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South Asia

Apr 4, 2009



India split over terror trial

by Neeta Lal

NEW DELHI - In the aftermath of the Mumbai terror attack last November in which nearly 200 people were killed and property worth millions of dollars destroyed, intense public debate has erupted over the fate of the lone surviving terrorist. Opinion is sharply divided over whether Mohammed Ajmal Amir Kasab should be given a fair trial, and whether - given the magnitude of his crime - Kasab can rightfully claim legal help.

Kasab's trial is set to start on April 6 in Mumbai, and a few vital points need to be raised. These include India's international obligations, its human-rights stand and the constitutional rights guaranteed to every citizen - Indian or foreign - in this regard.

Firstly, the 1948 Universal Declaration of Human Rights, ratified by India, protects the "presumption of innocence until proven

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guilty in a court of law at which the defendant has had all the guarantees necessary for his defense". So, failing to provide legal support to Kasab would sully India's reputation as a democracy - the world's largest - rooted in the principles of justice and social equity.

Secondly, the Indian constitution guarantees a right to legal aid and representation and ensures that every individual get a "fair, just and equitable procedure" in court for any defendant, "regardless of his nationality". The right to life guaranteed under Article 21 of the constitution includes the right to legal aid. Similarly, Article 39A mandates equal justice and free legal aid. Section 303 and section 304 of the Criminal Procedure Code mention the right of an accused to be "defended by a lawyer and the state's duty to provide legal aid".

Even the Supreme Court states, "Free legal assistance at state cost is a fundamental right of a person accused of an offence which may involve jeopardy to his life or personal liberty." This in short is the essence of the country's criminal justice system. As Home Minister Pranab Mukherjee told the media recently, "Every person in India who is accused or prosecuted is entitled to have a fair trial and the Indian judiciary is known for its transparency and

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for its fair deal."

However, while the law is unequivocal about Kasab's right to fair representation, a section of the Indian public has expressed severe displeasure over this prospect. This segment feels a fair trial for Kasab is "unpatriotic". After all, they argue, how can a criminal - who has been caught on camera unleashing terror in a city and mercilessly killing innocent people - lay claim to justice? Kasab was captured by the security forces outside Chatrapati Shivaji railway terminus, from where he was heading to other targets.

The groundswell of public anger against Kasab is enormous. And unfortunately, undesirable elements are taking advantage of the situation by giving the case a political spin. Maharashtra-based political parties like Shiv Sena, for instance, are demanding that Kasab be executed at the same terminus where he and his accomplices killed several innocent people.

To carry forward its moral policing agenda further, the Sena has even threatened Indian defense lawyers who agreed to represent Kasab in court. Senior lawyer Anjali Waghmare, a government legal aid panel lawyer and wife of a city cop, who has now agreed to defend Kasab, albeit under a heavy security cover. She had earlier withdrawn from the case following a violent protest outside her home in Mumbai by hundreds of Shiv Sainiks.

On Monday, over 300 Sainiks pelted stones at Waghmare's house and forced her to sign a statement promising she would drop the case. This senior lawyer is the perfect choice for the Kasab's defense, as she has appeared in many high-profile crime and corruption cases and has been a member of the governmental legal aid panel for the past 12 years. Despite the harassment, she confirmed on Wednesday that she will continue as Kasab's lawyer.

Waghmare is not the first lawyer to have faced Shiv Sena's ire. In December, a local lawyer, Dinesh Mota, was selected to represent Kasab but withdrew at the last minute, citing personal ethics. As legal experts point out, the protestors are missing a vital point: if

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Kasab doesn't get a lawyer, the case will not even proceed. He may even be acquitted. Clearly, this crucial case can't be decided by the pressures of mob rule or a kangaroo court but by a constitutionally appointed court of law.

Kasab has been under detention and interrogation since being captured. The mayhem unleashed by him and his militant colleagues has earned worldwide condemnation in the strongest possible terms. The international community has also been exerting pressure on Pakistan to act swiftly on terror and fulfill its promises to curb terrorism.

However, Islamabad is still reluctant to accept the fact that the attackers were Pakistani nationals and were specially trained for the purpose by militant outfits. On the same grounds, Pakistan has also refused any legal aid to Kasab.

It was against this backdrop that the Indian government stepped in to offer legal assistance. However, a major twist in the case came when the Mumbai Bar Association unanimously passed a resolution telling its members not to defend Kasab in a court of law. Expressing solidarity with other like-minded groups, the association said that Kasab should be tried on circumstantial evidence and no legal aid should be provided to him in view of the gravity of his crime.

The association ignored the fact that not representing Kasab would be a gross violation of the Indian constitution and is against the principles of natural justice. It is beyond a shadow of doubt that Kasab deserves stringent punishment for his crime, but his conviction should come in a dignified and just manner, supported by the rule of law. By providing legal aid to Kasab, India has nothing to lose as sentencing in this case looks inevitable. By giving a fair trial to the terrorist, India will also gain an edge over Pakistan.

Diplomatically too, India can then leverage this opportunity to showcase its impartiality in the global arena and apply indirect pressure on Pakistan to curb the menace of terrorism. The country can also be seen as upholding its respect for human

rights. Simultaneously, Kasab's case can also demonstrate to the world that India has incontrovertible evidence that the Mumbai massacre was the handiwork of the Pakistan-based Lashkar-e-Taiba.

Neeta Lal is a widely published writer/commentator who contributes to many reputed national and international print and Internet publications.

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