

# India: Supreme Court judge advocates “animal rights” for alleged terrorists

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The third most senior judge on India’s Supreme Court has bluntly said in a public forum that alleged terrorists should be denied “human rights.” Instead terror suspects should be treated like animals. “What is required are animal rights,” declared Supreme Court Justice Arijit Pasayat.

Pasayat’s remarks were by no means off the cuff. They were made at a January 27 seminar organized by the Indian Law Institute to discuss “Investigation and Prosecution of Offences relating to Terrorism.”

They were a clarion call for India’s politicians to go even further than they did in a series of sweeping anti-terrorist laws that were passed virtually without debate following the late November terrorist atrocity in Mumbai. Under these laws, terror suspects can be held without charge for up to 180 days, the presumption of innocence is set aside for some offences, and special terror courts have been established from which the press and public can be excluded. The state has adopted a veritable catch-all definition of terrorism that could be invoked to justify the suppression of all manner of anti-government agitations.

“It is important,” Pasayat told the Law Institute seminar, “to have special laws to deal with terrorists and we need to give enough time to our investigators and prosecutors to prepare the case with strong evidence.”

While Pasayat, for obvious reasons, did not say so, his remarks were also clearly meant as a rebuttal of the views of India’s chief justice, K.G. Balakrishnan.

Speaking at a meeting of international jurists in December, Balakrishnan had simply restated elementary democratic judicial principles, including that all individuals “irrespective of how heinous their crimes may be” are entitled to a “fair trial.” “Adherence to the constitutional principle of ‘substantive due process’ is,” said Balakrishnan, “an essential part of our collective response to

terrorism.”

In an argument remarkable for its vulgarity and for its frank repudiation of core bourgeois democratic judicial principles, Pasayat denounced those who show concern for the rights of terror suspects. He deplored “how human rights activists carry out protests and hold *dharnas* (a form of sit-in that may involve fasting) if rights of terror suspects are violated.”

This, it must be emphasized, is in a country where the security forces—as Indian and international human rights organizations have documented in thousands of cases—routinely use torture, summary executions, disappearances and judicial frame-ups to combat armed opponents of the Indian state, be they Islamicists, Naxhalites (Maoist guerillas), or ethno-nationalist separatists.

“We speak of upholding human rights,” continued Pasayat. “What we are worried [about] is the violation of the rights of terrorists, the people who kill innocent people with AK-47s and AK-56s on streets. He (a terrorist) is not fit to be called a human. He’s an animal, so what is required is animal rights.”

There is more than a whiff of fascism in Pasayat’s views, and not just in his cavalier denunciations of those who stand up for the human rights of the accused and his call for terror suspects to be treated like animals.

The third longest-serving judge on India’s supreme court is, as Pasayat’s remarks attest, oblivious to the seminal distinction that is at the root of India’s judicial system—the distinction between an accused and a person whom the state has proven guilty of a crime through a trial, in which the accused is able to question his accusers and challenge the evidence against him. For Pasayat a “terror suspect” is already a terrorist who should be denied even the limited rights and protections accorded convicted criminals.

Pasayat did not say what he meant by “animal rights,” but they are clearly code words for torture or worse. Given his stature in the Indian judicial system, they are an open incitement for the police to abuse, even kill, terrorist suspects.

In this regard, it is important to note that the Hindu supremacist Bharatiya Janata Party and its allies have long demanded that confessions made to police—as opposed to those given in open court—be admissible as evidence. So shameful is the record of the Indian police and security forces in respect to the use of torture in obtaining evidence that even the Congress Party-led government has thus far felt compelled to resist this demand.

The significance of Pasayat’s remarks is underscored by the reaction to them.

At the seminar itself, his views were echoed by several other prominent participants, including senior advocate Fali S. Nariman and the second highest law officer in the land, the solicitor-general of India, G.E. Vahanvati.

Nariman suggested the government has been “pussy footing on terrorism,” because, unlike the public, the “Home Minister and Law Minister are protected from terrorist offences.” He said terror suspects should be stripped of the “right of silence,” that is, the right to refuse to answer questions posed by the police or in a court of law, without any inference of guilt being drawn by this refusal.

Solicitor-General of India Vahanvati said that terrorism could not be fought “by conventional methods”—i.e., civil liberties and longstanding judicial principles must be suspended or set aside: “It is time to show we also know how to fight and not just bark.”

India’s solicitor-general challenged Chief Justice Balakrishnan’s view that under Indian law Mohammed Ajmal Amir Kasab, the lone gunman to survive the Mumbai terrorist attack, must be provided with proper legal representation.

“If a lawyer does not want to fight for Kasab,” said Vahanvati, “we should not force him or her to do so. Let Kasab defend himself before the court, if he can speak another language other than terrorism.”

Since his arrest, the 21-year-old Kasab has been the object of a lynch-mob mentality whipped up by India’s ruling elite with the aim of furthering India’s longstanding geo-political rivalry with Pakistan, justifying the passage of laws that vastly increase the repressive powers of the state, and otherwise shifting Indian politics sharply to the right.

It is a core democratic principle that all accused, innocent or guilty—indeed, especially the guilty—merit a proper legal defence, so as to ensure that they are not abused by the state. But the outrage over the Mumbai atrocity is being used to stampede the public into accepting the setting aside of this and other basic rights.

With the active support of various bar associations, India’s legal profession has treated Kasab like a leper. All those who have been approached to undertake his legal defence have refused.

And the authorities have encouraged this attitude, although as Balakrishnan has warned, given the stipulations of India’s constitution and previous Supreme Court rulings guaranteeing legal aid and establishing basic norms of a fair trial, it will be impossible from a procedural standpoint to proceed with the legal case against Kasab unless he is able to exercise his right to have a lawyer defend him.

Revealing as was the reaction of Pasayat’s fellow seminar participants, even more significant has been the absence of any serious criticism, let alone outcry, against his noxious views from within the legal profession or from India’s political establishment. In fact, Pasayat’s remarks have elicited virtually no comment, a silence that bespeaks support.

The failure to oppose Pasayat’s patently antidemocratic views demonstrates that there is no genuine constituency within the Indian ruling class for key democratic and legal-judicial principles, including the presumption of innocence and the right to a fair trial.

It needs to be added that in recent years the Supreme Court has served as a major instrument in the bourgeoisie’s drive to transform India into a cheap-labor producer for world capitalism, a program that has resulted in increasing social inequality, economic insecurity and poverty. The Court has declared that public sectors workers have no right to strike, outlawed political strikes, asserted the power to ban commentary critical of government decisions (the *Clemenceau* case), and issued a series of decisions expanding managerial prerogatives.

The working class must take heed: while the bourgeoisie likes to proclaim India the “world’s largest democracy,” it is increasingly indifferent and hostile to democratic rights and is turning to authoritarian forms of rule.



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