

NATIONAL JUDICIAL ACADEMY,

BHOPAL

ADJUDICATING TERRORISM CASES

FRAMING CHARGES AND UNIQUE FEATURES OF
TERRORISM TRIALS

BY JUSTICE P. N. PRAKASH
JUDGE, MADRAS HIGH COURT


THE HAGUE MEMORANDUM

Good Practice No. 5: Supporting the Right of the Accused to a Fair Trial with Adequate Legal Representation

The UDHR and the ICCPR identify a number of individual rights related to criminal prosecutions, including:

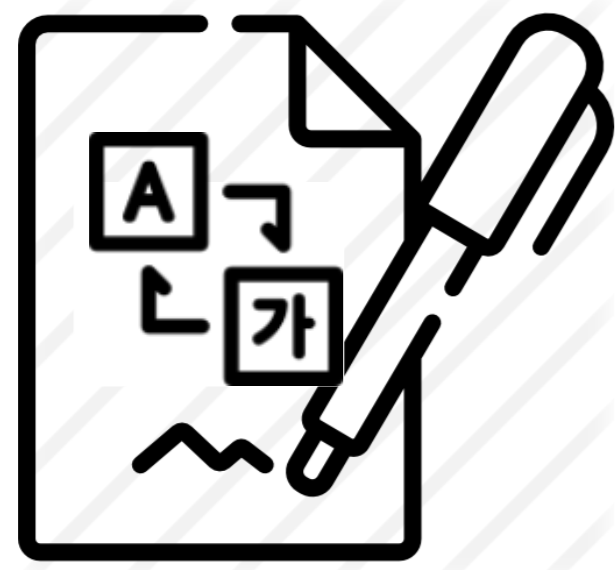
- (1) the right to a fair hearing without undue delay;
- (2) the right to a public hearing and pronouncement of judgment with limited exceptions;
- (3) presumption of innocence;
- (4) freedom from compulsory self-incrimination;
- (5) the right to be informed promptly and in detail of the accusation;
- (6) adequate time and facilities to prepare a defense;
- (7) the right to legal assistance;
- (8) the right to examine witnesses;
- (9) the right to an interpreter;
- (10) the right to appeal the conviction and sentence; and
- (11) freedom from ex-post facto laws.





**What are the
bottlenecks you
have confronted
after a criminal
case is
committed to
your Court and
before charges
are framed?**

In terrorism trials, you may face the following bottlenecks:



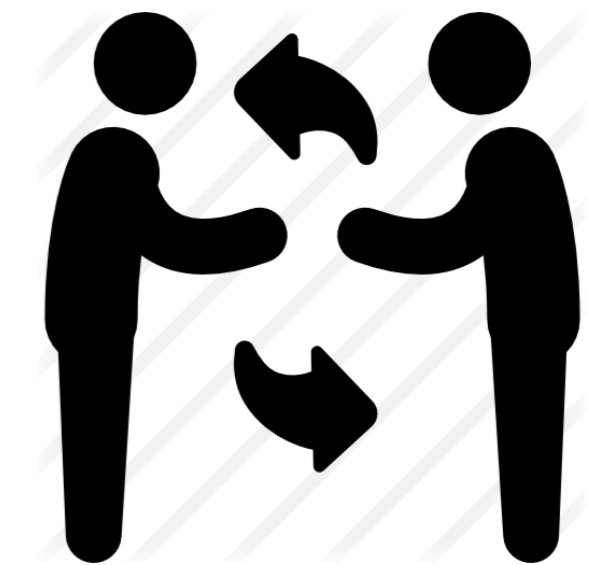
The accused may ask for the documents and statements in his language



The accused may simply not engage an advocate for defense



The accused may not answer when charges are read



The accused may ask for change of counsel frequently

In terrorism trials, you may face the following bottlenecks:



May not cross-examine the witnesses or may file application for recalling witnesses for further cross-examination



May show his back while in the dock



The accused may disturb the proceedings



If on bail, the accused may abscond

DEFINITIONS

Section 2(q) of the Unlawful Activities (Prevention) Act, 1967

words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

Section 2(i) of the National Investigation Agency Act, 2008

words and expressions used but not defined in this Act and defined in the Code shall have the meanings respectively assigned to them in the Code.

Section 2(y) of the Code of Criminal Procedure, 1973

words and expressions used herein and not defined but defined in the Indian Penal Code (45 of 1860) have the meanings respectively assigned to them in that Code.



CRIMINAL MANUAL

Section 225 of the Code of Criminal Procedure , 1973

Trial to be conducted by Public Prosecutor.- In every trial before a Court of Session, the prosecution shall be conducted by a Public Prosecutor.

Section 226 of the Code of Criminal Procedure , 1973

Opening case for prosecution.- When the accused appears or is brought before the Court in pursuance of a commitment of the case under section 209, the prosecutor shall open his case by describing the charge brought against the accused and stating by what evidence he proposes to prove the guilt of the accused.

Section 227 of the Code of Criminal Procedure , 1973

Discharge.- If, upon consideration of the record of the case and the documents submitted therewith, and after hearing the submissions of the accused and the prosecution in this behalf, the Judge considers that there is not sufficient ground for proceeding against the accused, he shall discharge the accused and record his reasons for so doing.

CRIMINAL MANUAL

Section 299 of the Code of Criminal Procedure , 1973

Record of evidence in absence of accused.-

(1) If it is proved that an accused person has absconded, and that there is no immediate prospect of arresting him, the Court competent to try, or commit for trial such person for the offence complained of may, in his absence, examine the witnesses (if any) produced on behalf of the prosecution, and record their depositions and any such deposition may, on the arrest of such person, be given in evidence against him on the inquiry into, or trial for, the offence with which he is charged, if the deponent is dead or incapable of giving evidence or cannot be found or his presence cannot be procured without an amount of- delay, expense or inconvenience which, under the circumstances of the case, would be unreasonable.

(2) If it appears that an offence punishable with death or imprisonment for life has been committed by some person or persons unknown, the High Court or the Sessions Judge may direct that any Magistrate of the first class shall hold an inquiry and examine any witnesses who can give evidence concerning the offence and any depositions so taken may be given in evidence against any person who is subsequently accused of the offence, if the deponent is dead or incapable of giving evidence or beyond the limits of India.

Notifications issued by the Central Government under the Unlawful Activities (Prevention) Act, 1967 and the National Investigation Agency Act, 2008

Which you are required to keep
on your desk readily



NATIONAL INVESTIGATION AGENCY
MINISTRY OF HOME AFFAIRS
CGO Complex, Lodhi Road
New Delhi-110003

No. 100/Legal/Misc/NIA/DLI/ 415

Date: 10th May, 2019

To

The Hon'ble Thiru. Justice P. N. Prakash,
High Court of Madras,
Chennai- 600104.

Sub: **Gazette Notifications of Designated Authorities in the Unlawful Activities Prevention Act, 1967 w.e.f. 31st December, 2008 to 5th February, 2018.**

Sir,

Please find enclosed herewith the Gazette Notifications of Designated Authorities as per the Unlawful Activities Prevention Act, 1967 and the National Investigation Agency Act, 2008.

Sr. No	Name of the Designated Authority	Section of the Law	Gazette Notification No
1.	Constitution of the National Investigation Agency.	Sub-Section (1) of Section 3 with clause (a) of sub-Section (2) of Section 25 of the NIA Act, 2008.	GSR 3015 (E) Dated 31-12-2008.
2.	Director General, NIA.	Section 43A of the UA(P) Act, 1967.	S.O. 742(E) Dated 11-03-2014.
3.	Sh. Sudhir Kumar Saxena, JS(IS-I).	Sub-Section (1) of Section 2 of the UA(P) Act, 1967.	S.O. 2684(E) Dated 11-08-2016.
4.	Joint Secretary (CTCR) *Notified by designation*.	Sub-Section (1) of Section 2 of the UA(P) Act, 1967.	S.O. 519(E) Dated 05-02-2018.

Encl: Gazette Notifications.

Yours faithfully,

Sonia Narang 10.5.19
(Sonia Narang, IPS)
Dy. Inspector General (Legal),
NIA Hqr. New Delhi.
Tele (Off): 011-24368793
E-mail: sonianarang.nia@gov.in

Sonia Narang, IPS
Dy. Inspector General
National Investigation Agency
Ministry of Home Affairs

1/8

रजिस्ट्री सं० डी० एल०-33004/99

REGD.NO.D.L.-33004/99



भारत का राजपत्र The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 1839]
No. 1839]

नई दिल्ली, बुधवार, दिसम्बर 31, 2008/पौष 10, 1930

NEW DELHI, WEDNESDAY, DECEMBER 31, 2008/PAUSA 10, 1930

गृह मंत्रालय
(आन्तरिक सुरक्षा विभाग)
अधिसूचना
नई दिल्ली, 31 दिसम्बर, 2008

सा.का.नि. 3015(अ).—केन्द्रीय सरकार, राष्ट्रीय अन्वेषण अभिकरण अधिनियम, 2008 (2008 का 34) की धारा 25 की उप-धारा (2) के खंड (क) के साथ पठित धारा 3 की उप-धारा (1) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, राष्ट्रीय अन्वेषण अभिकरण नामक अभिकरण का गठन करती है और निम्नलिखित नियम बनाती है, अर्थात्:-

1. संक्षिप्त नाम और प्रारंभ—(1) इन नियमों का संक्षिप्त नाम राष्ट्रीय अन्वेषण अभिकरण (गठन की रीति) नियम, 2008 है।
(2) ये राजपत्र में प्रकाशन की तारीख को प्रवृत्त होंगे।
2. परिभाषा—(1) इन नियमों में जब तक कि संदर्भ से अन्यथा अपेक्षित न हो,—

(क) "अधिनियम" से राष्ट्रीय अन्वेषण अभिकरण अधिनियम, 2008 (2008 का 34) अभिप्रेत है;

(ख) "अभिकरण" से राष्ट्रीय अन्वेषण अभिकरण अधिनियम, 2008 (2008 का 34) की धारा 3 के अधीन गठित राष्ट्रीय अन्वेषण अभिकरण अभिप्रेत है;

(ग) "संहिता" से दंड प्रक्रिया संहिता 1973 (1974 का 2) अभिप्रेत है;

(घ) "महानिदेशक" से केन्द्रीय सरकार द्वारा नियुक्त महानिदेशक अभिप्रेत है;

(ङ) "अनुसूची" से राष्ट्रीय अन्वेषण अभिकरण अधिनियम, 2008 की अनुसूची अभिप्रेत है।

2 उन शब्दों और पदों के जो इसमें प्रयुक्त हैं और इन नियमों में परिभाषित नहीं हैं किंतु अधिनियम में परिभाषित हैं, वही अर्थ होंगे जो यथास्थिति इस अधिनियम या पुलिस अधिनियम या संहिता में क्रमशः उनके हैं।

3. राष्ट्रीय अन्वेषण अभिकरण का गठन,—राष्ट्रीय अन्वेषण अभिकरण निम्नलिखित से मिलकर बनेगा; अर्थात्:-

(क) अपर महानिदेशक, पुलिस की पंक्ति से अनिम्न पंक्ति का कोई महानिदेशक, जिसे केन्द्रीय सरकार द्वारा उन्हीं निबंधनों और शर्तों पर नियुक्त किया जाए जो केन्द्र सरकार के तदनुसूची रैंक के अधिकारियों पर लागू होती हैं; और

(ख) उतनी संख्या में अधिकारी और कर्मचारी जितने समय-समय पर केन्द्रीय सरकार द्वारा विनिर्दिष्ट किए जाएं।

4. मुख्यालय.—अभिकरण का मुख्यालय दिल्ली में होगा।

5. अभिकरण का प्रशासन.—अभिकरण का प्रशासन महानिदेशक में निहित होगा।

6. महानिदेशक की शक्तियाँ और कृत्य.—महानिदेशक अभिकरण के संबंध में ऐसी शक्तियों का प्रयोग करेगा जो राज्य में पुलिस बल के संबंध में महानिदेशक द्वारा प्रयोज्य हों, जो समय-समय पर केन्द्रीय सरकार द्वारा विनिर्दिष्ट की जाएं।

7. अभिकरण की शक्तियाँ और कृत्य.—अभिकरण की निम्नलिखित शक्तियाँ और कृत्य होंगे, अर्थात्—

(क) अनुसूची में विनिर्दिष्ट अधिनियमों के संबंध में अपराधों का राष्ट्रीय स्तर पर अन्वेषण और अभियोजन करना;

(ख) केन्द्रीय सरकार और राज्य सरकारों के अन्य आसूचना और अन्वेषण अभिकरणों को सहायता प्रदान करना और उनसे सहायता लेना; और

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2/8

**Notifications issued by
the Central Government
under the Unlawful
Activities (Prevention)
Act, 1967 and the
National Investigation
Agency Act, 2008**

(71) ऐसे अन्य उपाय करना जो अधिनियम के उपबंधों के त्वरित और प्रभावी कार्यान्वयन के लिए आवश्यक हों।

[सं 11034/26/2008-आई एस-VI]

डी. दीप्तिविलास, संयुक्त सचिव (आईएस)

MINISTRY OF HOME AFFAIRS

(Department of Internal Security)

NOTIFICATION

New Delhi, the 31st December, 2008

G.S.R. 3015(E).—In exercise of the powers conferred by sub-section (1) of Section 3, read with clause (a) of sub-section (2) of section 25 of the National Investigation Agency Act, 2008 (34 of 2008), the Central Government hereby constitutes an Agency to be called the National Investigation Agency and Makes the following rules, namely:—

1. **Short title and commencement.**—(1) These rules may be called the National Investigation Agency (Manner of Constitution) Rules, 2008.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. **Definition.**—(1) In these rules, unless the context otherwise requires,—

(a) "Act" means the National Investigation Agency Act, 2008 (34 of 2008);

(b) "Agency" means the National Investigation Agency constituted under Section 3 of the National Investigation Agency Act, 2008 (34 of 2008);

(c) "Code" means the Code of Criminal Procedure, 1973 (2 of 1974);

(d) "Director General" means the Director General appointed by the Central Government;

(e) "Schedule" means the Schedule to the National Investigation Agency Act, 2008.

(2) Words and expressions used herein and not defined in these rules, but defined in the Act, shall have the meanings respectively assigned to them in the Act, or in the Police Act, or in the Code, as the case may be.

3. **Constitution of the National Investigation Agency.**— The National Investigation Agency shall consist of the following, namely:—

(a) a Director-General, not below the rank of Additional Director General of Police, to be appointed by the Central Government on the same terms and conditions as are applicable to officers of the corresponding rank in the Central Government; and

(b) Such number of officers and employees as may be specified by the Central Government from time to time.

4. **Head Quarter.**— The headquarters of the Agency shall be at Delhi.

5. **Administration of the Agency.**— The Administration of the Agency shall vest in the Director General.

6. **Powers and functions of the Director-General.**— The Director-General shall exercise in respect of the Agency such powers exercisable by a Director-General of Police in respect of the Police force in a State, as may be specified by the Central Government from time to time.

7. **Powers and functions of the Agency.**— The Agency shall have the following powers and functions, namely:—

(a) to investigate and prosecute offences in respect of the Acts specified in the Schedule;

(b) to provide assistance to, and seek assistance from, other intelligence and investigation agencies of the Central Government and State Governments; and

(c) to take such other measures which may be necessary for speedy and effective implementation of the provisions of the Act.

[No. 11034/26/2008-IS-VI]

D. DIPTIVILASA, Jt. Secy. (IS)

भारत का राजपत्र
The Gazette of India

असाधारण

EXTRAORDINARY

भाग II—खण्ड 3—उप-खण्ड (ii)

PART II—Section 3—Sub-section (ii)

प्राधिकार से प्रकाशित

PUBLISHED BY AUTHORITY

सं. 633]

No. 633]

नई दिल्ली, बुधवार, मार्च 12, 2014/फाल्गुन 21, 1935

NEW DELHI, WEDNESDAY, MARCH 12, 2014/PHALGUNA 21, 1935

गृह मंत्रालय

(आन्तरिक सुरक्षा-I प्रभाग)

आदेश

नई दिल्ली, 11 मार्च, 2014

का.आ. 742(अ).—विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) में प्रदत्त शक्तियों का प्रयोग करते हुए तथा भारत के राजपत्र, असाधारण, भाग-II, खण्ड-3, उप खंड (ii) में दिनांक 1 मई, 2009 में प्रकाशित गृह मंत्रालय में भारत सरकार की अधिसूचना संख्या का.आ. 1132(अ) के अधिक्रमण में, उन बातों को छोड़कर जो ऐसे अधिक्रमण के पूर्व की गई अथवा करने हेतु छोड़ दी गई, केन्द्रीय सरकार एतद्वारा महानिदेशक, राष्ट्रीय जांच एजेंसी को किसी व्यक्ति को गिरफ्तार करने अथवा किसी भवन, वाहन अथवा स्थान की पड़ताल करने अथवा अपने अधीनस्थ किसी अधिकारी को किसी ऐसे व्यक्ति को गिरफ्तार करने अथवा ऐसे भवन, वाहन अथवा स्थान की पड़ताल करने के लिए प्राधिकृत करने का अधिकार प्रदान करती है।

[सं. 11034/8/2009-आई एस-VI(IV)]

राकेश सिंह, संयुक्त सचिव

MINISTRY OF HOME AFFAIRS

(INTERNAL SECURITY-I DIVISION)

ORDER

New Delhi, the 11th March, 2014

S.O. 742(E).—In exercise of the powers conferred by section 43A of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967) and in supersession of the notification of the Government of India in the Ministry of Home Affairs number S. O. 1132 (E), dated 1st May, 2009 published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), dated 1st May, 2009, except as respects things done or omitted to be done before such supersession, the Central Government hereby empowers the Director General, National Investigation Agency to arrest a person or search a building, conveyance or place or to authorize any officer subordinate to him to arrest such person or search such building, conveyance or place.

[No. 11034/8/2009-IS.VI (IV)]

RAKESH SINGH, Jt. Secy.

**Notifications issued by
the Central Government
under the Unlawful
Activities (Prevention)
Act, 1967 and the
National Investigation
Agency Act, 2008**

रजिस्ट्री सं० डी० एल०-33004/99

REGD. NO. D. L.-33004/99


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The Gazette of India

असाधारण
EXTRAORDINARY
भाग II—खण्ड 3—उप-खण्ड (ii)
PART II—Section 3—Sub-section (ii)
प्राधिकार से प्रकाशित
PUBLISHED BY AUTHORITY

सं. 2005] नई दिल्ली, बृहस्पतिवार, अगस्त 11, 2016/श्रावण 20, 1938
No. 2005] NEW DELHI, THURSDAY, AUGUST 11, 2016/SRAVANA 20, 1938

गृह मंत्रालय
(आन्तरिक सुरक्षा-1 प्रभाग)
अधिसूचना
नई दिल्ली, 11 अगस्त, 2016

का.आ. 2684(अ).—केन्द्रीय सरकार, विधि विरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा-2 की उप-धारा (1) के खण्ड (ड.) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए, दिनांक 10 मई, 2016 को भारत के राजपत्र, असाधारण, भाग-II, खण्ड-3, उप-खण्ड (ii) में प्रकाशित भारत सरकार, गृह मंत्रालय की दिनांक 10 मई, 2016 की अधिसूचना संख्या का.आ. एन.ओ. 1697(अ) का अधिक्रमण करते हुए, सिवाय उन कार्यों के जिन्हें ऐसे अधिक्रमण से पहले संपादित कर लिया गया था अथवा करने से लोप कर दिया गया था, भारत सरकार के गृह मंत्रालय में संयुक्त सचिव (आईएस-1) श्री सुधीर कुमार सक्सेना को एतद्वारा, उक्त अधिनियम के प्रयोजनार्थ नामित प्राधिकारी के रूप में विनिर्दिष्ट करती है।

[फा. सं. 11034/8/2009-आईएस-VI (IV)]
महेश कुमार सिंगला, विशेष सचिव

3974 GI/2016

(1)

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THE GAZETTE OF INDIA : EXTRAORDINARY

[PART II—SEC. 3(ii)]

MINISTRY OF HOME AFFAIRS

(Internal Security-I Division)

NOTIFICATION

New Delhi, the 11th August, 2016

S.O. 2684(E).—In exercise of the powers conferred by clause (e) of sub-section (1) of section 2 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), and in supersession of the notification of the Government of India in the Ministry of Home Affairs, S.O N.O. 1697(E), dated 10th May, 2016, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), dated 10th May, 2016, except as respects things done or omitted to be done before such supersession, the Central Government hereby specifies Shri Sudhir Kumar Saxena, Joint Secretary (IS-I) in the Ministry of Home Affairs, Government of India, as the Designated Authority for the purposes of the said Act.

[F. No. 11034/8/2009-IS-VI (IV)]
MAHESH KUMAR SINGLA, Special Secy.

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भारत का राजपत्र
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असाधारण
 EXTRAORDINARY
 भाग II—खण्ड 3—उप-खण्ड (ii)
 PART II—Section 3—Sub-section (ii)
 प्राधिकार से प्रकाशित
 PUBLISHED BY AUTHORITY

सं. 447] नई दिल्ली, सोमवार, फरवरी 5, 2018/माघ 16, 1939
 No. 447] NEW DELHI, MONDAY, FEBRUARY 5, 2018/MAGHA 16, 1939

गृह मंत्रालय
 (आतंकवाद-रोधी एवं कट्टरवाद-रोधी प्रभाग)
 अधिसूचना
 नई दिल्ली, 5 फरवरी, 2018

का.आ. 519(अ).—केन्द्रीय सरकार विधिविरुद्ध क्रियाकलाप (निवारण) अधिनियम, 1967 (1967 का 37) की धारा 2 की उप-धारा (1) के खण्ड (ड.) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए और भारत का राजपत्र, असाधारण, भाग-II, खण्ड-3, उप-खण्ड (ii) में प्रकाशित भारत सरकार के गृह मंत्रालय की दिनांक 11 अगस्त, 2016 की अधिसूचना संख्या का. आ. 2684 (अ) का अधिक्रमण करते हुए, ऐसे अधिक्रमण से पहले पूरी की गई या पूरा करने के लिए लोप की गई चीजों के सिवाए एतद्वारा यह विनिर्दिष्ट करती है कि गृह मंत्रालय, भारत सरकार में संयुक्त सचिव, आतंकवाद-रोधी एवं कट्टरवाद-रोधी प्रभाग (सीटीसीआर), उक्त अधिनियम के प्रयोजनों के लिए मनोनीत प्राधिकारी होंगे।

[फा. सं. 11034/8/2009-आईएस-VI (IV)]

रीना मित्रा, विशेष सचिव

MINISTRY OF HOME AFFAIRS
 (COUNTER TERRORISM AND COUNTER RADICALIZATION DIVISION)

NOTIFICATION

New Delhi, the 5th February, 2018

S.O. 519(E).—In exercise of the powers conferred by clause (e) of sub-section (1) of section 2 of the Unlawful Activities (Prevention) Act, 1967 (37 of 1967), and in supersession of the notification of the Government of India in the Ministry of Home Affairs number S.O. 2684 (E), dated the 11th August, 2016, published in the Gazette of India, Extraordinary, Part-II, Section 3, Sub-section (ii), except as respects things done or omitted to be done before such supersession, the Central Government hereby specifies that the Joint Secretary, Counter Terrorism and Counter Radicalization Division (CTCR), in the Ministry of Home Affairs, Government of India, shall be the Designated Authority for the purposes of the said Act.

[F. No. 11034/8/2009-IS-VI (IV)]

RINA MITRA, Special Secy.

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Case References

Case Title

Citation

State of Andhra Pradesh v. Cheemalapati Ganeswara Rao and Ors. **AIR 1963 SC 1850**

Banwari Lal Jhunjhunwala and Ors. v. Union of India and Ors **AIR 1963 SC 1620**

Ajay Agarwal v. Union of India and Ors. **1993 (3) SCC 609**

Bimbadhar Pradhan v. State of Orissa **AIR 1956 SC 469**



