

## **Mohammed Afzal, Terrorism, and the Spectral Order of Sacrifice**

*Vinay Lal*

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India looks all set to hang Mohammed Afzal, who has been sentenced to death for the terrorist attack on the Indian Parliament, in the next few days. The outcome of a clemency petition from his family which is presently before the Indian President, A. P. J. Abdul Kalam, is still awaited. As in the movies, Afzal may get a last minute reprieve, a commutation of his death sentence to life imprisonment or a lesser term, a power conferred on the President by Article 72 of the Indian Constitution. But time is clearly not on Afzal’s side.

On 13 December 2001, five men sprung from a white Ambassador car that had entered the premises of the Indian Parliament complex and exchanged gunfire with armed guards. Half an hour later, all five terrorists were dead, as were nearly twice as many security personnel. The incident was immediately dubbed India’s “9/11”, but India, notwithstanding the ambitions of its élites and the fantasies of its mandarins and powerbrokers, who are eager to pounce upon the slightest suggestion that the country is headed for greatness, is no superpower. It cannot with impunity violate the sovereignty of other nations and launch air attacks at a ‘moment of its choosing’; indeed, it cannot do much of anything, except lodge diplomatic complaints, or, if it wishes to be more theatrical, mass tens of thousands of troops on the border. It cannot, in one fell swoop, bomb Pakistan into abject submission. One immediately knew, once the terrorists had been killed and the license to unearth a conspiracy against the nation had been obtained, that more sacrificial lambs would have to be found.

Mohammed Afzal Guru was long ago, to put it plainly, a man in the waiting room leading to the execution chamber. Afzal is a Kashmiri, and his home town of Baramulla has been sharply hit by militancy; by his own admission, he once belonged to the militant organization JKLF, before surrendering to state authorities and endeavoring to create a new life for himself and his family. For all one knows, Mohammed Afzal may be guilty of the crime, for which he has now been condemned to death, of aiding the suicide attack on the Indian Parliament. Many who are not necessarily disposed towards Afzal have nonetheless pleaded for his life, some among them primarily because, as they rightfully claim, the legal case against Afzal is not even remotely close to being ironclad. Though the Indian Evidence Act is among the most stringent in the world, a forced confession was unlawfully used in evidence against Afzal. The police officers who extracted the confession from Afzal have since been charged with corruption, and Afzal was not accorded the opportunity of legal representation. However, Afzal’s conviction has been upheld by the Indian Supreme Court, and it is unlikely that President Kalam will be moved by these considerations.

The opposition to the Supreme Court's decision of those who take a principled ethical stand against capital punishment is understandable, but the remaining arguments made on Afzal's behalf are largely derived from reasons of pragmatism and prudence. The state prosecutors admitted, and the Supreme Court agrees, that Afzal is not among the 'masterminds' of the attack. Maulana Masood Azhar, the leader of the Jaish-e-Mohammed, which is believed to be the terrorist organization most likely to have orchestrated the attack, remains free in Pakistan. It is contended that the punishment is vastly disproportionate to the crime of which Afzal has been convicted, considering that he did not even participate in the attack. The arguments from realpolitik which oppose Afzal's death sentence stress that his execution would erode the Indian government's already extraordinarily strained credibility in Kashmir, and give a boost to those very terrorists and secessionists to whom the Indian state would like to teach a lesson or two. The Srinagar Valley has been rocked by demonstrators opposed to the imminent execution, and the United Jihad Council has warned of 'dire consequences' if it is allowed to take place. On the realpolitik view, nothing is gained by turning Afzal into a martyr: far from serving as a deterrent, his execution is likely to be turned into a recruiting tool for terrorist and secessionist groups in Kashmir, as well as for jihadi organizations in Pakistan. Some Muslim organizations are likely to trumpet the case as the most visible instantiation of the inability of a Muslim to get due process of law in a non-Muslim state.

The advocates of the death sentence have summoned the usual arguments that prevail whenever 'terrorism' is at issue. They argue that India should not, in a word, be a 'soft' state, and it should unequivocally convey to militant organizations, and to their patron Pakistan, its resolute determination to bring to justice the perpetrators of terrorist atrocities. Since the victims of terrorist attacks are, whether in India, the United States, or elsewhere, invariably turned into martyrs, the families of victims are brought on stage, so to speak, to offer the view that appeasement of terrorists would be a betrayal of the ideals for which the victims gave up their lives. The Indian Supreme Court, while upholding the death sentence, furnished an argument bearing some family resemblance, though couched in a different and more anthropological idiom. Describing the present case as having 'no parallel in the history of the Indian Republic', the court noted that the attack had shaken up the entire country and was intended to paralyze the government and disrupt 'the normal life of the people of India.' The Court was thus duty-bound to furnish balm to their wounds: in the words of the judgment, 'the collective conscience of the society will only be satisfied if the capital punishment is awarded to the offender.' Though the Court set aside Afzal's conviction under POTA, and found that no evidence had been offered to prove that Afzal was a member of any terrorist gang or organization, it nonetheless found him guilty of having partaken in a criminal conspiracy to shake the very foundations of the country by assisting in the attack on India's supreme 'sovereign democratic institution'.

As the Supreme Court's judgment amply suggests, the Parliament Attack case cannot be disassociated from the symbolic politics in which it is deeply embedded. The attackers exposed the vulnerability of a 'sovereign democratic institution' of the Republic, and, in a lighter vein, they did so by arriving at the Parliament's gates in a white Ambassador

car, itself one of the supreme icons of a capacious, cumbersome, and dinosaur-like officialdom. Nandita Haksar, a prominent civil rights campaigner and Supreme Court lawyer who has made an eloquent plea on behalf of the Society for the Protection of Detainees' and Prisoners' Rights (SPDPR) to spare Afzal's life, has with some justification suggested that a wider symbolic politics renders a more sympathetic hearing of Afzal's case improbable. The 'Hindu fascist forces' braying for Afzal's blood, Haksar argues, are 'victims of the ideology of the Islamophobia spawned by the US war against terrorism.' She further submits that the American jury which convicted Zacarias Moussaoui of involvement in the terrorist attacks of 11 September 2001 showed more compassion than Indian courts, and taking into account his 'unstable childhood and dysfunctional family' background, besides his 'hostile relationship with his mother', spared Moussaoui his life and only committed him to life imprisonment. (See Haksar, 'Afzal's Story', [www.outlookindia.com](http://www.outlookindia.com), 5 October 2006).

That Haksar is grossly mistaken about the supposed compassion displayed by an American jury towards an alleged hardcore terrorist is a point by which we need not be detained, though one cannot but question the assumption that the US of A, where Mohammed Afzal would in the present climate of opinion have been a sitting duck, still sets the standards of justice for the world to emulate. The present case, the Supreme Court judgment states, presents 'a spectacle of rarest of rare cases', and that is more than warrant enough for summoning, from the recesses of the past, another of the 'rarest of rare cases' from which perhaps more insight is gained than from the conviction of Zacarias Moussaoui. In February 1949, Nathuram Godse and several others were found guilty of a criminal conspiracy that had led to the assassination of Mahatma Gandhi. Though Nathuram Godse took sole responsibility for the murder, Judge Atma Charan sentenced him and fellow conspirator Narayan Apte to death, and the assassin's brother, Gopal, and several others to varying terms of imprisonment.

Ramdas Gandhi, the Mahatma's third son, was among those who pleaded with Nehru that the lives of Nathuram and Apte should be spared. Gandhi, it was pointed out, was a staunch and inflexible opponent of the death penalty. Nehru remained unmoved: as he was to write to Ramdas, no lesser a person than the 'Father of the Nation' had been assassinated, and much as he was inclined to accept and honor the teachings of Bapu, his very own mentor, the ends of justice would be better served by the deaths of Nathuram and Apte. In this, the 'rarest of rare cases', the secular Nehru had to serve an unspecified will that could not be defied. Nehru, we can be certain, would have approved of the words that the Supreme Court chose to use in upholding Afzal's death sentence: "The appellant, who is a surrendered militant and who was bent upon repeating the acts of treason against the nation, is a menace to the society and his life should become extinct."

Interesting as are the legal issues surrounding Afzal's conviction, and compelling as are the questions of culpability and responsibility, it is clear that Afzal's case now belongs to another spectral order. We must thus be asking very different questions: What sacrificial victims does the nation-state relentlessly seek? What is the symbolic register of sacrifice demanded by a modern nation-state? What sacrifices are demanded by the regime of

truth, and what truths must be forsaken by the regime of sacrifice? These questions do not admit of easy answers, but perhaps they may guide us to better reflection and action.