



Email:editorijless@gmail.com

Volume: 8, Issue 1, 2021 (Jan-Mar)

**INTERNATIONAL JOURNAL OF LAW, EDUCATION,
SOCIAL AND SPORTS STUDIES
(IJLESS)**

A Peer Reviewed and Refereed Journal

DOI: 10.33329/ijless

<http://ijless.kypublications.com/>

ISSN: 2455-0418 (Print), 2394-9724 (online)

2020©KY PUBLICATIONS, INDIA

www.kypublications.com

Editor-in-Chief

Dr M BOSU BABU

(Education-Sports-Social Studies)

Editor-in-Chief

DONIPATI BABJI

(Law)

©KY PUBLICATIONS





Role and Responsibilities of National Investigation Agency

Dr.Jaya Kiran*, Jyoti Singh
*Email:jayakiran2003@yahoo.com
DOI: [10.33329/ijless.8.1.93](https://doi.org/10.33329/ijless.8.1.93)



Dr.Jaya Kiran

ABSTRACT

The National Investigation Agency (NIA) was established by the Government of India to fight against terrorism in our country. It basically works as a Central Terrorism Law Enforcement Agency. The agency is empowered to work independently when it comes to terror related crimes across states without special permission from the states. After the deadly terrorist attack in Mumbai during November 2008, there arose an urgent need to come up with an agency with its core focus on dealing with terrorist activities. In this article the establishment of NIA along with its aims and objectives have been discussed. A comparative analysis of different agencies world over, which deal with terrorist activities has also been done.

Traditional distinction between domestic and global threats have been greatly marginalized, especially in the matters of terrorism. Today, it's understandable that the Intelligence agencies operate in a very complex environment, that makes their work much more difficult. With the changing time and new challenges, the Intelligence agencies have come up with many fundamental changes in the manner they function, analyse, collect and disseminate the intelligence. Although Intelligence agencies in India have been slow to transform, because of bureaucratic pressure and disorganized direction, first change can be seen after the constitution of the NIA in 2008.

Today the Intelligence agencies in India are much more tech savvy, well-coordinated, better staffed and more collaborated with their counter-parts world over. As security is the primary objective of any country in the world. India has also developed a range of intelligence agencies to deal in specified areas or problems. India has number of intelligence agencies which have been planned predominantly to gather intelligence information, both at domestic and international level, which may affect the sovereignty, internal peace, national security and socio-economic wellbeing of country and to take pre-emptive measures to deter such threats and safety of the country. The best known among these are Research and Analysis Wing (R&AW) that is India's external intelligence agency and others are Intelligence Bureau (IB), Central Bureau of Investigation (CBI) and Enforcement Directorate(ED), the domestic intelligence agencies and in recent times the NIA. Some other important Intelligence Agencies in India are:

1. Central Bureau of Investigation
2. Central Economic Intelligence Bureau
3. Criminal Investigation Department (India)
4. Directorate of Enforcement

5. Department of Criminal Intelligence
6. Directorate of Air Intelligence
7. Directorate of Military Intelligence
8. Directorate of Naval Intelligence
9. Directorate General of Income Tax Investigation
 - i. 10. Defence Intelligence Agency
10. Directorate of Income Tax (Intelligence and Criminal Investigation)
11. Directorate of Revenue Intelligence
12. Indian Political Intelligence Office
13. Intelligence Bureau
14. Investigation Division of the Central Board of Direct Taxes
15. Narcotics Control Bureau
16. National Investigation Agency
17. Regional Economic Intelligence Committee
18. Research and Analysis Wing
 - ii. 20. Serious Fraud Investigation Office

These agencies were organised to fill the gap of information regarding a specific field or area that was there in the country at a given point of time and with the every passing years agencies have proved their metal by stopping many untoward incidents in respective areas .However in the aftermath of Mumbai attack it was realised that these overburdened agencies have become helpless in combating terrorism and offences related to it and therefore the requirement of a federal agency to investigate and control terrorism came in the form of NIA.

NATIONAL INVESTIGATION AGENCY

The National Investigation Agency (NIA) is a central agency which was incorporated by the Government of India to fight against terrorism in the country. It basically works as a Central Terrorism Law Enforcement Agency. The agency is empowered to work independently when it comes to terror related crimes across states without special permission from the states. The National Investigation Agency Bill 2008, to form the agency was approved by the cabinet on 16th December 2008¹. Although several experts and Committees, including the Administrative Reforms commission in its Report, had made recommendations for establishing such an Agency, the Agency was formed with the enactment of the National Investigation Agency Act 2008 by the Parliament of India on 31 December 2008, which was passed after the deadly 26/11 terror attack in Mumbai. The attack brought into notice the fact that it was a failure on the part of the existing agencies otherwise the terror attack of that level could have been tracked beforehand. Hence the Government of India realized the need for a specific body to deal with terror related activities in India, and therefore The National Investigation Agency Act, 2008, was enacted with a view to constituting the NIA to investigate and prosecute people for offences affecting the sovereignty, security and integrity of India, security of state, friendly relations with foreign states

¹ Vinay Kumar, Approval for National Investigation Agency, *The Hindu*, 16th December 2008, available at: <http://www.hindu.com/2008/12/16/stories>, (last visited on 08/08/2020)

and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations.²

The objective behind the NIA Act was to constitute a National level Investigative body to avert the happening of offences, having national or cross border repercussions in the first place.³The Act empowered the Central Government to direct the National Investigation Agency (NIA) to take over a case on a request made by the State Government or in its own capacity.⁴ The NIA is mandated to investigate and prosecute offences under the Acts mentioned in the Schedule⁵ which includes offences under the Unlawful Activities (Prevention) Act, 1967 that have inter-state and/or international linkages, which are assigned to it by the Government. Although the NIA Act provides for a comparatively straight forward procedure for investigation of terrorism and related activities, however, the agency is not given the necessary powers to prevent the enumerated offences.⁶ The Act applies to the whole of India and to Citizens outside of India, to Government officials and to persons on ships and aircrafts registered in India.⁷

CONSTITUTION OF NATIONAL INVESTIGATION AGENCY

The Central Government constituted a special agency, to be known as National Investigation Agency for investigation and prosecution of offences under the Act specified in the Schedule. The offences mentioned in the schedule have been illustratively discussed below:⁸

- i. The Atomic Energy Act, 1962 provides for the development, control and use of atomic energy for the welfare of the people of India and for other peaceful purposes.
- ii. The preamble to the Unlawful Activities (Prevention) Act, 1967 indicates that the Act seeks to provide for the more effective prevention of certain unlawful activities of individuals and associations and dealing with terrorist activities and for matters connected therewith. As indicated by the preamble itself, the said Act seeks to implement the Resolution 1373(2001) dated 28th September 2001 adopted by the Security Council of the United Nations in its 4385 meeting under Chapter VII of the Charter of the United Nations requiring all the States to take measures to combat international terrorism, as also, Resolutions 1267 (1999), 1333 (2000), 1363 (2001), 1390 (2002), 1455 (2003), 1526 (2004), 1566 (2004), 1617 (2005), 1735 (2006) and 1822 (2008) of the Security Council of the United Nations requiring the States to take action against certain terrorists and terrorist organizations, to freeze the assets and other economic resources, to prevent the entry into or the transit through their territory. The said Act which implements the Resolutions of the Security Council for coping with terrorist activities and for matters connected therewith or incidental thereto, relates to matters having national/ international implications, which have an effect on the sovereignty, integrity and security of India.

² V. Venkatesan, *Amendment to the National Investigation Agency Act, 2008: An act of violation, available at <https://frontline.thehindu.com/the-nation/article28758410.ece>, (last visited on 04/08/2020)*

³ Anurag Deep and Fawaz Shaheen, "National Investigation Agency Act 2008: Constitutionality, Desirability and Feasibility" 23 *ALJ* 176 (2015-16)

⁴ National Investigation Act, 2008, ss. 6(4) & 6(5)

⁵*Ibid.* Schedule

⁶ The Role of NIA in the War on Terror: An Appraisal of National Investigation Act, 2008 by R. Bhanu Krishna Kiran

⁷ *Supra* note 4, s.1(c)

⁸ *Pragyasingh Chandrapal Singh Thakur v. State of Maharashtra*, 2014 (1) Bom CR (Cri) 135

- iii. The Anti-Hijacking Act, 1982 gives effect to Convention for the Suppression of Unlawful Seizure of Aircraft and for matters connected therewith, signed at The Hague on 16th December, 1970.
- iv. The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 gives effect to the Convention for the Suppression of Unlawful Acts against the Safety of Civil Aviation signed at Montreal on 23rd September 1971.
- v. The SAARC Convention (Suppression of Terrorism) Act, 1993 gives effect to the South Asian Association for Regional Cooperation Convention on Suppression of Terrorism signed on behalf of the Government of India at Kathmandu on the 4th day of November, 1987.
- vi. The Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 gives effect to the International Maritime Organization Convention for Suppression of Unlawful Acts against the Safety of Maritime Navigation and the Protocol for the Suppression of Unlawful Acts Against the Safety of Fixed Platforms Located on the Continental Shelf signed at Rome on 10th March, 1988.
- vii. The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 prohibits unlawful activities in relation to weapons of mass destruction and their delivery systems and has been enacted to safeguard national security as also to furtherance of India's obligations as a State Party to the Convention on the Prohibition of the Development, Production, Stockpiling and Use of Chemical Weapons and on their Destruction and the Convention on the Prohibition of the Development, Production and Stockpiling of Bacteriological (Biological) and Toxin Weapons and on their Destruction.
- viii. Offences under Chapter VI of Indian Penal Code (Section 121-130) relates to offences against the State including waging war or attempting to wage war or abetting waging of war against the Government of India (Section 121), conspiracy to commit offences under Section 121 (Section 121-A), collecting arms etc. with the intention of waging war against the Government of India (Section 122) etc. and offences under Sections 489-A to 489-E of the Indian Penal Code relate to counterfeiting etc. of currency notes and bank notes relates to major economic frauds." However, the constitution of the agency shall not affect anything contained in the Police Act. Central Government on its behalf may order the officers of the Agency to investigate Scheduled offences and arrest persons concerned in such offences with the same privileges and liability like the other police officers investigating such crimes. Any officer of the Agency of, or above, the rank of Sub-Inspector may exercise throughout the country any powers as an officer in charge of a police station of that area.

ROLE OF NATIONAL INVESTIGATION AGENCY

Establishment of NIA has undoubtedly lifted the counter terrorism policy in India. Earlier laws like Indian Penal Code and Code of Criminal Procedure could only help in the investigation and prosecution of the cases, not in restraining terrorism. Eventually NIA started to work as a counter terrorism agency with greater resources and expertise in handling terrorism. The agency will not limit itself to probe the terror cases but also other organised crimes with inter-state and foreign linkages will be using the provisions of the Defence of India Rules, Unlawful Activities Prevention Act, Explosives Act, and a plethora of other laws meant for protecting the national security.⁹

⁹NIA will have more teeth to tackle terror, available at: <https://www.rediff.com/news/2008/dec/12mumterror-nia-will-have-more-teeth-to-tackle-terror.html> ,(last visited on 05/08/2020)

NIA is playing a vital role today to save the country from any other terrorist attacks because terrorism has become a growing menace in almost every part of the world today. The term terror is derived from Latin word 'terror' which means to tremble. In reality terrorism is a threat to the security of all nations of the world and any law to combat terrorism will come under the purview of protecting the security of that state. The history of terrorism began with French revolution and since then it has grown really big. Terrorism has mainly five forms or types,¹⁰

State sponsored terrorism, which consists of terrorist act on a state and government by a state or government.

Dissent terrorism, which are terrorist groups which have rebelled against their government

Terrorists and the Left and Right, which are groups rooted in political ideology.

Religious terrorism, which are terrorist groups which are extremely religiously motivated.

Criminal Terrorism, which are terrorist acts used to aid in crime and criminal profit.

Cyber-terrorism, Nuclear Terrorism, Political Terrorism, Narco-Terrorism, Pathological Terrorism and Separatist Terrorism, etc., are other forms of terrorism, which are prevalent across the globe.

The NIA can take measures for effective and speedy control of terrorism in every possible manner for the security and integrity of the country and its citizens. The NIA acts 'at the national level, investigate and prosecute offences affecting sovereignty, security and integrity of India, security of states, friendly relation with foreign states and offences under NIA Act enacted to implement international treaties ,agreements, conventions and resolutions of the united nations and other international organisations and for matters connected therewith or incidental thereto'.¹¹

The NIA is established under a Concurrent Jurisdiction. NIA's jurisdiction extends to the whole of India, citizens of India, outside India, in service of the Government, wherever they may be and for persons on ships and aircrafts registered in India wherever they may be.¹² The Officers of the NIA shall have all the powers, privileges and liabilities which the police officers have in connection with the investigation of an offence.¹³ For the completion of the investigation on NIA's part the state government should extend full support to NIA while they are investigating terror related offences. The operational role of the agency is investigation, coordination, prevention and prosecution.

FUNCTION AND POWERS OF NIA

The Indian Criminal Jurisprudence demands fairness in investigation and to be in accordance with law and at the same time prevent the escape of offenders due to external influence on investigation process.¹⁴ The NIA mainly functions to study and analyse laws related to terrorism in other countries and regularly evaluates the efficacy of existing laws in India and proposed changes when seems necessary and to investigate terror related cases or to make strategy to combat terrorism. The first information as to the commission of the offence will be registered in the police station under section

¹⁰ Definition, History and Types of Terrorism, available at, <https://ekuonline.eku.edu/homeland-security> ,(last visited on 07/08/2020)

¹¹ *Supra* note 4, Preamble

¹² *Supra* note 4, s.1

¹³ *Supra* note 4, s. 3(2)

¹⁴Efficacy of Anti-Terrorism Laws in India: Judicial Response, Available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&cad=rja&uact=8&ved=2ahUKewi_IMz3tMLrAhXSAIKHajhBssQFjANegQIBhAB&url=http%3A%2F%2Fshodhganga.inflibnet.ac.in%2Fjspui%2Fbitstream%2F10603%2F144725%2F14%2F14_chapter%25204.pdf&usg=AOvVaw2es0ntYHeE83fY1O4wd42, (last visited on 12/08/2020)

154 of the Code of Criminal Procedure¹⁵ and then forwarded to the state government.¹⁶ The state government immediately forwards it to the federal government, which may, in view of the gravity of the offence and other relevant factors direct that the case be taken up with the NIA.¹⁷ Otherwise, the case remains with the state agency. The NIA may associate the state agency with the investigation, if it is expedient to do so. The NIA may also return the case to the state for investigation.¹⁸ Notwithstanding anything contained in this section, if the Central Government is of the opinion that's a scheduled offence has been committed which is required to be investigated under this Act, it may *Suo motu*, direct the agency to investigate the said offence.¹⁹ NIA Act exercises the extra territorial jurisdiction on the basis of nationality as punishment of offences committed outside India may be tried within India as if the act has been committed within India.

While investigating any offence under this Act, the agency having regard to the gravity of the offence and other relevant factors, may, if it is expedient to do so, request the State Government to associate itself with the investigation; or with the previous approval of the Central Government transfer the approval to the State Government for investigation and trial of the offence.²⁰

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.²¹

NIA, however particularly emphasizes to work on terrorism and offences related to atomic energy, unlawful activities, anti-hijacking, aviation, maritime transport, weapons of mass destruction, obligation of the SAARC Convention and offences against the state, including conspiring or waging war against Government of India²² and counterfeiting currency notes under the Indian penal Code.²³

INFORMATION AND INTELLIGENCE

Information based intelligence is another facet of NIA, in preventing the menace of terrorism and to control its fear. Information is essentially a raw data, either qualitative or quantitative. However, information and intelligence are two different things. Any information has to undergo four stages of intelligence process to get the specific result. These are comprehensive threat assessment, collecting relevant and usable information, analyse the data and developing an appropriate response.

¹⁵ Section 154 of the Criminal Procedure, 1973 states : (1) Every information relating to the commission of the cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informants and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered into a book to be kept by such officer in such form as the state government may prescribe in this behalf;

(2) A copy of the information as recorded under sub-section (1) shall be given forthwith, free of cost, to the informant;

(3) Any person aggrieved by a refusal on the part of an officer in charge of a police station to record the information referred to in sub-section (1) may send the substance of such information, in writing and by post, to the Superintendent of Police concerned who, if satisfied that such information discloses the commission of a cognizable offence, shall either investigate the case himself or direct an investigation to be made by any police officer subordinate to him, in the manner provided by this code, and such officer shall have all the powers of an officer in charge of the police station in relation to that offence.

¹⁶Supra note 4, S. 6 (1)

¹⁷ *Ibid.* 6 (3)

¹⁸ *Id.* s.7

¹⁹ *Id.*, s. 6 (5)

²⁰ *Id.*, s. 7

²¹ *Id.*, s. 8

²² Section 121 to 130 of IPC

²³ *Id.* s.489A to E

STRUCTURE OF NATIONAL INVESTIGATION AGENCY

The agency comes under the Ministry of Home Affairs. The Head quarter of NIA is in New Delhi but it has eight other regional offices across the country.²⁴ NIA is headed by Director- General (DG), who is appointed by the Central Government who exercises same power as exercisable by a Director-General of Police in respect of the police force in a State. DG is the main executive authority that gives direction, and leadership to the agency means he is the operational head of NIA. However, the superintendence of the NIA vests in the Government of India and the administration will vest in the officer designated on this behalf by it.²⁵ The Director General of Police[DGP] in NIA is assisted by Special Director General or Additional Director General. There four wings that work under the aegis of NIA, these being, Investigation wing- I, Investigation wing –II, policy wing, Investigation and Operation wing for North Eastern Region, and fourth is Administration/TFFC/Training wing.

Manner of constitution of Agency and conditions of service of members

The Agency should be constituted in such a manner as may be prescribed and conditions of service of persons employed in the agency shall be such as may be prescribed.

JURISDICTION OF NIA

The agency has been empowered to conduct investigation and prosecution of offences under the Acts specified in the Schedule of the NIA Act.²⁶ NIA plays its role when a State Government requests the Central Government to hand over the investigation of the case to the agency, provided the case has been registered among the offences as contained in the schedule of the NIA Act. Central Government can order NIA to proceed with the investigation anywhere in India, if the offence is the Scheduled offence.

The officers of NIA will have the same power as other police officers in the country while investigating offences, across India. The officers of the NIA will have the power to investigate Scheduled offences committed outside India, subject to international treaties and domestic laws of other countries. The Central Government may direct the NIA to investigate such cases as if the offence has been committed in India.²⁷ The Special Court in New Delhi will have jurisdiction over these cases.

SPECIAL COURT

After the enactment of NIA Act,2008 the jurisdiction over the terrorist related offences are conferred upon the Special Courts. These are Courts other than Session Court and High Court. The Act gives the Central Government power to constitute a special court to hear cases investigated by the NIA.²⁸ The Act establishes a special court empowered to take cognizance of any offence, without the accused being committed to it for trial, after receiving a complaint of facts that constitutes such offence

²⁴Hemant Singh, The National Investigation Agency (NIA): Establishment and Functions, Available at <https://www.jagranjosh.com/general-knowledge/functions-of-national-investigation-agency-1562846844-1> (last visited on 06/08/2020)

²⁵ *Supra* note 6 at 50

²⁶ *Supra* note 4

²⁷ Lok Sabha passes NIA Amendment Bill to give more power to anti-terror agency, available at <https://www.businesstoday.in/current/economy-politics/lok-sabha-passes-nia-amendment-bill-to-give-more-power-to-anti-terror-agency-here-all-you-need-to-know/story/364609.html> ,(last visited on 16/08/2020)

²⁸Institutional and Administrative Response to Terrorism in India, available at https://www.google.com/url?sa=t&rct=j&q=&esrc=s&source=web&cd=&ved=2ahUKewjwsfG6gMvrAhVDzjgGHUEfCFQQfjADegQIBRAB&url=https%3A%2F%2Fshodhganga.inflibnet.ac.in%2Fjspui%2Fbitstream%2F10603%2F144725%2F15%2F15_chapter%25205.pdf&usg=AOvVaw1bLZ8FVnUHVTQUOdr8DSsf, (last visited on 19/08/2020)

or upon a police report of such facts.²⁹ The cases are registered by these special courts at various police stations of NIA under section 11 and 22 of the NIA Act. Any question related to the jurisdiction of these courts are decided by the Central government. Trial by these courts are held on day-today-basis and have precedence over the trial of any other case against the accused in any other court. A Special Court may take cognizance of any offence, without the accused being committed to it for trial, upon receiving a complaint of facts that constitute such offence or upon a police report of such facts. Where an offence triable by a Special Court is punishable with imprisonment for a term not exceeding three years or with fine or with both, the Special Court may, notwithstanding anything contained in sub-section (1) of section 260 or section 262 of the Code, try the offence in a summary way in accordance with the procedure prescribed in the Code and the provisions of sections 263 to 265 of the Code shall, so far as may be, apply to such trial: Provided that when, in the course of a summary trial under this sub-section, it appears to the Special Court that the nature of the case is such that it is not desirable to try it in a summary way, the Special Court shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided by the provisions of the Code for the trial of such offence and the said provisions shall apply to, and in relation to, a Special Court as they apply to and in relation to a Magistrate: Provided further that in the case of any conviction in a summary trial under this section, it shall be lawful for a Special Court to pass a sentence of imprisonment for a term not exceeding one year and with fine which may extend to five lakh rupees.³⁰

A special court may proceed with the trial in the absence of the accused or his pleader if it thinks fit and also for the reason to be recorded. The special court established under the Act of NIA is headed by a Session Judge or an Additional Sessions Judge who are appointed by the Central government on the recommendation of the Chief Justice of the concerned High Court. Various Special Courts have been notified by the Govt. of India for trial of the cases registered at various police stations of NIA.³¹ At present there are total 38 number of special courts under NIA.³² The rates of disposal of cases are not very high, however. Section 17 of the Act mandates the provisions for the protection of the witness or the witnesses. The special court may sit at such places as it thinks fit keeping in view the protection of witnesses etc. and with reasons recorded in writing, the proceedings of the Court will be held in camera.³³ The special court if satisfied that the life of the witness is in danger, it may take measures to keep the identity and address of such witness a secret.³⁴ The name and address of the witnesses shall not be disclosed in any manner as it is in the public interest that the proceedings pending before the court should not be published in any form.

The High Court may, by notification in the Official Gazette, make rules as it may deem necessary for the purpose of carrying out any function under the Act.³⁵ In case of any difficulties, the Central Government has the power to remove the same and every order made under the Act shall be laid before each House of the Parliament. Section 25 of the Act prescribes that the central government may make rules to carry out the provisions under the Act.³⁶

SCOPE OF NATIONAL INVESTIGATION AGENCY AFTER THE AMENDMENT OF 2019

²⁹ *ibid*

³⁰ *Supra* note 4, s. 16

³¹ Available at

<https://web.archive.org/web/20130605153852/http://www.nia.gov.in/niasplcourts.aspx> , (last visited on 18/08/2020)

³² *Ibid.*

³³ *Supra* note 4, s. 17(1)

³⁴ *Ibid.*

³⁵ *Supra* note 4, s. 23

³⁶ *Supra* note 4, s. 25

1. The NIA can investigate and prosecute offences under the Acts specified in the Schedule of the NIA Act. The original Act allowed NIA to investigate and prosecute offences within India.
2. With the amendment of NIA act 2008, on 24th July 2019, agency has now been empowered to investigate offences committed outside India, i.e., extra territorial jurisdiction, subject to international treaties and domestic laws of other countries. The amended section (section 6 of principal act) reads:
“Where the Central Government is of the opinion that a Scheduled Offence has been committed at any place outside India to which this Act extends, it may direct the Agency to register the case and take up investigation as if such offence has been committed in India.”³⁷
3. The amendment has allowed the NIA to investigate and prosecute offences under the acts specified in the Schedule of the act. The amendment has allowed the NIA to investigate, in addition, cases related to (i) human trafficking, (ii) counterfeit currency or banknotes, (iii) manufacture or sale of prohibited arms, (iv) cyber-terrorism, and (v) offences under the Explosive Substances Act, 1908.
4. The 2019 amendment allowed the Central Government to designate Sessions Courts as Special Courts for the trial of Scheduled offences under the Act.

JUDICIAL RESPONSE AND NIA

It has been nearly 12 years that NIA Act 2008 saw the light of the day and in pursuance to the various provisions of the Act, various ‘Special Courts’ have been established to try the offences and several investigations have been carried out by the National Investigation Agency, leading to the prosecution of several persons. Since its establishment the NIA Courts had involved trial of many cases like the Parliament Attack Case, the Hyderabad Mecca Masjid Blast Case, Samjhauta Express Blasts Case, Delhi High Court Blast Case and Kasab’s Trial.

In *Redual Khan v.NIA*³⁸, it was held by the Supreme Court that where a person is arrested by NIA only a special court can remand the accused to police or judicial custody .Where a special court has not been constituted such powers lie with the sessions court. In *Jayanta Kumar Ghosh v NIA*³⁹, it was observed by the court that the source of power to grant bail in such cases in Section 437 of the CrPC which is the general provision for granting bail for non-bailable offences and not Section 439, which deals with special powers of High Court or Session Court in granting bail. In the case of *Jigmanshu Paul v NIA*⁴⁰, the Court said that this is because the Special Court is a court of Original jurisdiction and cannot be regarded as a Sessions Court except to the extent provided by NIA under the Act itself. The aggrieved party may appeal to the Supreme Court in accordance with Section 21 (4) of NIA Act, but cannot directly approach the High Court under Section 439 of the CrPC.⁴¹

In *Pragyasingh Chandrapal Singh Thakur v. State of Maharashtra*⁴², the constitutional validity of NIA Act was challenged before the Bombay High Court on the ground of lack of legislative competence of the Parliament to enact such law. This case actually underlined the Centre-State battle in dealing with the terrorist offences. It was argued that the Centre had encroached upon the State subject of Police by creating a national police agency in the form of NIA.

³⁷ The National Investigation Agency (Amendment) Act, 2019

³⁸ *Redaul Khan v. NIA*, (2010) 1 SCC 521

³⁹ *Jayanta Ghosh v NIA*, 2014 (1) GLT 1 (Guwahati High Court)

⁴⁰ *Jigmanshu Paul v NIA*, 2011 (3) GLT 615

⁴¹ *Ibid.*

⁴² *Supra* note 8

However, the constitutional validity of NIA Act was upheld by Bombay High Court. The Court, in turn, highlighted the grave nature of terrorist offences and the backdrop of large scale terrorist activities which involved complex inter-state and international linkages and that necessitated coming up of an agency at central level to investigate the offences which might have national consequences. Setting up of NIA as an investigative agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India was upheld by the Court in this case.

In *Morjen Hussain V. State Through NIA*⁴³, Hyderabad, the issue of multiplicity of legal provision on counterfeiting was tested for the first time when the designated NIA Special Court convicted six people. The accused were charged with smuggling counterfeit Indian Currency from Pakistan through India-Bangladesh border and getting them circulated across India. All accused persons were charged under sections 489-B, 489-C, and 120-B of the Indian Penal Code and sections 16 & 18 of the Unlawful Activities [Prevention] Act, 1967. The accused persons were not found guilty under the provisions of UAPA Act, 1967. They were held guilty of offences under section 489-B & 489-C of IPC. The judgement for the first time highlighted the fact that possession and circulation of counterfeit currency amounted to 'damaging the monetary stability of India' and becomes significant not only in defining terrorism but, also assisting the act of terror.

In *The NIA, Hyderabad v. Muhammad Sakir Hussaien & others*⁴⁴ the court dealt with the various parts of the NIA investigation and also recorded the confessions of the accused and finally the court found the accused guilty of offences committed and he was sentenced on various matters.

In *State of Karnataka v. Union of India*, the Court held that the Parliament was competent to enact the NIA Act. In *Londhoni Devi v. NIA*, the Court indicated that all financial transactions with a terrorist group would not fall within the ambit of Section 17 of the UAPA. However, the Court did not clarify the differentiation between the money raised for the legal activity and those raised for the commission of any terrorist act.

In *State of Maharashtra Through NIA v. Ravi Dhiren and Others*⁴⁵, the Court held that the accused with a deep rooted criminal conspiracy circulated Fake Indian Currency Notes (FICNs) of high quality, printed and manufactured across the border, which is a terrorist act aimed at destabilizing the economy and to threaten the unity, integrity, security and sovereignty of the found the accused person as guilty for the offences levied against them

In *State Through NIA Delhi V. Phojendra Hojai and Others*⁴⁶ the NIA carried out the investigation by visiting the place of occurrence, examined witnesses and arrested the accused persons and forwarded them to the Court. The accused persons denied all the charges levied upon them but finally the Court's verdict was against them and they were declared guilty of the offence charged upon them.

In *Kangujam Ravi Kumar Singh v. Union of India*⁴⁷, an order was issued by the Government of India, Ministry of Home Affairs, indicating that the Central Government, having regard to the gravity of the offences and other material in its possession, was of the opinion that the offences were scheduled offences under the National Investigation Agency Act, 2008 (hereinafter referred to as 'NIA Act') and offences connected to the scheduled offences u/s 8 of the NIA Act affecting the security of the State. Therefore, in exercise of the powers conferred u/s 6(5) read with Section 8 of the NIA Act, the Central

⁴³ *Morjen Hussain V. State Through NIA* (Special Sessions Case no. 2 of 2013)

⁴⁴ *The NIA, Hyderabad v. Muhammad Sakir Hussaien & others* (Calendar Case No. 5 of 2014)

⁴⁵ *State of Maharashtra Through NIA v. Ravi Dhiren and Others*, (Special Case No. 674 of 2009)

⁴⁶ *State Through NIA Delhi V. Phojendra Hojai and Others*, (Special Case No. 1 of 2009)

⁴⁷ *Kangujam Ravi Kumar Singh v. Union of India*, MANU/WB/1088/2013; [The High Court of Calcutta]

Government suo motu directed the NIA to take up the investigation of the aforesaid case and such other offences which may be revealed during the investigation. The appellants raised multiple issues with regard to the maintainability of the prosecution itself and also on merits of the bail applications. The first submission was that the order of the Central Government issued u/s 6(5) of the NIA Act, was not valid as it was not issued in the name of the President of India. However, the Court did not consider the legality and validity of the order issued by the Government under the NIA Act. The issue before the Court mainly was whether the appellant deserved to be enlarged on bail? It was observed by that the Court that we do not think it appropriate to enlarge the appellants on bail, considering the gravity of the offences allegedly committed by the appellants. The material on record, prime facie show their complicity and there are reasonable grounds for believing that the accusations against them are true.

INTERNATIONAL PERSPECTIVE OF ANTI-TERRORISM LAW

USA: After the terrorist attack on the world Trade Centre, New York, on 9th September ,2001, the US Government immediately passed an order to block the property and prohibit transactions with persons who commit, threaten to commit, or support terrorism. The US Government enacted PATRIOT ACT (Providing Appropriated Tools Required to Intercept and Obstruct Terrorism) in 2001 to make stringent provisions to deal with terrorism. The then President George W. Bush declared a sort of global war against the international terrorism so that another terrorist incident could be avoided in every possible way.

Simultaneously US Government took strict measures to curb terrorism on national and international level, which included formation of Three Unified Command, Terrorist Threat Integration Centre, The National Commission on Terrorist Attack on USA, The Home Land Security Council etc.

The Federal Bureau of Investigation implemented a comprehensive plan as well that enhanced the ability of the FBI to predict, control and prevent attacks of terrorism. It is very well evident that all the initiatives and improvement produced tangible and effective results in their war against terrorism and has averted any major attack in the country then onwards.T

UK: The UK had a legislation to combat terrorism since long back. The Prevention of Violence Act 1939 was enacted in response to an Irish Republican Army Campaign of Violence. This particular Act was repealed in 1973 and was replaced by the Prevention of Terrorism Act in response to the troubles in Northern Ireland. However, the UK Government consolidated all its counter terrorism laws, which were temporary earlier and eventually the Terrorist Act 2000 was enacted.

9/11 episode of terrorist attack on World Trade Tower in US, awakened the whole world and almost every country started enacting stricter laws against terrorist activities. UK enacted the Anti-Terrorism, Crime and Security Act (ATCSA) in 2001 as well, which provided for the indefinite detention without charge or trial of NON-UK nationals who were suspected of terrorism related activities.

AUSTRALIA: Australia had relatively very limited experience with terrorism in comparison to other countries. In late 70's there was a bomb blast at Hilton hotel in Sydney that killed few people and several others were injured. The Government took an unprecedented decision to call out the arm forces to protect its leaders. The attack on World Trade Centre gave an impetus to the Australian Government's focus on its internal security. Australia's Counter Terrorism laws mainly focus on terrorist act offences, terrorist organizations, preventing the financing of terrorism etc. Australia's primary basis for implementing new counter-terrorism laws was that the criminal law framework in place in 2001 was inadequately positioned to combat the threat of terrorism.⁴⁸ Accordingly, in the year 2004 Australian Attorney General Philip Ruddock, introduced the Antiterrorism Bill he described this Bill as "a Bill to

⁴⁸ Haikun Huang, Counter-Terrorism Offences: A Comparison of the Australian and US Approaches, available at <http://studentjournals.anu.edu.au/index.php/burgmann/article/view/421>, (last visited on 20/08/2020)

strengthen Australia's counter terrorism laws in a number of respects". The Anti-Terrorism Act 2004, amended the crimes Act 1914, "to strengthen the powers of Australia's law enforcement authorities, setting minimum non-parole periods for terrorism offences and tightening bail conditions for those charged with terrorism offences".⁴⁹ It introduced the new offence of training with a terrorist organisation that has been proscribed, an offence that carries a maximum penalty of 25 years imprisonment.⁵⁰ The Anti-Terrorism Act (No. 2) of 2004 amended the Criminal Code Act of 1995 making it an offence "to intentionally associate" with someone who is a member of a listed terrorist organization.⁵¹ The Anti-Terrorism Bill (No.2) 2005 was introduced in the Parliament of Australia in November 2005, in the wake of the terrorist bombings in London in July 2005 and was eventually passed in December 2005. It's evident that the Australian Government is committed to strengthen the nation's ability to understand and respond to terrorism in the required manner and to ensure that security, intelligence and the law enforcement agencies are adequately resourced and prepared with all the relevant measures.

LEGAL FRAMEWORK OF NIA

The legal framework of NIA is primarily administered by Mutual Legal Assistance Treaties (MLATs) and Extradition Treaties signed by India with other countries. Under the Indian law, all Civil and Commercial matters involving other jurisdictions must be taken up with the Ministry of Law & Justice, government of India, on the other hand all Criminal law matters involving other jurisdictions must be taken up with the Ministry of Home Affairs, Government of India. Any request for legal assistance, ideally must pass through, diplomatic channels between the countries. In India, Criminal Procedure is governed by the Criminal Procedure Code, 1973, while the Civil Procedure is governed by the Civil Procedure Code, 1908. Both these Codes contain provisions, involving foreign jurisdictions.

As per the guidelines laid down by the Ministry of Home Affairs, the letters of requests must be forwarded within the ambit of the Mutual Legal Assistance Treaty (MLAT), Memorandum of Understanding/arrangements, etc. existing between India and many foreign countries.⁵² However, request for the service of non-bailable arrest, warrants for the extradition of an individual are to be addressed to the Ministry of External Affairs. It is very evident that the legal framework of NIA is also supported by the various MLATs and Extradition Treaties signed between India and other Countries. In the matter of *Union of India v. Mubarak*⁵³, the Supreme Court of India relied on the report of the Public Prosecutor concerning the criminal investigation of the accused in the matter. It was observed by the Court that NIA is conducting the investigation on the social media and email communications used by the accused and associates and the process of sending requests to the USA under the Mutual Legal Assistance Treaty (MLAT) between India and USA to get the details of the social media accounts and communication between the accused and their associates in India and abroad. One therefore cannot deny the role of MLATs and Extradition Treaties in conducting smooth investigations and facilitating

⁴⁹ Mark Rix, Australia's anti-terrorism legislation: the national security state and the community legal sector, available at https://www.researchgate.net/publication/227623501_Australia%27s_Anti-Terrorism_Legislation_The_National_Security_State_and_the_Community_Legal_Sector (last visited on 20/08/2020)

⁵⁰ *ibid*

⁵¹ *Id.*

⁵² Danesh Mehta, India: The Mutual Legal Assistance Treaty and Its Impact On India-US Legal Relations, available at <https://www.mondaq.com/india/terrorism-homeland-security-defence/956062/the-mutual-legal-assistance-treaty-and-its-impact-on-india-us-legal-relations>, (last visited on 25/8/2020)

⁵³ *Union of India v. Mubarak* AIR2019 SC 2428

the legal procedure. NIA can also use the Letters Rogatory process in cases where India does not have an MLAT with the concerned foreign state.

WAY FORWARD

NIA may adopt both preventive as well as deterrent measures against terrorism to establish rule of law, which demands a good legislative framework, fair and transparent procedure and for its implementation various strong and accountable institutions as well as a good coordination between the states of the country. The Government of India has relied on the extension of powers for intelligence, security services, specific policies by enacting legislation, creating terrorist act as penal offence and NIA as an intelligence organization is working in that direction so that the investigation and prosecution of the terrorists can be done at a fair level.

Winning war and terrorism or to prevent and combat terrorism depends upon the success of these institutions and administrative agencies which include unambiguous legislative framework, sharper intelligence and investigation agencies, efficient prosecution work and appropriate judicial body and its activism.

NIA may comprehensively work to achieve the mechanism to emerge as an exemplar intelligence organization. They may focus on the following features:

- NIA should have the means to go for an in depth professional investigation of scheduled offences by best scientific methods so that a bench mark is set up in dealing with any type of offences related to terrorism.
- To have a speedy and effective trial should be another working approach of NIA. Besides that thorough professional method should be developed that will uphold the Constitution of India as well as the laws of the land, while protecting human rights and the dignity of the individual at the same time.
- Ensuring effective and speedy trial.
- To create an effective and professional task force with a regular training and exposure given to them should be taken as another objective of NIA to increase its efficacy.
- To maintain professional and cordial relation with the Government of different States, Union Territories and other law enforcement agencies, in compliance with the provisions of NIA is one of the major challenges that the agency has to look into.
- Creation of a database on terrorist related information by the NIA will improve the overall working of the Organization and would be helpful for other agencies as well.
- Most importantly, the NIA should analyse laws relating to terrorism in other countries and evaluate the adequacy of the existing Indian laws and try to adopt and adept to changes.
- Study and analyse laws relating to terrorism in other countries and regularly evaluate the adequacy of existing laws in India and propose changes as and when necessary.
- To win the confidence of the citizens of India through selfless and fearless endeavours.

It is important to note that the Constitutional validity of the NIA is questioned many times. However, the aim of the creation of NIA is to empower a federal agency to investigate major crimes related to terrorism, and to give a unanimous approach between the state and the federal government to work coherently with the help of judiciary.

To make NIA potentially stronger to meet any challenges, the agency will have to work upon its existing shortfalls if any, with the help of the Government and without any political prejudices. NIA should also be responsible for tackling all aspects and types of terrorism from prevention and pre-emption of terrorist attacks to collecting and disseminating inputs between various states and central investigative agency.