

NATIONAL JUDICIAL ACADEMY



NATIONAL SEMINAR ON ORGANISED CRIME AND OFFENCES AGAINST NATIONAL SECURITY (P-1429)

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REPORT

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OBJECTIVE OF THE CONFERENCE

National Judicial Academy organized a national seminar for judges of the district judiciary on 'organised crime and offences against national security' to throw light on the substantive and procedural nuances with regard to the offences against national security and organized crime. These offences have been introduced in the central penal law - the Bharatiya Nyaya Sanhita, 2023. The seminar familiarized the participants with the legislative landscape with regard to these offences. Emphasis was placed on the aspects of bail and remand, evidentiary issues, implications of the cross-border nature of these offences, and sentencing. Efficient conduct of trial including case management, ensuring fair trial, framing of charge, disclosure of materials, security of court and stakeholders were focused upon in the seminar.

SESSION 1

Theme - Organised Crime & Offences against National Security: Legislative Landscape

Resource Persons - Hon'ble Mr. Justice Joymalya Bagchi & Ms. Shruti Jane Eusebius

The session commenced tracing the evolution of law relating to terrorism and organized crime. The concept of waging war and terrorism were explained and distinguished. Reference was made to the judgements in to draw on the animus and acts which constitute the offence of waging war. The determining tests to determine whether an act constitutes waging war were delineated referring to the judgment in *Mohd. Jamiluddin Nasir v. State of West Bengal*, (2014) 7 SCC 443. A distinction was drawn between the offences of Terrorist Act and Waging War referring to judgments in *State (NCT of Delhi) v. Navjot Sandhu alias Afsan Guru*, (2005) 11 SCC 600. The offences under Bharatiya Nyaya Sanhita, 2023 and Unlawful Activities Prevention

Act, 1967 were discussed at length. Discussion was undertaken on the offence of Endangering Unity, Integrity & Sovereignty of India (Section 152 BNS) and the essential changes introduced. The National Investigation Agency Act, 2008 (NIA Act) was discussed with regard to the special provisions and primacy to the jurisdiction and trial in cases of offences against national security. The issue of limitation for appeal under Section 21(5) NIA Act, 2008 was discussed referring to the cleavage in High Court judgments on the issue. (2024 SCC OnLine Mad 6189, 2024 SCC OnLine Megh 72, 2023 SCC OnLine Cal 493, 2015 SCC OnLine Ker 39625, 2023 SCC OnLine Bom 1936, 2019 SCC OnLine Del 9158).

The discussion also examined the changes in the law with the introduction of the new criminal laws. Specific focus was placed on the two distinct procedure and jurisdiction for similar offences and related issues. The offences of membership of terrorist organisations were examined with references to the judgments in *Vernon v. State of Maharashtra*, (2023)15 SCC56, *Shoma Kanti Sen v. State of Maharashtra*, (2024) 6 SCC 591, *Thwaha Fasal v. Union of India*, (2022) 14 SCC 766, *Union of India v. Yasmeen Mohd. Zahid*, (2019) 7 SCC 790. The criteria for membership offences (guilt by association, active participation and *mens rea* criteria) were discussed. The term 'associate or profess to associate' as a criteria for penalization of membership of terrorist organization under Section 38 was discussed referring to *Yasmeen Mohd. Zahid* and *Thwaha Fasal*.

SESSION 2

Theme - Digital Evidence

Resource Persons - Hon'ble Mr. Justice Joymalya Bagchi & Hon'ble Mr. Justice Anoop Chitkara

The session commenced tracing the evolution of technology and its implications from an evidentiary perspective. The transnational nature of technology based crimes and

the challenges in collection, storage and appreciation of digital evidence was examined at length. The areas in which digital evidence forms an important part of the evidence was discussed. The sources of digital evidence was discussed. Specific focus was placed on metadata, IMEI number, IP Address. The newer sources of evidence including blockchain, cryptocurrency, IOT devices etc. were also dwelt upon. The procedure for collection and preservation of digital evidence was discussed with specific focus on measure to secure the evidence from alteration, destruction and authentication of the evidence. The authentication of digital evidence through the S. 65B IEA / S. 63(4) certification and maintenance of chain of custody was emphasized upon. Deep fake, artificial intelligence, and dark web as emerging areas posing a challenge were discussed. Challenges in dealing with digital evidence were highlighted. Key digital evidence in organised crime including digital foot print, money trail, audio video recording, dark web etc. were discussed. It was noted that these evidence can reveal the organizational structure, modus of operation, leadership of the organization, networks etc. Advanced persistent threats were also discussed with examples.

SESSION 3

Theme - Bail and Remand

Resource Persons - Hon'ble Mr. Justice Abhay S. Oka, Hon'ble Mr. Justice Aniruddha Bose & Hon'ble Mr. Justice Joymalya Bagchi

The session commenced with discussion on the challenges in dealing with bail petitions in Terrorism offences. Factors which play in the mind of the judge while granting or denying bail were also dwelt upon including the alleged offence and its seriousness, prima facie material, the co-accused and grant of bail on basis of similar footing, and possibility of abscondence or commission of another offence. Delay in investigation, trial,

and personal factors such as age & ailment as a factors in determining bail were also discussed. Discussions were undertaken on grant/ denial of bail in UAPA offences and the provisions of Section 43-D(5) UAPA as a restriction in the grant of bail. Restrictions in NDPS and PMLA with regard to bail were compared and contrasted with UAPA. Issues in trial including delays and complexity of the cases which result in delay were dwelt upon as factors which impinge on human rights and fundamental rights under the Constitution of India and the consideration of these aspects in bail jurisprudence was dwelt upon. Discussions were undertaken on the requirement under Section 43-D(5) UAPA i.e. “reasonable belief that the accusation is true”. The term “Strong suspicion” in framing charge versus “reasonable belief” were compared and contrasted. Discussions were undertaken cases as illustrations to highlight the parameters and materials to determine “reasonable belief” (*Shoma Sen, Jalaluddin v. Union of India*, 2024 SCC OnLine SC 1945, *Vernon*). Factors of inordinate delay, illegality of arrest and cooperation in investigation and their consideration in grant of bail as elements relating to Article 21 of the Constitution of India. Reference was made to the judgments in –

- *Gurwinder Singh v. State of Punjab*, (2024) 5 SCC 403,
- *Jalaluddin v. Union of India*, 2024 SCC OnLine SC 1945,
- *Shoma Kanti Sen v. State of Maharashtra*, (2024) 6 SCC 591
- *Vernon v. State of Maharashtra*, (2023) 15 SCC56
- *State of AP v. Md. Hussain alias Saleem*,(2024) 1 SCC 258,
- *Prabir Purkayastha v. State (NCT of Delhi)* 2024 SCC OnLine SC 934,
- *Satender Kumar Antil v. CBI*, (2022) 10 SCC 51,
- *Tarsem Lal v. Directorate of Enforcement*, (2024) 7 SCC 61,
- *Shaheen Welfare Assn. v. Union of India*, (1996) 2 SCC 616,
- *Union of India v. K.A. Najeeb*, (2021) 3 SCC 713,
- *Sheikh Javed Iqbal v. State of UP* , 2024 SCC OnLine SC 1755,
- *Javed Gulam Nabi Shaikh v. State of Maharashtra and anr*, 2024 SCC OnLine 1693,
- *Rakesh Kumar Paul v. State of Assam*, (2017) 15 SCC 67,
- *Bikramjit Singh v. State of Punjab*, (2020) 10 SCC 616,

- *M. Ravindran v. Directorate of Revenue Intelligence*, (2021) 2 SCC 485,
- *Jigar alias Jimmy Pravinchandra Aditya v. State of Gujarat*, 2022 SCC OnLine SC 1290,
- *State through CBI v. T. Gangi Reddy @ Yerra Gangi Reddy*, 2023 SCC OnLine SC 25,
- *West Bengal v. Jayeeta Das*, 2024 SCC OnLine SC 550,
- *Shajan Skaria v. State of Kerala*, 2024 SCC OnLine SC 2249,
- *Frank Vitus v. NCB and ors*, 2024 SCC OnLine SC 1657,
- *Girish Gandhi v. State of Uttar Pradesh and ors*, 2024 SCC OnLine SC 2142

SESSION 4

Theme – Efficacious Conduct of Trial

Resource Persons – Mr. D. Lingeswaran & Ms. Garima Sharma

The session commenced discussing the requirement of disclosure of materials to the accused as an element of fair trial. The stage of disclosure of information and the materials that must be disclosed were discussed referring to Section 207 CrPC and Section 230 BNSS. The challenge is disclosure with regard to secret information, sensitive information and information having national security implications was discussed. The challenges in disclosure of voluminous materials and it was suggested that the accused in such cases may be allowed to inspect the documents in the court premises. The exceptions to the requirement of disclosure of materials were discussed referring to Sections 193 BNSS, Section 173(6) CrPC, Section 44 UAPA and Section 17 NIA Act, 2008. The necessity for striking a balance between disclosure, the interests of Security of the State and the interests of fair trial and justice were discussed and reference was made to the judgments in *P. Gopalkrishnan v. State of Kerala and ors.* AIR 2020 SC 1, *CBI v. Abhishek Verma*, (2009) 6 SCC 300, *Wahid-ur-Rehman Parra v. Union Territory of Jammu and Kashmir* 2022 SCC OnLine SC 237, *Supt. And Rememberancer of Legal Affairs v. Satyen Bhowmick* AIR 1981 SCC 917. The alternatives to strike this balance were examined –

- Redacting some or all of the classified or sensitive information from documents before requiring their production;
- Substituting unclassified descriptions of the classified or sensitive information or a summary of the entire document;
- Substituting a statement or other form of the information, admitting the relevant facts the classified information would tend to prove.
- Order for inspection of record before evidence.
- Order for the presence of IT expert in cases electronic documents are involved.
- Order relating to the security and proper custody of classified/Secret/sensitive information.

Discussions thereafter were undertaken on framing of charge as a crucial aspect of the trial. Discussions were undertaken on a hypothetical to underscore the requirement to be observed in the framing of charge. Emphasis was placed on ensuring that the charge provides all relevant information to the accused of the allegations against him to enable him to be informed and to prepare his/her defence. Further, emphasis was placed on the requirement to read out and explain the charges to the accused in a language understood by him/her as an important element of provision of requisite information to the accused.

SESSION 5

Theme - Trial Management

Resource Persons - Ms. Madhu Khanna Lalli & Dr. Sunnam Srinivas Reddy

The session commenced emphasizing on trial management as a crucial aspect of ensuring expeditious and efficacious justice. The requirements of fair trial and speedy trial as constitutional mandates were discussed and the challenges in striking a balance between fair trial and speedy trial. Reference was made to *Ranjan Dwivedi v. CBI* (2012) 8 SCC 495 and *High Court Bar Association, Allahabad v. State of UP* 2024 SCC OnLine SC 207. The

challenges in adhering to a trial schedule were dwelt upon. Reference was made to *Imtiyaz Ahmed v. State of UP* (2012) and *Kartar Singh v. State of Punjab* (1994 SCC (3) 569). Trial management strategies were discussed. Strategies to ensure efficient scheduling of witness testimony, securing evidence and ensuring continuous trials were discussed. Dealing with repeated requests for adjournments was also discussed as an important aspect of trial management. Reference was made to *Criminal Trials Guidelines Regarding Inadequacies and Deficiencies, In Re. v. State of Andhra Pradesh* (2021) 10 SCC 598, *Vinod Kumar v. State Of Punjab* (AIR 2015 SC 1206), *Vijay Kumar v. State NCT of Delhi*, 2017 CrL.L.J. 3875, and *State of Kerala v. Rasheed*, (2019) 13 SCC 297.

Court and stakeholder security was emphasized as an important aspect of trial management in terrorism cases. The potential security threats were underscored and emphasis was placed on the need to protect stakeholders including witnesses in order to ensure effective conduct of the trial. The requisite security measures to protect the court premises and the stakeholders were discussed. Emphasis was placed on assessment of security threats and vulnerabilities of the court and the stakeholders, creation of a security plan, coordination with relevant authorities for undertaking security measures, and assessment and review of security measures. Witness protection measures were emphasized upon and reference was made to the judgment in *Mahender Chawla v. Union of India*, (2019) 14 SCC 615. It was also suggested to implement the directions of the Supreme Court in *Pradyuman Bisht v. Union of India*, (2018) 15 SCC 433 and *Pradyuman Bisht v. Union of India*, 2023 SCC OnLine SC 983 regarding installation of CCTVs in court premises. Discussions were undertaken on the components of a security plan and the measures to be undertaken to secure the court precincts and to protect the stakeholders.

SESSION 6

Theme - Evidence in Organised Crime & Offences against National Security

Resource Persons – Hon'ble Mr. Justice Subhasis Talapatra & Mr. Manmeet Singh Suri

The session commenced discussing the concept of presumption of innocence as the basis of the adversarial criminal justice system. Reverse burden of proof was discussed referring to Section 43 -E UAPA. Evidence in terrorism cases was discussed and it was underscored that direct evidence in terrorism cases mostly is rare. Increasing involvement of digital evidence was noted and the requirement of knowledge and capacity in digital forensics was highlighted. The challenges posed by artificial intelligence was noted. The nature of evidence was discussed referring to the Mumbai blast case (Kasab). The special features of evidence in terrorism trials were discussed –

- Voluminous materials,
- encrypted data,
- data often is in a foreign language,
- The evidence is technically complex requiring forensic and technological experts

Challenges in extradition of accused were discussed with focus on the requirements for extradition. Sources of intelligence in terrorism cases including surveillance, financial intelligence, communications etc. were dwelt upon. Further, the transnational issues in terrorism cases was discussed with a focus on the issues of accessing evidence in other countries as well and locating and extraditing accused persons from other countries. The discussions threw light on extradition as the mechanism on international cooperation for extraditing accused from other countries. The discussions also threw light on Mutual Legal Assistance (MLA) which is a mechanism for international cooperation and assistance for prevention, suppression, investigation, prosecution and adjudication of crime. MLA is based on treaties between nations, international conventions and assurance of reciprocity. The procedure for accessing evidence in other countries through MLA was explained. Reference was made to the Comprehensive guidelines of MHA-IS-II Division/Legal Cell I dated 04-12-2019. Discussions were also undertaken on Letters

Rogatory, and reference was made to the Sections 166A and 105K CrPC, Sections 57 and 61 PMLA, and Section 12 Fugitive Economic Offenders Act, 2018 (FEOA). The procedure for service of judicial processes in other countries was explained referring to Section 105 and Chapter VIIA, Cr.P.C., Sections 57 and 61 of PMLA, and Section 10 of FEOA. Discussions were also undertaken on the use of technology including video conferencing for accessing evidence and recording evidence of witnesses in foreign countries.

SESSION 7

Theme - Sentencing

Resource Persons - Hon'ble Dr. Justice G. Jayachandran & Dr. Humayun Rasheed Khan

The session involved a discussion of the principles of sentencing and the theories of punishment which form the rationale for determination of punishment. Discussions were undertaken on aggravating and mitigating circumstances and principle of rarest or rare. Reference was made to the judgments in *Bachan Singh v. State of Punjab*, AIR 1980 SC 898, *Machhi Singh v. State of Punjab*, (1983) 3 SCC 470, *Shanker Kisanrao Khade v. State of Maharashtra*, (2013) 5 SCC 546, *Rajendra Praladrao Wasnik v. State of Maharashtra*, (2019) 12 SCC 460. The judgments in *Ramnaresh v. State of Chhattisgarh*, [AIR 2012 (SC) (Cri) 711], *Mukesh v. State for NCT of Delhi & Others* [AIR 2017 SC 2161] were referred to in the course of the discussion.

Imposition of just sentence and proportionality in imposition of sentence was deliberated upon. Reference was made to *Ediga Anamma v. State of A.P.*, (1974) 4 SCC 443, *Shailesh Jaswantbhai v. State of Gujarat*, (2006) 2 SCC 359, *Suresh v. State of Haryana* (2015) 2 SCC 227, *Jaswinder Singh (Dead) through L.R. v. Navjot Singh Sidhu & Others*, AIR 2022 SC 2441, *Deo Narain Mandal v. State of UP* (2004) 7 SCC 257, *Jagmohan Singh v. State of UP*, [1973(2) SCR 541], *Rajendra Prasad v. State of UP*, [(1979) 3 SCR 646], *Mofil Khan v. State of Jharkhand*

(2015) 1 SCC 67, *Pappu v. State of U.P.*, (2022) 10 SCC 321, *Manoj & others v. State of M.P.*, (2023) 2 SCC 353. Discussions were undertaken on the right of the convict to be heard on the question of sentence and reference was made to *In re: Framing Guidelines Regarding Potential Mitigating Circumstances to be considered while imposing Death Penalty*, 2022 SCC OnLine SC 1246
