

India: "Replace 26/11 Trial Judge" - Press Release from International Association of People's Lawyers

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International Association of People's Lawyers

- ▶ Oudergracht, 3511 AP Utrecht,
- ▶ Netherlands.

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26 / 11 trial judge, Tahilyani, be replaced

What transpired on 26th, 27th and 28th November 2009 in the court of Additional Judge Mr. Tahilyani of Bombay Session Court hearing what is commonly called the "26 / 11 trial" has not gone well with the basic principles of the criminal justice system which India inherited from the British.

The Article 22 of the Constitution is categorical that no accused "shall be denied the right to consult, and to be defended by a legal practitioner of his choice". The peculiarity of this case, however, made it impossible for Ajmal Kasab to exercise this right and to have a legal practitioner to defend him, let alone a legal practitioner of his own choice. Hence, the state intervened, as is the practice, and provided him with a legal counsel. And that is how Abbas Kazmi came to defend Kasab.

As a defence counsel, Kazmi had an independent status. He could not have been dismissed on the ground that he opposed the prosecution's application to short-cut the trial by tendering evidence of prosecution witnesses on affidavit. This episode has vitiated the trial of Ajmal Kasab. Justice should not only be done, but also be seen to have been done.

It was unfair and uncalled for that Kazmi was removed from the case and asked to leave the court premises. Was he a criminal who posed a threat to the judge and the court? Kasab's trial is a public trial which necessarily means a trial to which the general public have access. Arbitrariness is not one of the virtues of the Indian justice system.

Several of the 340 affidavits submitted by the prosecution in the court constituted evidence not only in appearance, but also in substance. They did not fall under Section 296 of Criminal Procedure Code. Abbas Kazmi has a legal and moral obligation to raise the issue and debate it in

the open court. How could this disqualify him to be a defence counsel?

What happened in Mumbai on 26th November 2008 had arrested the attention of the world. The trial and verdict of Kasab's case will come under the watchful eyes of the international media. This has serious implications for the Indian judicial system. It is in the interest of justice and fairness and the good name of the Indian judicial system that Judge Tahilyani is replaced with a new judge. This is not just one of the million cases pending in India. This is a unique case. It calls for special attention and treatment.

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