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Cases of Headley & Rana: What Next?

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The Ministry of Home Affairs of the Government of India has been less than honest with the public by trying to convey an impression that it will continue to try for the extradition of David Coieman Headley of the Chicago cell of the Lashkar-e-Toiba (LET), who has been sentenced to 35 years in prison by a Chicago court for his co-operation with the LET of Pakistan and the Inter-Services Intelligence (ISI) in the planning and execution of the 26/11 terrorist strikes in Mumbai and his role in the abandoned plans of the LET to blow up the office of a Danish paper which had published caricatures of the Holy Prophet.

2. His extradition is legally out of question since as part of the plea bargain entered into with him, the USA's Federal Bureau of Investigation (FBI) has made a commitment to him that he will not be extradited to India. Moreover, since he has been convicted by the US court for his role in the 26/11 strikes, the bar of double jeopardy will come in the way of his being tried in India. This prohibits the conviction of a person twice for the same offence.

3. When the FBI originally informed the court of the plea bargain, I had written that before the plea bargain is accepted by the court, the Government of India and the relatives of the victims of the 26/11 strikes should oppose its acceptance since its acceptance would preclude the death sentence and extradition. No action was taken by the Government of India and the relatives. His plea bargain was accepted by the court and he has now been convicted under it.

4. The MHA must have the honesty to admit that as a result of its bad handling of the case, the extradition door has been closed for ever. But an option of limited utility still remains open. As part of the plea bargain, Headley has made a commitment to the FBI to continue to co-operate with it and with the agencies of other countries having liaison with the FBI in any future investigation. Under this, a team of our

National Investigation Agency (NIA) can still visit the US and question Headley in judicial custody in the presence of the FBI. However, it is doubtful whether anything useful would come out of this exercise, but we may still try it to find out about his network in India.

5. In my reading, the extradition door is still open in the case of Tahawur Hussain Rana, Headley's Chicago-based accomplice. Intriguingly, the FBI did not consider it necessary to enter into a plea bargain with him. Only one logical explanation is possible for the FBI's double standards in the case of Headley and Rana. The FBI wanted to protect Headley from independent Indian interrogation because he was an agent of the Drug Enforcement Agency. Rana was apparently not an agent of the Agency. The FBI, therefore, did not feel the need to protect him through a plea bargain.

6. Moreover, even though there is considerable evidence regarding Rana's assistance to Headley and his prior knowledge of the Mumbai terrorist strikes, he has been convicted by the Chicago court only for his role in the Copenhagen case and not in the Mumbai case. The bar of double jeopardy may not apply in his case.

7. From the moment Rana was arrested, I have been pointing out that while extradition may be difficult in the case of Headley, it may not be difficult in the case of Rana and that we should press for it in order to collect details of the Headley-Rana network in India. Again intriguingly, this option has till now not been vigorously pursued by the NIA, which works under the MHA. At least now, we should try for his extradition.

8. There were definite sins of commission and omission by the FBI which came in the way of the prevention of the 26/11 strikes in Mumbai. Firstly, the FBI was aware that David Coleman Headley had originally an American passport under the name Daood Gilani. Before he started frequently travelling to Pakistan and India, he obtained a new US passport under the name David Coleman Headley. In India, when a person obtains a new passport under a different name, we make an endorsement in his new passport that he previously used to travel with another passport under the name----. Many other countries follow this security precaution. Surprisingly, the FBI did not make any such endorsement. As a result, the Indian Consulate in Chicago, which issued a multiple-entry visa to Headley, was not aware that he previously used to travel as Gilani. After the strikes, we became aware of the various travels of Headley to India as Headley. Are we aware of the travels that he might have made to India as Gilani before he changed his name?

9. Secondly, the FBI was aware that during his travels to Pakistan for the Drug Enforcement Agency, Headley had also been visiting India and going back to Pakistan. He had even visited India once after the strikes. The FBI did not alert India even once before the strikes. It was apparently afraid that if it informed the Indian agencies, they may detain and question him thereby exposing his being an agent of the Drug Enforcement Agency. It chose to keep quiet.

10. Thirdly, immediately after the 26/11 strikes, the "Hindustan Times" had carried a report by Vir Sanghvi, citing an unnamed high-level officer of the R&AW as saying that the CIA had twice alerted the R&AW that the LET was planning a sea-borne terrorist strike in Mumbai and that the R&AW had conveyed the information to the IB. Wherefrom did the CIA get this information, which proved to be correct? Was it

from Headley or from one of CIA's sources in Pakistan or from technical intelligence of the USA's National Security Agency? No Indian journalist or analyst has gone deeper into this.

11. There have been serious sins of commission and omission by the Indian intelligence too. The processing of Headley's case for a multiple-entry visa was handled by the Indian Consulate in Chicago in an unsatisfactory manner.

12. Headley was frequently coming to India from Pakistan and going back to Pakistan with the help of the multi-entry visa. Not once did our immigration question him about his frequent visits to Pakistan and keep him under surveillance in India. Even after we became aware of his frequent travels to India after the 26/11 terrorist strikes, we have not made thorough enquiries about his network in India.

13. In 1988, a source of the US Federal Aviation Agency (FAA) had reported that a Palestinian terrorist group was planning to blow up a US flight to Europe around Christmas. The FAA alerted the CIA, the FBI and the US diplomatic missions in Europe, but did not alert the US public of the likely danger of a terrorist strike against a US flight to Europe.

14. A flight of Pan Am was blown up off Lockerbie in Scotland killing all the passengers. The US media reported about the prior intelligence that was available to the US intelligence agencies which was not shared with the public. Some relatives of the victims took the US Government to court. It was from then that the practice of issuing an advisory about likely terrorist strikes started.

15. As reported by Vir Sanghvi, the CIA was aware of the LET's plans for a sea-borne terrorist strike in Mumbai. Yet, the State Department did not issue an advisory to the US citizens intending to travel to India about the dangers of a strike in Mumbai. If it had gone public with the warning, that itself might have acted as a deterrent on the LET.

16. We still do not have a completely satisfactory reconstruction of the strikes and the roles of Headley and Rana. It is important for the relatives of the Indian, American, Israeli and other foreign victims to take the matter up before courts in India and the US in order to force the two Governments to come out with the truth.

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