

NATIONAL INVESTIGATION AGENCY

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In the modern warfare, where any country has strong military base and well-equipped police force to combat terrorism and militant activities, but the presence of intelligence agencies is felt outright as they play significant role which cannot be performed by army or police. Ever since human existence, gathering information by means of espionage has been a key element to the survival of nations. India has already many intelligence agencies like Intelligence Bureau, which is the oldest among all the agencies, Narcotics Control Bureau, Director of Revenue Intelligence etc., on the national level and Research and Analysis Wing on international level. A major change in the functioning of intelligence agencies have been made due to the advancement of technology and modern methods used by anti-social activists. Intelligence officers are often termed as the unseen heroes because they take up those cases which cannot be taken up by any other wings of the government and mostly discharge their duties undercover. But 26/11 Mumbai Attacks proved to be the major intelligence failure of India. This attack established that India needs better intelligence to safeguard the country from terrorist massacre which led to the creation of National Investigation Agency.

INTRODUCTION

Over the past two decades the world has witnessed major terrorist activities like the 9/11 Attack or the London Bombings or the Norway attack and many more, which has proved that whether it is a developed country or as powerful as United State of America, combating terrorism is a difficult task. India, which is a very soft target, due to its vast population and communal diversity, terrorist attacks and bombings has become quite normal. But the “26/11 MUMBAI ATTACK” was the most traumatic and horrifying attack in the history of India as well as for the world. After the incident of Mumbai Attack, the Central Government felt the need of a Counter Terrorist Agency. With the recommendation of the Administrative Reforms Commission, The National Investigating Agency Bill, 2008 was passed and approved by the cabinet on 16th December 2008 and the National Investigating Act, 2008 (NIA ACT) has been enacted and notified on 31st December 2008 and THE NATIONAL INVESTIGATION AGENCY (NIA) has been constituted.

At present the National Investigation Agency is functioning as the Central Counter Terrorism Law Enforcement Agency in India. The main purpose behind the creation of this agency is not only to combat terrorism but also to protect militancy and insurgency affected areas and areas affected by Left Wing Extremism. It is also functioning to control the circulation of fake currency notes and border infiltration along with cases of hijacking,

attack on nuclear installation and other offences which have national ramification. At present the NIA is dealing with around 163 cases and recently it has filed the charge sheet in the railway incident of Ghorasan, Motihari, Bihar. The NIA has a good rate of conviction which is around 93%.¹

OBJECTIVES

Till date, the agency was successful in creating deterrence in the society by its professionalism and standards. The vision of the agency is to combat terrorism and other national security related investigation by a highly developed and trained workforce. The agency aims at developing as a storehouse of all kind of terrorist related information.

The missions of agency are:

- Professional investigation of schedule offences.
- Ensuring effective and speedy trial.
- Complying with the Constitution and other related laws.
- To develop a professional workforce
- To display scientific temper and professional spirit.
- Inducting modern methods and latest technology.
- To coordinate with other agencies and government.
- To assist others in a situation of terrorist activities.
- Maintaining databases of all terror groups and activities.
- To study and analyze laws related to terrorism and other terror activities.
- Further to serve the citizen and gaining their confidence.

SUMMARY OF THE NATIONAL INVESTIGATION AGENCY ACT, 2008

The National Investigation Agency Act, 2008 was passed to protect the country from further terrifying terror attacks like that of 26/11 which proved massive intelligence failure. The intention of the legislature was to establish intelligence agency and out of that, the NIA was born. The NIA was form to monitor serious terrorism threats, to maintain the security, sovereignty and integrity of the State, etc.

Wide responsibility has been showered on the NIA by this Act and its Schedule. The Schedule contains other legislation under which the NIA can investigate and prosecute. The Act further contains the process of investigation, the role of public prosecutor and establishment of Special Courts.

Observation and Comments

- Section 17, which deals with the protection of witness, is a decent step towards protection of justice. Witness protection shall be given under every Criminal Act

¹<http://www.nia.gov.in/index.htm>

otherwise justice will not prevail in a Country like India where corruption is widespread.

- No such provision has been given as to how the NIA would coordinate with other intelligence agencies and what are its powers in relation to that
- According to Section 3(2), NIA have only power to investigate the offences thus NIA doesn't have any proactive function.
- The powers of the Director-General have not been mentioned which should have been provided for as he is the key person who is answerable in case of an intelligence failure.
- The Central Government has been given a lot of power in the Act. The supervision and administration of the agency solely lie in the hands of the Central Government, which indicate wide interference and political pressure although the power has been vested in the Director General. (Section 4)
- Moreover, the Central Government has the power to opine whether an offence is a Scheduled offence or not and whether NIA can investigate or not, which shows that NIA is not independent to take its own decisions. Section 6(3)
- No time is mentioned as to how the State Government must forward the report to NIA. The phrase "expeditiously as possible" needs proper interpretation because the Act has been enacted to prevent serious and grave situation such as terror attacks.
- In case of instituting a suit, the sanction of the Government is necessary, this might delay the matter in course.

The NIA mainly functions under the following Acts

- The Atomic Energy Act, 1962
- The Unlawful Activities (Prevention) Act, 1967
- The Anti-Hijacking Act, 1982
- The Suppression of Unlawful Acts against Safety of Civil Aviation Act, 1982
- The SAARC Convention (Suppression of Terrorism) Act, 1993.
- The Suppression of Unlawful Acts against Safety of Maritime Navigation and Fixed Platforms on Continental Shelf Act, 2002 (69 of 2002);
- The Weapons of Mass Destruction and their Delivery Systems (Prohibition of Unlawful Activities) Act, 2005 (21 of 2005);
- 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.

THE MALEGAON BLAST CASE: INSIGHT

The period between 2006 and 2008, India has witnessed major blast which shook the nation to the core. Among all the attacks, the major was Malegaon Blast of 2006 and 2008 where Muslim majority of our country was targeted as it seems. In both the cases initially the investigation was done by Anti-Terrorism Squad, Maharashtra where the ATS has

arrested nine Muslim men of Student Islamic Movement of India (SIMI) in connection to 2006 blast. Later NIA took up the matter on April 6 2011 and arrested four persons who belong to the Hindu Right Wing, Abhinav Bharat. In 2016, all the nine accused who were previously arrested were discharged by Special NIA Court who was used just as mere scapegoats. This period also witnessed many blasts like Ajmer Sherif Dargah blast, Samjhauta Express blast and Mecca Masjid blast and in all these incidents the association of Hindu Separatist Leader came into the picture. The Malegaon Blast in 2008 was being probed by the then ATS Chief Mr. Hemant Karkare who was later suspiciously killed in 26/11 Mumbai terror attack. Mr. Karkare got many vital leads of the involvement of Hindu organization like RSS, ABVP and Abhinav Bharat or collectively "Saffron Terror". The main role was played by Pragya Singh who was the mastermind along with other associates like Swami Aseemananda, Sameer Kulkarni and other. In a narco analysis they confessed their involvement in all these blasts.

Later NIA started probing all these blast and found loopholes in the investigation of ATS. Although in 22nd March 2017, NIA Special Court awarded life imprisonment to Devendra Gupta and Bhavesh Patel in Ajmer Dargah Blast. But Sadhvi Pragya was granted bail in connection to Malegaon blast case.²

CONSTITUTIONAL VALIDITY OF NIA

In the case of *Pragyashingh Charpalsingh Thakur versus State of Maharashtra, Anti-Terrorist Squad, Mumbai, Union of India and National Investigation Agency AND Major Ramesh Upadhyaya Vs. Union of India, Government of Maharashtra*³, the constitutional validity of NIA was questioned. It has been argued by Mr. Mahesh Jethmalani that Section 6 of the NIA Act, give immense power to the Central Government to transfer any matter any time to the NIA for investigation if it falls under the category of Schedule Offences. Section 6 which is the heart of the NIA Act is unconstitutional and abridges Article 14 and 21. He further argued that only court has power to transfer the matter to any investigation agency if it deems fit whereas this Section confers arbitrary power to the central government to direct transfer of investigation. Mr. Setalwad representing Union of India contented that NIA is a federal agency having power to probe terrorism and other crimes having national ramification such as hijacking, bomb blast, attack on nuclear installation etc. The preamble of NIA Act specifically provides that the agency has been constituted to investigate offences relating to

- Sovereignty of India
- Security of India
- Security of State
- Friendly relation with other states

² Conversation with former Inspector S. M. Mushrif

³ MANU/MH/1680/2013

- To implement treaties and conventions

Furthermore, NIA ACT is not constituting a police force and not to deal with police or public order which are part of State List in VIIth Schedule of the Constitution rather it is mainly to deal with matter of nation importance like that of Defence, Naval, Airforce, Central Bureau of Intelligence and Investigation, etc. Court therefore dismissed the petition stating that there is enough room for NIA to take up any matter any stage because Rule of Rule must prevail over abuse of process of law. If the sovereignty, integrity and security of State is threatened then by acts of terrorism and insurgency, then Parliament and NIA can interfere to restore the same. Thus there is a Rule of Law that binds NIA which cannot be overruled.

Comment

The preamble of the NIA has specifically states the role of NIA in case of national importance. The elements which have been laid down in it can be connected to reasonable restriction provided under Article 19 of the Indian Constitution. Therefore it is not ultra vires to the Constitutional and one has to understand the vital subjects which are being dealt by the NIA which is not only of national importance but of international concern.

SUCCESSFUL CASES BY THE NIA

KULLU HIMACHAL CASE

In this case police arrested a person named Abid Khan guilty of propagating terrorist activities and planned to join ISIS in Syria. The case was registered on 17th December 2016 of Banjar Police Station, Himachal Pradesh. The person hails from Bangalore and was arrested from Himachal Pradesh was found guilty under Section 419 IPC and Section 18 and 20 of the Unlawful Activities (Prevention) Act (UAPA), 1967. He was found to be a member of a newly-formed organization called 'Junood-Ul-Khilafa-Fil-Hind' which function under the ideology of ISIS. On 27.07.2017, the NIA Special Court in Himachal Pradesh sentenced the person to 5 years of rigorous imprisonment.

This case can be added to the list of successful disposal of cases by NIA as it can be observed that fast investigation had taken place which led to speedy trial and prompt judgment.

TERRORIST ATTACK OF KUPWARA (J&K) CASE

This is a case of infiltration from Pakistan to attack Jammu and Kashmir and Delhi. The chargesheet was filed on 26th July 2016 against one accused and the case is under further investigation. *The chargesheet of this case reflects how the LASHKAR-E-TAIBA or LeT was planning to wage war against the Government of India by infiltration and gave high intensity training to its members. All the accused persons were the citizens of Pakistan and were well equipped with high class weapons and GPS devices.*

FICN CASE, RAJKOT, GUJARAT

This is a case of printing of fake currency notes in huge quantities. The chargesheet was filed on 03rd June 2017 against all the accused persons. The complaint was registered on 24th February 2017 after the accused tried to dupe the complainant by extracting 50 lakh rupees from him. The incident occurred during the time of demonetization when majority of the people were in short of cash and the conspirators took advantage of the situation. *This case throws light on how people were fooled during emergency situation. But the NIA was prompt in its action and chargesheet was filed in such a short span of time.*

BOMB PLANTED IN PRESSURE COOKER CASE

In this case the NIA had filed the final charge sheet on 24th July 2017 against all the nine accused persons who have planted an IED Bomb in pressure cooker at Railway Track Ghorasan, Motihari, Bihar in the night of 30th September 2016. *Again in this case there was an involvement of a Pakistani citizen as well as a Nepalese citizen. It simply reveals that another massive mass destruction has been resisted by promptness of a few citizens of our country. The chargesheet reflects that there is an ongoing conspiracy to carry out a series of terror attacks in India. The coordination between the accused persons and the persons behind them are extremely strong but nevertheless NIA had successfully nabbed the accused and stopped a major attack from being happening in the nation.*

APPREHENSION OF 12 IRANIANS ON BOAT WITH HIGHLY SUSPECTED ITEMS

In this case the final report has been filed by NIA on 31st July 2015 which states that only one accused has been charged namely, Abdol Majid Balouch, under section 7 r/w 14 of the Maritime Zones of India (Regulation of Fishing by Foreign Vessels) Act, 1981. The name of the boat was "FV BAKOORI" which has been found by Indian Coast Guard from the Exclusive Economic Zone of India off Kerala Coast without any license or permit and with an intention to commit criminal offence. The preliminary investigation was done by Mr. Stanley who arrested all the 12 accused out of which 11 accused has not been made liable since they were just crew members. The judgment was pronounced by NIA Special Court, Ernakulam, Kerala on 4th April 2016 which held the accused guilty.⁴

This is another example of efficient work of the Investigation Agency which led to quick conviction of the accused.

RECENT IMPORTANT CASES UNDER PROBE BY NIA

HURRIYAT LEADER CASE

Apart from the few above mentioned cases the NIA is investigating many high profile cases which has recently been flashed by the media like terror funding of Huriyat Leaders by Lashkar-e-Taiba and Pakistan. It has been claimed by NIA officials that the money

⁴http://www.nia.gov.in/writereaddata/Portal/CasesPdfDoc/Judgement_Iran_Boat_Case_Annexure_-_U-1.pdf

received by the Hurriyat Leaders has been used to carry out different violent activities in Kashmir since last year like stone pelting and torching of schools and government buildings.⁵

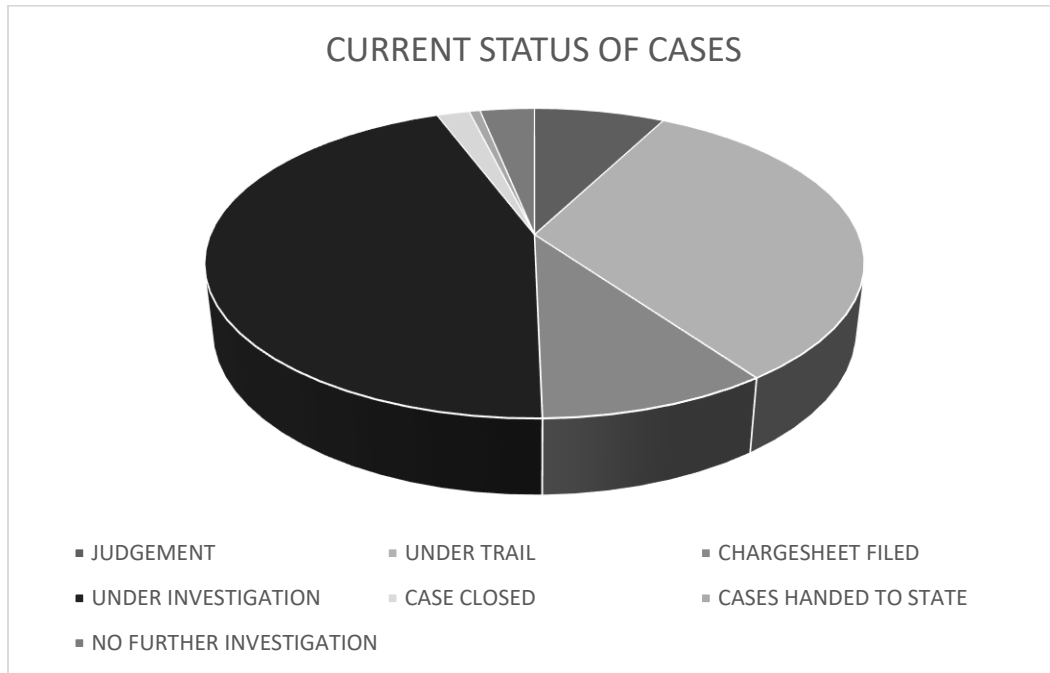
ZAKIR NAIK CASE

Famous Islamic preacher Zakir Naik, who was in a lot of controversy after a Bangladeshi terrorist took his name that he, got influenced from his contentions. Presently the NIA is probing the matter and recently issued notice to him to appear in Court as a case has been filed against him under Unlawful Activities (Prevention) Act.

Therefore, it can be analyzed that the NIA is proactive as compared to the other agencies and local police departments which fails to even submit the charge sheet. NIA proactively take up the matter with the power given in the NIA Act but the interference of Central Government must be reduced in order to make it more effective and efficient.

STATUS OF CASES

In present time the NIA is dealing with a total no. of 163 cases, having 6 police stations across India. Out of which most of the data involves ISIS or ISIL. The analysis of the cases has been given through the following diagram:



As can be drawn from the chart that most of the cases are under investigation around 43% and chargesheet has been filed in around 34% cases (approx.) and cases are in the trail stage. In around 6 cases judgment has been delivered which shows although there are Special

⁵ <http://www.hindustantimes.com/india-news/nia-launches-probe-against-hurriyat-leaders-for-receiving-money-from-pakistan>

Courts for NIA but speedy trial is not happening. There are 37 Special Courts for NIA in various States and Union Territories. The number of courts must be increased for speedy disposal of cases as the terrorist activities and infiltration is rapidly outnumbering in India. The judiciary must take steps to increase the number of courts and judges as well as providing best public prosecutors to NIA cases so that the accused can get stringiest of punishments and to cover up the lacuna that causing acquittal of accused. Proper training must be imparted not only to NIA officials but also to judges who are dealing with special cases.

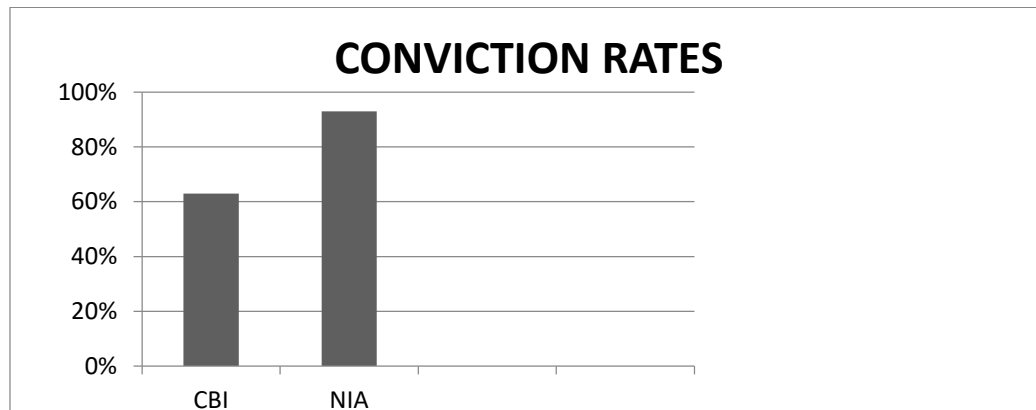
COMPARISON WITH OTHER AGENCIES

A. Central Bureau of Investigation and NIA

Central Bureau of Investigation or CBI is a premier investigation wing of police which primarily does criminal investigation whereas NIA is a newly formed intelligence department after the attack of 26/11 for combating terrorism and other scheduled offences laid down in the National Investigating Agency Act, 2008. Although both the intelligence departments are not immune from Central Government interference but NIA doesn't need special permission from the State Government for investigation of terrorism activities unlike CBI. CBI is well equipped with a Central Forensic laboratory and has a separate CBI Academy for imparting modern training techniques whereas NIA doesn't have such a separate institution for training which is very much required because NIA deals with global problems like terrorism and fake currency circulation which require modern technology and smart intelligence to track.⁶

Conviction Rate

The conviction rate of CBI⁷ is much lower than NIA⁸.



⁶<http://cbi.nic.in/aboutus/aboutus.php>

⁷<http://www.newindianexpress.com/cities/kochi/2017/feb/12/68--conviction-rate-for-cbi-1569707.html>

⁸<http://theindianawaaz.com/nia-has-achieved-conviction-rate-of-93-rajnath/>

According to newspaper reports the conviction rate of CBI is much lower to around 63% of CBI than that of NIA whose rate is around 93% which is quite impressive because CBI is getting much more facilities than NIA which is the youngest among all the intelligence agencies. Thus the contribution of NIA is much more than that of CBI which is functioning for only 8 years.

B. ATS versus NIA

Both ATS and NIA are formed to combat terrorism or related activities but ATS has proved to be more powerful and efficient in investigating cases and causing conviction of the accused. NIA is an independent organization unlike ATS which mainly functions under the supervision of Intelligence Bureau. The 26/11 Mumbai Attack proved the drastic intelligence failures which led to the death of many people.

NIA is a young agency as compared to ATS which was formed in 1990 and happened to stop many terrorist attacks in the country but it conducts many encounters and shootouts. In a recent case of encounter, Saifullah⁹, was killed by ATS team and Uttar Pradesh Police, who is suspected as an ISIS terrorist. The NIA was given the authority to investigate the encounter.¹⁰ The controversial Malegaon Blast case, which was probed by the estranged ATS Chief Hemant Karkare, was later handed over to the NIA and the entire story was turned and the NIA's contention was absolutely reversed to that of ATS. In this case all the accused persons have been acquitted which indicates the partial attitude of NIA towards RSS and Abhinav Bharat. The facts have been presented in court from different angle from that of ATS. The conviction rate of ATS is quite low as compared to NIA.

PROBLEMS FACED BY NIA

Although the National Investigating Agency is a federal organization and has power to take up any matter of terrorism and other related activities, it faces a lot of pressure from the Centre as well as the State Government. In addition to that they face multiple problems which are discussed in detail, as follows:

A. CENTRE-STATE CONFLICT

Since "police" and "public" order both come under the STATE LIST in 7th Schedule of the Indian Constitution, the State Government create issues in the name of Central Government interference. The State police department doesn't cooperate in hiding the loopholes in their investigation which lead to conflicting investigation report and miscarriage of justice. In Section 9 of the NIA Act, 2008 it is given that the State Government to provide assistance to NIA and in Section 6(2), the State Government has been directed to forward a report containing information regarding any offence "as

⁹ <http://indiatoday.intoday.in/story/lucknow-encounter-slain-terrorist-saifullah-neighbours-shocked-thakurganj/1/900173.html>

¹⁰ <http://www.hindustantimes.com/india-news/lucknow-encounter-likely-to-be-given-to-nia-for-probe/story-42TPk7TRuVndxSMi6vSeJP.html>

expeditiously as possible” but the interpretation of the phrase has not been provided which has already been mentioned which scrutinizing the ACT. This might lead to delay in investigation resulting in acquittal.

B. PROBLEM OF COORDINATION WITH THE STATE POLICE

The NIA faces problem while coordinating with the concerned State Police Department or the Anti-Terrorist Squad leading to ego clashes and lack of information to tackle the issue because combating terrorism cannot solely be handled by NIA as it requires cooperation of the other agencies and organizations. They face problem since the State officials are poorly trained and ill-equipped. For instance, in the case of Yasin Bhatkal who was arrested by the West Bengal police in forged currency case was later released because the police was unaware of the fact that he was on the NIA's most wanted list.

C. NOT WELL-EQUIPPED

The NIA is poorly equipped to tackle emergency situation like a terrorist attack, for instance- when there was a blast in West Bengal in the year 2014 there was no public vehicle to carry the officials to the crime scene and they had to avail taxi services which show the lack of infrastructure provided by the Government.¹¹

D. PROPER TRAINING

The NIA operates PAN India which puts a lot of pressure on them and requires skill and training in cyber surveillance, equipment and communication skills and other expertise. The government must increase the budget from the current \$16 million. NIA requires more specialized staff and a centre of excellence to train them.

E. THREAT OF SECURITY

Recently in 2016, an NIA official named TANZIL AHMED was shot dead in a planned attack by unidentified motorcycle-borne assailants in front of his wife and children in Bijnore, western Uttar Pradesh, on 3rd April 2016. He had died on the spot, while his wife Farzana was taken to a hospital in Noida, where she is in a critical condition¹². His daughter (14) and son (12) are unharmed. This incident shows that how the officials are vulnerable to get attacked by anyone anytime. Government must provide proper security to important officials who are playing critical role in high profile cases.

F. BUDGETARY PROBLEMS

¹¹ <http://www.dnaindia.com/india/report-national-investigation-agency-poorly-equipped-shortfalls-hamper-india-s-fight-against-terrorists-2032784>

¹² <http://www.thehindu.com/news/national/NIA-officer-shot-dead-in-Uttar-Pradesh/article14217573.ece>

The NIA was created after the 26/11 attack and is seen as the Federal Bureau of Investigation of India. But India has a population of 4 times than that of America and NIA is being allotted only 0.5% of the funding of its American counterpart.¹³

G. COORDINATION WITH OTHER AGENCIES

This major issue faced by NIA is the need to work hand in hand with other intelligence agencies. They face pressure from Intelligence Bureau which acts as the head of all agencies in India as a result of which they lose their independence and transparency.

CONCLUSION

The National Investigation Agency or the NIA is proved to be better than other intelligence agencies both in terms of professionalism and humanitarian aspects but it lacks certain other important aspects because of the fault of others. This agency is basically formed to counter terrorism like the FBI in America but to compete with those standards they require assistance from Government stakeholders and be given full independence in handling cases. It faces hurdles when they are imparted with any case from a State where the police department concerned have already carried on investigation which could be faulty and lack of any specific strategy. Where there is strain relationship between Central and State Government, national agency like NIA fails to get proper assistance from the State Police which ultimately lead to miscarriage of justice.

From the Malegaon Blast case it does seem like that NIA is falling under the influence of high profile people who are the real threats to the country than Al-Qaeda or Lashkar-e-Taiba, who hide behind these groups and serve their purpose. This case is a setback for NIA since there is a sharp contradiction in the contention of ATS and NIA and they failed to gather evidence. Nonetheless, the NIA must be able to function independently without any political pressure, which must be ensured by the Government as it is a federal agency and government keeps on changing. The expectation from NIA is quite high as India doesn't want to witness another a 26/11 which was a major and deliberate intelligence failure.

¹³ <http://www.dnaindia.com/india/report-national-investigation-agency-poorly-equipped-shortfalls-hamper-india-s-fight-against-terrorists>