

DEC  
2019



# A COMPROMISED INVESTIGATION

Samjhauta Blast (2007) and Role of the  
National Investigation Agency (NIA)

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People's Union for Democratic Rights (PUDR)



# A COMPROMISED INVESTIGATION

## *Samjhauta Blast (2007) and Role of the National Investigation Agency (NIA)*

On the intervening night of 18-19 February 2007 at around 1:53 am, two unreserved coaches of the Attari Express from Delhi- Attari exploded and caught fire close to Panipat, instantly killing 67 passengers on the spot, injuring 13 others, out of whom one died later in the hospital. Explosives were planted in two other places, which did not go off, one in another coach of the same train, and one by the railway tracks near the platform. Those killed in the blast included mostly Pakistani civilians, some Indian civilians and railway personnel.

The original FIR 28/2007 dt. 19 February 2007 was filed at PS GRP Karnal. Between 2007 to 2010, the blasts were investigated by a Special Investigative Team (SIT), who first pursued links of organizations such as the Lashkar-e-Taiba (LeT) and Students Islamic Movement of India (SIMI), as well as other Muslim and Pakistani men. On 1 March 2007, the Punjab police arrested one Azmat Ali, a Pakistani citizen, for illegally entering India on forged papers. After thorough interrogations by the SIT into his role in the blasts, he was released as the lead led to a dead-end. Another Pakistani citizen, Usman, was also similarly arrested soon after the blast and then released. The SIT spent the following years interrogating many alleged members of SIMI who were then in prison, including Safdar Nagori, but there also found no links to the blast.

In 2009, the United States of America identified Arif Qasmani, a member of LeT, as involved in raising funds for the Samjhauta blast (and the 2006 Mumbai train blasts). This 'intelligence' was then used by the UN Security Council to identify four LeT operatives behind the Samjhauta blasts, namely, Arif Qasmani, Fazeel-A-Tul Shaykh Abu Mohammed Ameen al-Peshawari, Mohammed Yahya Mujahid and Nasir Javaid, and on this basis imposed sanctions on Al-Qaeda and the Taliban.

It was only in 2010, after Hemant Karkare (chief of Mumbai Anti-Terror Squad) separately uncovered links of Hindu terror outfits to the Malega-

on blasts, that the SIT uncovered similarities in the modus operandi, and abandoned its earlier trail of LeT and SIMI to pursue a different set of suspects. By then, the SIT had already uncovered that the epicentre of the conspiracy for the Samjhauta blast was in Indore, and had begun to identify key suspects who were later put on trial, namely Swami Aseemanand, Col. Purohit (discharged from the Samjhauta trial), Sunil Joshi, among others. However, by this time, three years had elapsed since the offence.

On 26 July 2010, pursuant to an order by the Ministry of Home Affairs (MHA), investigation was transferred to the NIA, who re-registered the case as NIA FIR No. 09 dt. 29 July 2010, under the following offences:

Ss. 302, 307, 324, 326, 124-A, 438, 440 IPC, 1860	Murder, attempt to murder, voluntarily causing hurt, grievous hurt, sedition, mischief by fire or explosive substance, mischief by preparing to cause death or injury
Ss. 150, 151, 152 Railways Act	Maliciously wrecking or attempting to wreck a train, damage or destruction of railway properties, maliciously hurting or attempting to hurt persons travelling by railways
Ss. 3, 4, 6 Explosive Substances Act, 1908	Explosion likely to endanger life or property, attempt to cause explosion likely to endanger life or property, abetment
Ss. 3, 4 Prevention of Damage to Public Property Act, 1984	Mischief causing damage to public property, mischief causing damage to public property by fire or explosives
Ss. 13, 15, 16, 17, 18, 19, 23 UAPA	Unlawful activity, terrorist activity, raising funds, harbouring etc., conspiracy, enhanced penalties

### *Timeline of investigations and chargesheet by NIA*

The NIA undertook investigations for less than a year, and on 20th June 2011, filed its chargesheet against five persons, namely, Swami Aseemanand, Sunil Joshi (since deceased), Ramchandra Kalasangra alias Ramji, Sandeep Dange (since declared proclaimed offender) and Lokesh Sharma.

Soon after the case was transferred to the NIA, Devender Gupta and Lokesh Sharma were arrested by CBI. In November 2010, the CBI also

arrested Swami Aseemanand from Atmalpur, with regard to Mecca Masjid blasts where he had been absconding and living under an alias. Two other accused, Kamal Chouhan and Amit Hakla were arrested in 2012, after the NIA uncovered their involvement in the case based on Swami Aseemanand's confession on January 15, 2011 (later retracted on May 12, 2011). NIA filed a supplementary chargesheet against Kamal Chouhan and Amit Hakla (since declared proclaimed offender) on 09 August 2012. Thereafter, a second supplementary chargesheet was filled against Rajendra Chaudhary on 12 June 2013. As Sunil Joshi had died prior to the filing of chargesheet, his name was dropped from the case.

Even as the NIA filed chargesheet against these accused persons in 2011 after the links uncovered by the SIT and Hemant Karkare, it still continued to probe LeT links to the blast. In 2011, the NIA issued a request to USA for intelligence available with them on the basis of which action had been taken domestically and at the UN Security Council against Arif Qsamani and others, but received no reply. The pursuit of this trail against LeT continued even in 2016, long after trial had commenced against Aseemanand and others in 2014. In 2016, the NIA Director and his team personally met their US counterparts to seek further intelligence against Qasmani.

The trial proceeded against the following accused persons: Swami Aseemanand, Ramchandra Kalsangra, Sandeep Dange, Lokesh Sharma, Kamal Chouhan, Rajendra Chaudhary and Amit Hakla. On 24 January 2014, the Special NIA Judge at Panchkula framed the following charges against the accused:

Ss. 302, 307, 124-A, 438, 440 IPC, all read with S.120B	Murder, attempt to murder, sedition, mischief by fire or explosive substance, mischief by preparing to cause death or injury, criminal conspiracy
Ss. 150(e), 151, 153 Railways Act	Maliciously wrecking or attempting to wreck a train damage or destruction of railway properties, wilfully endangering safety of persons travelling by railways
Ss. 3, 4 Explosive Substances Act, 1908	Explosion likely to endanger life or property, attempt to cause explosion likely to endanger life or property

Ss. 3, 4 Prevention of Damage to Public Property Act, 1984	Mischief causing damage to public property, mischief causing damage to public property by fire or explosives
Ss. 13, 15, 16, 17, 18, 19, 23 UAPA	Unlawful activity, terrorist activity, raising funds, conspiracy, enhanced penalties

## The Prosecution case

The trial at Special NIA Court, Panchkula commenced in 2014, where the prosecution presented its case of conspiracy qua call records, evidence uncovered by NIA during investigations and presented 224 witnesses in support of its case. On the other hand, the defence presented no oral evidence but only a certified copy of the judgment in the Special case no. 03 of 2013 delivered on 16.04.2018 w.r.t. documentary evidence. The following sections recount the prosecution case as described in the judgment of the Special Court.

### *Link 1: The conspiracy*

Swami Aseemanand and Sunil Joshi met at Shabridham Ashram, Dangs district, Gujarat in 2006, where they hatched the conspiracy of targeted terror attacks on Muslim places of worship and high-density areas as a way to retaliate against the attacks on Hindu temples by “Jihadists”. While conspiracy had been underway between some of the accused for over a year, the NIA credited the theory of “bomb ka badla bomb” to Swami Aseemanand at this meeting in 2006, who proposed launching attacks in Malegaon, Ajmer and Hyderabad, with the deceased Sunil Joshi as the main planner and executor of the conspiracy. Sunil Joshi followed this up by putting together a team comprising three kinds of groups:

**Group 1:** so-called “white-collared persons” responsible for providing ideological support, by motivating youth for the mission, providing shelter to field workers, etc. Members of this group were Swami Aseemanand and Bharat Bhai Rateshwar, with Pragya Singh Thakur responsible for media management.

**Group 2:** consisting of those responsible for procuring raw materials to manufacture bombs. Ramji and Lokesh were a part of this group.

**Group 3:** consisting of those who would actually manufacture, and then plant the bombs on the day of the attacks. Kamal Chauhan, Rajendra Chaudhury, Sandeep Dange, Lokesh Sharma, Ramji were all a part of this group. None of the groups were to be in contact with another, and Sunil Joshi was to be the only common link between all. Although Swami Aseemanand volunteered financial support to the conspiracy from time to time, Sunil Joshi himself managed to raise a large volume of funds through sources undisclosed to Aseemanand or others. Aseemanand also put Sunil Joshi in touch with useful contacts across the country to help in preparations for the attacks, including sourcing IED materials, funds, ideas and recruiting persons.

Sunil Joshi introduced Swami Aseemanand to Sandeep Dange, Ramji, Lokesh Sharma, Amit Hakla in 2006 so that they could be involved in the conspiracy. Likewise, Swami Aseemanand also introduced Col. Purohit to Sunil Joshi, as Aseemanand and Col. Purohit had been in contact on the same conspiracy since 2005. Swami Aseemanand had earlier met Pragma Thakur in 2003.

### *Evidence produced before the Special Court*

- Statements of Aseemanand (15 January 2011) before the Chief Judicial Magistrate under S.164 CrPC (“confession”), wherein he admitted to his involvement in the conspiracy, and provided details of meetings held and planning undertaken in furtherance of the conspiracy.

However, these statements could not be relied upon as neither the NIA nor the CJM followed the law to make sure that the confession was freely and voluntarily given. Aseemanand did not sign his statement before the Magistrate, and applied for its retraction in May 2011, which should have immediately made it clear that the confession could not be relied upon in court.

During the cross-examination, the CJM was also unable to show that he undertook minimum safeguards to ensure that the statement could be relied upon and was freely given. The CJM did not ask Aseemanand how long he had been in police custody or the fact that he was presented before him straight from police remand. The CJM did not ensure that jail author-

ities were present while handing him over to NIA. In fact, the magistrate has to ensure that no police official was present during the recording of the statement and that the accused was sent to judicial custody and not back to police custody.

The NIA did not make any recoveries based on Kamal Chauhan and Aseemanand's confessional statements, which could have been admitted in court independently as corroborative evidence.

The NIA submitted hearsay evidence of Sheikh Abdul Khaleem (PW-153), another prisoner Chanchalguda Jail, Hyderabad, to whom Aseemanand had recounted his entire conspiracy while in custody together. However, in his cross examination, Khaleem mentioned that Aseemanand was kept in solitary confinement and thus, their chance of meeting and interacting seemed highly improbable. Strangely, no documentary evidence regarding lodging of Khaleem in the same jail from October 2010 to January 2011 was brought on record.

Thus, given the lapses, the confessions could not be relied upon by the Special Court at all.

### ***Link 2: Planning and preparation in furtherance of the conspiracy***

The prosecution cited numerous meetings between the co-conspirators and accused persons throughout the course of 2005-07, during which time the conspiracy was hatched, planned and executed, funds raised, and new members added to the team. This includes:

- November 2005: Meeting in Gujarati Dhramshala, Jaipur where different tasks were assigned to carry out the execution of their plan was attended by Late Sunil Joshi, Ramji, Lokesh Sharma and others.
- January and April 2006: Sunil Joshi had organized two trainings-
  - The first training was held in the Bagli forest area in Dewas (MP) on the preparation of pipe bombs and pistol firing. This training was attended by Kamal Chauhan, Ramchandra Kalsangra, Shivam Dhakad, Lokesh Sharma, Amit Hakla and Rajender Chaudhury.
  - The second was firing practice organized at Dr. Karni Singh firing range at Faridabad (near Delhi), where Kamal Chauhan, Shivam Dhakad, Lokesh Sharma, Amit Hakla and Rajender Chaudhury participated.



- January - May 2006: Sunil Joshi (accompanied by Bharat Bhai on some occasions) undertook multiple journeys as directed by Aseemanand to further the conspiracy and held meetings throughout the country -
  - Jharkhand where Devender Gupta (Jamtara) helped by providing some SIM cards, pistols and explosives.
  - Agra and thereafter to Gorakhpur, but at both these places he did not get any help from any quarter.
  - Nagpur, where he met Indresh Kumar who helped him financially by giving him Rs. 50,000/- in cash to meet out the expenditure for procurement of explosives and other material.
- June 2006: the main conspiracy meeting took place at the residence of Bharat Bhai known as Thakurghar, Valsaad which was attended by Aseemanand, Pragya Thakur, Sunil Joshi, Sandeep Dange, Ramji, Lokesh Sharma, Amit Hakla and Bharat Bhai.
- 16 February 2007: Sunil Joshi met Aseemanand and Pragya Thakur at Shabridham Ashram, Gujarat two days before the bomb blast.
- Nasik, 2007: Attended by Aseemanand and Col.Purohit, soon after the death of Sunil Joshi, where they declared the formation of Abhinav Bharat.

### *Evidence produced before the Special Court*

- Disclosure statement by Kamal Chauhan on 27 February 2012

Kamal Chauhan made a disclosure statement on 27 February 2012, in continuation of which, he led the NIA team to Karni Singh Shooting Range and pointed out the place where shooting practice took place in April 2006. Further, he disclosed that he could identify the places at Indore and Bagli forest area where preparation of bomb and demonstration of blast of bomb were given.

The special court did not admit this disclosure statement as it was in the nature of an extra-judicial confession, which is expressly barred by the Indian Evidence Act. The NIA made no recovery at all in pursuance of the disclosure statement by Kamal Chauhan. Therefore, the Special Court did not accept the discovery/ pointing out memos and other evidence. This

meant that the NIA could not present any substantive evidence to corroborate the facts in the disclosure statement of Kamal Chauhan.

- Disclosure statement made by Rajender Chaudhury on 26 December 2012

Rajender Chaudhary had made a disclosure and also pointed out the site of training in Bagli forest area. The Special Court notes that it was strange that no soil samples were collected at the time of Kamal Chauhan's disclosure, but that it was done so only ten months after Rajender Chaudhury's disclosure.

- Soil Samples from Bagli Forest Area

The soil samples of the crater formed due to the blast were taken for examination and were sent to FSL for examination in December 2012, 5-6 years after the bomb blast demonstration, and 10 months after it had been first pointed out to them.

The Special Court did not accept the soil samples for many reasons. The sample was collected after 5-6 years from an open and accessible area and was not even sealed before sending it to the FSL. Thus, the sand samples with bomb residue did not remain intact when the experts received them in 2013. Further, the chain of custody of the soil samples wasn't established before the court clearly i.e. it was not clear where the parcels containing the samples were kept for about two months, up to 27 February 2013, when they reached the FSL.

Further, the discovery memo was inadmissible because it was made while the accused was in police custody. The prosecution did not examine two independent witnesses during trial, Partap Kumar and Rajesh Sarwate, who on paper joined the investigation and preparation of pointing out memos. The third independent witness Md. Irshad (PW-151) testified in court that he signed the recovery memo at the airport upon the return of the NIA team from Bagli, and that he did not witness the recovery itself. Lastly, the FSL Report did not link the RDX found in Bagli to the bombs that were used in the actual explosion.

- Sketch of Karni Singh Shooting Range

NIA prepared a sketch of Karni Singh Shooting Range but did not explain the connection of the sketch with the firing practice. The site plan,

whose sketch was presented, was of the existing position of Karni Singh shooting range which was re-built/re-constructed in the year 2008-2009 for Commonwealth games.

- No evidence provided to prove the meetings held were in furtherance of the planning of conspiracy between 2005 and 2007

The only fact established independently was the booking of the room in Indore in 2005 where responsibilities and tasks were divided between the conspirators. It was established that the room was booked in the name of Sunil Joshi. No evidence was produced to prove the many meetings to plan the conspiracy and the blasts between 2005 and 2007.

Call records of Pragma Thakur, Sunil Joshi, Sandeep Dange and Asimanand showed inter-connectivity and links between them during the months of February and March 2007, during the last leg of the planning for Samjhauta blast, was underway. However, the NIA failed to produce call detail records (CDRs) of any mobile phone nor any other evidence pertaining to ownership and possession of any mobile phone or SIM cards by the accused. The two witnesses examined by the prosecution on this point, namely Rajesh Mittal (SDE, BSNL) (PW-203) and Ravi Prakash (Asst. Nodal Officer, Idea Cellular) (PW-223) also did not support the prosecution case. Even if CDR were destroyed with time, no documents to prove the identity of the SIM card buyers were produced in court.

### ***Link 3: Execution of the Samjhauta blast in February 2007***

In November- December 2006, Kamal Chouhan and Rajender Choudhury conducted a reconnaissance of Jama Masjid and Old Delhi Railway Station area under the instructions of Lokesh Sharma. They gave feedback to Lokesh Sharma stating that there were adequate security arrangements at Jama Masjid but none for Old Delhi Railway Station, and that exploding bombs in the Samjhauta Express train could be easily and safely planted there .

On the instructions of Lokesh Sharma, Kamal Chauhan and Rajender Chaudhary reached Indore on 17 February 2007, and went to a room in a house in Sarvsampan Nagar, where other accused persons namely Amit, Rajender Chaudhary and Ramchandra Kalsangra were present. Ramchandra Kalsangra delivered four suitcases, one each to Lokesh Sharma, Amit Hakla, Rajender Chaudhary and Kamal Chauhan containing

the TEDs which were planted later in the Samjhauta Express train. The above-mentioned room was the same room where Amit Hakla had stayed in 2006–2007 and which was officially taken on rent by Ramchandra Kalsangra who paid the house rent. This is also the room where Kamal Chauhan had assisted co-accused Amit Hakla in sealing the bottles filled with inflammable fuel oil which were later used with the IEDs used in the Samjhauta Express blast.

Ramchandra Kalsangra dropped Lokesh Sharma, Amit Hakla, Rajender Chaudhary and Kamal Chauhan at Indore Railway station in a Maruti Omni Van on 17.2.2007, which was identified and seized thereafter. They boarded the Indore Intercity Express train at Indore Railway Station and reached Nizamuddin Railway Station next morning on 18.2.2007, from where they took a local train and reached Old Delhi Railway Station. Thereafter, they stayed in the Deluxe dormitory room No. 14 at Old Delhi Railway Station and reached the platform from where the Samjhauta Express train was scheduled to depart. Kamal Chauhan and Lokesh Sharma had booked the two beds.

Amit Hakla and Rajendra Chaudhary checked into a nearby railway dormitory on the first floor of the main platform. Thereafter, they selected different general coaches and went in with the suitcase bombs and put the suitcase with IED on the upper luggage space. They reached Jaipur by train after planting the bomb in Samjhauta Express train and then to Indore by bus. On the way, Sandeep Dange discussed with Lokesh Sharma as to why other two bombs (out of four) did not explode.

### *Evidence produced before the Special Court*

- Blast and Bomb Report

As per the FSL reports, the cause of fire in the Samjhauta Express train was a bomb blast, with sulphur and potassium chloride, PETN, TNT, RDX etc, needed for causing the explosions.

- Suitcase cover of the bombs

The suitcases recovered from the site of incident had a stitched cover on it. On investigation it was found that Iqbal Hussain, a tailor of M.K. Bag Centre, Kothari Market, Indore had stitched the cover and put his mark on it by writing APOLO 600, which was determined by FSL to be the handwriting of Iqbal Hussain.

The Special Court could not rely on this evidence either. A blue colour cloth was seized from Abhinandan Bag Centre, and the denim cloth seized from M K Bag Centre, were also sent to FSL. As per the FSL, both were similar in colour, design, physical/microscopic appearance and texture with the suitcase covers found at the scene of crime. The NIA did not bother to conduct a TIP of the accused to confirm whether one of them had, in fact, got the suitcase cover stitched at the same shop. Call records sought to be relied on for this point were also pointless, as the “dump data” (data which helps in zeroing down the location of users) of tower of Kothari market area or any call details from the subscriber’s detailed record, were not brought before the Special Court.

- No evidence produced to link the named accused to the occurrence of the blast

The NIA did not produce any corroborative evidence to establish that the accused named in Group 3 had planted the bombs aboard Samjhauta. The record of passengers aboard the Intercity Express on 17.02.2007 between Indore and Delhi, in which the accused travelled from Indore to Delhi, before boarding the Samjhauta Express at Old Delhi Railway Station, Delhi, was not produced.

The NIA did not produce records regarding the stay of the two accused at the rail way dormitory on 18 February 2007. The NIA did not produce any CCTV footage to establish the recce undertaken of Old Delhi and Jama Masjid area, or of the presence of the accused at the Delhi railway stations on the eve of the offence. The NIA did not match the fingerprints of the accused with those recovered from the site of the blast, and also did not conduct a TIP to match their identity with the buyer of the suitcase cover in which the bombs were placed. The prosecution sought to rely on Kamal Chauhan’s disclosure memo where he pointed out the dormitory and other places of the station, but which was not admitted by the Special Court as it was an extra-judicial confession.

The prosecution examined a witness named Istikaar Ali (PW-90), who was also a passenger on the train. He had testified that he overheard other passengers saying that a few persons had deboarded from the general coaches, hinting that some suspects were stated to have deboarded the train after the start of journey. However, no further investigation was conducted on this point, and in fact, this statement by the witness contradicted the

story of the prosecution that the bombs had been planted at the Old Delhi Railway Station itself.

## Some Unresolved Questions

The Special Court indicted the NIA for shoddy investigations that led to the eventual acquittal of all accused brought to trial. Indeed, the NIA's role and conduct from the beginning raises many questions that still remain unresolved.

### *Turning a Blind Eye to 'Hindu' Terror*

- Before investigations were started against the present named accused, the PS Karnal wasted three years in pursuing the Lashkar-e-Taiba as suspected hands behind the attack. The LeT had not claimed the blasts, and it is unclear on what basis the investigative agencies reached this conclusion. As a result, the initial years, which were crucial for the collection of physical and other evidence, were compromised on account of pursuing the wrong lead. As more time passed, it was impossible to obtain proper quality and nature of evidence, as was evident through the trial with regard to the soil samples, call records, and even the witnesses. This clearly reflects either incompetence and unprofessionalism, or a deep-set bias against the existence of Hindu terror. Either way, the investigative agencies' omission to pursue this lead was fatal to the case from the beginning. It is only later did they realise the involvement of Hindu terror groups due to the similar nature of the bombs used in the other attacks which took place across the country.
- In 2016, while the trial against Aseemanand and others was still pending, the NIA Director General Sharad Kumar sent a request to United States to resuscitate its pursuit of LeT to link to the blast. Under the Mutual Legal Assistance Treaty, the NIA sought details of Arif Qasmani's involvement in the blast, even though he had been earlier discharged by both the SIT and the NIA itself. After the acquittal of all accused in the case, the Home Minister, Amit Shah during one of his election rallies in Odisha on 01 April 2019, directed barbs and attacks against the previous UPA government for tarnishing Hindus

as perpetrators of terrorism, and argued that the ‘real’ suspects, Islamic terrorists, had been improperly let off by the previous government.

### ***Unexplained Rush to Frame Charges and File Chargesheets***

- The NIA pursued investigations for less than a year, filing the chargesheet within 11 months of the case being transferred to them (29 July 2010 – 20 June 2011). The chargesheet claims readiness for trial based on the availability of ample evidence. Contrary to what was claimed, the investigations by the NIA had not been completed by the time of filing chargesheet, and went on at least until 2013 when the soil samples were sent to the FSL. Ramachandra and Kamal Chauhan’s disclosure statements, found inadmissible in court, were also collected after filing of chargesheet.

### ***Mishandling of Investigations and Evidence***

- The NIA’s collection of other evidence, eg, soil samples, suitcase covers and confessions of accused, also raises pertinent questions. As these evidences were collected without following proper procedure, it allowed the court to discount them at the stage of trial and they could not be relied upon. Is it possible that the leading and most professional investigative agency is unfamiliar with basic procedures of the CrPC and Indian Evidence Act? Furthermore, how did the NIA reasonably expect to rely on soil samples collected after five or six years from an active and well-frequented firing range ?
- Further, the NIA produced almost no electronic evidence in court. Only witnesses from telephone providers were produced in court to establish inter-connectivity between Sunil Joshi, Sandeep Dange, Pragy Thakur and others for the period of February 2007. However, even this was not relied upon by the prosecution in court as no call details were produced.

### ***Hostile and Unsafe Witnesses***

- Why did so many prosecution witnesses, out of 224, turn hostile or refuse to support the case of the prosecution in court? If there was coercion or threat advanced to the witnesses, why didn’t NIA provide witness protection? Why wasn’t any attempt made to recall or refresh the witness’s memory and gain their confidence?

## *Absence of Key Evidence Linking Accused to the Offence*

- The recording of Aseemanand's confession raises pertinent questions. Not only was such a crucial piece of evidence recorded without following the established legal procedure, but the NIA insisted on relying on the same even after Aseemanand moved to retract the confession within three months of making it, claiming that it was obtained under duress. The fact that it was recorded unlawfully made it easy for the Court to set aside the confession. But even at this early stage of the case, the NIA made no effort to make recoveries based on the confession, so that at least parts of it may be admitted despite the retraction. The NIA made no effort to collect corroborative evidence. So how did this retracted confession remain the primary basis of the prosecution case until the end?
- Additionally, even as the fact of the blast had been established through physical evidence collected from the sites of the blasts, no evidence was produced linking the named accused to the offence. No CCTV records were produced, or records of the accused's stay in the railway dormitory, or records of the hotel room regularly used to hold meetings and prepare IEDs, or call records for establishing links of the accused to the blast were ever submitted. Even the witnesses (including the suitcase retailer) could establish identity of the accused but he wasn't summoned as a witness. Without evidence to establish a clear chain of causation, why did the prosecution proceed to trial? Was the prosecution unaware of basic tenets of criminal law, which demand that the chain of causation linking the offence to the accused must be clearly established?
- Was the NIA unaware that the physical evidence, forensic evidence and confessions collected with significant lapse of time and without following procedure would be inadmissible or unreliable in court? Why did the NIA not attempt to collect any corroborative evidence to support its case?

The role of the NIA in the Samjhauta case is befuddling. If the NIA lacked evidence to back their claim recorded in the charge-sheet, why did they file it before the trial court in the first place? If they had sufficient evidence, which could be the case, why did they not produce it before the trial court? Key pieces of evidence remained missing until the end,



including CDR, CCTV footage, dormitory records TIP, soil samples and recoveries which should have been conducted after disclosures. All put together, these failures make for a strong indictment of NIA and its competence as an investigative agency. The Special Court notes that the NIA did not produce an **“iota of evidence”** (para 53 of judgment) to support its case. Even more mysterious is the role of the special prosecutors who did not inspect the evidence available before filing the chargesheet and commencing the trial.

These questions cast doubt on the autonomy of the premier investigating agency, NIA and its credibility to investigate, prosecute and ensure security of the country.

## Postscript

The National Investigation Agency (Amendment) Act 2019 passed by the Parliament in August 2019 during the Monsoon session of Parliament was spearheaded by the Minister of Home Affairs Amit Shah and has widened the investigative and prosecutorial authority of the NIA in two ways -

- It has extended the list of scheduled offences on which NIA has jurisdiction and thus, now NIA may exercise its discretion to investigate offences involving human trafficking, sale-manufacture and transfer of prohibited arms, cyber terrorism along with offences under Explosive Substances Act, 1908.
- It has extended the jurisdiction of NIA to investigate scheduled offences to the offences which are committed against Indian citizens outside the territory of India or affects the interest of India.

Thus, NIA now can not only investigate Indian nationals who have committed the scheduled offences within India or the commission of scheduled offences within India but also the crime committed by foreign nationals and any act done by a foreign nationals which affects ‘interest of India’.

Further, the amendment empowers both Central and State Governments to list any sessions court within a state as a ‘Special NIA Court’ within the Act.

S . No	Category	NIA Act, 2008	NIA Amendment, 2019
1.	Scheduled Offences	<p>The offences within the Schedule of the Act were limited to -</p> <p>Seven Acts and the following two categories of offences under IPC i.e. (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).</p>	<p>The jurisdiction of the NIA has been extended to the following offences – 1. Offences under the Explosive Substances Act, 1908. 2. Following offences has been added - (ii) human trafficking (Section 370- 370A IPC) (ii) offences related to counterfeit currency or bank notes, (iii) manufacture or sale of prohibited arms (Section 25(1AA), Arms Act) (iv) cyber terrorism (Section 66F, IT Act)</p>
2.	Jurisdiction	<p>The jurisdiction was limited to – a) citizens of India outside India; (b) to persons in the service of the Government wherever they may be; and (c) to persons on ships and aircrafts registered in India wherever they may be. (Article 1)</p>	<p>The Bill extends the jurisdiction of NIA to investigate and prosecute scheduled offences committed outside India against Indian citizens or affecting the interest of India, subject to International treaties as if the offence was/has been committed in India. (Art. 1(2)(d))</p>

3.	Central Government's power to direct NIA	Central Government may on its own direct NIA to conduct investigation if its of the opinion that a scheduled offence has taken place.	Central Government is now empowered to direct the Agency to register the case and initiate investigation with respect to a scheduled offence committed outside as if such offence has taken place in India (Article 6)
4.	Investigative Powers	The investigative powers were limited to the offences committed within India.	The investigative powers, duties, privileges and liabilities similar to the ones being exercised by the police officers shall extend to offences committed within and outside India. (Art. 3(2))
5.	Designation of Sessions Court as Special Courts	The Central Government shall constitute special courts qua notification in the official gazette. (Art. 11)	The Central Government/State Government may designate any sessions court as a special court under the Act with the consultation of the Chief Justice of the High Court under which such sessions court exists.

The abovementioned amendments were passed despite the strong opposition by the members of the Parliament as they feared that it will result into increased malicious prosecution against minorities, Adivasis and weaker sections of the society.

In the light of increasing political pressures coupled with political considerations affecting the decision making and exercise of the discretion by the National Investigation Agency, aiding and expanding the investigative powers and jurisdiction of the already fallible, unprofessional and legally inept institution will further the abuse of constitutionally guaranteed rights of the citizens by the premier investigative body of the country. In addition, it will facilitate selective and targeted criminalisation of activities and consequently, prosecution of individuals and groups. While doing so, we will be left without bonafide and effective investigations into matters which affect the security of the people of India. Published by: People's Union for Democratic Rights (PUDR)

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