NATIONAL JUDICIAL ACADEMY

[P-1337]

NATIONAL SEMINAR FOR PRESIDING OFFICERS OF NIA COURTS

18th & 19th March, 2023

Programme Coordinators

DR. SONAM JAIN & MS. ANKITA PANDEY, FACULTY, NATIONAL JUDICIAL ACADEMY

The National Judicial Academy organized a seminar for Presiding Officers of NIA Courts. The purpose was to aid participating judges understand various aspects related to the Unlawful Activities (Prevention) Act, 1967 (UAPA). This included comprehending the type of offenses, corresponding punishments, special procedures, and stringent bail conditions outlined in the UAPA. Additionally, the seminar aimed to shed light on the role of the National Investigation Agency in addressing national security concerns. The objective was to familiarize participant judges with the recent amendments to the National Investigation Agency Act (NIA Act). The seminar covered a wide range of offenses, including those involving cyber-crimes and human trafficking, in order to provide a comprehensive understanding. Furthermore, the seminar emphasized the importance of enacting relevant legislation to combat organized crime, which poses a threat to the nation's integrity.

Session – 1
Adjudicating Offences against National Security: Substantive and Procedural Aspects
Speakers - Justice Ashutosh Kumar & Justice G. R. Swaminathan

The discussion in the first session began by emphasizing the broad coverage provided to the accused under the constitutional umbrella. The conversation revolved around contrasting approaches to policing and justice, favoring a shift towards a more police-centric mode rather than a due process-oriented one. During the discussion, the importance of procedural aspects, power dynamics, and witness protection was highlighted, drawing reference from the legal case Prem Chand (Paniwala) vs Union of India and Ors. (AIR 1981 SC 613), which emphasized the issue of pocket/stock witnesses. It was asserted that the offenses under the Unlawful Activities (Prevention) Act (UAPA) are extremely severe, and such laws can be misused by the government, leading to the torture and unjust treatment of innocent individuals. Furthermore, it was advised that when dealing with cases under UAPA, the Central Bureau of Investigation (CBI), the Prevention of Money Laundering Act (PMLA), and others where bail conditions are stringent, a thorough analysis of the law should be conducted, and special judges should not feel constrained in their decision-making. Analyzing laws with appropriate checks and balances helps ensure fair adjudication without any miscarriage of justice. A reference was made to Henry Steele Commager, an American historian and a great Dissenter. He was a liberal intellectual and published a book titled *Freedom Loyalty & Dissent,* in which he expressed his fear that may be such stringent laws with staple conditions might stifle dissent, might stop people from thinking freely and to form an association which have their transcendental rights. It was emphasized that for any democracy to thrive, dissent is essential. Additionally, the

discussion delved into the reasons behind the existence of the UAPA Act and the importance of a central agency under the NIA Act. The UAPA Act's dictionary defines associations, terrorist gangs, terrorist organizations, and unlawful activities. Furthermore, another section of the Act dealt with penalties and punishments. The difficulty in differentiating between terrorist activity and unlawful activity due to common linkages was highlighted as a major challenge for the courts. The conditions for granting bail, the process of taking cognizance or evaluating evidence, and the interpretation of the presumption of guilt differ from the general principles of criminal law. Section 43D of the UAPA Act and section 167 CR.P.C, which discusses default bail, were referenced. Various cases such as *Bikramjeet Singh v. State of Punjab* (2020) 10 SCC 616, *NIA vs. Zahoor Ahmed Watali* (2019) 5 SCC 1 and *Muzamil Pushpa v. NIA* (2021) SCC Online Kar 12688 were extensively discussed during the discourse

Additionally, it was emphasized that according to Section 21 of the NIA Act, appeals can only be filed with a division bench in response to any judgment or order, while quash petitions are handled by a single judge under Section 482 of the Cr.P.C. The session concluded with an in-depth discussion on the process of framing charges under the Cr.P.C. It was recommended that all participating judges request the prosecutor to submit a draft charge sheet when they begin presenting their case under Section 226 of the Cr.P.C. During the session, a reference was made to the case of *State of Karnataka v. Muniswamy* (1977) 2 SCC 699, which highlighted the authority of a session's court to discharge an accused if, after reviewing the evidence, hearing the parties, and providing written reasons, it is determined that there are insufficient grounds to proceed against the accused.

Session – 2
Decoding the National Investigation Agency (Amendment) Act, 2019
Speaker - Justice G. R. Swaminathan

It was emphasised that the implementation of the NIA Act is fraught with challenges in various courts with respect to the purpose and scope of the NIA Act. Such issues have an important bearing on the administration of criminal justice and prosecution of scheduled offences. The discussion assessed the special procedures for trial under the NIA Act that deviates from the ordinary law of criminal procedure vis-à-vis rights of the accused and designation of ‘Special Courts’ for trial of scheduled offences. The discussion also pertained to the effect of taking over investigation of scheduled offences under the NIA Act on the federal structure of the Constitution. Further, the scheme of investigation as envisaged by Section 6 of the NIA Act

was delineated. The Special NIA Court or the Court of Session, as the case may be, being the original court of jurisdiction for the Scheduled Offences will also possess sole jurisdiction for authorizing remand of any person accused of any such offence. It was stressed that unless otherwise authorized expressly, a Magistrate will be bereft of statutory authority to order the remand of any such person under section 167, Criminal Procedure Code. It was asserted that for Scheduled Offences the Special NIA Court or the Divisional Court of Session (as the case may be) shall try them summarily in light of Section 16(2) of the NIA Act. Relying on the Full Bench judgment of the Patna High Court in ***Bahadur Kora v State of Bihar, 2015 SCC OnLine Pat 1775*** and an analysis of Sections 7 and 10 of the NIA Act, the discussion focused on the limited circumstances that allow state governments to prosecute cases under Scheduled Offences before the Special Courts.

As regards Section 22 of the NIA Act it was specified that the jurisdiction of the Special Courts can be predicated upon the investigation undertaken under the NIA Act. It was argued that the state governments have accorded a wider jurisdiction to the Special Courts created under Section 22 than what was intended by the legislature. Section 22 (2) (ii) modifies the reference to 'Agency' in Section 13 to be construed as the "investigation agency of the state government". Therefore, this phraseology leads to an erroneous conclusion that analogous to Section 11, where the NIA happens to be the investigating agency in a case tried by the Special Court, the "investigation agency of the state government" is assumed to play that role in a case tried by the Special Court designated under Section 22 of the NIA Act. This assumption then leads to the erroneous inference that the provisions of the NIA Act (instead of the CrPC) would get attracted once a Scheduled Offence is alleged, irrespective of whether or not the Central Government entrusted the case to the NIA as under Sections 6(4) or (5) of the NIA Act. It was remarked that such ambiguity in the provision has enabled the state governments to liberally interpret Section 22 to mean that the NIA Act can be employed every time an offence enumerated in the enactments in the Schedule is committed, whether or not the Central Government has thought it fit for investigation by the NIA.

Session – 3
Electronic Evidence in NIA Cases: Evolving Horizons
Speaker - Dr. Harold D'Costa

The session started by emphasizing that the internet is not owned by any individual or organization, and nobody has complete control over it. The discussion covered two approaches

to spreading terror: traditional and modern methods. Traditional methods encompass activities such as bombing, explosions, assassinations, kidnapping, armed attacks, and cybercrime. On the other hand, modern methods involve utilizing social media and the internet, carrying out cyber-attacks, employing biochemical and biological attacks, utilizing drones, artificial intelligence, and machine learning. Detailed discussions were held on various instances such as the Varanasi Bombarding Terror Case, Mundra Port Drug Case, the utilization of AI and ML for spreading terror, and the diverse methods through which AI facilitates cyber-attacks.

The concept of "Electronic Evidence" was explained as evidence produced through mechanical or electronic processes, often crucial in establishing or disproving a relevant fact. The legal recognition of electronic evidence under the Information Technology Act, 2000 was discussed. Detailed attention was given to the modification of WhatsApp chats, despite their protection through security measures and biometrics. The discourse emphasized that WhatsApp chat can be altered, including the message content, date, time, caller ID, and email ID, as they can all be manipulated or falsified. Several procedures were highlighted for the collection of cyber evidence, such as conducting pre-investigation assessments, evaluating crime scenes, and gathering physical evidence. The speaker emphasized the precautions to be taken while collecting digital evidence. To prevent forensic duplication, it was stressed that data should be accurately copied through logical backup without any modifications. Section 65(B)(4) was emphasized as a relevant provision for appreciating digital evidence. The speaker shared the contents and applicability of the certificate, along with its template.

Session – 4
Measures and Tools for Effective Adjudication in Offences against National Security
Speakers - Justice Atul Sreedharan & Justice S. G. Gokani

It was asserted that a fair and independent judiciary for expeditious adjudication of terrorism and other national security offences is critical. It was reflected that protracted legal proceedings and inherent delays remain a critical barrier to an effective, efficient and just resolution of criminal cases. One of the significant factors contributing to delays in the justice system is the discretionary practice of non-continuous criminal trials, where evidence is heard by the court in piecemeal fashion, with cases effectively spread out over the course of many months or even years. It was stressed that while limited judicial or court resources and a shortage of available court time due to the volume of cases are often cited for the use of this discretionary practice, the costs of non-continuous trials to both parties and to the justice system as a whole can far outweigh the perceived benefits. It was also noted that assigning a terrorism-related criminal

case to a specific judge, once charges have been filed in a court and increasing continuity of trial days enhances the effectiveness of judicial management in expediting such cases. It was advised that good management practices and procedures begin with the scheduling of a pre-trial/trial management conference(s) as soon as possible as after the judge receives the case.

Further, it was maintained that a judge in cases involving terrorism or other national security offenses should have a flexible approach to address the unique demands or needs related to victims and witnesses as they arise by adopting special measures to ameliorate any threat that is identified, if it supports a secure trial environment and does not unduly infringe on the fair trial rights of the parties. The discussion also emphasised upon the development of enhanced courthouse and judicial security protocols and effective courtroom security. In addition, strong judicial leadership is essential to successful implementation of rules of procedure and conduct in the individual courtrooms to ensure a secure and fair trial environment. It was stated that such leadership is particularly important in terrorism cases because the heightened tensions and emotional atmosphere that accompany such cases have the potential to impact the conduct of the judicial proceedings. In conclusion it was pointed that the characteristics that support a trial judge's ability to manage a courtroom effectively include: being decisive; being consistent; requiring punctuality; minimizing trial interruptions; and, developing knowledge of the applicable law.

Session – 5
Managing Media in Adjudicating High Profile Cases
Speakers - Justice R. Basant & Justice Asha Menon

The discussion began highlighting the fact that the media operates with minimal legal regulation. While the constitution does not grant an absolute right to freedom of speech and expression, allowing for restrictions under Article 19(2), the media opposes any form of regulation. However, it is acknowledged that the media fulfills a vital role in disseminating information to the public, serving its intended purpose. Nevertheless, it is crucial to regulate the media to uphold judicial objectivity and neutrality. The belief is expressed that judges are an integral part of a system that still commands public trust. People regard this institution as a stronghold of authority, infused with a profound sense of morality. It was further opined that judgeship is not an opportunity to show power, it is something that provides the utmost inner satisfaction of finding the truth and justice. It was expressed that all judges are equal when it comes to matters of conscience, suggesting that their judgments should be independent and

unbiased. However, it also highlights a concern about the influence of media on the judiciary. It implies that the media has the potential to sway judges, either directly or indirectly, and some judges may be more susceptible to such influence. Judges were advised to gain a sense of empowerment and to create a separation from media influences, ensuring they remain insulated from any potential media bias that could sway their decisions. Judges should shed the idea of approval seekers and should not bother about the public opinion. It was mentioned that judgeship is a sacrifice and a lot of restrictions which makes a judge different form an ordinary person. The greatest assurance for the administration of justice and the strongest weapon against the influence of media is the character of the judge. Further, section 15 of the Contempt of Courts Act, issuing Gag order were formed part of the discussion.

A state of equilibrium must exist between the press and the judiciary. The battle between the freedom of speech and fair trial is a battle between the court of law and court of public. In 1985, the United Nations embraced the fundamental principle of judicial independence, emphasizing that the judiciary should render impartial decisions based solely on factual evidence, free from external pressures. Later on, the International Covenant on Civil and Political Rights incorporated certain amendments to its clauses. In certain instances, such as when moral standards, public order, or national security are at stake, the press and the public may be excluded from some or all parts of the trial. It was mentioned that media has an obligation to respect the rights of an individual and the independence of judiciary, reserving the right to comment upon administration of justice before, during or after trial without violating the presumption of innocence. The Madrid Principles were mentioned as a reference to describe the relationship between the media and the judiciary. The case of *Zahira Habibullah Sheikh & Anr vs State of Gujarat & Ors* (2004) 5 SCC 353 was cited to illustrate the importance of conducting a fair and unbiased trial. A fair trial entails having an impartial judge, a fair prosecutor, and a judicial environment free from bias against the victim, the accused, and the case. Furthermore, it should ensure that witnesses are neither bribed nor threatened. The session concluded with an advice that a judge should always be true to his conscience and feel empowered.