

Who was behind 13 Dec 2001? Dont make Afzal Guru a Scapegoat

Sunday 19 November 2006, by [Collective / Multiple signers](#), [DUBE Mukul](#), [GANGULY Meenakshi](#), [SRI RAMAN J., SRIVASTAVA Aseem](#) (Date first published: 19 November 2006).

Enquire into who was behind the 2001 attack on the Indian Parliament, that nearly provoked war between India and Pakistan - Dont make Afzal Guru a Scapegoat.

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1) Letter to the president.

its at:

<http://www.petitiononline.com/ekta1/petition.html>

2) Letter to Indian National Human Rights Commission. Reproduced below.

We are asking a select group of invited Indian and international personalities to sign the letters. Both the letters will be handed in personally in New Delhi. Would you please consider signing both the letters? [send your signatures to: admin.justiceforafzalguru.org]

Letter to NHRC:

November 12, 2006

Hon'ble Dr. Justice A.S. Anand

Chairperson, National Human Rights Commission,

Faridkot House,

Copernicus Marg,

New Delhi 110001

Dear Sir,

We are writing to request you to take action according to your constitutional powers in the case of Mohammad Afzal Guru of Sopore, Kashmir, to prevent a serious miscarriage of justice. Mr. Guru was sentenced to death in the Parliament attack case by the trial court on 18 December 2002 and this sentence was upheld through appeals in the Delhi High Court and the Supreme Court. Mr. Guru has appealed to the President of India for clemency and is currently awaiting a decision. It is clear that the trial process was flawed and highly unfair, for the following reasons.

1. Mr. Guru was not provided a lawyer at the crucial trial stage.

2. The Special Cell of the Delhi Police, which was placed in charge of investigating the case, used the media to brand Mr. Guru as guilty even before the trial. He was produced before the media and forced to "confess". Subsequent statements by a media person present at the event that Mr. Guru appeared to be in a highly disturbed frame of mind were ignored by the courts. The media trial, which included a film broadcast on Zee TV, previewed and approved by the then Prime Minister, was clearly a factor in prejudicing the outcome of the trial.

3. The confession made by Mr. Guru to the police while in custody was under duress. Mr. Guru was tortured and his family were threatened. When he was produced before a magistrate, Mr. Guru retracted his confession, yet the evidence therein was used as the basis for his conviction and sentencing.

4. The Delhi High Court acknowledged that the investigating agency fabricated evidence against the accused, yet upheld the verdict.

5. The Supreme Court rejected Mr. Guru's confession on account of the procedural irregularities in obtaining it, yet upheld the death sentence based on nothing more than inadequate circumstantial evidence.

Mr. Guru's trial does not meet international standards for a fair trial: he was denied due process, legal counsel and the presumption of innocent until proven guilty. These violate articles 7, 10, 14, and 17 of the International Covenant on Civil and Political Rights. India signed and ratified the International Convention on Civil and Political Rights in 1979 and is obliged to protect the rights guaranteed therein.

It is also pertinent that under international human rights standards people charged with crimes punishable by death are entitled to the observance of strictest fair trial guarantees in view of the irreversible and extreme nature of the penalty. Carrying out the death penalty upon conclusion of a trial in which the provisions of International Covenant on Civil and Political Rights have not been respected, which can no longer be remedied by appeal, would be a serious reflection on the Indian judicial system.

All of these circumstances point to the need for a new trial for Mr. Guru, in order that justice may be done. We urge you to exercise your mandate to protect human rights and the rule of law, to obtain a new trial for Mr. Guru. Further, in light of the disclosures of fabricated evidence by the investigation agency which have been clearly acknowledged by the higher courts, and of the manner in which Mr. Guru was tortured and manipulated by the Special Task Force, we also urge you to ask for a judicial enquiry to find out the real truths behind the attack on the Indian Parliament.

Sincerely,

The undersigned

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www.sacw.net | 16 November 2006

<http://www.sacw.net/hrights/aseem16Nov06.html>

We must leave alone what is not in our power to change

THE DEATH SENTENCE FOR MOHAMMED AFZAL GURU AND THE FUTURE OF BARBARISM

by Aseem Srivastava

"The vision of justice is God's delight alone."

Artur Rimbaud

"It is not the eternal in man that kills. It is not the eternal in man that dies."

The Upanishads

Our moral exhaustion today

A soldier, in fidelity to the orders of his commander, the peer pressure of his fighting mates, and the despairing heat of the moment, shoots down innocents. The realization hits soon enough, and yet too late. Because, on impulse, he is led to carry out further atrocities, as if they would absolve him of his first crime. This happens all too often in wars, though such facts - lined as they are with psychological subtleties - are not easy to record.

When you are "programmed to kill" and the efficient weaponry to implement orders is at hand, killing becomes a self-perpetuating affair. Once the thick first line is crossed the ones that follow are too thin and invisible to meet the eye of conscience. Only the other side can perceive the horror and feel the pain and trauma. And, often, seek revenge.

What does one say? What does one do? So often nowadays it appears that we quickly reach the point where there is little left to say, almost nothing that can be done, plenty to undo and, most ominous of all, the lurking risk of further wrongs piling up, of hell getting ever more

hellish and of the world moving further down the precipitous slope of barbarism from the tragic to the farcical. There may have been times and places in the human past when violence might actually have meant something. Howsoever things may have stood in the past, what is on offer today is mostly a nihilistic spectacle of the absurd, a cowardly martial routine which only awakens our conscience when we ourselves or one of our own are the aggrieved party.

Every child knows that two wrongs don't make a right. But every adult seems to forget it. Revenge is not the same as justice, no matter that some jurists and moral philosophers have lavished plenty of ink on tomes about retributive justice. However, only the other day, the Dalai Lama told Japanese reporters "the death penalty is said to fulfil a preventive function, yet it is clearly a form of revenge." "However horrible an act a person may have committed, everyone has the potential to improve and correct himself", he said.

Revenge has no future - because it thinks of none. It is driven by the past and appears to be innocent of the savage demands that a wounded conscience may impose later on. In fact, in the shadow of revenge, justifications or even further wrongs must almost inevitably follow, precisely to deceive oneself, above all, about the absence of the commands of conscience, and of the prior wrongness of one's deeds.

Can we escape moral illusions?

The moral fantasies that so many of us live - and what is more important for us than to persist in maintaining our moral appearances! - become necessary illusions for our day-to-day survival, indispensable parts of the psychological kit of our hardened capacity to live with ourselves. Short of an unlikely collective expiation on all sides, there is no reprieve from this unacknowledged nightmare. Hypocrisy is inevitable and becomes, as Oscar Wilde was led to remark, "the debt that vice pays to virtue."

Perhaps, as some philosophers have pointed out, therein lies hope: that we must be, in some ultimate remote corner of our lost hearts, after all, good by nature. Otherwise it is a bit difficult to understand the trouble that we take

to not merely appear good before others, but to want to feel good about ourselves even in the privacy of our souls, after having done some wrong or having been complicit in one. Our misdeeds trouble us in some mysterious spot of the soul, hence the need to justify and, if at all possible, overlook or forget. Call it preferred "blindsight" if you will.

It is no easy task to be a good human being. Strange that we seem to so readily take it as an article of faith that we are, by definition, and by the mere virtue of our existence, good. The corollary that others are, *pari passu*, evil, almost follows as a moral reflex that preserves our deluded self-image, justifying our own evil through the logic of moral sloth and practical convenience. Thus, unsurprisingly, history knows more blood to have been shed in the name of the good than for evil. Moral self-righteousness is a lot harder for us to recognize in ourselves and uproot than is plain self-interest.

The hard thing is to know oneself to be morally imperfect and to abide the sight of one's imperfection without succumbing to the tempting impulse to "run away" from one's past by actually repeating the misdeeds, thereby perpetuating the "rightness" of one's actions in one's moral self-image. Human beings appear to find it very difficult to neither justify nor condemn their misdeeds. Memory and habit are the devil's accomplices here. Moral reasoning - and the faith and patience that command it - are so easily enfeebled by that devastating logic of the heart which seeks to wash one's wrongdoings in a cleansing ritual of lies, illusions and self-deceit, even shedding further blood if necessary and contributing all along to the social edifice of mendacity.

A forgotten story, worth recalling

Setting aside the terrible memories of the past, and the nasty realities of the present, there is an urgent need today to rediscover the liberating power of forgiveness and the merits of mercy. One shining - and rarely remembered - example of this is provided by South Africa under Nelson Mandela's leadership in the mid-1990s. As long as the wrongdoers from the Apartheid era were willing to publicly and candidly confess their

crimes, they were offered amnesty by the Truth and Reconciliation Commission. This was not a perfect solution to a problem of breathtaking moral complexity. At the hands of the White Apartheid regime, Blacks in South Africa had suffered over decades and centuries every inhumanity and humiliation imaginable - from judicial torture, murder and rape to bloody massacres. Many, such as Steve Biko's family, felt betrayed by the general amnesty offered to so many of the killers and rapists. Apologies from many privileged white families, such as De Klerk's were qualified. Others, such as P.W.Botha, did not even go that far. All this had predictable ripples on the other side.

However, Mandela's rejection of retributive justice was emphatic and his setting aside of bitterness was an unparalleled act of mature statesmanship, seen rarely in history. It saved humanity from what would have been a certain and unforgettable bloodbath. Given how hard it is for justice to be done once vengeful atrocities of this scale are unleashed, and how tempting it must have been to allow them to take place (witness Mugabe) Mandela's was an act of astonishing moral foresight.

A permanent paradox

If you kill one man or woman you are a murderer. If you do so again, you are a murderer twice over. You kill 10 and you are a serial killer. For all these crimes the law lays down due punishments. But if you are responsible for the killing of a thousand or a million people the crime is rarely acknowledged, let alone punished. (Notice the reluctance in Turkey to allow discussion of the Armenian genocide or in the US of the genocide of native populations.) It appears that somewhere between the number of 10 and a thousand, murder mutates into a moral imperative. States are often founded on the bloodshed. The rule of law is thenceforth established and all that lies behind and beneath is forgotten - without any public confessions or reconciliation with the wounded. Little wonder that history repeats itself with disturbing regularity.

Mandela's searing insight was to recognize the futility of revenge for historical injustices on

a national scale. Humanity is able to punish only the small and petty crimes. The truly big ones elude our moral eye and, given our frequent penchant for the pragmatic - of sharing in the spoils of war, conquest and great injustice - ever so often become the basis of states and societies that are seen to be, ironically, legitimate.

Mandela's actions demonstrated humanity's utter helplessness in the matter of delivering precise justice in matters that truly matter. Where even the best of men have humbly accepted the limits to the justice they can offer, lesser men ought not to try. There is a lesson here for all those states and governments and terror outfits so keen to teach the other side a lesson.

"You never teach life anything", Gabriel Garcia Marquez has written. Punishment only hardens criminals and has never stopped new ones from undertaking similar ventures in the future. As has been noted by some philosophers, that evil exists in the world is undeniable. But that the existence of evil is itself an evil can be disputed. Further, that it is possible to eliminate evil from the world - without oneself staring into the same darkness - is a lethal illusion that has led us to our present global predicament. If we continue to take moral shelter in the alleged crimes of others, almost instinctively overlooking our own, we will only continue to delude ourselves about our own putative goodness and in the end there will be no shelter from facts.

There is still time

All this is far from irrelevant to Afzal Guru's death sentence by the Indian judiciary. As has been pointed out by some commentators, there are many directions in which the circumstantial evidence points that have not been investigated at all, not to mention the repeated provocations and assault on human rights for which Indian military and paramilitary forces in Kashmir are responsible. Under such conditions, to carry out the sentence would be an act of ignorant haste with predictable repercussions in Kashmir. Even if Afzal's guilt is established, the Indian state must find the maturity to learn from countries like South Africa - which abolished capital

punishment 11 years ago - rather than the US, where so many states, including Texas, send criminals to the gallows every year.

The use of force is in fashion today. We have become too morally lazy to think before we act - especially when we wield power. States and governments so easily forget the imitative repercussions that their organized, visible and "legitimate" violence has on those restless, disgruntled or aggrieved groups who might be keen to resort to violence to resolve human conflicts. When killing is used - often in deep ignorance of facts, thus even more unjustly - by the state, it legitimizes the use of violence in the administration of justice. Terror groups then do not have to restrain themselves and exercise their moral imagination to find peaceful approaches to their grievances. They take the law into their own hands. They are only too happy to put their fingers even closer to the trigger. Recent observations from the experience of the US in Iraq, of Israel in Palestine and Lebanon, of the Indian state itself in Kashmir come readily to mind.

The methods of Gandhi, Martin Luther King, and Nelson Mandela evoke interest even today precisely because they provoked ethical thought by the dignity and efficacy of the actions that they carried out and inspired. If the movements they represented used excessive violence they would not only have been readily suppressed by their much more powerful enemies, but also been forgotten by now. The secret of their success was their principled eschewal of the methods of the powerful.

Mandela opened the door to a moral and spiritual universe whose existence was not even suspected. It shows us that there is indeed a vision which transcends human conflicts and which helps us accept with fortitude and grace the ineradicable facts of the past. It sets human life as it is outwardly lived on this planet in its proper - puny - perspective. It humbles us into recognition of our own moral limits. What we cannot cure we must endure. We cannot pretend to know all there might be to know about the matter of good and evil. Our knowledge is limited, our ignorance infinite. Hence public remembrance and

forgiveness may be our best bet for living peaceful, even satisfying, lives.

Mandela is reported to have said "for all people who have found themselves in the position of being in jail and trying to transform society, forgiveness is natural because you have no time to be retaliative." He also said "one of the most difficult things is not to change society - but to change yourself." Mercy alone liberates us from the shackles of revenge and false justice.

Indian leaders ought to regard this truth in their deliberations over the fate of Mohammed Afzal Guru.

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<http://www.sacw.net/hrights/mukulD16Nov06.html>

November 15, 2006

TAKING A BLUNDERBUSS TO A MOUSE:
SOME OBSERVATIONS ON THE MOHD. AFZAL CASE

by Mukul Dube

[This article in Mainstream and on Counterpunch on 11 November 2006.]

According to the formula, the death penalty is awarded only in the "rarest of rare" cases. There must be something about the crime or the criminal which causes the judge to decide that the penalty of imprisonment for life will be insufficient. The crime must be grave or heinous enough to warrant the extreme penalty, or else the criminal must be considered entirely without hope of redemption.

Criminal. It goes without saying that the person sentenced to death must have been shown conclusively to have committed whatever was the crime. It goes without saying that that person's guilt must have been established, to quote

another formula, "beyond the shadow of a doubt."

Was Mohd. Afzal's guilt in the "Parliament attack case" established in this conclusive way? Here I shall look only at the fact that the judgment states that his guilt was established on the basis of circumstantial evidence.

By its very nature, circumstantial evidence is a weak form of evidence. It involves the putting together of two and two and does not depend on the sensory perceptions of any person. Circumstantial evidence says not "he did it" but "in view of this, this, and this, I think he must have done it." It can be called deduction, it can be called conjecture, it can be called jumping to a conclusion. Certainly it is not based on something seen, heard, smelt, touched or tasted.

In a lay person, the juxtaposition of a supposed crime deemed to be of the "rarest of rare" kind and an inherently weak form of evidence causes perplexity and unease. It makes one think of stud bulls running around a racing track meant for greyhounds, or of a 5 lb. hammer used in driving home a screw with a Phillips head.

There are those among Christians who hold that the principle of lex talion ("an eye for an eye") was divinely ordained. However, this principle, which was long ago abandoned by most civilised societies, demands the strictest proof, as we see. "On the evidence of two witnesses or of three witnesses he that is to die shall be put to death; a person shall not be put to death on the evidence of one witness..." (Deuteronomy 17:6,7). And here is Jehovah in the Old Testament: "...but no person shall be put to death on the testimony of one witness." (Numbers 35:30)

Judaism recognises the death penalty, but it places strict conditions. "For a Jew to be convicted by a Jewish court, two eyewitnesses must have seen the perpetrator about to commit the crime and warned him of the potential penalty. The murderer must verbally answer that he chooses to proceed anyway. (For a non-Jew, only one witness is required and no verbal warning.)" (Jewish Journal of Greater Los Angeles, 10 March 2000)

How many eye-witnesses testified against Mohd.

Afzal in the "Parliament attack case"? One half, perhaps? An eighth, or a sixtieth? Less than one witness, that is certain.

The judgment of the Supreme Court was an attempt to produce a poetically elegant piece of prose, never mind the effect of much unwanted use of the definite article. "Afzal is characterised as a 'menace to the society', whose 'life should become extinct' to satisfy 'the collective conscience of the society'" (Nirmalangshu Mukherji, quoting from the judgment in "Should Mohammad Afzal Die?", Economic and Political Weekly, 7-13 October 2006).

What is conscience? My understanding of my own conscience has always been that it is what prevents me from shop-lifting, from kicking puppies, from bursting fire-crackers at midnight. It is also the force which makes me try to assist anyone who seems to be in distress.

The "collective conscience of the society" seems an altogether different phenomenon. It does not prevent "the society" from doing wrong: instead, it impels it to do that which so many consider wrong but which it transforms into right-if we are to go by the specious reasoning of the judgment-by reference to a man who is described as a "menace to the society," etc.

Other than the Supreme Court, which waved it about to justify its award of the death penalty to Mohd. Afzal, who knew of this "collective conscience of the society"? Did "the society" itself know of it? Were the people of, say, Kashmir and the North-East among the possessors of this unusual "collective conscience"? Just who are those who make up "the society"? I am compelled to conclude that they are those who swallow the police' version of facts dished out by an obliging and singularly uncritical media. I shall not repeat what so many have said about the impossibility of Mohd. Afzal's getting a fair trial, given the sustained glare of one-sided publicity his case had received.

I have argued elsewhere ("S.A.R. Geelani and the Dance of Holy Justice," *Mainstream*, 3 September 2005) that, in setting free Geelani with a face blackened for life, the Supreme Court gave the media what they wanted. In the case of Mohd. Afzal, the Supreme Court enabled the media to

sate the public thirst for blood which they had created while co-operating with another arm of the justice machinery, the police. With the wheel of unreason moving in the only way in which wheels can move, we search in vain for the distinction between administration and judiciary.

As a side light, there was a comedy of errors in which the errors were not those which the chief actor described as such. Colin Gonsalves, advocate for Mohd. Afzal at a late stage, has insisted again and again that his 250-page submissions-their length is stated each time-did not contain the plea that his client, whose guilt would implicitly have been accepted, be executed by lethal injection rather than by hanging. Indeed Mr. Gonsalves' submissions did not contain that plea; but he forgets that he filed a supplementary affidavit-which bore the signature of Mohd. Afzal who, when he signed it, did not know what it contained - - which described lethal injection as a method of execution much to be preferred to hanging because it was humane, not painful, etc. Why should a man sign such an affidavit who knew that above his head hung the death penalty? In the context of larger philosophical considerations, perhaps? Mr. Gonsalves, otherwise hardly tongue-tied, does not say.

There is something else, however, which eminently credible people say who were present in court at the time. It is that Mr. Gonsalves, in his oral submissions, clearly asked that his client Mohd. Afzal be put to death not by hanging but by lethal injection. Unlike written submissions and supplementary affidavits, oral submissions do not form part of the record unless the court refers to them in its judgment. The court did not refer to them in this instance, possibly because of their absurd nature: but, I repeat, those who say that the defence lawyer's spoken words included this admission of his client's guilt-and apparently the foreknowledge that the sentence to be handed down would be that of death-are credible people.

The efforts to have Mohd. Afzal's death sentence commuted have attracted the attention of the media, but in a strange and perhaps predictable way: they have transformed the matter into a

debate for and against capital punishment. Whether or not Mohd. Afzal received justice is not of any interest to them. The oak is all, the acorn forgotten. Other than the talk about Colin Gonsalves and lethal injections-of which Mr. Gonsalves seems to have become aware rather more than a year after I heard it-there is the question of whether or not the trial judge said to Mohd. Afzal, in his chamber and in the presence of Seema Gulati, then amicus curiae, that he should not worry because he was "our man. ' This must remain forever a rumour, since no one can be expected to say for the record that it happened. If it did happen, though, once again no difference remains between judiciary and administration.

Mohd. Afzal, we might recall, is a former militant who, since his surrender, was in close and constant contact with the "forces of law and order." Lamb to the slaughter? One man at least will be hanged: forget that the genesis of the plot to blow up Parliament has not been and cannot be explicated. Do not ask if there even was a plot. On the basis of circumstantial evidence, with no independent witness or corroboration, the Supreme Court has passed judgment in order to satisfy its constructed "collective conscience of the society." A fine conscience, one which bays for blood.

The strongest argument against the death penalty is the imperfections of systems of justice. For example, the Stanford Law Review uncovered 350 20th-century cases in the U.S. in which "clearly innocent" people had been sentenced to death. That 75 of these cases dated since 1970 shows an improvement over time, it could be argued.

Besides, execution has by no means been shown to be a deterrent. Now and then, murderers-that is, those convicted of murder-are hanged and the people are made to know of this. Yet murders continue to be committed. I do not know if anyone has tabulated these figures for a year or for a decade or two: on the one side, the numbers of people hanged for having committed murder; and on the other, the numbers of murders committed in the weeks and months following the hangings. When many guilty people get away scot free, the miscarriage of justice involved in hanging an

innocent becomes all the more appalling.

I shall probably never decide if I am absolutely for or absolutely against the death penalty. On the one hand are the Modis, for whom a sentence of being torn asunder by horses would be horribly mild: and on the other are the Afzals, who are pushed towards the gallows although against them proof positive exists by no stretch of the imagination.

In our land of justice, the Afzals are tried, never mind that for most of their trials they have no lawyers to speak for them: while the Modis do not even have charges framed against them. Our socially conscious, responsible, etc., media find it convenient and safe to debate the death penalty in the abstract.

A friend suggested another way of looking at this affair. She said that the "attack on Parliament" had been offered as the reason for the immediate mobilisation of the armed forces on a scale unprecedented in peace time; and that many hold that the two countries were brought to the brink of a nuclear war. Now Pakistan never accepted that it had done anything wrong or that it had looked the other way while its men did wrong and its territory was misused. For its part, India never presented evidence so convincing as to put Pakistan squarely in the dock. Pakistan has only expressed a general regret, which is very different from saying "sorry." That is, war-like India ("You tried to blow up our Parliament: we will blow up your country") could not extract even an apology.

It was to justify that inordinately expensive and dangerous "reaction", my friend said, that Mohd. Afzal was sentenced to be put to death. Blood alone could serve as the ink on the rubber stamp which would close the file in a satisfactory and satisfying way; and Mohd. Afzal was State property, a readily available resource, an expendable pawn well placed.

9 November 2006

WHEN THE NOOSE IS DOUBLY GOOD NEWS

by J. Sri Raman

Within a fortnight, India is witnessing furious debates over two death sentences. And no prizes for guessing the political identity of those who see the noose as positive news in both the cases.

The far right is baying like a lynch mob for the hanging of Afzal Guru, whom the Supreme Court of India sentenced to death for a role of "conspiracy" in the still largely mysterious attack on India's Parliament in December 2001. A broader coalition of forces has backed the death sentence for deposed Iraqi leader Saddam Hussein.

Afzal has appealed for presidential "clemency," under a statutory provision that can save him still. The noose alone can save the nation, counters the Bharatiya Janata Party (BJP), the political front of the fascist phalanx known as the "parivar" or the "family." The party wants Afzal killed before any clemency can be considered.

Supporters of the sentence on Saddam have not spoken up against an appeal against the verdict being allowed (even if few see this as anything but a formality). But they are sternly disapproving of any effort by New Delhi even to appear equivocal or sound embarrassed about the verdict of the Washington-installed court.

The case of the anti-Afzal campaigners is clear. The attack on Parliament may be an untold story in many respects, though the then BJP-led government trotted it out as an excuse for taking India to the brink of a nuclear war with its neighbor. No member of either of the legislative chambers may have suffered bodily harm, though some poor security personnel were killed. But, according to the official version, Islamic terrorists from Kashmir staged the attack with the help of Pakistan. So, Afzal cannot escape the death penalty, though justice continues to evade thousands of victims of the Gujarat pogrom of

early 2002, which the party presided over.

The case of the anti-Saddam campaigners is equally clear, though it may appear slightly more complex. They may concede that some questions of international law can possibly be raised in relation to the case and the verdict. Their main point, however, is that such questions should make no difference to New Delhi - especially when that all-important US-India nuclear "deal" is involved.

It took very little to provoke them on this issue. Just how little can be judged from the coy and convoluted statement of India's external affairs minister, Pranab Mukherjee. "Such life-and-death decisions," he said, "require credible, due process of law, which does not appear to be victor's justice and is acceptable to the people of Iraq as well as the international community." He added: "We hope that this verdict will not add to the suffering of the people of Iraq."

For good measure, the ruling Congress Party, which Mukherjee represents, rejected the Left demand for New Delhi's "active intervention to get the sentence rescinded" and condemnation of the "travesty of justice" by a court that represented "occupation forces." The party's plea was that the appeal provision made such steps utterly unwarranted.

All this was not good enough for those firmly of the opinion that it just was bad form for Prime Minister Manmohan Singh's government to voice such reservations about the wisdom of the Bush regime and its accredited representatives in Baghdad.

From one particular editorial pulpit, known for pious advocacy of the "strategic alliance" and paramount importance of the nuclear "deal," came the exhortation: "It is possible to be circumspect about at least some parts of the legal architecture that surrounds the Saddam Hussein verdict and yet keep the necessarily hard-headed calculations of national interest in mind. Which is to say the UPA government (United Progressive Alliance) could have probably achieved a better balance between its reservations about the verdict and India's

strategic goals in Iraq and the surrounding areas."

Security expert C. Raja Mohan, a staunch defender of Singh on the "deal," sounded displeased. "Irrespective of its intent, the Indian reaction, issued in the name of External Affairs Minister Pranab Mukherjee is bound to irritate Washington, Baghdad and Tehran in one stroke." Striking is the show of concern for the sensitivities of Iran, which Mohan and like-minded have been denouncing as a country undeserving of India's support on the nuclear issue.

The BJP's top leadership has avoided sounding as bloodthirsty on this issue as on Afzal. The party spokesman, however, conveyed implicit disapproval of Mukherjee's statement by describing the sentence on Saddam as "an internal affair of Iraq," as though it had nothing to do at all with that country's invasion and occupation by foreign forces.

At lower levels, however, the party was more open in its pro-noose stand on both the issues. Just one example is the reported statement by a leader of the party's student wing, the Akhil Bharatiya Vidyarthi Parishad (ABVP), in New Delhi's politically alive Jawaharlal Nehru University (JNU). "We are happy," reads the statement, "that Saddam will be hanged to death and we demand that Mohammed Afzal Guru ... should also be hanged soon."

To the rest of the world, the two issues may not readily appear to be related. To the common people of India, however, the connection is obvious.

[5]

Asian Age

7 November 2006

LIFE, NOT DEATH: WHY AFZAL MUSTN'T HANG

by Meenakshi Ganguly

Mohammad Afzal Guru is supposed to hang. His conviction for his role in the conspiracy to attack Indian Parliament in 2001 was upheld by the Supreme Court in August. He was deemed guilty enough to receive the “rarest of rare” sentences: the death penalty. The hanging was set for October 20, but was delayed as a mercy petition awaits the decision of the government and, eventually, President A.P.J. Abdul Kalam.

Much has been said and written about this case. Most Kashmiri leaders say the hanging will adversely affect the ongoing peace process. One of India’s leading magazines published an essay by Booker Prize winner Arundhati Roy arguing against the sentence. Its rival magazine ran an opinion poll of urban Indians that found 78 per cent opposed “liberal rhetoric” such as hers, and believed Afzal should be hanged. In fact, some right-wing Hindu groups even held a mock hanging to support this claim.

Some say that Mohammad Afzal was able to appeal his conviction and therefore has no reason to complain. The legal system has worked. Others say that the guilty verdict was based on unconvincing circumstantial evidence. Activists also point out that he did not receive proper legal counsel.

Let’s be clear at the outset. Human Rights Watch unequivocally opposes the death penalty. Guilty or not, we believe that neither Mohammad Afzal Guru, nor Priyadarshini Mattoo’s killer, Santosh Kumar Singh, nor Saddam Hussein, nor anyone else, should be executed. Taking the life of a human being is inherently cruel, and as a form of punishment is unique in its irreversibility. The intrinsic fallibility of all criminal justice systems assures that even when there is a fair judicial process, innocent persons will still be executed. On a practical level, there is no evidence that it is an effective deterrent.

The sentencing of Mohammad Afzal also represents a different and perhaps deeper problem in India. As a former militant, at the very least it seems clear that Mohammad Afzal once sympathised with Kashmir militancy. Militants blow up markets and kill Indian soldiers and civilians. In the common

Indian narrative, Indian soldiers are the good guys, and militants are the “bad guys.” Bad guys deserve to be punished.

Yet the backbone of any proper legal system is that individuals who commit crimes should be prosecuted and punished for their specific actions, not for who they supposedly represent. For many in India’s powerful middle class with little real understanding of the complexities of Kashmir, Kashmiris have become a distant “other,” interchangeable people who need not be considered as individuals. Thus, whether Mohammad Afzal was a key figure in the attack deserving a long criminal sentence or just a marginal figure whose actions merit a much lesser punishment is of little concern. This needs to change if there is any chance of a resolution of the conflict or, in the meantime, making the justice system work in a fair and impartial manner.

Recently, Human Rights Watch became the first international organisation to release a human rights report ("Everyone Lives in Fear: Patterns of Impunity in Jammu and Kashmir") in Srinagar. We noted that in Jammu and Kashmir, police and soldiers have been given extraordinary legal powers to tackle a violent armed conflict. Any such law is based on trust that those thus empowered will not abuse it. Unfortunately, our research found that this trust has been violated, and that abuse is common practice.

In Kashmir a person can be lawfully arrested for committing or planning offences against national security, such as harbouring militants, hiding weapons or planning an attack. But the extraordinary powers that the state provides to its security forces also encourage abuses. To take but one example, there are so many weapons in a conflict area like J&K that to plant evidence such as a grenade or a gun is all too easy - and presents a credible story that is hard to rebut.

Many Kashmiris have to supply food or shelter to militants at the point of a gun. Yet, the Public Safety Act can be used, or abused, to put such people in detention for years, held without trial, because the state never has to prove their guilt. Often the basis of detention is

highly unreliable information provided during the coerced confession of another, usually through torture or the threat of torture.

Sadly, Kashmiri lawyers are grateful when a person turns up in detention. Not because they can make some extra money from another client, but because it means the government has publicly admitted that it has the person in custody, and the detainee's life, therefore, becomes more secure. Those who do not turn up in an official place of detention frequently "disappear" or turn up dead, killed in a faked armed encounter.

Both the government of India and much of the population are aware that this happens. There is however, a widespread wink and nod. Some may believe that "bad guys" deserve to die and inquire no further. Government officials explain privately that there is little option to use such measures because the legal and judicial process is flawed. It takes too long and it is too hard to secure a conviction, they say. Witnesses, terrified of reprisals from the militants, refuse to testify against them. Detaining militants carries the risk that their comrades will organise jail breaks, abductions or plane hijackings to gain their release. So the security forces often murder those they believe to be guilty. A police report is lodged describing an armed encounter or an escape attempt.

The Armed Forces Special Powers Act, used when troops are deployed to tackle internal insurgencies, has been widely criticised because it allows enormous powers to arrest and shoot to kill. The Act has also been used to protect military personnel responsible for abuses, leading to widespread impunity for human rights abuses. For example, five days after 36 Sikhs were killed in Chattisinghpura in March 2000, the Army and police claimed to have killed the militants that were responsible. The Central Bureau of Investigation discovered that the Army had lied, that the so-called militants killed were illegally detained villagers who had nothing to do with the massacre. Earlier this year, five officers were charged with murder. These men are now claiming immunity from prosecution under the Armed Forces Special Powers

Act. For this reason, in J&K many troops believe they can get away with murder. Because of these abuses, a government-appointed committee in 2005 said the Act should be repealed. But the government refused to release the report and has not acted.

Justice in J&K has taken a peculiar form where patriotism, nationalism, political ideology, duty, and religion, all dance to their own tune of retribution.

The killing of supposed informers and traitors by militants, attacks upon civilians by both government forces and militants, and the torture and summary execution of supposed militants by troops - all illegal in both peacetime and wartime - are common in J&K. The militants actually responsible for such attacks are seldom prosecuted. Nor do troops responsible for such killings face transparent courts-martial or criminal courts.

In light of all of this, it is important to consider Mohammad Afzal Guru's case very carefully. Is he really the person that so many Indians supposedly want dead? Or are they taking out their frustrations on an easy target? For many, Afzal bears the burden of representing all those who dare to oppose Indian rule in restive parts of the country, because the attack on Parliament was an attack on India. Conversely, many Kashmiris would say that Afzal is a freedom fighter, planning an attempt at the symbol of Indian oppression.

Both views are flawed. For this multi-religious, multi-ethnic, multi-cultural state to survive, Indians have to believe in equal justice for all. And in the case of J&K, there has been consistent failure to deliver on this promise. Dealt with properly, the case of Mohammad Afzal could be part of the solution, not part of the problem.

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P.S.

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