

Counter Terrorism (CT) Workshop (SE-13)

16th and 17th December 2023

Ms. Shruti Jane Eusebius, Research Fellow & Mr. Krishna Sisodia, Law Associate

National Judicial Academy in collaboration with the Federal Judicial Center, Washington D.C. and the CEELI Institute, Prague organised a workshop with the objective of disseminating good practices in the adjudication of terrorism cases. This workshop was the culmination of the Counterterrorism Project commenced in February 2022 which involved the capacity building of judges as master trainers, and the creation of a judicial counterterrorism curriculum. In this project, eight judges as master trainers were provided an insight into the nuanced issues involved in the adjudication of terrorism cases and best practices in this regard. The master trainers were guided by relevant domain experts in the development and creation of a curriculum on adjudication of terrorism cases and the modalities for dissemination of the same. The project involved the engagement of the master trainers in the development and refinement of the curriculum, and implementation of such curriculum through adult education strategies through a series of workshops. The project created relevant domain expertise in judges in the adjudication of terrorism cases. In this workshop, the master trainers disseminated their learning through training sessions on aspects of terrorism law and adjudication of terrorism cases.

In the first session on the theme *Fair Trial Rights in Terrorism Cases* the discussions were undertaken on the concept of fair trial and reference was made to the judgment in *Moti Lal Saraf v. Union of India*, 2007 SCC Cri. 180. The component aspects of fair trial to the accused were discussed with specific reference to the presumption of innocence, the accused's right to be informed promptly and in detail of the accusation, the right against self-incrimination, the right of defense, the right to a fair and expeditious public hearing, double jeopardy, ex-post facto laws, and the right of appeal. The participants were familiarised with the International law on fair trial. Emphasis was placed on the right of legal representation as a crucial aspect of fair trial, and reference was made to the judgment in *Mohd. Ajmal Mohd. Amir Kasab alias Abu Mujahid v. State of Maharashtra*, AIR 2012 SC 3565. Institutional fairness was underscored as an important aspect of fair trial. Institutional fairness requires that the trial is conducted by a competent, independent and impartial court. The element of open court as a measure of transparency was highlighted as an element of fair trial. Institutional and individual

bias as a challenge to fair trial was dwelt upon. Investigatory lapses and malpractices and its impact on the trial was underscored and judges were advised to ensure that the trial is based on proper evidence which is untainted by torture or other coercive methods. The right to speedy trial was also emphasised upon and it was stated that delay remains a critical barrier to an effective, efficient and just resolution of criminal cases. Reference was made to the judgments in *Abdul Rehman Antulay and others v. R. S. Naik and another*, 1992 (1) SCC 225; *Vinod Kumar v. State of Punjab*, AIR 2015 SC 1206; *Satender Kumar Antil v. Central Bureau of Investigation and another*, AIR 2022 SC 3386.

The second session on the theme ***Anti-Terror Legislations: Evolution and Judicial Interpretation of the Substantive Provisions*** provided an overview of the laws relating to terrorism. Discussions were undertaken on the Unlawful Activities (Prevention) Act, 1967 and National Investigation Agency Act, 2008. Reference was made to Second Schedule to the NIA Act which specifies the scheduled offences. Discussions were undertaken on Unlawful Activity and Unlawful Association under UAPA. The terrorism offences under UAPA were discussed. Reference was made to the judgments in *State of Kerala vs. Raneef* [(2011) 1 SCC 784], *Arup Bhuyan vs. Union of India*, (2011) 3 SCC 377, *Sri Indra Das vs. State of Assam* [(2011) 3 SCC 380] and *Arup Bhuyan vs. State of Assam*, (2023) 8 SCC 747

The third session on ***Framing of Charges in Terrorism Cases*** placed emphasis on the duty of the judge at the stage of framing of charges to ensure objectivity and fair adjudication. The basic principles in framing charges were dwelt upon. The contents of a charge were discussed. Participants were advised to ensure that the legal conditions to constitute charge are satisfied. The charge should be written in the language of the court and sufficient notice is given to the accused to ensure a fair hearing. Discharge of the accused was also discussed. The joinder of charges was discussed.

The fourth session on ***National Security & Management of Confidential Information*** engaged the participants in discussion on the disclosure of materials to the accused under Section 207 CrPC and the challenges involved in balancing national security interests in preservation of the confidentiality of sensitive information. The mandate of Section 207CrPC was dwelt upon as an element of fair trial. The concepts of confidential information and classified information were discussed. The exceptions to the mandate of disclosure of information as specified in Section 173(6) CrPC, Section 44 UAPA and Section 17 NIA Act were discussed. The

balancing of competing interests of fair trial to the accused by disclosure of information and the national security interests in confidentiality of information was dwelt upon

The fifth session on *Decoding the Binary of Digital Evidence* provided an insight into the evolving area of digital evidence and the challenges posed in the appreciation of digital evidence in terrorism cases. The discussions were undertaken on the authenticity of digital evidence and the checks to be put in place to sift through legitimate and fake digital evidence. Discussions were undertaken on the admissibility and the probative value of digital evidence. The certificate under Section 65B Indian Evidence Act, 1872 was dwelt upon and reference was made to the judgment in *Arjun Pandit Rao Khotkar Vs Kailash Kushanrao Gorantyal* [AIR2020SC4908]. It was stated that the certificate required under Section 65B(4) is a condition precedent to the admissibility of evidence by way of electronic record. The certificate under Section 65B(4) is unnecessary if the original document itself is produced. Discussions were undertaken on the requisite person who may sign a Section 65B certificate. Discussions were undertaken on the judgement in *Virendra Khanna v. State of Karnataka*, (2021) 3 AIR Kant R 455. The methods to verify the credibility of digital evidence were dwelt upon. Emphasis was placed on chain of custody as a measure to establish authenticity of digital evidence.

The sixth session on *Appreciation of Evidence in Terrorism Cases* provided an insight into the nature of evidence in terrorism cases. The standard of proof was discussed briefly referring to the judgments in *Miller v. Minister of Pensions* [(1947) 2 All ER 372: 177 LT 536], and *Collector of Customs v. D. Bhoormall* (1974) 2 SCC 544. The requirement for sanction for prosecution in terrorism offences was discussed. Discussions were undertaken on confessions as evidence and the standard of proof in case of confessions. Discussions also focused on the admissibility of extra-judicial confessions and statements made to the police. Evidentiary value of confessions of co-conspirators was dwelt upon and reference was made to the judgments in *State (N.C.T. of Delhi) vs. Navjot Sandhu and Ors.* AIR2005SC3820 and *Himachal Pradesh vs. Om Prakash* AIR 1972 SC 975. The evidence to prove conspiracy was dwelt upon.

The seventh session on *Case Management* placed emphasis of the adoption of effective trial management standards for adjudication of terrorism cases. The major sources of delay in terrorism cases were identified including delays in deposition of witnesses, securing documents after commencement of trial, repeated requests for adjournments, and increased docket load for the judge. Suggestions were given to address the common problems of delay including

measures for timely examination of witnesses. Reference was made to the judgments in *Kartar Singh vs. State Of Punjab* (1994) 3 SCC 569, *Ranjan Dwivedi vs. CBI*, (2012) 8 SCC 495. Discussions were undertaken on measures that can be undertaken for timely adjudication including devising a schedule for presentation of evidence, admissibility of the formal evidence with consent of defense, disclosure of materials to accused etc. Discussions were undertaken on measures to curb adjournments and reference was made to the judgment in *Vinod Kumar vs. State Of Punjab*, AIR 2015 SC 1206. Docket management was focused upon and the challenges in prioritization of cases was discussed. The major reasons for delay in the pre-trial and trial stages were discussed. The case management strategies advocated in the session include setting a comprehensive schedule for the case in consultation with the counsels, scheduling dates for recording of evidence of witnesses, limiting adjournments especially during deposition of witnesses. Reference was made to the judgment in *Vijay Kumar vs. State NCT of Delhi*, 2017 CrI. Law Journal Page 3875. The practice guidelines for the trial courts in criminal trials as laid down by the Supreme Court in *State of Kerala v. Rasheed*, (2019) 13 SCC 297 was underscored.

The eighth session on ***Providing Security to Stakeholders*** highlighted security 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 security measures required to be undertaken 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 emphasised 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.

The ninth session on ***Transnational Issues in Terrorism Cases*** focussed 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.