



**WORKSHOP ON ADJUDICATING TERRORISM CASES IN COLLABORATION WITH  
THE CEELI INSTITUTE, PRAGUE AND THE FEDERAL JUDICIAL CENTER,  
WASHINGTON D.C. [P-1163]**

**10<sup>th</sup> to 12<sup>th</sup> August, 2019**

**Program Report**

**Programme Coordinator**

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The NJA proposed to organize two workshops this Academic year on the theme *Adjudicating Terrorism Cases* during Phase IV of multi-stage project in collaboration with the CEELI Institute, Prague and the Federal Judicial Center, Washington D.C. continuing this partnership the Academy conducted the first workshop under Phase IV on 10-12 August, 2019. On day one, there was final faculty development (pre-program meeting) wherein, the (core group of 8 master trainer) justices worked together on reviewing and refining individual sessions and presentations for the pilot workshop held on subsequent two days i.e. 11<sup>th</sup> and 12<sup>th</sup> August, 2019 for District Judges, Additional District Judges and Sessions Judges. The workshop was attended by 40 judicial officers across different jurisdictions.

The workshop sensitized judges to contemporaneous best practices and jurisprudence pertaining to counter-terrorism control norms, adjudication protocols and allied areas. The workshop facilitated deliberations upon the Hague Memorandum of good practices and implementation of steps outlined in the Rabat Memorandum in criminal justice system of India. The workshop included sessions on core areas which are dealt by judges while adjudicating terrorism cases such as Fair trial; Laws relating to terrorism trials; Evidence, MLATs and extradition; Digital Forensics; Role of media in terrorism trials; Case Management in terrorism cases & offences against national security; Judicial and courtroom security; and Framing charges with unique features in terrorism trials. The workshop was commenced with a brief introduction and overview by the Hon'ble Director of the Academy.

## **Day 1**

### **Session 1: Fair Trial**

Speaker – Justice Sanjeev Kumar

The session covered overarching concepts and mechanisms by which a judge can ensure fair trial in spite of the inherent difficulties of a terrorism case. Concepts including ensuring a speedy trial, open v. in-camera courtrooms, and subconscious bias was addressed. The session threw light upon good practices outlined in the Hague Memorandum for fair trial. Reference was made to Good Practice No. 5: Supporting the right of the accused to a fair trial with adequate legal representation. The international and Indian sources of law were pointed out, emphasizing on general principles of fair trial. The session included discussion on areas like concept of Reverse Burden, Speedy trial

through the lens of terrorism cases, open versus in-camera trials and sub-conscious bias/preconceived notions.

## **Session 2: Law relating to Terrorism Cases**

Speaker – Justice N. Kotiswar Singh

Introduced participants to the important facets of Indian law, both substantive and procedural, concerning terrorism related cases. The deliberations included an appreciation for the differences between ordinary criminal laws (substantive and procedure) and laws specifically governing terrorism and terrorism-related cases; gaining an understanding of the peculiarities and significance of the latter. The important points to be kept in mind by trial judges while adjudicating terrorism case, such as the principle statute i.e. Unlawful Activities Prevention Act, 1967 (UAPA), amendments in the UAPA in the year 2004, 2008 and 2013, provisions relating to pre-trial stage, difference between UAPA and TADA provisions were highlighted and discussed at length. The session also included discussion on important Sections of the UAPA *vis-à-vis* Indian Penal Code, Code of Criminal Procedure, 1973 (hereinafter CrPC) and Evidence Act, 1872.

## **Session 3: Framing of Charges and Unique Features of Terrorism Trial**

Speaker – Justice P.N. Prakash

The session assisted participants to understand how to begin a terrorist trial by framing appropriate charges and ensuring adequate defense for the defendant. The session will include a discussion of charging provisions in the Unlawful Activities (Prevention) Act, as well as the burden of proof under the Indian Evidence Act and special burden requirements under terrorism laws. It was pointed out that framing of charges is a significant step, because it is subjected to judicial review by the higher courts, on account of which, delays may occur. The speaker discussed bottlenecks faced after a criminal case is committed in Court and before charges are framed with specific reference to terrorism trials. The participants were given a hypothetical fact situation of a terrorism case and asked to frame charges. Lastly, model charge in *Rajiv Gandhi Assassination* case was discussed with the participants.

#### **Session 4: Case Management in Terrorism Cases & Offences against National Security**

Speaker – Justice G.S. Kulkarni

The speaker covered methods for effective case management including judicial leadership, mastery of the record and law by the judge, the ability to setup a pretrial conference quickly and adequately, use of a continuous trial, witness management, and the use of courtroom technology for improved organization. The importance of continuous trial in terrorism cases was deliberated upon. The elements of case management, nature of terrorism trial, managing evidentiary issues, handling potential delays through use of court room technology were deliberated upon at length. The guidelines regarding court and case management as provided in the Hague memorandum were also highlighted for reference.

#### **Session 5: Evidence, Mutual Legal Assistance Treaty (MLAT) and Extradition**

Speaker – Justice Atul Sreedharan

The next session introduced judges to the complex process of assessing evidence in terrorism cases. The speaker dealt with areas like assessment of evidence at the stage of cognizance u/S. 190(1)(b) CrPC, admissibility of evidence collected through interception of communication u/S. 46 UAPA, technicalities of evidence during trial stage, concept of Mutual Legal Assistance Treaty (MLAT) and access to evidence in other countries. The provisions of the Unlawful Activities Prevention Act, 1967 relating to the theme were discussed in detail. The session included practical aspects which were covered through illustrations, case studies, and brain storming exercises on the theme. The aspects pertaining to expediting procedure under MLAT was also highlighted. The case of David Hedley was also referred during the course of discussion.

#### **Session 6: Judicial and Courtroom Security**

Speaker – Justice Joymalya Bagchi

The next session was commenced by the speaker highlighting videos of security in courtroom and related aspects. It focused on the importance of providing security to all stakeholders in the justice delivery system. The session included discussion on role of judge as a facilitator to prepare and implement a security plan, including witness protection measures, and to continuously monitor and supervise execution such of security plan throughout the trial. Importance of security in justice

delivery was highlighted, insisting that the judges must impart justice without fear of physical and psychological harm to the stakeholders. It was mentioned that security is not static, it is a continuous goal which requires constant vigilance and continuous supervision and review of court security plans. It is imperative to meet evolving vulnerabilities of stakeholders and confronting emerging exigencies arising out of ground realities.

## **Session 6: Forensics and Digital Evidence**

Speaker – Justice Joymala Bagchi & Justice Atul Sreedharan

On *Forensics and Digital Evidence*, the speakers highlighted relevance of forensic science in terrorism cases and admissibility of electronic evidence. Under forensic sciences, three main areas were deliberated upon – forensic medicine, ballistics & explosives and toxicology relevant to terrorism-related offences. The provisions of Information Technology Act, 2000 relating to electronic evidence, collection, preservation and admissibility of electronic evidence were discussed at length. Some of the cases discussed during the session included *State (NCT of Delhi) v. Navjot Sandhu* (2005) 11 SCC 600, *Anvar P.V v. P.K Basheer* (2014)10 SCC473, *Sanjaysinh Ramrao Chavan v. Dattatray Gulabrao Phalke & Ors.* (2015) 3 SCC 123, *Vikram v. State of Punjab* (2017) 8 SCC 518, *Shafhi Mohammad v. State of U.P* (2018) 1 SCC (Cri) 860.

## **Session 7: Managing Media Attention**

Speaker – Justice S. Talapatra

The last session involved discussion on the difficulty in managing media attention in high-profile terrorism cases. Understanding that timely access to accurate information of court proceedings increases transparency and public confidence in the fairness of the justice system. The speaker also discussed media's impact on the right to fair trial and content analysis of pre-trial publicity. The participants were encouraged to suggest and formulate model media plans, which could be laid before prosecutors proposing the Charge in order to regulate conduct of proceedings and maintain decorum. Also such plans would prevent distraction, and ensure safety of courthouse personnel.