

The “Anti-Nationals”

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VI. Attacks on Lawyers

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Lawyers who represent Muslims suspected of terrorism-related crimes operate in a climate of overt hostility. In the wake of the 2008 attacks, at least seven bar associations in four states issued official or unofficial resolutions instructing members not to represent terrorism suspects. They include the state bar association of Rajasthan, the local bar associations of Lucknow and Faizabad in the state of Uttar Pradesh, and Bhopal in the state of Madhya Pradesh. They also include the associations of Nagpur and Pune, as well as the prestigious Mumbai Metropolitan Magistrate Court Bar Association, all in Maharashtra state.^[224]

In December 2010, the Supreme Court criticized bar associations for passing resolutions forbidding the defense of certain persons, stating: “The action of any bar association in passing such a resolution that none of its members will appear for a particular accused, whether on the ground that he is a policeman or that he is a suspected terrorist, rapist, mass murderer ... is against all norms of the Constitution, the statute and professional ethics.”^[225]

Mumbai lawyer Shahid Azmi was among the few lawyers willing to defend terrorism suspects in Maharashtra. A witness to violent anti-Muslim riots as a teenager in 1992, Azmi was arrested after joining a Kashmiri militant group and was sentenced to five years in prison. In June 2009 he told Human Rights Watch that his experience with the justice system and those of many others he met while in prison—all convicted under the



abusive and now-defunct Terrorist and Disruptive Activities (Prevention) Act—inspired him to defend persons charged with acts of terrorism.[\[226\]](#)

Azmi was defending several of the 2008 terrorism suspects, including an Indian national charged in connection with the Mumbai attack, when he was killed in February 2010.[\[227\]](#) Three gunmen posing as prospective clients entered his office one evening and shot five rounds at him from point-blank range. Azmi told Human Rights Watch that he had been receiving threatening phone calls.[\[228\]](#) Three men were arrested and charged with Azmi’s murder.[\[229\]](#) Police subsequently said the gunmen were contract killers for a Hindu gang suspected of links to the killings of other Muslims and that Azmi was targeted because he had been defending two members of a rival Muslim gang.[\[230\]](#)

In other areas of the country, at least eight lawyers who defied bans on defending Muslim terrorism suspects were physically attacked by other lawyers affiliated with nationalist Hindu parties, threatened, or publicly insulted. In most cases, the authorities have taken little if any action against those responsible.[\[231\]](#)

In September 2010, the Pune Bar Association banned members from defending two Muslim men accused of involvement in the Pune attack seven months earlier. Bar association members also chanted slogans at one court hearing to protest the suspects’ right to counsel.[\[232\]](#) One lawyer, Sushil Mancharkar, resigned from the case after two dozen activists from the nationalist BJP demonstrated outside his home, demanding he step down.[\[233\]](#) Another lawyer, A. Rehman, said he was forced to resign as the state minority leader for the Nationalist Congress Party, which positions itself as a secular party, for refusing to remove himself from the case.[\[234\]](#)

While most of the IM suspects eventually obtained counsel, Indian human rights groups and defense attorneys told Human Rights Watch that the intimidation tactics have greatly reduced the pool of lawyers willing to defend Muslim terrorism suspects more generally. “Lawyers are reluctant to represent terrorist suspects,” said retired Gujarat High Court Judge Ramesh Mehta. “There is a kind of peer pressure to not defend them.”[\[235\]](#)

It is also clear that defending a terrorism suspect of any ethnicity is unpopular in India. Lawyers for the 11 Hindus charged in the Malegaon bombing of 2008 also alleged that they received death threats.[\[236\]](#)

Many bar associations qualified the bans by saying they only applied in cases with “incontrovertible evidence” of guilt—when the legal process itself is the mechanism for determining guilt, and where proceedings that violated a defendant’s right to counsel cannot fairly determine guilt.[\[237\]](#) To their credit, the Uttar Pradesh and Madhya Pradesh state bar councils denounced the bans. Even in those two states, however, at least three

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lawyers were assaulted in 2008 for defending terrorism suspects.

In Uttar Pradesh, veteran defense attorney Mohammad Shuaib of Lucknow alleged that Hindu lawyers repeatedly beat and harassed him inside courthouses in the cities of Faizabad, Barananki, and Lucknow—once so severely that he was sent to a hospital emergency room.[\[238\]](#)

Shuaib filed detailed complaints with local police and numerous other authorities. He said the desk office at the police station refused to accept his complaint, an FIR. The refusal of police to register lawyers’ complaints of mistreatment violates India’s Code of Criminal Procedure.[\[239\]](#) The police may decline to investigate claims made in an FIR if they are “not of a serious nature” or lack “sufficient ground” for investigating, but they have a documented record of abusing that right.[\[240\]](#) Numerous eyewitnesses, including law enforcement officials, could provide grounds for investigations into the refusal to issue FIRs.

Police also refused to accept an FIR from Lucknow attorney Zamal Ahmed, who alleged that on June 6, 2008, two lawyers in Faizabad, including the secretary of the Faizabad Bar Association, pushed him and threatened him with “dire consequences” if he did not withdraw as counsel for a Muslim terrorism suspect.[\[241\]](#)

In the state of Madhya Pradesh, lawyer Noor Mohammad said he was attacked on April 11, 2008, for defying a Dhar Bar Association ban on members defending terrorism suspects.[\[242\]](#) Police allegedly whisked Mohammad away in a van, but refused to release him until he signed a written statement that he did not wish to lodge an FIR and that he had not sustained any injuries.[\[243\]](#)

On October 14, 2008, the Human Rights Law Network, a Delhi-based nongovernmental organization, filed a plea with the Supreme Court of India calling on the court to initiate contempt proceedings against advocates who prevent terrorism suspects from receiving legal aid.[\[244\]](#) The court rejected the plea, stating that the lawyers were governed by the Bar Council of India alone and that the court did not have jurisdiction over the matter.[\[245\]](#)

Shuaib stopped pressing for action against his attackers. “Eventually the cases would have to go before the same courts that already have done nothing,” he told Human Rights Watch. “What would be the point?”[\[246\]](#)

Some lawyers under attack have said they did not even want to take the cases but did so simply to show that India is capable of upholding the rule of law even in circumstances of remarkable duress.

Threats against the Mumbai Gunman’s Defenders

Acknowledgements

After the attack on Mumbai in November 2008, the influential Mumbai Metropolitan Magistrate Court Bar Association issued an edict against any of its 1,000 members representing the sole suspect apprehended, Pakistani native Ajmal Kasab, or any Indians charged as accomplices.

Kasab is “not the same as other criminals arrested,” said Bar Association president Rohini Wagh. “His main aim was an attack on our city, our country.” Wagh justified the ban by noting the two-and-a-half day siege was among the most publicly documented attacks in history, with numerous eyewitnesses to Kasab’s actions. “There is no doubt about what he did,” Wagh argued. “The whole world was watching it [live on television] for 60 hours.” [\[247\]](#)

Following the Bar Association ban, only one of 17 eligible pro bono lawyers, Anjali Waghmare, volunteered to represent Kasab. On the night of Waghmare’s appointment on March 30, 2009, more than 200 people descended on her Mumbai home, throwing stones and shouting obscenities until she agreed to sign a note withdrawing from Kasab’s case. “What I am doing is following the court’s orders and the mandate of law. How can a mob decide whether it is right or wrong?” a visibly upset Waghmare said the next day. [\[248\]](#)

The judge presiding over Kasab’s trial gave Waghmare special protection and ordered an investigation into the incident that led to several arrests for contempt of court. As of this writing, however, none of the attackers had been prosecuted. At the judge’s urging, Waghmare also agreed to stay on the case but had to step down two weeks later because of an unrelated conflict of interest. Many of the protesters outside Waghmare’s house were members of the Hindu political party Shiv Sena. [\[249\]](#)

Some Islamic organizations and leaders condemned attorneys for representing Muslim terrorism suspects as well. Abbas Kazmi, a prominent Muslim attorney, was expelled as a trustee from a prominent Islamic athletic foundation two weeks after he agreed on April 16, 2009, to replace Waghmare as Kasab’s counsel. The Mumbai-based foundation, Islam Gymkhana, said it took the action because defending a terrorism suspect “is against the essence of Islam.” [\[250\]](#) Kazmi also said he received anonymous hate mail containing messages such as, “You should be hanged along with Kasab.” [\[251\]](#)

The judge removed Kazmi as Kasab’s lawyer in November 2009, several months into the trial, in a dispute over the witness list. The judge then appointed Kazmi’s junior to defend Kasab.

After he was forced to step down, Kazmi said prosecutor Ujjwal Nikam had publicly denigrated him during court proceedings, calling him “Abu Abbas”—the name of the Palestinian mastermind of the deadly 1985 hijacking of the cruise ship *Achille Lauro*—and “the terrorist’s lawyer.” [\[252\]](#) Nikam said he made the comments “in a lighter vein.” [\[253\]](#)

In July 2010, Kasab’s appellate lawyer, Amin Solkar, received a text message on his cellphone threatening “dire consequences” if he did not immediately withdraw from the case. State police authorities, to their credit, provided Solkar with a security

escort.^[254]

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[224] Local bar associations can be formed by lawyers appearing in various district or city courts and usually serve union functions.

[225] Satya Prakash, “Don’t refuse cases, Supreme Court tells lawyers,” *The Hindustan Times*, December 8, 2010, <http://www.hindustantimes.com/Don-t-refuse-cases-Supreme-Court-tells-lawyers/Article1-635762.aspx> (accessed December 22, 2010).

[226] Human Rights Watch interview with Shahid Azmi, Mumbai, June 25, 2009.

[227] “26/11 accused Faheem Ansari’s lawyer Shahid Azmi shot dead,” *The Times of India*, February 11, 2010 <http://timesofindia.indiatimes.com/india/26/11-accused-Fahim-Ansaris-lawyer-Shahid-Azmi-shot-dead/articleshow/5561910.cms> (accessed April 26, 2010). Azmi’s vigorous defense of the defendant in the Mumbai attacks was widely credited with resulting in that client’s acquittal in May 2010. See, for example, Mayura Janwalkar, “Terror suspect is free, thanks to Shahid Azmi,” *DNAIndia.com*, May 4, 2010, <http://www.dnaindia.com/dnaprint910.php?newsid=1378731> (accessed May 4, 2010).

[228] Human Rights Watch interview with Azmi, June 25, 2009.

[229] “Nikam appointed special prosecutor in lawyer Azmi’s murder case,” *The Times of India*, July 10, 2010, <http://timesofindia.indiatimes.com/city/mumbai/Nikam-appointed-special-prosecutor-in-lawyer-Azmis-murder-case/articleshow/6148007.cms> (accessed August 25, 2010).

[230] “Ex-Chhota Rajan aide Bharat Nepali got lawyer Azmi killed,” *Mumbai Mirror*, February 17, 2010, <http://www.mumbaimirror.com/index.aspx?page=article§id=15&contentid=20100217201002170349287132ee5e8a> (accessed May 4, 2010). Numerous Muslim activists, political observers, and lawyers, who spoke on condition of anonymity for fear of retaliation, told Human Rights Watch in email and telephone interviews that they suspected Azmi was killed for his successful defense of Muslim suspects in high-profile cases.

[231] Human Rights Watch compiled information on these attacks from interviews with attorneys who have represented Muslim terrorism suspects in India including Colin Gonsalves of the Human Rights Law Network, New Delhi, July 4,

2009, and Mohammad Shuaib, Lucknow, June 28, 2009, as well as from Indian media reports and from *Mohd. Shuaib v. Bar Council of India*, Writ Petition No. 494, filed October 14, 2008, before the Supreme Court of India, copy on file with Human Rights Watch.

[232] “Police remand of German bakery blast accused Himayat Baig extended,” *DNA India*, September 20, 2010, http://www.dnaindia.com/mumbai/report_police-remand-of-german-bakery-blast-accused-himayat-baig-extended_1440625 (accessed September 27, 2010).

[233] “BJP protests Pune lawyer’s move to defend terror accused,” Indo-Asian News Service, September 19, 2010, http://www.thaindian.com/newsportal/politics/bjp-protests-pune-lawyers-move-to-defend-terror-accused_100431014.html (accessed September 27, 2010).

[234] “German bakery blast advocate resigns from minority cell of Maharashtra NCP,” *DNA India*, September 23, 2010, http://www.dnaindia.com/mumbai/report_german-bakery-blast-advocate-resigns-from-minority-cell-of-maharashtra-ncp_1441830 (accessed September 27, 2010).

[235] Human Rights Watch interview with retired High Court Justice Ramesh Mehta, Ahmedabad, June 19, 2009.

[236] Human Rights Watch email exchange with defense attorney Ganesh Sovani, Mumbai, July 15, 2009. See also “Plot to kill Sadhvi Pragnya’s lawyers foiled: police,” *Thaindian News*, July 10, 2009,

http://www.thaindian.com/newsportal/uncategorized/plot-to-kill-sadhvi-pragnyas-lawyers-foiled-police_100216377.html#ixzz0WJrXbe79 (accessed August 1, 2009).

[237] “Madhya Pradesh lawyers pledge not to defend terrorists,” Indo-Asian News Service, September 24, 2008, http://www.thaindian.com/newsportal/world-news/madhya-pradesh-lawyers-pledge-not-to-defend-terrorists_10099467.html (accessed September 11, 2009).

[238] Human Rights Watch interview with Shuaib, Lucknow, June 28, 2009. Human Rights Watch also obtained information in his case from *Mohd. Shuaib v. Bar Council of India*, and Indian newspaper reports.

[239] A First Information Report (FIR) is a criminal complaint that police either file against a suspect as a result of their own investigation or on behalf of a complainant. When filing an FIR on behalf of a complainant, police are required to register the FIR of the reported offense, read it to the informant and have it signed, and to provide a copy to the informant at no cost under India’s Code of Criminal Procedure, secs. 154–156, <http://www.vakilno1.com/bareacts/CrPc/Criminal-Procedure-Code-1973.htm>. As recently as 2008, the Indian Supreme Court noted police unwillingness to register FIRs without pressure from higher authorities: See *Lalita Kumari v. Gov’t of UP and Orissa*, Writ Pet. (CRL.)

No. 68, decided July 14, 2008.

[240] Code of Criminal Procedure, secs. 154, 157, 173, <http://www.vakilno1.com/bareacts/CrPc/Criminal-Procedure-Code-1973.htm>. As recently as 2008, the Indian Supreme Court noted police unwillingness to register FIRs without pressure from higher authorities: See *Lalita Kumari v. Gov't of UP and Orissa*, Writ Pet. (CRL.) No. 68, decided July 14, 2008.

[241] Mohd. Shuaib v. Bar Council of India.

[242] Kashif-ul-Huda and Mumtaz Alam Falahi, “Bar association expels lawyers representing terror suspects,” *The Muslim News*, August 19, 2008. <http://www.muslimnews.co.uk/news/news.php?article=14719> (accessed September 17, 2009).

[243] Mohd. Shuaib v. Bar Council of India.

[244] *Ibid.*

[245] “Can't direct contempt proceedings against lawyers, says SC,” *The Times of India*, November 8, 2008, http://timesofindia.indiatimes.com/Cant_direct_contempt_proceedings_against_lawyers_says_SC_/articleshow/3687607.cms (accessed September 17, 2009).

[246] Human Rights Watch interview with Shuaib, June 28, 2008.

[247] “Lawyers Group Refuses to Defend Mumbai Suspects,” *Breaking News.ie*, December 10, 2008, <http://breakingnews.ie/world/lawyers-group-refuses-to-defend-mumbai-suspects-389928.html> (accessed July 23, 2010).

[248] “Shaken Kasab lawyer seeks time for rethink,” *The Times of India*, April 1, 2009, <http://timesofindia.indiatimes.com/Mumbai/Shaken-Kasab-lawyer-seeks-time-for-rethink/articleshow/4341541.cms> (accessed July 23, 2010).

[249] *Ibid.*

[250] “Qasab's lawyer removed as Gymkhana trustee,” *Indian Express*, May 1, 2009, <http://www.indianexpress.com/news/kasabs-lawyer-removed-from-islam-gymkhana/453443/> (accessed June 26, 2009); Human Rights Watch Interview with Abbas Kazmi, Mumbai, June 26, 2009.

[251] Human Rights Watch interview with Kazmi, June 26, 2009.

[252]“Kazmi Cries Foul,” *Indian Express*, December 1, 2009, <http://www.indianexpress.com/news/kazmi-cries-foul-says-nikam-humiliated-him-during-26-11-trial/548541/> (accessed December 7, 2009).

[253] “Kasab has realised the inevitability of his fate,” *Rediffnews.com*, April 9, 2010, <http://news.rediff.com/interview/2010/apr/09/interview-with-26-11-prosecutor-ujjwal-nikam.htm> (accessed April 10, 2010).

[254] Human Rights Watch telephone interview with Amin Solkar, Mumbai, July 15, 2010. Copy of the SMS on file with Human Rights Watch.

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