

WORKSHOP ON COUNTER TERRORISM (P-1109)
IN COLLABORATION WITH FEDERAL JUDICIAL CENTER AND CEELI INSTITUTE
PROGRAMME REPORT

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

Phase II of the Training Program in the United States (Washington DC and in Los Angeles)

Phase II - Was conducted in the United States from 10-14 September 2018. In this Phase, 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 Hague Memorandum of good practices and implementation of steps outlined in “the Rabat Memorandum on Good Practices for effective Counter-terrorism Practice in the Criminal Justice Sector”.

The training program was conducted in two parts, the first part was held at the FJC, Washington DC which involved standard classroom learning, in an adult education format. The second part was at Los Angeles, California where the participant judges had the opportunity to get an on-site observation and for interaction with local judges and other courtroom personnel.

The programme is based on the format of “Training of Trainers” whereby participating judges assimilate knowledge on Counter-Terrorism adjudication through sharing of best practices and their ability to disseminate that information to judges across the Country. 8 High Court Justices participated during Phase II training which included – Justice G.S. Kulkarni, Justice Joymalya Bagchi, Justice P.N. Prakash, Justice Atul Sreedharan, Justice N. Kotiswar Singh, Justice S. Talapatra, Justice Raja Vijayaraghavan and Justice Sanjeev Kumar from the High Court of Bombay, Calcutta, Madras, Madhya Pradesh, Manipur, Tripura, Kerala and Jammu Kashmir. These judges were nominated by the Supreme Court of India in consultation with the Director, National Judicial Academy, based on their deliberations and contribution during sessions in Phase I and other relevant factors.

Hon. Jeremy D. Fogel, Director (FJC); Hon. John R Tunheim, Chief Judge U.S. District, District of Minnesota; John S. Cooke, Deputy Director and the in-coming Director (FJC); Tim Regan, Senior Research Associate, Research Division; Mira Gur-Arie, Director International Judicial Relations office, Claire A. Smearman, Judicial Education Attorney, Education Division were the resource persons from the FJC and US Judiciary in the sessions at Washington DC.

Hon. David Carter, United States District Court Judge, Central District of California; Hon. Charles Margines, Presiding Judge, Superior Court of Orange County; Hon. Kimberly Menninger, Supervising Judge, Superior Court of Orange County; Hon. Rick King, Superior Court Judge, Superior Court of Orange County; Hon. Kathleen O’Leary, Presiding Judge, California Fourth District Court of Appeal Division III, guided the deliberations and discussions during the on-site training held at Los Angeles, California. Hon’ble Justice G Raghuram, Director NJA led the Indian delegation providing an overview of the Indian Judiciary and working at the National Judicial Academy. The group was also accompanied by Mr. Cristobal Dias, Program Manager CEELI Institute; Mr. Marek Svoboda, Director of Programs CEELI and Ms. Nitika Jain, Law Associate (Programme Coordinator NJA).

The theme of the training programme was *“Adjudicating terrorism cases: Curriculum Design and Faculty Development”*. The sessions in the first part held at the FJC focused on areas like - *Introduction & Overview of the FJC and NJA; Judicial Education at the FJC; Distance Education: Using Technology to Enhance Learning; Research at the FJC and the National Security Cases Project; Discussion on Recent Developments & Challenges in the Adjudication of Terrorism Cases in India; Principles of Adult Education; the Hague Memorandum; Judicial Competencies for Presiding at Terrorism Trials; Educational Objectives; Case Management and Pretrial Conferences: Skills Building and Problem Solving; Curriculum Design and the “What & How” of Teaching and faculty development.*

The discussions and deliberations during the sessions at the Federal Judicial Center, Washington DC:

Federal Judicial Center: Day 1 - 10.09.2018

The discussions commenced with a brief introduction of each of the delegates and introduction of the judicial training institution in the USA and India with an overview of its functioning, by the Directors of FJC and NJA. This was followed by a discussion on how the terrorism related cases are charged and filed in India. Participant Indian Justices explained about the working of special courts in the country, how a case is filed in our special courts and the judges presiding in these special courts established under the Unlawful Activities (Prevention) Act, 1967; and outlined the relevant substantive and procedural legislation operating in the area.

The Director, FJC discussed the methodology of working at the institution based on the foundation of adult education which focusses on certain factors in an adult learner such as competencies, task oriented, engaged, active and self-directed learners. It was pointed out that keeping the above foundation of adult education at the background, the workshops & seminars on topics like judicial ethics, criminal sentencing, case management, opinion writing, courtroom skills, using IT etc. are designed at the FJC. Just like the NJA, FJC does not train the prosecutors. Further, the role of prosecutors in each jurisdiction was discussed in detail.

In the session on *Judicial Education at the FJC*, John S. Cooke spelt out the ongoing topics and subjects in the FJC which included Case Management and Judicial Ethics. It was noted that Federal judges preside over varied caseloads including civil and criminal cases, with subjects ranging from civil rights and IPR to narcotics distribution and corporate crimes and therefore, case management has a lot of significance in the US Judicial training institution to enable judges to navigate court administration efficiently. The participant judges enquired and were informed about the ADR mechanism in the US and researches carried on at the FJC.

In the next session on the theme: *Distance Education: Using Technology to Enhance Learning*, the subject expert addressed the strategies for using video and online resources to deliver education, including curriculum development issues that arise when using technology. The concept of “modern learner” was discussed at length and the techniques efficient to educate the modern learner. It was highlighted that short videos of 4 minutes length, videos broken into parts and flexible videos have a greater impact on a learner as compared to longer videos. The concept of Micro learning with the help of pictures and video clips was introduced to participants. Further, the discussions pointed that short paragraphs are more easily readable with attention as compared to longer paras. The session focused on how education technologies enable the FJC to provide information to a larger number of judges and court staff in a timely fashion than traditional workshops. It was suggested that these technologies could be used at the NJA for imparting judicial education and making the Academy more accessible to a larger judicial audience, at different levels of the country.

The session on *Research at the FJC & National Security Cases Project*, provided an overview of the FJC’s research mandate and publications, focusing on their web based resources designed to assist the judges in managing their growing caseloads. It was pointed out that these available resources are kept up to date with relevant developments in law, science & technology. The Center conducts empirical and exploratory research in different domains of judicial administration. A reference was made to the Center’s web based materials on national security cases. It was pointed that the Center has developed written materials, workshop sessions and a collection of case analyses on important trials in U.S, on Counter-terrorism.

The session on *Recent Developments in the Adjudication of Terrorism Cases in India and Challenges in Terrorism trials*, Judge John R. Tunheim summarized the deliberations which took place during Phase I training at Bhopal. He outlined a brief overview of the Hague Memorandum Principles and discussed the recent developments in terrorism trials in India with the participant High Court Justices. The session was a review of the Indian Judiciary’s capacity to adopt some of the practices discussed in the Hague Memorandum. Further, the discussions focused on challenges faced in terrorism cases relating to security setup for witnesses and the court. It was noted that in the U.S, the allocation of cases is done through a software called Electronic Random Selection.

Various aspects relating to handling of classified information and State secrets in the U.S were also discussed. Participant judges pointed out the challenges relating to collection and

preservation of evidence in terrorism trials and the laws on preventive detention. A judge's role in witness protection in terrorism trials in different jurisdictions was also discussed in detail during the course of discussions.

During the last session on, *Curriculum Design and Faculty Development*, the group of High Court justices were expected to work with the Director, NJA to develop a curriculum for teaching Indian Judges on Counter-terrorism and National security cases, using the Hague Memorandum on Good Practices as a tool for the judiciary. The final session led to discussions on goals for the next day's faculty development program on Judicial competencies which included adult education principles, experienced interactive learning, developing and prioritizing goals for the NJA, developing learning module for the NJA, educational objectives for terrorism adjudication curriculum, and developing an action plan.

Federal Judicial Center: Day 2:

The first session was on, *Principles of Adult Education*, which focused on the importance of adult education and modern methods of judicial education. The session highlighted that adult education is task oriented, practical and gives an opportunity to gain mastery of the competencies needed to meet the complex demands of judging. The mission of adult education and the techniques of adult learning in judicial training institutions were discussed in detail. Following key points emerged during the course of discussions:

- The discussions in the later sessions of the day on curriculum development for the NJA were based on these three questions:
 1. What substantive knowledge and skills do judges need for efficient function?
 2. The methods and media best suited to teach that knowledge and those skills.
 3. The criteria which should be used to select and train its faculty and to evaluate the effectiveness of judicial education programs.
- Judges need a mix of substantive knowledge and decision-making skills; adults learn and retain knowledge and skills most effectively through interactive teaching methods and active engagement. The effectiveness of programs and faculty should be evaluated in relation to measurable educational objectives.
- It was observed that the highest retention of learning is through teaching method, followed by techniques like doing, discussion, demo, audio/visual and reading. The least retention is through the lecture method. Long lectures are not an effective means of conveying new knowledge and skills.
- Teaching approaches for effective engagement of learners include short presentations, facilitated discussion, simulation exercises, case studies etc.
- Techniques of adult learning include - engaging, practicing, applying own experiences and relevance.

- Lightning rounds which include small group activities/ short questionnaires/ quick identifying topics based on participant responses on the subject is an efficient learning technique of adult education.

In the next session on *Challenges in Adjudicating Terrorism Cases*, the outcome of Phase I training and extent of its implementation by the participant Indian High Court judges was assessed through discussions. The judges mentioned that the learnings from Phase I training was applied by them in cross-border counterfeit of currency cases in West Bengal under UAPA Act and in other related criminal trials. The session included the lightning round wherein the participant group of justices were given a two minute questionnaire which included questions such as; the issues most commonly arising in terrorism cases in India, the greatest challenges faced by judges presiding in these proceedings and how these challenges could be addressed and managed directly by the presiding judge of the court. The discussion on legal and procedural issues common to criminal adjudications and specific to terrorism cases highlighted the priorities for developing NJA's terrorism adjudication curriculum.

The session on *The Hague Memorandum*, was an exercise based session. Participant Judges explored good practices described in the Hague Memorandum. The 8 Justices were divided into two groups. Each group was given a list of 8 good practices identified under the Hague Memorandum and they were asked to identify practices less familiar to Indian Judges in the order of its priority and the practice which requires training at the Judicial Academy. The judges identified that, developing effective trial standards is the most important among the Hague practices and needs to be considered while developing the curriculum for the NJA. The discussions in the session facilitated the development of educational programs and material on the subject.

On session *Judicial Competencies for Presiding at Terrorism Trials*, the participant Justices identified competencies relating to knowledge, skills and attributes which judges require while presiding over terrorism related cases and outlined the components of a curriculum for Indian judges. This was also an exercise based session; and participants were provided a list of knowledge, skills and attribute competencies. Divided into three groups each group was asked to identify the most important competencies under knowledge, skills & attributes required in a judge presiding over terrorism related cases from the list, which could also form part of the NJA training program.

In the following session on *Educational Objectives*, participant Judges formulated a draft of educational objectives using the competencies identified in the previous session. These objectives were, demonstrable skills and knowledge, a course participant is expected to acquire at the conclusion of the program. These objectives further facilitated identifying and organizing course content and instructional strategies for NJA developing the curriculum on adjudicating terrorism cases.

On the theme *Case Management and Pretrial Conferences: Skills Building and Problem Solving*, a hypothetical exercise on Case management scenario in a "police-station bombing" was given to participant judges for an active understanding of the theme. With the help of the

hypothetical the participant judges identified the role of judges in efficient case management. The discussion assisted in devising instructional strategies and activities to be carried in the curriculum for future training programs at the NJA on adjudicating terrorism cases.

It was pointed out that through techniques like discussion, hypothesis, case study, interviewing an expert judge or role play key elements of procedural law could be identified which will initiate setting the trial program and creating a schedule with firm deadlines. Similarly, discussions also focused on including a session in the curriculum on the need for formulating standardized approach for media plan in the judicial setup.

The last two sessions of the first part of the program were, *Curriculum Design and the "What & How" of Teaching; and Next Steps*. The sessions focused on developing a training curriculum for the future phases of the training program to be conducted at the NJA on adjudicating terrorism trials for District judges. The process of curriculum development included a number of stages; assessing the learning of the target audience, devising educational objectives, designing activities to teach and reinforce the information being delivered and planning program implementation. The session facilitated formulating an outline of the content/ topics/ teaching strategies/ learning modules and activities for the District judges participating in the subsequent phases of the training program. The tentative training program devised during the session is annexed in this report.

Output report of the Training sessions at FJC, Washington DC:

During the course of discussions in the sessions scheduled over the two days at the FJC participants identified topics essential in adjudicating terrorism trials and for which training must be imparted to participating judges of subordinate judiciary of India, in the future program at the NJA. A list of teaching strategies included methods like brainstorming, debate, demonstration, questionnaire, hypotheticals, games, jigsaw exercise, lecture, lightening rounds, multimedia, peer teaching, presentation, role plays, case studies, simulations and writing exercises to be adopted by each judge in the training session based on their chosen theme.

To further the goal of disseminating *The Hague Memorandum on Good Practices* to a larger cross-section of Indian judges, developing a curriculum that would be beneficial to judicial training institutions and to strengthen the relationship between U.S. & Indian judges, an action plan was developed for future discussions and implementations. The following list of topics were identified by the participant Justices for the future training curriculum:

Each topic was selected by one of the delegate High Court Justices, based on his area of expertise and choice, and to be dealt by him in the future training sessions, which will be scheduled at the NJA:

1. Media Plan - Hon'ble Justice S. Talapatra;
2. Unlawful Activities Prevention Act 1967 vis-à-vis The Indian Penal Code - Hon'ble Justice Kotiswar Singh;
3. Technicalities of Scientific evidence/ Forensics - Hon'ble Justice Raja Vijaya Raghavan;
4. Handling framing of charges & Burden of proof in terrorism cases - Justice P.N. Prakash;
5. Witness protection & court security - Hon'ble Justice Joymalya Bagchi;
6. Fair Trial practices - Hon'ble Justice Sanjeev Kumar;
7. Case management - Hon'ble Justice G.S. Kulkarni;
8. Evidentiary Issues: International Cooperation/ Extradition/ Evidence - Hon'ble Justice Atul Sreedharan.

On 12.09.2018 the entire delegation visited the Supreme Court of United States before proceeding to attend the second part of the Training Program at Los Angeles, California.

Discussions and deliberations at Los Angeles, California:

Day 1 - 13.09.2018 (Ronald Reagan Federal Building and U.S. Courthouse)

The second part of the training program was scheduled in Los Angeles California. The training sessions scheduled at the LA was a supplement to the dialogue at the FJC. During this phase participant Judges spent time in on-site observation and interacted with local judges of the Trial, Appellate and Federal courts and other courtroom personnel. The training mainly focused on observing the Courtroom security in the US Courts, role and investigatory processes followed by the FBI monitored by the District Attorney's Office, case management, and handling media in courtroom in high profile terrorism cases.

Judge David Carter welcomed participants at the "Ronald Reagan Federal Building and U.S. Courthouse" followed by a brief introduction of the court building and its working and a walk through the State Courthouse, Orange County Superior Court. The group was introduced to the process of Jury trials whereby they observed how the Jury in a particular trial is selected and how the whole process is managed and organized inside the court building as the jurors are large in numbers.

The participant judges interacted with Superior Court Judge of Orange County, Hon. Kimberly Menninger on technicalities of case management. The participant justices were briefed on the master calendar of the court & court criminal observation, how it is prepared and the role of judges in case management. The judges then observed the proceedings in the courtrooms of respective judges. Participant Justices also observed the process of E-filing in the Superior Court of California. For deliberations on *Individual role in Case management* participants met Hon. Rick King, Superior Court Judge, Court of Orange County, who pointed out that the main aim of case management is to keep the case moving.

Participants also interacted with the Chief Judge & Court Executive officer, Superior Court of Orange County, Hon. Charles Margines and Mr. David Yamasaki respectively who explained the judicial setup in the United States; and briefed participants on the court security setup. This was followed by a visit to the court detention center whereat the delegation observed the security setup

inside the court building, the courtroom and outside the court as well. The participants also observed the strict security plan followed inside the court while transferring the accused or criminals.

Participants also met Mr. Wade L Lee, FBI Special Agent, California and the U.S Attorney to understand their role in terrorism related trials. They presented a case study on the lessons learned from a high profile terrorist trial “the broken banner case” where a US Citizen named Kabir who traveled to Afghanistan to fight with Taliban, was investigated and brought to trial. The presentation provided valuable insights into the importance of close collaboration between investigators, prosecutors and foreign governments. It further showed the investigators techniques, handling of highly sensitive information; and balancing the values of the freedom of speech of the terrorist accused *vis. a. vis* legal action by the FBI leading to prosecution.

During the discussions many distinctions between the Indian and US. Judicial approaches to the issues, were highlighted;

- In India the trial court writes the opinion in every case whereas in the U.S the Jury decides the fact and that is normally final.
- In the U.S courts no electronic recording is allowed, judges makes the decision on admissibility of evidence and not the jury.
- Jurisdiction is one of the biggest issue in the United States as the federal and the State courts setup is a complex one.

Day 2: 14.09.2018 (Ronald Reagan Federal Building and U.S. Courthouse)

The first theme for discussions was *Rings of Security*. Judge David Carter took the judges outside the court building and gave an on-site experience, explaining the circles of security. The judge highlighted three areas: the security of judges outside of courthouse, the security of judicial proceedings within the courthouse and the security of cooperating witnesses. Based on the discussions during the first phase of the training program at the NJA, Mexican mafia case was referred to, to explain the concept of security inside and outside the court for judges and other court staff.

Participants were then introduced to Mr. Marcelino Hazelwood, U.S. Supervising Marshall who gave a presentation on the role of U.S Marshalls in personal security of a Judge and Court house security. It was pointed out that utmost importance is given to the security of a Judge followed by his family and then to civilians. During the whole process they take note of the background of the defendant.

On *Pre-Trial Release Strategies*, the Chief of Pre-trial services gave an overview of the role of pretrial services in the court process. It was highlighted that the main aim of these services is to make sure of implementation of all the court rules by the judge and they work on judge’s order.

In the next session on *Media in High Security Threat Trials*, Judge Carter focused on the role and limits of media in the Courtroom for conducting fair public trials. Participants had an opportunity to meet and interact with a journalist who had been working in the court and reporting on sensitive cases. The Good Practice No. 8 of the Hague Memorandum on Media Guidelines was discussed at length. The aspect of benefits to and problems for courts in allowing media access was also deliberated. Judge Carter pointed out that in allowing the media access to courts would improve transparency and accountability but will on occasion conflict with the dignity of the courtroom. The

advantages and disadvantages of different type of media such as print, television, radio etc. were also discussed.

The participant judges then went to the California Fourth District Court of Appeals Division, III, and interacted with the Appellate Court judges to understand the working and trial process at Appellate Courts in the U.S.

During last session on *Sentencing Considerations in High Profile Terrorism Cases*, participant justices observed sentencing proceedings by Judge Carter in his court, and observed the proceedings inside the courtroom during the sentencing proceedings of an accused in the “Mexican Mafia Case” where the convict had applied for a review of the sentence imposed.

Conclusion:

It is expected that the knowledge accrued in the two phases of the training program would be gainfully employed to handle other related domains as well. Participant Justices felt that it is essential that we train a large number of judges and sensitize them to the best practices which have evolved globally in dealing with adjudicatory and related aspects of Counter Terrorism trials, and these would also be beneficent in trial of other serious offences.