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CO09041 | The Mumbai Kasab deserve a free a

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Commentary

The trial of Ajmal Amir Kasab, the lone terrorist captured alive attacks, has begun after a series of delays that stemmed from a fair trial.

THE TRIAL of Ajmal Amir Kasab, the lone surviving terrorist in Mumbai in India, has become embroiled in a series of controversy. Since his capture, there has been a nation-wide debate as to whether Kasab should be tried in India or Pakistan. The lawyers willing to defend Kasab, including the Indian government, have faced much anger, protest, and even intimidation from the members of the public.

However, such emotional outbursts should not be stretched to the limit. India must ensure that Kasab gets a free and fair trial. The trial should be conducted with transparency, which will uphold the highest traditions of justice. India gets the opportunity to vindicate its claim of involvement in the Mumbai attacks.

No trial for Kasab

In November 2008, ten militants attacked several targets in Mumbai and killed 185 people, including 26 foreigners. Kasab, being the only surviving militant, became an integral clue in the investigation of the attacks. His testimony reports, outlined the involvement of militant group Lashkar-e-Tehrik in the planning and execution of the attacks.

Claiming that he is a Pakistani citizen, Kasab requested the Indian government to provide legal aid, a request that was not accepted. Under the laws of both countries, if the accused is unable to procure a legal counsel or

an advocate to represent him. During the remand proceedings represent Kasab. Fearing public protest and outcry, Dinesh Mehta of losing his licence to practice.

In December 2008, when advocate Mukesh Deshmukh offered Shiv Sena – a Hindu rightwing organisation- attacked his residence Waghmare, the court-appointed advocate was also similarly in due to a potential conflict of interest, the court then appointed . Although the trial has now begun, emotions continue to run high and disruptions.

Unlike in previous incidents, the November 2008 attacks in Mumbai anger all over India. The modus operandi involving a 60-hour trial was traumatised, fuelled anger and hatred towards the perpetrator Kasab shooting indiscriminately at the railway terminal. Some felt it was far too heinous to deserve a fair trial and that he should in

Right to Defence

Although the anger and hatred towards Kasab is understandable, India has a functional judicial system in place, and it is expected that the administration of justice. Under Article 22 (1) of the Indian Constitution, a person can be detained in custody without being informed of the grounds of detention and the right to consult and be defended by a legal practitioner. This provision is supported by a legal aid scheme.

Article 22 (3) of the Constitution says that clause 1 of the article applies to "citizens". Opponents of Kasab's trial, therefore, argue that he does not merit a systematic trial. However, as India and Pakistan were not at war, Kasab cannot be classified as an "enemy alien". Moreover, Article 21 of the Constitution guarantees the right to life and personal liberty even to "non-citizens".

Miscarriage of Justice

In a democratic country with an independent judiciary, denial of a fair trial would result in miscarriage of justice. The militants who attacked Mumbai are not the victims. This does not mean that the victimised country and its institutions are to be decriminalised which is what a denial of due process would mean. It must be established that the serious offence that Kasab is accused of, but the establishment of internationally-accepted principles of natural justice.

The protestors also miss the point that it is absolutely necessary to ensure that in the absence of defence, the trial of the criminal would be one-sided. As pointed out by the Chief Justice of the Supreme Court of India, if the trial is held without defence, then the entire justice delivery system would be vitiated. This could be contested an adverse verdict on grounds of inadequate legal representation by the higher courts on that ground.

Vindicating Cross-border Implications

The "evidences" that the Indian investigators have obtained from

charges against him, but also of India's claims of involvement (Perhaps for the first time, New Delhi has the opportunity to sue terrorist attacks. Even though India has provided documents evidence citizens in the attacks, there is still an air of palpable deniability trial is not seen to be fair, it would enable the skeptics to reinforce is nothing but India's smear campaign against Pakistan.

Kasab's statements, recorded by the investigators, need to pass acceptable. Already, there are indications that Kasab is likely to these were obtained under duress. It is now left to the court to statements. That is possible only when due process is observed subvert justice and undermine India's diplomatic offensive against

About the Authors

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