

India: Stop the state murder of Mohammed Afzal

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14 November 2006

The Indian state and India's political establishment are preparing to execute Mohammed Afzal, a 39-year-old Kashmiri and citizen of India.

As the result of a police investigation and trial that flouted the most elementary judicial and democratic principles, Afzal was convicted in 2002 of helping to organize the December 13, 2001, commando raid on the Indian parliament

His legal appeals having been exhausted, Afzal was to be hanged on October 20. His execution was delayed, however, when his family submitted a "mercy petition" to Indian President A.P.J. Abdul Kalam.

Last week, Afzal submitted his own 102-page clemency appeal. In it he condemned the terrorist attack on India's parliament, which resulted in the deaths of a gardener, eight security personnel, and all five attackers. According to press reports, Afzal affirmed that he did not knowingly participate in any terrorist conspiracy, deplored the loss of life resulting from the December 13 attack, and accused both India and Pakistan of using Kashmiris as pawns.

Capital punishment is rare in India. But there is every reason to believe that India's authorities—the Congress Party-led United Progressive Alliance (UPA) government, the judiciary, the police, and the military-national-security apparatus—are determined to have the death sentence against Afzal carried out.

In ruling on Afzal's appeal, the Indian Supreme Court found him to have been only a minor player in the December 13 terrorist plot and conceded that there were numerous anomalies in the police investigation. It further found that there was insufficient evidence to prove Afzal was a member of a terrorist organization and that the evidence tying him to the attack on India's parliament was entirely circumstantial. Yet it nonetheless sanctioned his execution. Society's "collective conscience," declared India's highest court, "will only be satisfied if capital punishment is awarded to the offender."

Under Indian law, the president, who is head of state but not the leader of the government, must closely consult with the government in determining whether to accept or reject mercy and clemency pleas. One important branch of the UPA government, the Law Ministry, has, according to news reports, already replied to the mercy petition submitted by Afzal's family with a document affirming there is "no compelling reason or circumstance" to commute the death sentence.

Some liberal media voices have spoken out against Afzal's execution on humanitarian and democratic grounds. But the elite debate over his execution principally revolves around its political expediency: the purported need to show that India is resolute in waging "war on terrorism" versus fears that Afzal's execution could fuel Kashmiri opposition to Indian rule.

The Congress Party chief minister of Jammu and Kashmir recently denied that he had appealed to UPA Prime Minister Manmohan Singh for clemency for Afzal when they met at the beginning of October. Ghulam Nabi Azad said he had not previously refuted the press reports of his having intervened on Afzal's behalf only because his state was being

convulsed by mass demonstrations and strikes in support of Afzal. "I chose," said Azad, "not to react at that time as the news...reduced the intensity of the agitation."

Azad's reputed clemency plea had provoked much opposition within Congress Party and UPA circles.

The Bharatiya Janata Party (BJP), India's official opposition, and the entire network of Hindu-supremacist organizations affiliated with the Rashtriya Swayamsevak Sangh (RSS) are meanwhile publicly agitating for Afzal's execution. Their campaign links denunciations of the insurgency in the Indian state of Jammu and Kashmir, with charges that Pakistan is a fount of international terrorism and denunciations of the UPA government for being "soft" on terrorism.

The execution of Afzal will be used to foster a reactionary political climate: to acclimatize the public to state executions for political crimes, to justify further strengthening of the state's repressive apparatus, to vilify all Kashmiri opposition to Indian rule as "terrorism" and to ratchet up pressure on Pakistan to curtail its logistical and political support for the Kashmiri insurgency.

Just as importantly, it will greatly facilitate the Indian establishment's attempts to prevent any public scrutiny of the events of December 13, 2001, and how they were seized upon by the BJP-led government of the day, with the support of the corporate media, to rush through anti-democratic legislation (the Prevention of Terrorism Act, or POTA) and plunge South Asia into a war crisis.

According to the Indian state, Afzal facilitated an attack planned and carried out by others. However, his confession—which he soon after repudiated as having been coerced from him through violence and threats to his family—was of great utility to India's national security apparatus and government. For the former, it served as the crux of their claims to have solved the December 13 terror conspiracy; for the latter, it served as a prop in justifying the placing of India's armed forces on a war footing.

In violation of the most elementary rules of police conduct, the police paraded Afzal before India's media at a December 20, 2001, press conference, whereupon he publicly confessed to involvement in the December 13 attack.

Afzal, who had been arrested five days before, had not been allowed to see a lawyer. Indeed, he would not be given any access to legal counsel until fully five months after his arrest

So eager were the police to get Afzal's confession into the public domain, it was only on December 21, 2001—the day after his nationally televised confession—that his confession was officially recorded, but not in the presence of a judge, the standard Indian practice. Rather, Afzal's confession was taken by the police themselves as sanctioned under POTA (which the government, using emergency regulatory powers, had declared in temporary effect).

That very day, the BJP-led National Democratic Alliance, touting the supposed cracking of the December 13 terror plot, proclaimed it had incontrovertible evidence of Pakistani involvement in the terrorist attack

on India's parliament, ordered an end to all transport links with Pakistan, and all but broke off diplomatic relations with Islamabad. Soon, close to a million Indian troops were deployed in war formation on the Pakistani border, a mobilization that lasted until the following October and brought South Asia to the brink of war and a possible nuclear conflagration.

In February-March of 2002, when this war mobilization was at its height, the BJP state government of Gujarat and its Hindu-supremacist allies fomented an anti-Muslim pogrom following a train fire that killed several dozen Hindu activists. The Gujarat pogrom left more than 2,000 Muslims dead and tens of thousands more jobless and homeless.

It is under these conditions of state- and media-led war and anti-Muslim hysteria, that Afzal and three other Kashmiris—Delhi University lecturer S.A.R. Geelani, businessman Shaukat Hussain Guru, and Shaukat's wife, Afsan Guru—were tried and found guilty, in a POTA-expedited trial, of participation in the December 13 terror plot.

Much of the case that the police and prosecution presented at this initial trial has since been discredited, forcing higher courts to find Geelani and Afsan Guru not guilty and to reduce Shaukat Hussain Guru's original death sentence to 10 years' imprisonment.

But the unraveling of the police-prosecution case has only made the authorities the more anxious to hang Afzal. Undoubtedly, much of the national security and political establishment believe Afzal's grisly end will serve to divert public attention from their failure to provide a convincing and coherent explanation of the December 13 attack, including substantiation of their charge that the commandos were Pakistanis and that the attack was orchestrated from Pakistan.

A second reason some may want Afzal eliminated is that he has provided evidence pointing to possible state involvement in the December 13 terrorist attack—a charge to which we will return below.

At the original trial, the prosecution, citing Afzal's confession, contended that Geelani was the "local mastermind" or Delhi organizer of the attack..

Afzal had by then repudiated this confession, saying that he had contributed little more to it than his signature.

What is noteworthy here is that even on December 20, 2001, when police forced him to appear before television cameras and confess his role in the terrorist attack, Afzal, in answer to a reporter's question, denied that Geelani was involved in the plot. Delhi's Deputy Police Commission then intervened and requested that the media not include any mention of Afzal's denial in their reports, and for months the news media complied. It was only in Afzal's "official" confession, subsequently recorded by the police, that he implicated Geelani, which strongly suggests that pressure was placed on Afzal to implicate Geelani or that he wasn't the author of the confession.

So many "lapses and violations of procedural safeguards" surrounded Afzal's confession that India's higher courts were compelled to rule it inadmissible. Consequently, the case against Geelani, who had always insisted on his innocence, fell apart, since the police had no other evidence tying him to the terror attack.

The collapse of the case against Geelani blew a major hole in the police-prosecution explanation of the December 13 plot, of its origins and workings. As Sonia Jabbar noted in an op-ed piece in the *Hindustan Times*, without Afzal's confession "there is nothing...that confirms the sequence of events or the conspiracy theory" that links the December 13 attack to its alleged Pakistan-based masterminds.

But this is far from the only hole.

Both the High Court and Supreme Court criticized the Delhi Police's Special Cell, which led the investigation into the December 13 attack, for submitting false—that is, untruthful and forged—documents.

The police claimed that it was the arrest of Geelani and the seizure of his phone and other belongings that led them to look for Afzal. But this does not conform with police logs. They indicate that the order to arrest Afzal

was made before, rather than after, Geelani's arrest.

Police did not apprehend Afzal as soon as he was located. Instead, they waited until security personnel were the only persons in a position to witness the arrest—a tactic that would facilitate the planting of evidence. And it is here that the police claim to have recovered their most important physical evidence against Afzal, a mobile phone and a laptop whose contents tie him to the December 13 attack.

Much of the case against Afzal hinges on phone records, but evidence shows that the phone card that police claim Afzal purchased on December 4 and used to communicate with his co-plotters was in fact already in operation the month before. Taking note of this discrepancy, the Supreme Court simply asserted: "The SIM [phone] card should necessarily have been sold to Afzal prior to 4.12.2001."

Afzal was denied the basic democratic right of all accused to legal counsel. Not only was he not allowed to see a lawyer until months after his arrest, he was effectively denied legal representation at his trial.

Afzal's court-appointed lawyer quit soon after the trial began, and the junior lawyer who replaced her failed to mount a serious defense on his behalf. Afzal supplied the court with a list of lawyers whom he wanted to represent him, but they all declined to do so, a not surprising outcome given the furor that the government and press had whipped up against the accused.

The judge then took the extraordinary step of allowing Afzal, who had no legal training, to cross-examine prosecution witnesses himself. Given the complexity of the case—it was the first to be tried under POTA, legislation which established new lower thresholds for evidence—and the seriousness of the charges, the judge could not have but have known that Afzal was for all intents and purposes without a legal defense.

Afzal's subsequent attempts to appeal his conviction were fatally undermined by the failure of the defense at his original trial to lodge routine protests contesting prosecution arguments and evidence.

While repudiating his confession, Afzal does admit to having known two of the people that the police claim were involved in organizing or carrying out the December 13 attack—a man called Tariq and another named Mohammad.

According to police, Tariq has fled to Pakistan. Mohammed was one of the five attackers killed on December 13.

It would appear that Tariq, like Afzal, was a surrendered, anti-Indian Kashmiri militant, since Afzal says that he first met Tariq when they were both inmates in a Jammu and Kashmir Police Special Task Force (STF) camp.

The STF is a shadowy counterinsurgency force notorious for human rights abuses. It includes in its ranks some surrendered militants who have been enticed and/or coerced into assisting the Indian state's pacification campaign.

In a legal document titled "Statement of the Accused Mohammed Afzal under Section 313 of the Criminal Procedure Code," Afzal says that the STF repeatedly pressed him to become an informant and that to escape beatings and reprisals he did provide the STF with inconsequential information that he had gleaned from newspapers. Afzal adds that after he was brutally tortured in 2000, he was given a certificate by the STF naming him a special police officer. It was around this time, while in STF custody, that Afzal met Tariq. Later, when the two met outside of the STF camp, Tariq told Afzal that he was working for the STF and Afzal conceded he was doing the same.

In his statement, Afzal claims that it was at Tariq's request that he took Mohammad to Delhi and helped him purchase a car used in the December 13 attack.

According to Afzal, it was Tariq who handed Mohammad "over to me": "Tariq is working with the Security Force and STF JK Police. Tariq told me that if I face any problem due to Mohammad he will help me as he knew the security forces and STF very well.... Tariq had told me...if I

would not take Mohammad to Delhi I would be implicated in some other case.”

In other words, Afzal has testified that in assisting Mohammed, he thought he was doing the bidding of the STF, and that he had to do so if he was to escape further abuse at the hands of Indian security forces.

The Indian authorities have not lifted a finger to investigate Afzal's claim, even if only from the standpoint of refuting it so as to bolster the legitimacy of the official story. Was Afzal ever issued a STF certificate? Was he known to the STF as a petty informant? Was Tariq also a surrendered militant, and, if so, what were his relations with the police and security personnel? How is it that Afzal was able to enter into a terrorist conspiracy, when, as a surrendered militant, he was required to report to army authorities once a week, and, as a rule, surrendered militants are under heavy police-military surveillance?

Rather than investigate these and a host of related questions, the authorities have taken refuge in the guilty verdict rendered by the courts and Afzal's impending execution.

In the immediate aftermath of the December 2001 attack on India's parliament, many in the media and Indian elite spoke of it as India's September 11, 2001. Certainly, like the attacks in Washington and New York, the attack in New Delhi was seized upon as a means of shifting India's domestic and foreign policy far to the right. And five years on, for all the ranting and raving about the dangers of terrorism, in neither country has the government and national-security establishment provided any serious accounting of what happened in 2001 and why.

Socialists and all those concerned with the defense of democratic rights should oppose Afzal's execution and for a multiplicity of reasons.

Afzal's trial was conducted in a lynch-mob atmosphere, and his right to a proper legal defense was grossly violated. There are numerous inconsistencies and contradictions in the legal case against him, and even India's courts have been forced to criticize the police for violating basic legal procedures.

Through his execution, India's ruling elite aims to foster an even more right-wing political climate and obscure the disturbing questions surrounding the December 13, 2001, terror attack and how it was exploited by the BJP-led government.

Afzal may have been a dupe of a plot hatched within India's security forces; at most, he was a minor player in the attack on India's parliament.

Like tens if not hundreds of thousands of Kashmiri men who have become adults over the past two decades—and this is one of the reasons why his case has resonated with the people of Jammu and Kashmir—Afzal has repeatedly been harassed and abused by India's security forces.

Capital punishment, that is murder by the state, is always abhorrent.

Last but not least, responsibility for the tragedy that is contemporary Kashmir lies with British imperialism, and the Indian and Pakistan elites. It is they who partitioned the Indian subcontinent on communal lines in 1947-1948, a process that resulted in some 2 million deaths, rendered millions more refugees, divided the Kashmiri people into Indian- and Pakistani-held Kashmir, and gave rise to an intense geopolitical rivalry that continues to threaten South Asia with war.

In seeking to ensure Indian domination over Kashmir, the Indian elite subsequently betrayed its own promises of autonomy for the Muslim-majority state. Nevertheless, it was only in the late 1980s, after the Indian government had rigged elections in Jammu and Kashmir and after the Indian ruling elite had begun aggressively promoting Hindu chauvinism that significant numbers of Kashmiris began to support an armed struggle against the Indian state. Pakistan, for its part, sought to turn the Kashmiri insurgency to its own benefit by using its logistical support to promote the most communal-minded and reactionary Islamist forces.

While Afzal's execution would be a precedent in that India rarely resorts to capital punishment, India's security forces are notorious for staging disappearances and executions as part of their counterinsurgency

campaign in Kashmir.

According to a report released by Human Rights Watch in September: “Extrajudicial killings by Indian security forces are common. Police and army officials have told Human Rights Watch that security forces often execute alleged militants instead of bringing them to trial in the belief that keeping hardcore militants in detention is a security risk. Most of the summarily executed are falsely reported to have died during clashes between the army and militants in ‘encounter killings’ ”

“The Indian government has effectively given it forces free rein....”



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