

**Justice S.Kulkarni, Judge
Bombay High Court**

**Case Management in Terrorism Cases and Offences against
National Security**

Introduction :

Terrorism cases- Necessity of a speedy trial

- These are cases different from the normal criminal cases.
- These are offences designed to destroy the society, bring instability to the nation or destroy a political regime.
- Hence, an effective criminal trial plays an important role, so that a message goes loud and clear that such offences would be brought to justice in no time.
- The quintessential requirement in the administration of Criminal justice is the necessity of a speedy trial.
- These trials are sensitive. There is lot of expectation, not only of the citizens of the country but also internationally.

- This apart the accused/defendant's are equally awaiting an early outcome from such accusation. They are not only personally affected but also their family members .
- It is a necessity to recognise the basic legal and fundamental rights of the accused/ defendant.
- The principles of fairness are required to be applied with thorough rigour in trials concerning terrorism and national security offences. (Re:Ajmal Kasab's Trial)
- Definitely the court dealing with these trials would stand on a different footing than the regular court taking up regular criminal trials.

Elements of case Management

1. Judicial leadership
2. Time schedule
3. Continuous trial
4. Managing Evidentiary issues
5. Potential delays
6. Courtroom technology
7. Guidelines in the Hague Memorandum

1. Judicial leadership

When we talk of judicial leadership what are the essential attributes in this context, would be required to be seen. First and foremost the judge should display the quality of absolute control of the proceedings before him. To achieve this the judge is required to have absolute command over the court procedures, the substantive law involved and the manner in which he would authoritatively control the proceedings. In the context of a terrorism trial judge is required to take efforts to master the nuances of the unlawful activities (prevention) act 1967. It should also be aware of all the decisions which would become relevant in the process of adjudication under the said act.

Consider a scenario that the judges himself not well acquainted with either the procedural requirements and the intricacies of the substantive provisions and how the provisions have actually fallen for interpretation of the superior courts and what is the correct position in law as laid down on the various facets involving the application of the said law.

Judicial officer cannot countenance a situation that the lawyer before him is more well versed in the subject than the judge himself. This would cut a sorry figure for the judge to be the commander of the whole process. It is in this context the concept of judicial leadership plays a vital role.

This apart such a trial would require not only the usual procedure is but adaptation of the judge to special procedures within the permissible parameters. This is required as the ultimate goal of the

judicial officer is to have a effective and speedy trial of the terrorism offences.

Unless the above attributes are carefully studied in all its aspects it would be difficult to bring a control on speedy adjudication.

Prolonged trials has become a routine in such cases. The factors are too many. Whether we have identified these factors, and at what stage these factors are required to be identified is one the challenges the judicial officer would be required to be confronted at every stage of the proceedings. Thus at all stages the judge would have to display essential qualities of effective leader.

2. Time schedule:

Pre-trial conference :

- A judge must establish a fair and firm schedule and plan for pre-trial matters and trial proceedings in consultation with the prosecution and the defence.
- A pre-trial conference establishes expectations and schedule.
- Firmly, trial dates would be required to be fixed and will not change except in case of unforeseen events.
- It would be appropriate to consider the procedural requirements, and the timelines prescribed to complete the procedural requirements. This would require a thorough study of the relevant and necessary requirements under the code of criminal procedure.
- This would also require a proper study of all the factors which normally delayed trials and methods and means to get over the causes of delay.
- Once in the 1st pre-trial conference schedules are fixed and all anticipated issues are discussed it would be appropriate to have a 2nd

pre-trial conference so as to give a final shape to what was planned and sought to be achieved in the 1st pre-trial conference.

- Final pre-trial conference, to review and confirm the following:-
 - Court's rules and procedure
 - daily schedule
 - conduct of counsel
 - schedule a witnesses
 - evidence including stipulations
 - potential delays
 - court room layout
 - courtroom technology
 - communication and media
 - Security (entrances, staggered departures, witness security).

- It would be necessary to study the observance of the time schedule and the expectations which were required to be met midway of the trial.

3. Continuous trials

This involves strict adherence and observance of the time schedule.

- The importance of achieving time schedule is required to be impressed on all the stakeholders and more particularly the prosecution and defence machinery.

-Discretionary practice of non-continuous trials is required to be done away.

- The request of the prosecution and defence lawyers for adjournments at the drop of a hat is required to be not only discouraged but completely eliminated.

- Continuous trial reduces hardship to witnesses and victims were otherwise required multiple appearances which can be avoided.

- There are serious disadvantages of lengthy trials. We have seen witnesses turning hostile disillusionment and becoming non-cooperative. This is likely to seriously affect the outcome of the trial.

- A satisfactory recording of evidence, which includes the examination in chief, cross examination and re-examination of witnesses to be effectively undertaken.

Examination of witnesses is required to be conducted fairly objectively and within the reasonable time constraints.

It would be the duty of the court to stop cross examination if it is not focused and if it is unlikely to make any significant impact to the overall outcome.

It would be the duty of the court to control repetitions in evidence and were particularly those which are not necessary for finding out the truth.

There is a need to emphasise avoidance of prolix and have co-operation from the lawyers.

An endeavour is required for developing effective trial management standards.

4. Managing Evidentiary Issues

The heart of a criminal trial is effective evidence management which would be to manage the documentary and the oral evidence , meticulously following the procedural law (the Evidence Act and the Code of Criminal Procedure.)

1. Whenever a document like FIR , Complaint, (161(3) Cr.PC.) Statements, expert opinions, PM reports etc. is sent to your court, put your signature and date of receipt on every page and keep them in a sealed cover;
2. Certified copy of these documents, except the FIR, should not be furnished to anyone until the charge-sheet is filed;
3. Section 164 statements of the accused and witnesses, TI parade report, dying declaration, photo copies should be taken under your direct supervision and should be handed over to the IO immediately after getting an undertaking from him that he will not make public its contents till the charge-sheet is filed.
4. Material objects like cyber records should be preserved separately. It can be kept in either in the property room of the court or in a given case kept in the safe custody with the forensic science department with adequate safeguards of its safety and security.
5. You may also pass a judicial order to take a back up of the cyber records under your supervisions and with the help of the experts and certify the same under Section 65 B of the Evidence Act.

6. Potential Delays :

Identify the different causes of delay, right from the word go as crime is partly condoned when justice is postponed. It is likely that due the passage of time in incident of crime is quickly forgotten. No one would want the delay except the accused. Delay is the first line of defence. The defendant/accused known that the lapse of time softens the eagerness of the prosecution, impairs its rigour and fortifies a fictitious defence.

- It is not that the delay occurs only during the trial procedure. But the seed of the same also lies in preliminary interim orders, bail orders and investigation.
- Pre trial delay : Remand the first stage after a FIR is lodged. Number of future complications can be avoided if certain basic precautions are taken. Like recording correct name , age/date of birth of the accused , addresses of the accused, all the schools attended by him as he may have changed places with the different names as registered by him. All this should be recorded in the remand statement of the accused. All these will avoid cropping up of issues after filing of the charge sheet. **(see : Ankush Maruti Shinde Versus State Of Maharashtra 2014 (1) SCC 129)**. Six accused were sentenced to death the sentence was confirmed. They filed a second review petition before the supreme court claiming that they were juveniles at the time of commission of the offence. The death sentence was required to be set aside and compensation of Rs. 5 lakhs was awarded to each of the accused. Even in Nirbhaya case the accused was adjudged to be juvenile.

- In Bail Proceedings conditions of bail.
- In Test Identification Parade. It is a common experience that the TI parade of the arrested accused is not taken promptly or proper procedure is not followed although it is not a substantive piece of evidence, but relevant for the purpose of investigation to see that the investigation is in the proper direction. But it also affects and delays the trial. If a prompt TI parade is conducted as during the trial it becomes difficult for the accused even if he wins over some witnesses, as the said conduct of a particular witness to have identified the accused with a particular role, becomes relevant as conduct under section 8 of the Evidence Act which would de-moralise the accused winning over witnesses in serious cases.
- **Delay During Trial**
 - Legal Aid- to the accused –prompt orders.
 - Delay at the stage of supply of documents, especially where there are voluminous documents – court to direct inspection of documents and apply for copies of essential documents – set time limit for the exercise.
 - Delay at the stage of arguments on framing charges – multiple accused each having a different counsel – court to be firm and set date for arguments on charge and ensure that the defence don't drag the trial at this stage.
 - Maximum delay takes place at the stage of prosecution evidence – court to set protocols on for the effective and expeditious summoning of prosecution witnesses.

- During trial frivolous applications eg: u/s. 91 etc filed for the production of documents/material objects by the defence especially at the stage of prosecution evidence – such applications to be decided on the same day they are filed if possible so that trial can go on.
- Delay in preparing questions u/s. 313 Cr.P.C – trial court can prepare these questions as the trial proceeds without waiting for the end of the prosecution's evidence.

6. Courtroom technology

One would admit that there is now a close connection between technology and law. One has to be innovative when it comes to using court room technology. The judicial system has traditionally been hesitant to embrace new ideas and the constantly evolving technological advances. This can really impact the criminal cases. New techniques in presenting evidence can be used. We have the concept of E-Courts, interactive screens are used for displays, use of dual screens for presentation of documents. The criminal justice system relies on information at each stage of the entire process. For example the criminal history record. Maintaining accurate and complete record. Data of the criminal trial in an electronic form is quite advisable. This is useful even before the appeal court. The recording of oral evidence can be videographed. It may be possible to use video monitors, video conference for the purpose of the trial. There is no need to adjourn the hearing for want of the accused to be brought to the court house, can witness the trial from the jail. The judge can use gadgets like dicta phones, dragon dictates to record on day to day basis the notes of arguments or to record the notes during the hearing.

7. Guidelines in the Hague Memorandum

We have seen in quite in detail as to what are the international good practices. It would be imperative to be guided by these good practices which is a result of a deep study on the various facets concerning terrorism cases and the methods of speedy and effective disposal of these cases namely of continuous trials, developing effective trial management standards, special measures to protect the witnesses and the victims, fair trial standards, rules on protection of intelligence information, effective court house and court room security, developing medial guidelines.

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