

National Investigation Agency: Do states have right to reject?

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Tamil Nadu government's rejection of the services of the NIA to investigate the bomb blasts at the Chennai Central Railway Station on May 1, 2014 brings in the need to understand the Agency in right perspective.

The NIA was created by an Act of the Parliament of India on December 31, 2008 following Mumbai Terror Attack of November 2008. According to the NIA Act, the Agency is:

an investigation agency at the national level to investigate and prosecute offences affecting the sovereignty, security and integrity of India, security of State, friendly relations with foreign States and offences under Acts enacted to implement international treaties, agreements, conventions and resolutions of the United Nations, its agencies and other international organisations and for matters connected therewith or incidental thereto for investigation and prosecution of offences affecting sovereignty, security and integrity of India. NIA plays the role of the national counter terrorism law enforcement agency.

The NIA was established in a concurrent jurisdiction framework, with provisions for taking up specific cases under specific Acts for investigation and prosecution [Section 3(1)]. In other words, it was “not an Agency to deal with offences under all the laws”, but “with only eight laws”:

1. The Atomic Energy Act, 1962 (33 of 1962);
2. The Unlawful Activities (Prevention) Act, 1967 (37 of 1967);
3. The Anti-Hijacking Act, 1982 (65 of 1982);
4. The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982 (66 of 1982);
5. The SAARC Convention (Suppression of Terrorism) Act, 1993 (36 of 1993);

6. The Suppression of Unlawful Acts Against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (69 of 2002);
7. The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (21 of 2005);
8. Offences under—
 - (a) Chapter VI of the Indian Penal Code (45 of 1860) [sections 121 to 130 (both inclusive)];
 - (b) Sections 489-A to 489-E (both inclusive) of the Indian Penal Code (45 of 1860).

Under two circumstances the NIA takes up a case “to investigate and prosecute offences”. It could be on reference from the State where a Scheduled offence has taken place. On receipt of report from the State Government, the Central Government shall determine on the basis of information made available by the State Government or received from other sources, within 15 days from the date of receipt of the report, whether the offence is a fit case to be investigated by the NIA [Section 6(3)]. The Central Government may also, *suo motu*, direct the Agency to investigate a Scheduled offence if it is of the opinion that the offence is required to be investigated under the NIA Act [Section 6(5)]. In that case any police officer of the State Government investigating the offence shall not proceed with the investigation and shall forthwith transmit the relevant documents and records to the Agency [Section 6(6)]. 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 8]. It is mandatory for the State Government to extend all assistance and co-operation to the Agency for investigation of the Scheduled Offences [Section 9]. The NIA may also ask the State Government to associate itself with the investigation. And, after investigating the matter, if the Agency finds that the matter is not so important, it may, with the previous approval of the Central Government, transfer the case to the State Government for investigation and trial of the offence [Section 7(b)]. In the words of the then Home Minister, P. Chidambaram, the government has “struck a balance between the right of the State and duties of the Central Government to investigate the more important cases.”

As far as jurisdiction of the NIA is concerned, “officers of the Agency shall have throughout India in relation to the investigation of Scheduled Offences and arrest of persons concerned in such offences, all the powers, duties, privileges and liabilities which

police officers have in connection with the investigation of offences committed therein.”
[Section 3(2)]

When it comes to powers, “Any officer of the Agency of, or above, the rank of Sub-Inspector may, subject to any orders which the Central Government may make in this behalf, exercise throughout India, any of the powers of the officer-in-charge of a police station in the area in which he is present for the time being and when so exercising such powers shall, subject to any such orders as aforesaid, be deemed to be an officer-in-charge of a police station discharging the functions of such an officer within the limits of his station.” [Section 3(3)]

Are the NIA provisions unconstitutional? According to the Wikileaks, the then Home Minister P. Chidambaram, “opined that the NIA law would be challenged in court because it ascribes certain investigating powers to the NIA which may be seen to conflict with responsibility that is exclusively with the states.” (Document no. 195165, dated 04 March 2009). Despite this doubt, one cannot conclusively say that the NIA is unconstitutional. Since the body was established in a concurrent jurisdiction framework, there is no question of violation of federal spirit. Although the Centre has *suo mottu* power to take up any case that falls within the stipulated eight laws, in practice, it has ventured into cases only on the invitation of the States.

Views expressed are of the author and do not necessarily reflect the views of the IDSA or of the Government of India.