of an individual. Even, the Supreme Court has held that the law of preventive detention has to be strictly construed and meticulous compliance with the procedural safeguards, is mandatory and vital.

**UAPA**

The UAPA – an enhancement on the TADA (Terrorist and Disruptive Activities (Prevention) Act), which was allowed to lapse in 1995 and the Prevention of Terrorism Act (POTA) was repealed in 2004 — was originally passed in 1967 under the then Congress government led by former Prime Minister Indira Gandhi. Eventually amendments were brought in under the successive United Progressive Alliance (UPA) governments in 2004, 2008 and 2013.

**Pt shot:** At present, NIA is functioning as the Central Counter Terrorism Law Enforcement Agency in India established under NIA Act 2008.

**Unlawful Activities (Prevention) Amendment Act was passed by both Houses of the Parliament:**

- The Act gives special procedures to handle terrorist activities, among other things.
- **Who may commit terrorism:** According to the Act, the union government may proclaim
or designate an organisation as a terrorist organisation if it: (i) commits or participates in acts of terrorism, (ii) prepares for terrorism, (iii) promotes terrorism, or (iv) is otherwise involved in terrorism. The Bill also empowers the government to designate individuals as terrorists on the same grounds.

- **Approval for property seizure by National Investigation Agency (NIA):** As per the Act, an investigating officer is required to obtain the prior approval of the Director General of Police to seize properties that may be connected with terrorism. The Bill adds that if the investigation is conducted by an officer of the National Investigation Agency (NIA), the approval of the Director General of NIA would be required for seizure of such property.

- **Investigation by the National Investigation Agency (NIA):** Under the provisions of the Act, investigation of cases can be conducted by officers of the rank of Deputy Superintendent or Assistant Commissioner of Police or above. The Bill additionally empowers the officers of the NIA, of the rank of Inspector or above, to investigate cases.

- **Insertion to schedule of treaties:** The Act defines terrorist acts to include acts committed within the scope of any of the treaties listed in a schedule to the Act. The Schedule lists nine treaties, comprising of the Convention for the Suppression of Terrorist Bombings (1997), and the Convention against Taking of Hostages (1979). The Bill adds another treaty to this list namely, the International Convention for Suppression of Acts of Nuclear Terrorism (2005).

**Arguments in Favour of Amendments:**

- The object of the proposed amendments is to facilitate speedy investigation and prosecution of terrorist offences and designating an individual as terrorist in line with international practices.
- The amendments will also allow the NIA probe cybercrimes and cases of human trafficking, sources aware of the proposal said Sunday.
- Amendment to Schedule 4 of the Act, the NIA will be allowed to designate an individual suspected to have terror links as a terrorist. In the current scenario before the amendment was made, only organisations were designated as ‘terrorist organisations’.
- A strict law is utmost necessary to strengthen the investigation agencies and to uproot terrorism from this country in this regard.
- Hon’ble Home Minister stated in Lok Sabha that law can not be misused against any individual, yet, those individuals who engage in terrorist activities against the security and sovereignty of India, including the urban maoists, would not be spared by the investigating agencies either.
- There are no changes to the bail or arrest provisions. Hence, it is evident that there will be no fundamental rights violation of anyone. Also, the burden of proof is on the investigating agency and not on the accused.
- The amendment about attaching properties amassed through proceeds of terrorism is being proposed in order to accelerate investigation in terror cases and is not against the federal principles.
- At present, Section 25 of the UAPA states that forfeiture of property acquired from terrorism can be done only with the prior approval given in writing by the DGPs of the state wherein lies such property. But the problem is that many times, the terror accused owns properties in multiple states. In this kind of a scenario, it becomes tough to get the approvals of several DGPs and can cause a delay in the whole process of forfeiting property, which can help the accused transfer such property to someone else.
Concerns/Criticism:

- The Act assigns absolute power to the central government, by way of which if the Centre deems an activity as unlawful then it may, by way of an Official Gazette, declare it so.
- The opposition voiced concerns about the amendments, saying the provisions were against the federal structure of the country enshrined in the Constitution.
- There was no pre-legislative consultation.
- Designating an individual as a terrorist raises serious constitutional questions and has the potential for misuse.
- An individual cannot be called a ‘terrorist’ prior to conviction in a court of law, it subverts the principle of “innocent until proven guilty. A wrongful designation will cause irreparable damage to a person’s reputation, career and livelihood.

While none will question the need for stringent laws that show ‘zero tolerance’ towards terrorism, the government should be mindful of its obligations to preserve fundamental rights while enacting legislation on the subject.