

Does Kassab's Execution Signal the Collapse of India's Case Against Pak

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PKKH Editorial

The lone surviving alleged gunman of the 2008 attacks in Mumbai, Ajmal Kassab, has been prematurely put to the gallows by a court in India this morning.

Prematurely because, as a key component of the trial of the 7 Pakistanis held in Pakistan's Adiala Jail since 2008 and accused of masterminding the Mumbai carnage, Kassab was deemed an important part of the investigation by Pakistan's judicial commission.

India's case against Pakistan in general and against these seven individuals in particular, revolved mainly around Kassab's alleged statement. We use the word 'alleged' because the Indian authorities had repeatedly refused to grant access to Kassab to the Pakistani judicial commission, and statements from the Indian authorities cannot be taken on face value alone.

According to Pakistani Law of Evidence (Qanun-e- Shahadat Order , 1984)":

If a witness has to give any statements against any person, or has to be the eyewitness against any accused, the witness must present himself in front of court. Alternatively, the statement can be taken from the witness and presented in court by an authorized person such as a magistrate or Judge.

Due to India's lack of co-operation with the Pakistani judicial commission, none of the above conditions have been fulfilled. As per Pakistani law, either Kassab had to be produced in court in Pakistan, or the person who took Kassab's statement immediately after his arrest has to appear in Pakistani courts and present Kassab's statement, as well as allow himself to be cross-questioned.

If there's no ambiguity or loopholes in the Indian investigation of the Mumbai attack, India should not have had any problems in fulfilling these legal requirements of the Pakistani judicial process, to ensure a speedy and fair trial.

The law provided another alternative. If the above conditions could not be fulfilled, then a Judicial Commission of the Pakistani court could have travelled to India to record a statement from Ajmal Kassab or interview the magistrate who took Kassab's statement – and this is exactly why Pakistan sent its judicial commission to India in March this year – but was denied access to Kassab.

After the judicial commission's limited findings were presented in the Pakistani court, the presiding judge was left with no other option then to give a judgment which clarifies and reiterate the same facts that Pakistan had clarified from day one – that there is no court-admissible evidence implicating any Pakistani security forces, intelligence services, organizations or citizens in the Mumbai terror attacks.

It will be four years since the devastating attacks on Mumbai that left the entire nation paralyzed for three days. Countless statements accusing Pakistan and its state and military have been given from Indian politicians and security forces. And yet there is still no verification of the original statement of Kassab taken by the magistrate who interrogated Kassab, immediately after his arrest. Pakistani courts can use this statement in the case against the seven accused persons but it is India that is hesitant in not only presenting the magistrate in front of the Pakistani judicial commission but also in verifying the statement through cross questioning by the Pakistani Commission. And Kassab's death appears to be the final nail for the judicial inquiry in Pakistan, raising suspicions further that the 'evidence' presented by India may not have been able to withstand cross examination by Pakistan – hence the premature closure of the case as a consequence of the hanging today.

'The case will collapse, we have no option than to eventually release the seven accused persons as a key component of the case is no longer available, and India's refusal to cooperate only strengthens the position of those who believe there was never a case against Pakistan in the first place,' said a source close to the investigation in Pakistan.

Source

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