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The disturbing truth about an execution

Usha Ramanathan

On March 6, 2013, in response to an RTI request, the President's Secretariat made available documents pertaining to Ajmal Kasab's mercy petition. People from across the country and the globe had written to the President asking that he use his clemency power so that the power of the state to take life would be reined in. Recurring with unexpected frequency was an appeal that, if the mercy petitions were to be rejected, the "President and the Ministry of Home Affairs ... respect the practice of promptly informing the individual, his lawyers, his family, of the decision, reasons for the decision, and proposed date of execution as well as the public of any scheduled execution." Ajmal Kasab was hanged in secrecy on November 21, 2012. Less than three months later there was another secret execution, of Afzal Guru.

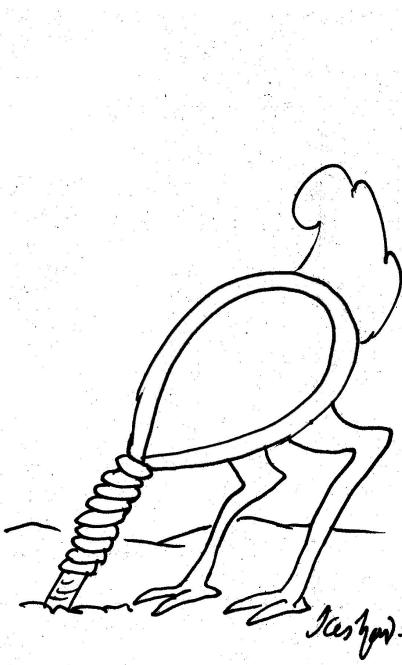
In India, of course, this is not about a 'practice'. It is the law. On February 9, 2013, when Afzal Guru was hanged, was the law followed?

Procedure flouted

The disturbing truth is that Afzal Guru's execution was illegal. The government flouted the procedure established by law in executing Afzal Guru the way it did; and the Constitution is categorical, in Article 21, that no one shall be deprived of life or personal liberty except according to procedure established by law. The Jail Manual is clear: "On receipt from the Administrator of the final confirmation about the date of execution of a convict, the convict and his relatives shall be informed about the date of execution by the Superintendent." 'On receipt of the 'final confirmation', the convict is to be informed. It is, however, reported that Afzal Guru was not informed till 5 a.m. on the day that he was hanged; a mere two hours before he was taken to the gallows. It is impossible, not merely improbable, that the Superintendent did not know about the date of execution till that last minute. By not informing Afzal Guru, the Superintendent breached the law.

The relatives too "shall be informed" about the date of the execution on receipt of final confirmation. To inform is not to send a letter or other missive; the duty cast by the law on the Superintendent is to 'inform.' The point of the provision is to give notice of the impending execution of the convict. Afzal Guru's family learnt of the execution when the rest of the world heard about it, and through the press. The letter sent by speed post reached them two days after he had

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been executed. Informing the family is not, as some have suggested, about humanitarian considerations; this is about a violation of the law in the process of depriving a person of life.

It is reported that Afzal Guru was buried in jail "in accordance with a directive from the Delhi administration, with the jail authorities saying that there was no request from the family to claim it" (*Economic Times*, 15.2.2013) This was a deliberate and self-serving distortion of facts.

The Jail Manual prescribes that the convict may "if he so desires, be permitted to prepare a will in accordance with his wishes. If the convict does not desire to prepare his will, his statement to that effect shall be recorded by the Superintendent". Was Afzal Guru given time to decide about his will? If he was informed of his impending execution at 5 a.m., as is reported, could that have provided him with the opportunity to decide about his will? He had not met his family in a long time. He had no time to get legal help —

something that evaded him at every turn. And he was being informed of his execution, literally, on his way to the gallows. Does this constitute conformity with the law? Plainly not.

Deliberate breach

It appears from pronouncements following the execution that these breaches were not caused due to oversight; that they were deliberate. If there are no adverse consequences for these deliberate violations of the procedure prescribed while taking life, it will clear the way for absolute power over life and death. Afzal is beyond reach, so the wrong done to him cannot be undone. His family, however, has borne the pain that this injustice, and violations of the law, have brought to them. Few would disagree that the family has been wronged. There have to be consequences. A public apology which will be an acknowledgement of the wrong done — that will also dilute the impunity that is growing every passing day. Reparation, to the family that has been wronged. And, action against those who were in violation of the law; that would be an act of respect for the rule of law.

Secret executions seem to have acquired the status of state practice. When Kasab was hanged, surreptitiously, in the early hours of November 21, 2012, the Home Minister explained that one of the reasons for practising secrecy was to avoid the possibility of anyone approaching the court, which could delay the execution. He repeated it, as one would a formula, after Afzal Guru's execution. This is unconstitutional. No one can be deprived of his or her right to judicial recourse. For the Home Minister of the country to ensure secret execution so that such judicial recourse may be denied is against all norms of civilised jurisprudence.

A Bench of the Supreme Court has reserved orders on the effect of delay on the execution of the sentence of death. The judgment of the court, which is yet to be delivered, would have had a direct bearing on whether Afzal Guru's death sentence could be carried out, or not; he had been under the shadow of the death sentence for over 10 years when he was hanged. On 20 February,

2013, when a three judge bench of the Supreme Court stayed the execution of the four alleged aides of the forest brigand Veerappan, it was on the express recognition that the decision of the court that had reserved orders was of direct relevance to the convicts before the court.

This was the judicial consideration to which Afzal Guru was entitled. The punishment is irreversible, and, for that reason, should have been deferred till the outcome in the pending challenge. By executing him secretly so that he may not approach the courts, and by ignoring the pending case that could impact on his death sentence, the Home Minister acted illegally. The court needs to demand an explanation from the Minister about the nature of the power he seems to think he has.

Lack of representation

On 11 February, 2013, two days after he had been executed, a case was quietly disposed of in the Supreme Court. Early in 2011, Afzal Guru had filed a petition in the Supreme Court asking for his transfer to Srinagar Central Jail so that his family, which included his mother, wife and young son, could visit him — something that distance and cost was making prohibitive. This case was filed through the Supreme Court Legal Services Committee, but the lawyer was repeatedly absent from the hearings, which prompted the court to ask the SCLSC to look into it and submit a report to the court.

As reported by V. Venkatesan in *The Hindu* (19.2.2013), the lawyer told the court on 23 November 2012 that someone else would be representing Afzal Guru; the court asked the SCLSC to find an explanation for the tardiness and submit a report to the court; the status of the case, on 4 January, 2013 did not indicate that any report had been filed. This was just one more time that Afzal Guru was left without proper representation. And, a single judge, in chambers, on 11 February, merely took judicial notice of the execution, found that the hanging had made the petition infructuous, and dismissed the petition!

The least that this calls for is an enquiry, followed by consequences for violations of the law, an apology and reparation to the family of Afzal Guru, an end to secret executions and a guarantee of non-repetition.

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