

TERRORISM AND THE NATIONAL INVESTIGATION AGENCY: BALANCING NATIONAL SECURITY WITH CIVIL LIBERTIES

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Abstract

This article critically analyzes the evolution of the National Investigation Agency (NIA) in India's counter-terrorism architecture, which is closely intertwined between national security and civil liberties. The agency was established through the NIA Act of 2008 in the light of the 2008 Mumbai attacks, with the purpose of centralizing and expediting terrorism investigations. The article doctrinally analyzes statutory interpretation and case law to examine the agency's new powers especially post the 2019 amendments to the UAPA and reforms to criminal law in 2023, taking into account the implications for fundamental rights. The response of the judiciary, including landmark judgments such as *Thwaha Faisal v. Union of India* and *Asif Iqbal Tanha v. State of NCT of Delhi*, tries to bring some order to the excesses noticed in NIA's operation, albeit intermittently. The study discusses operational problems like jurisdictional conflicts, resource constraints, and a dismally low conviction rate under UAPA (2.2%, 2016-2019) and goes about documenting the agency's evolution against newer threats such as cyberterrorism, and lone wolf attacks. Furthermore, global comparative insights point towards the necessity of stronger oversight mechanisms in India. In conclusion, this article argues that while the National Investigation Agency is an important organization for ensuring internal security in India, it needs to enhance its effectiveness and legitimacy through recalibration of legal frameworks, greater transparency, and more robust judicial checks that are able to balance the requirements of state power with democratic freedoms.

Keywords: National Investigation Agency, UAPA, civil liberties, counter-terrorism, cyberterrorism, constitutional rights

1.1 INTRODUCTION

Terrorism in India is now a serious concern, needing special agencies to counter a very complicated cross-border threat. An establishment coming out of the National Investigation Agency Act 2008 is the National Investigation Agency (NIA). The NIA was set up fundamentally following the events of the 2008 Mumbai hellish terror attack, which revealed

that India's separated investigative machinery was too weak. The NIA empowers the investigation and prosecution of offenses derogatory to national security, defined under some stringent laws like Unlawful Activities (Prevention) Act (UAPA), 1967, among others, including acts having terroristic roots. However, the powers of the agency, especially after the UAPA amendments in 2019, have raised the

controversy of fundamental rights. *Thwaha Faisal v. Union of India*¹ is one of those cases that view the judicial attempts attempting to overreach freedom of association while furthering seismic divisions.²

1.1.1 Research Objective

The article aims to analyze the thread-the-needle balancing act that NIA performs while preventing terrorist activities along with constitutional guarantees. Further, it examines the new legislative reforms that will take place in the NIA with amending UAPA 2019 and the Bharatiya Nyaya Sanhita, 2023. This study uses judicial pronouncements such as *Asif Iqbal Tanha v. State of NCT of Delhi*³, against the backdrop that emphasized time-bound justice, or *Gautam Navlakha v. NIA*⁴, again centered around the arguing custodial powers, to analyze if the existing mechanism is sufficient in striking a balance between security with personal freedom. In addition, operational difficulties such as inter-agency coordination will be tackled, as will emerging threats, with the focus on cyberterrorism, to create proposals in line with democracy.

1.1.2 Scope and Methodology

The research looks at the legal and operational environment in which the NIA functions, with due regard to the NIA Act of 2008, the UAPA of 1967, and some of the recent reforms within the Indian Penal Code. This study examines the judicial oversight through such cases as *Arup Bhuyan v. State of Assam*⁵, which initially limited penal provisions, and in stark contrast to the 2023 rulings, where interpretations have been introduced very strictly. The purview shall also include more recent challenges like digital terrorism and assimilate models of international best practices, e.g., the UK's Terrorism Act, 2000. The methodology employed includes statutory interpretation, doctrinal analysis of judgments, and critical evaluation of policy documents, along with secondary sources like reports published by Amnesty International in ascertaining implications toward human rights.

1.1.3 Structure of the Article

The article is structured in such a way as to serve a coherent narrative starting from the commencement of the historical evolution of anti-terrorism laws in India, moving through progressively to comprehending the legal framework and functions of the NIA, followed by addressing civil liberties concerns with reference to the cases of *Thwaha Faisal* and the evaluation of judicial interventions. It then examines the next emerging trends as adaptation by technology through case study such as investigation of the Pulwama attack, and analysis on challenges like low conviction rates. The article closes with some international comparisons and action-oriented recommendations for reforms to enhance oversight and safeguard rights while ensuring strong measures in counter-terrorism.

1.2 HISTORICAL CONTEXT OF ANTI-TERRORISM LAWS IN INDIA

The Indian laws have also been enacted to counter terrorist acts. These laws include provisions to make greater security threats to societies rather than individual rights. The Terrorist and Disruptive Activities (Prevention) Act, or TADA, came into being during the time when militancy was on the rise in Punjab and Kashmir; the introduction of TADA occurred in 1987. The legislation was however, very strenuous. It had provisions where confessions made to the police would be recorded as admissible evidence in the courts. Rampant misuse was reported, with cases like that of *Kartar Singh v. State of Punjab*⁶, being the hard evidence of overreach by the judiciary in scrutinizing, and then, TADA was allowed to lapse in 1995. Its chief successor was the Prevention of Terrorism Act (POTA), 2002, which also had an eye towards post-2001 Parliament attacks actions against terrorism; but for this, no one spared tears commenting on the misuse for arbitrary detentions.

In *People's Union of Civil Liberties v. Union of India*⁷, the Supreme Court upheld parts of POTA but explicitly noted its potential for misuse,

adding fuel to the fire for its repeal in 2004. The Unlawful Activities (Prevention) Act (UAPA) of 1967 was originally intended for secessionist kinds of activities, but amendments in 2004 changed the provisions of the Act in regards to terrorism definitions, to enhancements after the attacks in Mumbai in 2008, and lastly, by an amendment in 2019 which allowed more flexibility for the designation of individual terrorist, representing a more comprehensive yet flexible approach to legislation. The aforementioned amendments seem to have a global trend towards terrorism but also raise concern regarding proportionality as pointed out by the critics in human rights bodies.

1.2.1 Genesis of the NIA

India's historical catastrophe of the 2008 Mumbai terrorist attacks was a crude underpinning of all the deficiencies that stemmed from India's decentralized investigative system- especially with respect to the handling of multi-jurisdictional terrorism cases. This impediment in coordination was witnessed, where state police agencies had a delayed response, and the sharing of cognitive intelligence was fragmented. The crisis expedited the establishment of the National Investigation Agency Act, 2008, which created a centralized body with nationwide jurisdiction over the investigation of terrorist acts and other matters connected therewith. This was aimed at making investigations easy, as seen in the capacity of the NIA to successfully prosecute cases such as those related to the 26/11 attacks. With very few exceptions, the NIA had a difficult beginning against the background of limited resources and resistance from states the debates around which were later considered in *Thwaha Faisal v. Union of India*⁸.

1.2.2 Shift in Terror Threats

From being an organized national activity with large-scale attacks, terrorism in India today has transformed into a decentralized and technology-driven threat. Early terrorism

consisted of insurgencies and cross-border militancy, but today, it is mainly cyber terrorism, which creates hindrances in online radicalization and funding through cryptocurrency. Lone wolf attacks like the 2010 Pune blast considerably complicate matters for preemptive detection. Such trends also make the country more vulnerable to global influences from groups like ISIS through digital propaganda. Thus, it has become essential for the state to have tailored agencies equipped in advanced forensics and cyber capabilities. The NIA's adaptation of evolution-this includes AI-based analytics-in itself brings to terms however the aspect of judicial oversight, like in *Asif Iqbal Tanha v. State of NCT of Delhi*⁹, in order to ensure that even this tool does not go beyond constitutional limits. This changing security landscape emphasizes the importance of the NIA's role and the complexity of combining security with rights.

1.3 LEGAL FRAMEWORK GOVERNING THE NIA

The NIA Act, enacted in December 2008, marks the beginning of the NIA's powers, thereby establishing the NIA as the foremost authority in India to deal with terrorism and related crimes. The Act was passed after the Mumbai attacks of 2008 to remove jurisdictional inconsistencies by conferring powers on the NIA. The Act, in Section 6, provides for the NIA to investigate under its Act scheduled offenses such as terrorism, human trafficking, and counterfeit currency offenses without the permission of the government of the state concerned in the interest of speed in actions, like in the case of the 26/11 attacks. Here, NIA secured the convictions in *Mohammed Ajmal Amir Kasab v. State of Maharashtra*¹⁰. Section 11 permitted the central government to set up special courts. The provisions delineated in the Act not only cover terrorism, but organized crime and cross-border offenses, equipping the NIA to tackle multidimensional threats like narco-terrorism. This wide mandate has nonetheless raised anxiety about NIA's overreach: calls have been made for a delineation of jurisdictional boundaries to prevent the misuse of the Act in

the contravention of state autonomy.¹¹

1.3.1 Unlawful Activities (Prevention) Act, 1967

The NIA's focus in terrorism prosecutions is mainly guided by the Unlawful Activities (Prevention) Act, 1967, which, in the beginning, was an act directed against secessionist activities. The entire section 15 deals with terrorist acts, through various definitions, to mean acts threatening the unity and sovereignty of India, thus covering all possible categories like violence, intimidation, and disruption, in some cases like *Thwaha Faisal v. Union of India*¹², with the Supreme Court cutting down the meaning to preserve association rights. The gravity of offences under Section 16 is life or death, showing an evident deterrent theory, and punishment is to be a matter of severity. Quite a lot of controversy arose regarding Section 38 which gives a punishment for being a member of a terrorist organization; Section 43D(5) restricts bail unless the court has found that there was no prima facie case against the accused, which therefore leaves very little discretion in the judge's hand; still, timely justice was sought for in *Asif Iqbal Tanha v. State of NCT of Delhi*¹³ to mitigate its harsher effects. Although these provisions gave the center and the NIA an upper hand against terrorism, they frighten civil liberties because the broadness of the law can permit it to be used against citizens with prolonged detentions.

1.3.2 UAPA Amendments, 2019

The 2019 amendments considerably increased the powers of investigations and prosecutions by the NIA so as to include new dimensions of terrorism. A significant amendment that has come under challenge in *Sajal Awasthi v. Union of India*¹⁴ allows the center to declare an individual as a terrorist without linking him to banned organizations, which has been described as vague. Another amendment has incorporated determinations that curb arbitrary action by attaching conditions for the prior approval of the Director-General of the NIA

when seizing property; otherwise, such arbitrary action would create issues of unduly delaying time-sensitive enforcement. The powers given to investigators for searches reduce operational thresholds, thereby enhancing efficiency at the potential cost of procedural checks and balances. Furthermore, the ratification of the International Convention for the Suppression of Acts of Nuclear Terrorism (2005) commits India to bring its national legislation up to global standards, consequently enhancing the international role of the NIA. Nonetheless, these changes, while reinforcing security, subsequently came into question in *Gautam Navlakha v. NIA*¹⁵ pertaining to detention powers.

1.3.3 Bharatiya Nyaya Sanhita (BNS) and Bharatiya Nagarik Suraksha Sanhita (BNSS), 2023

These reforms to the Bharatiya Nyaya Sanhita, 2023, and the Bharatiya Nagarik Suraksha Sanhita, 2023, translate into replacing the Indian Penal Code and the CrPC, resulting in structural changes for investigations by the National Investigation Agency. BNS Section 111 deals with organized crime and terrorist acts, but it also gives an overall scheme for trying numerous offenses, perhaps to NIA's advantage in narco-terrorism cases. Thus, BNSS Section 112 expands the scope of police custody, almost to 90 days, in grave offenses enabling flexibility in investigations but also infringing human rights with undue influence, more so after the decision rendering opinion in favor of *Zahoor Ahmad Shah Watali v. NIA*¹⁶ regarding grave delays pending detention. That is how crimes are modernized for criminal justice, but in reality, these new laws simply increase the scope of provisions that continue to be effectively safeguarded against possible misuse by the NIA by strong restrictions, especially in light of the low conviction rates under the UAPA (2.2%, 2016-2019). The merging of these statutes will necessitate debate by the courts. Protect all democratic liberties from terrorism in a balanced and harmonized way.¹⁷

1.4 ROLE AND OPERATIONS OF THE NIA

The NIA is mandated to tackle sophisticated threats to national security because it is the lead agency for the investigation of serious crimes in India. Its entry provides for investigation of the offences under the National Investigation Agency Act, 2008, such as terrorism, fake currency, and human trafficking, as seen in the case of the NIA investigating the 2019 Pulwama attack, which resulted in the death of 40 CRPF personnel. It had jurisdiction to cross putative state boundaries, so it went to the NIA in cases like *State v. Adil Ahmad Dar*¹⁸ (Pulwama-related proceedings), where the agency developed cross-border terrorism financing. Apart from terrorism, the NIA is said to work on narco-terrorism and arms smuggling, thus enlarging its scope within internal security of India. However, a huge bunch of such expansive mandate strains the available resources and puts issues on the prioritization and efficiency of investigations, particularly in instances where such cross-border investigations conflict with the duties of the state police.

1.4.1 Investigative Techniques

The response of the NIA to the challenges posed by evolving threats has been, therefore, blending prospective technologies with counter-terrorism thrusts worldwide. The collection of forensic evidence through DNA profiling and ballistic analysis has proved its worth many times over, especially in the Pathankot attack case of 2016 where forensic leads resulted in convictions. Predictive policing of AI and social media monitoring for detection of radicalization while on the other hand, cyber forensics customer digital threats such as cryptocurrency-based terror funding—for instance, in the NIA's busts of two ISIS modules in 2022. Nevertheless, with the advancement of technology comes a slew of ethical concerns, while some recent cases such as *Thawaha Faisal v. Union of India*¹⁹ have put caution before the judiciary, warning against unchecked surveillance and violation of the right to

privacy. The NIA, in embracing technology, must ensure that these measures are backed by stringent oversight so that it fulfills constitutional norms under Article 21.

1.4.2 Coordination with Other Agencies

An effective counter-terrorism measure lies at the collaborative front, and NIA is haunted by these coordination problems often. Example is the 2019 Hyderabad terror module case where an NIA team coordinated with state police for ground-level intelligence, but such efforts are either fairly futile or time-consuming when it comes to jurisdictional disputes. Provisions in collaboration with international agencies like Interpol lend cause for cross-border investigations, such as those ongoing into Lashkar-e-Taiba operatives post-2008 Mumbai attacks. The joint work with the Enforcement Directorate is also helping in incapacitating the strike of terror finance, for instance, the case *Zahoor Ahmad Shah Watali v. NIA*²⁰, which upheld charges based on joint investigations. Yet, the two have coupled synergies in heroic efforts; as commonly said, "too many cooks spoil the broth"—bureaucracy silos and varied priorities dampen synergy development. Hence, the need to create an integrated structure like a multi-agency task force arises.

1.4.3 Achievements and Criticisms

The NIA has secured many achievements, yet it faces criticism for issues in its internal systems. Its conviction of Ajmal Kasab in *Mohd. Ajmal Amir Kasab v. State of Maharashtra*²¹ was indicative of its prowess in prosecuting terrorism cases, one that secured international publicity with respect to the NIA's role in the conviction of those convicted in the 2008 Mumbai attacks. On the other hand, some known cases such as the investigation into Bhima Koregaon and the extremely poor UAPA conviction rate (2.2% for cases registered from 2016-2019) highlight ongoing inefficiency. Critics, also citing the case of *Asif Iqbal Tanha v. State of NCT of Delhi*²², argue that long detention without trial undermines the public faith and detracts from the right to speedy

trials. The agency's reputation in such cases is further damaged by the allegation that it is politically biased against activists. Hence changes are needed for procedural streamlining and transparency in connection with the goals of justice delivery.²³

1.5 CIVIL LIBERTIES CONCERNS

Accusations have been laid heavily against the NIA for its attempts to undermine fundamental constitutional guarantees through the alleged application of the Unlawful Activities (Prevention) Act of 1967. Under the aegis of Section 38 of the UAPA, membership to terrorist organizations, without any requirement that the member act or participate in the criminal activities of the organization, is declared to be a crime and thereby is violative of Article 19 of the Indian Constitution, which secures freedom of speech as well as association. The overbroad interpretation of the provision was questioned in *Thwaha Faisal v. Union of India*²⁴, in which the Supreme Court cautioned against criminalizing mere ideological affinity without evidence, and rather inclined to supporting politically motivated crimes demanding a higher standard of proof. All those prolonged detentions, which end up damaging Article 21 securing life and liberty, are encouraged by the limitations on bail applications as prescribed by the UAPA. Bail was granted by the Delhi High Court in *Asif Iqbal Tanha v. State of NCT of Delhi*²⁵, criticizing extended incarceration without trial as a violation of due process, but indicating that these procedures are inherently uneven and disadvantage specific classes disproportionately. Solutions to these Quandaries are very skewed because security cannot be fully aligned with the demands of constitutionalism.²⁶

1.5.1 Allegations of Misuse

The application of UAPA by the NIA is alleged to be politicized, in that it has been made to serve accusations of specific targeting on activist and dissenting voices. This is well mirrored in the Bhima Koregaon case (2018-present), where it has been used to arrest scholars and lawyers

like Sudha Bharadwaj under UAPA for alleged Maoist infiltrations when rather weak evidence probably could lead to their convictions. The Supreme Court in *Vernon Gonsalves*

*v. State of Maharashtra*²⁷ granted bail to some accused accidentally pointing out weak prima facie cases against them, yet there continues to be detentions without trials. The data reveal a 2.2% conviction rate under UAPA (2016-2019) and hence suggest overreach, as arrests are not converted into judicial outcomes. The credibility narrows along these trends. The "high profile" cases like the Delhi riots (2020)-in which UAPA was invoked against student activists-add the perception of selective enforcement, as can be seen in *Khalid Saifi v. State*²⁸, where bail was initially denied. Such patterns endanger the very alienation civil society and democratic discourses risk suffering within.

1.5.2 Lack of Transparency

Such murkiness in NIA operations creates more doubts in the minds of the public about its fairness and accountability. Very little is shared about an investigation process, especially in high-stakes cases, putting a check to scrutiny, such as the long term secrecy relating to the Bhima Koregaon evidence collection. Unlike other countries, reporting arrests, charges, or outcomes is not made mandatory public information, as the UK has provided annual statistics on terrorism arrests. The Supreme Court underlined the charged nature of procedural irregularities in *Gautam Navlakha v. NIA*²⁹, citing that such non-transparency fuels distrust. This opacity definitely hampers public confidence but hardly makes matters easier for courts to exercise judicial oversight, for courts depend on agency disclosures to determine legality. More openness would reduce perceptions of bias and standardize the NIA with principles of democratic accountability.³⁰

1.5.3 Global Human Rights Standards

Indian counterterrorism law and functional ground regarding the UAPA and NIA diverge from international human rights norms; thus,

enormous gaps are created regarding due process. Legislation forbidding association with the absence of intent has come under fire mainly from the UN Special Rapporteur on Counter-Terrorism and the defenders for alleged violation of Article 20 of the Universal Declaration of Human Rights. While the UN Global Counter-Terrorism Strategy lays enormous emphasis upon striking a balance between rights and security, the Indian framework sadly reflects no element of this—Upholding extremely stringent bail conditions against the larger backdrop of human rights concerns, with disregard for the delicate balance brought out by this case, is an eye opener in that respect. It would be apt to compare it, say, with the Anti-Terrorism Act of Canada, which embodies sunset clauses along with oversight institutions—verifying the lag in all of India's institutional safeguards. Clearer definitions of the UAPA with subscription to the UN guidelines regarding mandatory reviews would justify the law without compromising security.³¹

1.6 JUDICIAL OVERSIGHT AND CASE LAWS

The judiciary in India provides check and balance against NIA's sweeping powers so that counter-terrorism measures are in accordance with the given constitutional mandates. Special courts have therefore been identified under Section 11 of the NIA Act, 2008, in order to ensure that the trials connected with terrorism-related offences are carried out efficiently and fairly. These courts, along with the higher judiciary, also examine the constant tension between national security and fundamental rights, which can be judged from the challenges to the stringent provisions of UAPA. In balancing due procedures, the Supreme Court and High Courts have struck down unreasonable detentions, as in *Vernon Gonsalves v. State of Maharashtra*³², allowing bail due to weak evidence and affirming the role of the judiciary in preventing indiscriminate detention. Whereas courts might act as safeguards preventing NIA overreach through scrutiny of investigative and prosecutorial conduct, effectiveness will hinge

on the ability of constitutional safeguards found under Articles 21 and 19 to be uniformly upheld.³³

1.6.1 Key Case Laws

Judicial pronouncements have heavily been shaping NIA operations and showing various shades of interpretation. In so far as *Thwaha Faisal v. Union of India*³⁴ drew Sections 38 and 39 of UAPA to require an active involvement in restriction against freedom of association—it has down read those provisions that criminalize membership and support to terrorist organizations—that is also the case with *Asif Iqbal Tanha v. State of NCT of Delhi*³⁵, which emphasized speedy trial and thus granted bail to one accused of the Delhi riots, detained for a long while without significant progress, in the most serious terms of condemnation of one's bail provisions under UAPA Section 43D(5). This was contrary to a prior Constitution Bench pronouncement in *Arup Bhuyan v. State of Assam*³⁶, where it ruled that mere membership without violent intent would not qualify for conviction. The judgment of 2023 stands in stark contradiction to that position thereby predispositions to yet another contradiction among judicial minds. *Gautam Navlakha v. NIA*³⁷ challenged the site at which NIA might detain an accused for an extended duration in the case Bhima Koregaon, thus rendering no choice to the agency but to bring a review petition against the judgment, making it as an issue regarding general procedural fairness. *NIA v State of Maharashtra*, further, said that sessions courts could even try UAPA cases in absence of special courts and reiterated access to justice. These judgments reflect the collective work done by the judiciary towards wading through an extremely intricate tightrope of securities against liberty.³⁸

1.6.2 Judicial Trends

In regard to case policy related to NIA, it seems that courts are often very patchy and waver between some sort of inclination toward protective but case-specific restrictions. There are instances of liberally construed judgments like Tanha and Thwaha Faisal; bail could have,

compared to restrict against misapplication of UAPA, bettered individual rights in something like *Khalid Saifi v. State*³⁹, when it was finally given. The other was simply very stringent textual interpretation of the UAPA, an example of which could be found in *ahoor Ahmad Shah Watali v. NIA*⁴⁰, invoked security through a more stringent reading for the purposes of denying bail or vague definitions of offenses.

This division demonstrates judicial awareness in protecting the counter-terrorism agenda without appearing overly cavalier regarding the UAPA's low rate of conviction (2.2% during, 2016–2019), thereby pointing to the overenthusiastic prosecution. Presently, there appears to be an increasing trend towards scrutinizing the quality of evidence brought forth by the NIA, such as in *Vernon Gonsalves* cases; however, inconsistently, as demonstrated by the prolonged litigation in *Navlakha*, this poses yet another level of trouble in developing a consistency in oversight. The changing stance of the judiciary would nevertheless require some clear frameworks for the balance of the security concerns with constitutional safeguards such that NIA is effectively regulated democratically.

1.7 EMERGING TRENDS IN TERRORISM AND NIA'S RESPONSE

Research on something private space hasn't really offered much help on traditional investigation for such a tenable shooting place by terrorists. The propaganda indoctrinates and mobilizes on an entirely different level; for instance, Indian youth are targeted by ISIS's social media campaigns while the NIA dismantled modules last year. Terror funding further got obscured with cryptocurrency transactions, compelling the NIA to use analysis impacted by blockchain technologies to track illicit money.

³⁸V. Venkatesan, "Amendment to the National Investigation Agency Act, 2008: An act of violation", *The Hindu*, August 5, 2019.

1.7.1 Lone Wolf Attacks

Lone wolf terrorism, as opposed to coordinated plots, exists in a decentralized fashion, and its self-radicalization causes detection challenges and complexities. The perpetrators depend on lightweight networks and, unlike coordinated plots, carry little conspicuous signs for disruption—the 2010 Pune German Bakery terrorist attack, for instance, investigated by the NIA. Contrasting global cases like that of the Christchurch shooting in 2019 reinforce the fact that such acts have their inspiration chiefly from online echo chambers—like nowadays, the NIA keeps an eye on some dark web sites. The NIA convicted Himayat Baig in 2013, but the case revealed intelligence gaps in forecasting lone actors. Such attacks require preventive responses, but the greater concern would be large-scale surveillance leading to alienation of communities. Trust will require more refined policies.⁴¹

1.7.2 Technological Adaptation

The determining technological advancements adopted by the NIA engage in a systemic shift in counter-terrorism. The role of artificial intelligence is one such very important aspect that steers predictive policing, analyzing patterns to prevent any plots from being executed, while another application of AI—that of facial recognition—assists in identifying the accused, as demonstrated in the Pulwama investigation in 2019. Forensic procedures relating to DNA analysis further provide support for incrimination in Court.

1.7.3 Legislative Reforms

The latest developments in criminal law have given a new form to investigative activities by the NIA. The *Bharatiya Nyaya Sanhita*, 2023, under Section 111, puts terrorism and organized crime in the same footing and delineates the remit of the NIA in very complex cases. Under Section 112 of the *Bharatiya Nagarik Suraksha Sanhita*, 2023, custody is being extended to 90 days – helping thorough investigations and, thus opening doors to violation of rights, as

noted in *Zahoor Ahmad Shah Watali v. NIA*, where the holding was on prolonged detention. It empowers the NIA, but makes things less easy, increasing the demand for accountability, which requires robust oversight mechanisms to check against misuse and to ensure conformity to justice principles.

1.8 CHALLENGES IN BALANCING SECURITY AND LIBERTIES

The effectiveness of the NIA has continuously been limited since there are still inefficiencies in securing convictions under very strict anti-terror laws. Between 2016 and 2019, the conviction rate under UAPA stood at a mere 2.2%, with the reason being the prosecution failure and judicial backlog maintaining cases for prolonged periods. Long trials, mostly running into years, weaken cases because of gaps in evidence and procedural delays, eventually leading to bail grant, as in *Asif Iqbal Tanha v. State of NCT of Delhi*⁴². Special courts constitute a nightmare for having been burdened under the NIA Act on the cases of Bhima Koregaon probe, where trials are still on hold. Not only does this poor rate of success call into question the investigative rigor of the NIA, but it also feeds perceptions of overreach, considering that arrests almost never result in justice and thus decrease the deterrent effect of anti-terror laws.

1.8.1 Political Interference

The accusations of political manipulation constantly hang over the NIA's credibility, especially with respect to the high-profile cases. Working on investigations opposes activists, nearly like in *Gautam Navlakha v. NIA*⁴³, bringing accusations of selective enforcement where courts are questioning procedural fairness. The Bhima Koregaon-A case truly not innocent, is generally characterized as an event wherein the NIA would silence dissent exposed due to judicial scrutiny in *Vernon Gonsalves v. State of Maharashtra*⁴⁴ along with the unworthy evidence. Such views further eat into the agency's credibility, requiring the establishment of safeguards to ensure that investigations are

evidence-based and not politically motivated.⁴⁵

1.8.2 Public Perception

There have begun to be doubts among the public about the fairness and efficiency of the NIA in discharging its functions. Prolonged unlawful detention, as is being debated in the issue of *Thwaha Faisal v. Union of India*⁴⁶, puts it under an impression of having overreached, particularly when the NIA is leniently invoking UAPA against actors engaged in unarmed civil resistance. Reports of Amnesty International during the year 2023 further illustrate just how opaque and arbitrary these processes are in terms of abuses against minority rights. All this destroys confidence and puts a strain on transparency. The kind of investigation that characterizes the reporting of Delhi riots has created negative publicity of a very high order, which has damaged NIA in mobilizing cooperation from local communities with which avowedly counter-terrorism programs work for intelligence gathering. NIA really needs to bring these communities back by instituting mechanisms for their accountability around the complaints from these communities.

1.8.3 Resource Constraints

The operational capacity of NIA is limited due to few resources, restricting it from responding to complex threats. A funded deforested area covers an approximate distance of 2,000 cases throughout the country, which creates bottlenecks for the investigative timeline as seen in the case of *Zahoor Ahmad Shah Watali v. NIA*⁴⁷. Despite recent developments, there are gaps in the technological arsenal that severely limit capabilities in cyberterrorism cases; a slim few can be counted among those with specialized knowledge. There has indeed been increased furtherance to the budgetary allocation; however, it is still inadequate when it comes to advanced tools like AI analytics and this will consequently, impact efficiency. In fact, more delays and errors, coupled with negative implications for security and rights to a fair trial, further create the need for strategic investments that would bolster the NIA's

effectiveness.⁴⁸

1.9 CASE STUDIES: PRACTICAL IMPLICATIONS

Widespread civil liberties are in question with the controversial implementation of the UAPA as is evident from the Bhima Koregaon case. This case was initiated following the 2018 violence in Maharashtra that erupted during the commemoration of Dalit rights, during which the NIA arrested activists, including Sudha Bharadwaj and Vernon Gonsalves, under the allegation of a Maoist conspiracy under Section 38 of the UAPA concerning membership in a banned organization. In 2023, the Supreme Court in *Vernon Gonsalves v. State of Maharashtra*⁴⁹ granted bail for want of evidence to sustain the charges, emphasizing the excessive duration of detention without trial—some for over five years. Critics argue that the misuse of the UAPA in this prosecution blatantly targets intellectuals, while controversies surrounding digital evidence, including alleged tampering, have jeopardized credibility, as discussed in *Romila Thapar v. Union of India*⁵⁰, where despite refusing to allow an independent probe, the Supreme Court admitted the concerns. This case highlights the need for robust standards of evidence to ensure no violation will be perpetrated on Article 21 rights.

1.9.1 Pulwama Attack (2019)

NIA investigation actions against the glorious Sangam deity on behalf of the prosecution. The NIA immediately took note of the charges which involved cross-border financing and explosives tracing of the Jaish-e-Mohammed. Submission of an indictment in the case *State v. Adil Ahmad Dar*⁵¹, in which forensic analysis meets international cooperation, was an investigation success story of the NIA. However, in anchoring tenets of accountability with respect to large-scale networks, there have been delays in prosecution owing to jurisdiction-related complexity that has drawn considerable public interest. Such was the case in *Zahoor Ahmad Shah Watali v. NIA*⁵². This case, founded on terror financing and essentially read with

judicial pragmatism observed, placed stringent conditions for bail in a manner that has revealed law and path for security but becomes problematic in view of the slow progress of trials. Delay in trials notwithstanding strong investigations does not strengthen deterrent conditions and confidence in the public but showcases the gap between breakthroughs in investigations and ultimate results before the judiciary in high-profile cases related to terrorism.⁵³

1.9.2 Delhi Riots (2020)

The controversial application of UAPA provisions against the protestors during the riots of Delhi in 2020, which left 53 dead, raises questions concerning its proportionality. National Investigation Agency and Delhi police had slapped Section 15 of UAPA against activists like Umar Khalid and Sharjeel Imam, charging them with a conspiracy to commit violence. The Delhi High Court therefore granted bail in *Asif Iqbal Tanha v. State of NCT of Delhi*⁵⁴ against the meld of protest and terrorism and stating that the right to a speedy trial falls under Article 21. *Khalid Saifi v. State*⁵⁵ similar fate further raised a judicial eyebrow about ambiguous charges while keeping the accused in long-term pre-trial detention. The said case illustrates the ever-broadening scope of the UAPA, a 2.2% conviction rate for UAPA cases between 2016 and 2019 assures that the conviction scenario is faintly bright for its misuse; surely it serves as a deterrent for dissent. Judicial developments show that UAPA's demands must have a provision for serious investigation as a safeguard to the democratic freedoms.⁵⁶

1.10 CONCLUSION

The article puts forth a rather nuanced interpretation of the newfound role of the National Investigation Agency (NIA) in the counter-terrorism architecture of India and holds in tension the idea of national security with that of constitutional freedoms. It includes historical travel from TADA and POTA to Unlawful Activities (Prevention) Act (UAPA), showing how these successive enactments,

culminating in establishing the NIA in 2008, responded to an increasing security threat. However, the post-2019 amendment of UAPA and Criminal Law Reform of 2023 have led to the overextension of power, bringing scrutiny toward it. Cases like *Thwaha Faisal v. Union of India*⁵⁷ and *Asif Iqbal Tanha v. State of NCT of Delhi*⁵⁸ speak to attempts from judicial hands to restrain excesses on the part of the state. In all these stresses, we see the picture of the court balancing out in a very complicated play of curbing terrorism on one hand and at the same time protecting principles of fundamental rights.

Conflicting priorities thus leave NIA at a crossroads facing increased cyber threats and lone wolf incidents, coupled with budgetary constraints and increased noise around abuse of powers and public mistrust. Worthy of mention is the investigation into the Pulwama attack; however, it finds itself overshadowed by not-so-encouraging conviction rates and processes about which the agency's effectiveness and credibility do not feel benefited. The courts have their share of blame, but with their erratic coupling, this still signifies a larger challenge in attempting to reconcile security law with democratic accountability. While the board seems to have gained popularity calling for expanded powers with changing global standards, India is also embroiled with terrorism challenges complicated by technology, and what is required now is greater checks, defined frameworks, and transparency. The exact opposite of counter- terrorism needs to be achieved now in India, focusing on calibrating the mandate given to NIA while proactively encouraging citizenship alongside national resilience.