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The Curious Case of Kasab the Killer

Bikram Vohra / 30 July 2009

Amir Kasab's 'shocking' confession last week of being guilty of the terror assault on Mumbai is essentially of very low voltage and has about it the stickiness of a gimmick. One, because his killing spree was pretty much on live TV for the world to watch, it has no great element of surprise.

For another, the confession is just another stalling tactic and the defence can now ask for more time to review its strategy, seeing how his lawyers were ostensibly caught off guard. It can also be a basis for a motion to call it a mistrial on the grounds that the 'not guilty' pleas have been revoked. That means back to the starting gate and closure for the hundreds of Indians who still mourn their bullet-riddled dead and give succour to the wounded and the maimed. And though the judge has ordered continuance of the trial, it does seem the grounds are being laid for a declaration of mistrial.

As a democracy, one reckons, we are all for due process and all that righteous stuff about one innocent man incarcerated being worse than a thousand guilty going free, but some things take sharp precedence over convention, especially when it concerns an attack on the state.

Someone has to short circuit what is becoming a travesty. As we near the first anniversary of the carnage, the perpetrator is assuming cult status. Tomorrow, some bleeding-heart NGO will want to save him and tout rehabilitation. Carry on like this and he will be so sanitised they'll be using him as a poster boy for breakfast food cereals. Candy floss, fruity loops and Sonny boy with an AK 47: it might fly on a billboard, but it sticks in the gullet.

Which brings me to the point of this harangue. Why did India not declare war on Amir Kasab officially? Nowhere is it written in the Constitution that a nation cannot formally declare war on an individual. It is a fallacy that war can only be declared from government to government or state to state.

In Kasab's case, he was part of an attack force in which innocents were mowed down by military type weapons he and his compatriots were held in combat by regular Indian troops in uniform and the assault was a hostile infringement of the sovereignty of Indian territory. There were casualties in the soldiers' ranks — Major Sandeej Unnikrishnan of the National Security Guard, for one — of whom over 800 took active part in the showdown and faced hostile fire. All five factors make the option of war tenable even if it requires the sanction of parliament.

All it needed then was to convene a court martial of five to seven general officers drawn from the three services under a three-star President of the Court, create a brief based on the audio-visual evidence available plus the man's own confession and indict him on two basic charges: war crimes and crimes against humanity, both charges permissible under military jurisprudence and with enough precedents for them to stand even under the Geneva Convention. Remember the Nuremberg trials?

Summary courts-martial were mandated in India in 1869 as part of the legal machinery of the Indian Army. The

procedure and powers in relation to the summary court-martial were contained in Articles 93-97 and 107 of the Indian Articles of War of 1869 and still exist. Today, the Indian armed forces have four kinds of courts martial: General Court Martial (GCM), District Court Martial (DCM), Summary General Court Martial (SGCM) and Summary Court Martial (SCM). According to the Army Act, army courts can try personnel for all kinds of offence except murder and rape of a civilian, which are primarily tried by a civilian court of law. The last is a loophole for Kasab — except that the deaths were not only those of civilians but included commissioned officers in uniform and on hazard duty. Therefore, any way you look at it, Kasab qualifies.

Kasab would still get a legal defence, thereby satisfying the demands of justice, but a court-martial on these premises would have a completely different texture. It has happened before. In the My Lai massacre, Lt. Calley was brought up on charges. The famous Mata Hari, who joined the Germans as a propagandist in 1907 while living in France, wheedled highly classified military secrets from the dozens of high Allied officers she slept with. She was brought before a French court-martial on July 24, 1917, sentenced to death by unanimous vote, and executed on October 15, 1917 — three months later — even though she was a civilian.

After the summary court-martial, there is a verdict and the sentence is carried out in military fashion. It must be remembered at all times that these terrorists see themselves an armed military force and must, therefore, be treated as such.

Since there is no statute of limitations on war crimes (the civilian equivalent being homicide) even now it is not late to exercise this option. There are many advantages to taking this course. One, it adds credibility to the much-tossed-about phrase 'war against terrorism.' (And it's about time.) It also sends a very strong message to the world that this war is ongoing against every terrorist arrested and he is not going to be allowed to seek shelter under due process of civilian judicial codes that have inbuilt delay elements in them.

Most importantly, it gives comfort to the next of kin of those who died. They must look upon the slowness of the legal process with something akin to horror that Kasab's personal habits, his needs, his desires and the Peepin Tom nitty-gritty of his incarcerated lifestyle get more media coverage than the condition of the bereaved.

If India is to be taken seriously in this post Hillary Clinton visit euphoria over the need to fight the good fight against militancy, this is the time to show intent. In no way is the civilian process compromised or placed in a corner if it is ruled that Kasab fits the criteria for a military court-martial and the case is passed to the Judge Advocate General's branch of the armed forces. Take it from there...

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