

ADJUDICATING TERRORISM CASES IN INDIA
FACULTY DEVELOPMENT SEMINAR – PART II

National Judicial Academy – CEELI Institute – Federal Judicial Center

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Programme Report

Prepared by: Nitika Jain, Law Associate National Judicial Academy, Bhopal

The National Judicial Academy, in collaboration with CEELI Institute, Prague and Federal Judicial Center, Washington undertook a multi-stage project to develop US-India partnership in applying steps outlined in “The Hague Memorandum on Good Practices for the Judiciary in Adjudicating Terrorism Cases” (Hague Memorandum). The project is funded by the US Department of Justice and involves four phases. With the above background, the project aimed to deter terrorism while promoting fair and efficient handling of terrorism cases and upholding human rights.

The first three phases of the Training program have been completed. Phase I of the training was conducted at the NJA campus, Bhopal during 27-29 October 2017 whereby a delegation representing the Federal Judicial Center, U.S (FJC), the CEELI Institute and the U.S. Judiciary travelled to India to meet and discuss priorities with counterparts at the NJA, Bhopal. Phase II was conducted in the United States from 10-14 September 2018, a delegation representing Indian Judiciary and the National Judicial Academy travelled to the United States to get an overview of the U.S. Criminal Justice system applicable in terrorism cases including aspects relevant to implementation of the *Hague Memorandum* and implementation of steps outlined in the *Rabat Memorandum* for effective Counter-terrorism Practice in the Criminal Justice Sector.

Subsequently, Phase III of the project titled “*Adjudication Terrorism Cases in India – Faculty Development Seminar –Part II*”, was conducted in India at the NJA, Bhopal during 20-21 April, 2019. The 8 Justices who had represented the Indian Judiciary during the exchange in the United States attended the programme and a delegation from the Federal Judicial Center, Washington along with Mr. Cristobal Dias, Program Manager CEELI Institute, Prague and Aditya Phatak, Political Specialist, US Embassy representative, New Delhi joined the programme.

The program was designed to share experiences and impart training in the best practices globally evolved for dealing with Counter Terrorism issues. Since, the 8 participant High Court judges who

participated in the phase I & II of the programme would function as master trainers themselves, disseminating this experience and knowledge across the country in various State Judicial Academies and the National Judicial Academy, to Judicial Officers who would preside over trials involving this area, the FJC delegation including *Hon. Sidney H. Stein, United States District Judge, Southern District of New York, Hon. John R Tunheim, Chief Judge U.S. District, District of Minnesota* and *Ms. Mira Gur-Arie, Director International Judicial Relations Office* guided the deliberations for trainer development and designing the curriculum for future workshop.

The discussions and deliberations during Phase III of the programme:

Phase III, was in continuation of Phase II, a second part of *Curriculum Design and Faculty Development*, structured to facilitate the development of Workshop on Adjudicating Terrorism cases at NJA proposed to be scheduled during August & September for the district judiciary. The 8 High Court justices as working group members, continued to develop a two day workshop for District and Sessions judges on counter terrorism and prepared instructor guides and program materials.

Day 1 – 20 April, 2019 (Saturday)

The first session commenced with a brief overview of the previous phases and the development so far. The justices were sensitized to the goals of the programme by Ms. Mira Gur Arie and Hon. John R. Tumheim such as - finalizing the title and agenda of the workshop, working on adult learning activities which could be implemented during teaching to make sessions interactive, identifying program materials to collect & develop and designing a comprehensive plan for the workshop which is proposed to be scheduled in phase IV at the NJA, whereby the justices would train a larger cross section of Indian Judges by disseminating the knowledge and skills assimilated during previous phases of the programme. During the course of two days justices were asked to review & reshape the session plan they have created for their subject to inculcate the pedagogic techniques of imparting judicial education.

It was highlighted that every programme should have learning objectives and they must be clear, concise statements; describe the knowledge, skills and attributes (values) participants will acquire; and provide the internal structure for curriculum design. Based on these attributes the justices were asked to review the learning objectives they had designed for their subject to facilitate

the selection and organization of content, inform the development of teaching strategies and guide evaluation of learning for the session.

After the program overview the next two sessions were *Curriculum Design: Proposed Program Sessions (Part I & II)*. These sessions were activity based sessions whereby each participant justice delivered a 5-minute overview of his session, explaining his decisions regarding content, format, and learning activity. Each participating justice made a presentation on the topic selected during phase II, based on his area of expertise and choice, to be dealt by him in the future training sessions, to be scheduled at the NJA. The presentations were made in the following order:

1. *Fair trial* - Hon'ble Justice Sanjeev Kumar
2. *Legislation* - Hon'ble Justice Kotiswar Singh
3. *Framing of Charges* - Hon'ble Justice P.N. Prakash
4. *Case Management* - Hon'ble Justice Girish S. Kulkarni
5. *International Cooperation/ Evidence* - Hon'ble Justice Atul Sreedharan
6. *Forensics* – Hon'ble Justice Raja Vijayaraghavan
7. *Media Trial* - Hon'ble Justice S. Talapatra
8. *Security* - Hon'ble Justice Joymalya Bagchi

At the end of each presentation the group spent 10 minutes providing feedback and discussed on scope of improvements in each session.

In the session on *South Asia Regional Toolkit: Effective Adjudication of Terrorism Cases*, Hon. Judge John R. Tunheim mentioned that the toolkit could be used as a part of the reference material for the workshop as it is a practical guide for judges and judicial academies working to improve the effectiveness and fairness of terrorism related court proceedings. The toolkit comprises the following chapters:

- Chapter 1 Foundations for Effective Adjudication*
- Chapter 2 Judicial Management of the Proceedings*
- Chapter 3 Judicial Management of the Proceedings*
- Chapter 4 International Judicial Cooperation in Terrorism Matters*
- Chapter 5 An Overview of the Global Counter-Terrorism Regime & the International Human Rights Law Paradigm*

The toolkit is a *National Bench-book for the effective adjudication of terrorism cases*, by the Counter-Terrorism Committee Executive Directorate, United Nation Security Council. It integrates international standards including the Hague Memorandum on Good Practices and includes guidance on a range of procedural and substantive issues. During the session the justices discussed upon how to integrate the toolkit in their respective sessions and questions pertaining to law and process.

The session on *Reviewing Workshop Agenda*, was a discussion session whereby the participant justices were asked to assess whether the topics identified during the phase II program in Washington D.C., provide the optimal breakdown and coverage of essential knowledge, skills and attributes; whether any topic is required to be changed or revised; Time allotment for each topic and; the order in which the topics are to be presented at the workshop. After discussions, the working group created a workshop agenda and drafted a description for their respective sessions.

The theme for the next session was *Learning Activity*, followed by two activity based sessions on the same theme. Participant justices reviewed the value of integrating learning activities into a workshop. The session also included discussion on the elements of effective hypothetical scenarios and role plays in judicial training. Various learning activities were mentioned to participants such as lecture, panel discussion, small group discussion, e-learning, demonstration, simulation, brainstorming, debate, demonstration, role play, case study etc. During the session some key points to refine the learning activity were highlighted. The FJC delegation pointed that each activity should include the following - a clear learning objective, clear instructions, focus on goals, time management and attend to group dynamics. In the activity based session on the same theme each group member spent some time individually refining one of the learning activities he had prepared for his workshop session. The next session was also on the same theme *Practice with Learning Activities*, whereby the participants were divided in groups of two, to have the opportunity to develop and pilot his learning activity for their workshop session. These sessions provided an opportunity to participant justices to pilot his learning activities which could be implemented by them in their session during the workshop.

Last session of the day was *Presentation Skills*, during which elements of an effective presentation were highlighted. The speakers deliberated upon how to use learning objectives to guide a presentation, how to collate information, strategies for making a presentation interactive

and best practices for using demonstrative aids such as power-point, charts, videos etc. The session also included a discussion on improving communication skills to disseminate the knowledge effectively.

Day 2 – 21 April, 2019 (Sunday)

The first two sessions on day two were *Practice with Presentation Skills - Part I & II*, which were in continuation of sessions scheduled on day 1. Each justice presented and practiced the learning activity they had worked upon the previous day in the stipulated time. After each group member had presented his learning activity, the group discussed strategies on what worked, what did not work and what changes are needed to improve the activity. At the conclusion of the presentation, feedback as to organization, clarity, time allocation and demeanor were provided by members of the working group. The participants further discussed whether each individual was able to make learning objectives for the activity clear, whether learning objectives for the topic were achieved, did the presenter engage the audience and lastly scope for improvements.

The next session was *Facilitating Group Discussions*, whereby it was highlighted that classroom discussion is an important tool for engaging learners and strengthening the content which could be challenging as well. It was stated that the facilitator must provide structure to the discussion, encourage participation, staying on the topic of the session without dominating the discussion, challenge learners to think critically, managing challenging exchanges, and cover the session material. During the presentations made by the justices in the previous session, tools that could be used by them to engage the learners were listed by the Judges and FJC delegate as: putting open ended questions, follow-up questions, diffusing disruptive comments and re directing comments.

The next session was themed as: *Activity: Program Materials*, which was an activity session. Ms. Mira Gur Arie pointed out that an instructor will not be able to cover all important material in a workshop session and therefore, some information must be transferred through written materials prepared specifically for the program or for outside reading. Learning will be facilitated through careful preparation of session outlines and conservative selection of additional readings. The participants as a group activity discussed and made a list of the materials needed for their session and in other sessions as well including visual aids, power-points, substantive outlines, landmark judgements and other readings.

In the session on *Time Management – Finalizing the Session Plan*, the justices were asked to review and work upon planning their session outline. The session outline included, topic of the session, time required, learning objectives, opening statement seeing the goals of the session, outline of content: broad overview of the subject, and learning activity which may be used. It was emphasized that planning a workshop session requires making difficult choices about how to allocate time and select material. There is always a time constraint; and overabundance of substantive information overloads the workshop participants. It was highlighted that using learning objectives as a guide, the instructor must plan the session. Justices must identify what substance to cover through a short presentation, what is best left for reading assignments, what to develop into substantive outline for distribution, what aspect of the topic should be dealt with as learning activity and supplemental readings to be prepared. During the session the justices were asked to work individually and using the provided template on ‘planning session outline’, to draft a plan for his session. Each participant was suggested to include in his session plan a breakdown of 10 minute increment, learning activities, and supplemental materials.

In the subsequent session which was *Final Session Plan: Presentations*, each participant had an opportunity to make a brief presentation of his plan for the session and received feedback from the group on what changes could be made, what could be added and what could be provided as additional readings, to manage time and make the learning effective for the participants of future workshops on counter terrorism.

The last session of the two day program was *Looking Ahead: To Do Lists*. The participants discussed the schedule for workshops proposed to be scheduled in August and September as regular programs of the NJA and addressed remaining questions and suggested changes. The justices were asked to create and share their to-do list.

Outcome of Phase III program:

The Justices designed an agenda for future workshops which includes the title of the workshop and the themes of the session. Each participant judge worked upon their session plan and allocated time required for their session as per the NJA training programme format. During the course of two days justices tried to define the scope of their session to avoid any overlap with the other sessions of the workshop. Lastly, they took note of the suggestions made and agreed to

implement the same in their presentation during the workshop session to make future trainings effective for the district judiciary.

Subsequent to phase III, phase IV is proposed to be scheduled during August and September as part of regular NJA training programmes which will comprise of following two stages:

Two workshops for the District and Session judges of India who would be adjudicating counter terrorism cases and related areas. These workshops will further the goal of disseminating *The Hague Memorandum on Good Practices* to a larger cross-section of Indian judges.