

# **WORKSHOP ON ADJUDICATING TERRORISM CASES**

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Justice Sanjeev Kumar  
Judge High Court of Jammu & Kashmir

# OBJECTIVES

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Balancing National Security and Rule of Law

Analysing provisions of the Constitution, Code of Criminal Procedure and Unlawful Activities (Prevention) Act 1976 in light of the Hague Memorandum

Highlighting the good practices outlined in the Hague Memorandum for fair trial

# 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.



# SOURCES OF LAW

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## INTERNATIONAL LEGAL SCENARIO

International Covenants on Civil and Political Rights (ICCPR)

Universal Declaration on Human Rights (UDHR)

Hague Memorandum on Good Practices for the Judiciary in adjudicating terrorism offences

# SOURCES OF LAW

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## NATIONAL LEGAL SCENARIO

Article 21 and 22 of the Constitution of India.

Provisions in the UAP Act.

Section 243(2) of Code of Criminal Procedure, 1973.

# A FAIR TRIAL : GENERAL PRINCIPLES

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An adversarial trial system, Presumption of innocence, Impartial and competent Judge, Knowledge of accusation, Open trial

Protection against illegal arrest

Right to Free legal aid, Speedy trial, Bail

Trial and Evidence in presence of the accused

Right against Self-incrimination and Double Jeopardy

# ATTRIBUTES OF FAIR TRIAL

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Concept of Reverse Burden

Speedy trial through the lens of terrorism case

Open vs. In-camera trials

Sub-conscious bias/Preconceived notions