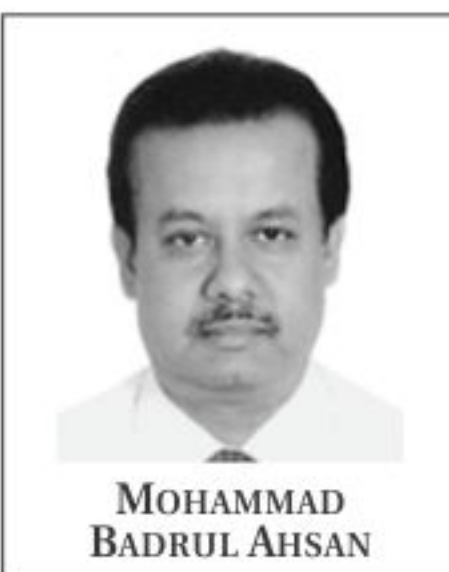


## CROSS TALK

# In the twilight of justice



MOHAMMAD  
BADRUL AHSAN

A senior assistant judge landed in jail last week for alleged possession of Phensidyl bottles and a licensed gun, neither of

which had anything to do with his line of work. Here was a man of law who was doubling up as an outlaw, a modern-day Dr. Jekyll and Mr. Hyde mixed up between crime and punishment. He supported law on weekdays and subverted it on weekends (he was arrested on a Saturday). This judge was playing both sides of the fence.

People occasionally have to wear two hats at work when a position suddenly falls vacant. Many people moonlight for supplemental incomes. Only God knows what this judge was doing in that van. Police say he has confessed to his role as a delivery man. One is curious if he was also getting high on his own supply.

At this point it appears that his legal career was simply a charade, a useful front to hide a seedy life behind the cover of a respectable job. That I should say is true for many of us who shuffle between their covert and overt lives. One doesn't need to hit a calculator to work out the calculus. A drug runner possibly takes home more money in one weekend than a judge

does in an entire month or a year. Fyodor Dostoevsky writes in *Crime and Punishment*: "If he has a conscience he will suffer for his mistake. That will be punishment as well as the prison." Prisons are meant to be prosthesis for crippled conscience. An individual is thrown behind the high walls of a prison when the walls of his conscience have all but crumbled. Our particular judge must have been raised on this diet of wisdom. Yet he chose to

storm blew through the valley and mixed up all the tails. Ever since then every dog is suspicious that the other dog must be wearing his tail.

That same storm has also left us disillusioned. The timing of that storm is controversial. Some say it happened in 1971, others say it was 1975, and still some people would like to argue that the year was 1990. But one thing is clear that each of us has lost his or her place in life.

may be sad and somewhat annoyed with himself for failing to conduct his business more discreetly. He may have the disappointment of a masquerade ball participant whose mask failed to hide his identity.

But he knew what he was doing. He knew law is like an etherised patient, breathing but immobilised and ineffective. In his mind it must have been all the same. Others help the criminal for money. He joined them to do the same thing.

As surely as night follows day, condoning crime is a crime in itself. Whether that crime is committed with underhand dealings or contraband items carried inside a van, the end result is the same. Reckless protectors of law in the driving seat of a feckless system are driving under the influence of money.

Justice delayed is justice denied, but justice depraved is even worse. American judge Earl Warren is credited for saying that the police must obey the law while enforcing the law. We are disappointed to find a judge allegedly amongst the drug dealers. Those who bend the law and those who break the law, both operate in the twilight of justice.

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live two lives, playing hide and seek with himself and rest of the world.

Conscience is an ordinary man's communion with God. What he sees, hears, tastes, smells, and touches are distilled by this invisible process that purifies his thoughts. If our man the judge was handling two contradictory jobs at the same time, it was simply because he lost his conscience. He was not thinking that he had crossed the line. A keeper had turned into a usurper.

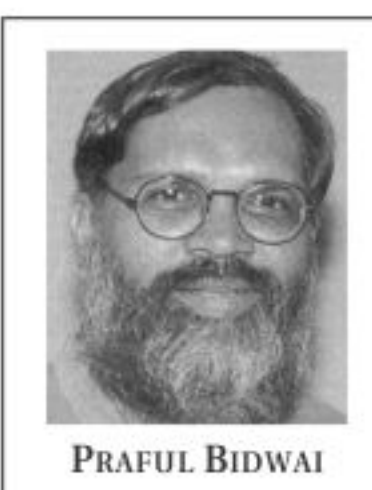
An Argentinean folklore has it that one night the dogs went to party with the cats and customarily left their tails outside the doors. That night a big

It has changed the game. Once we fought hard to keep our body and soul together, but now the fight is to tear them asunder. The judge was a moral arbiter in his body, but he was a miscreant in his soul. So are some politicians, doctors, lawyers, engineers, teachers, armchair analysts, Friday freethinkers, living room liberals and corridor conservatives in this country, each of whom is split into two personalities. The person sitting in the show-room isn't the same person in the godown.

If the arrest last week has shocked many people in this country, it mustn't have shocked the man himself. He

## PRAFUL BIDWAI COLUMN

# Kasab and politics of the death penalty



PRAFUL BIDWAI

By secretly hanging Ajmal Kasab for the 2008 Mumbai terrorist attacks, the Indian government committed a Constitutional

impropriety and virtually ensured that the masterminds behind the attacks wouldn't be brought to justice. Kasab's execution exposes the crassness of "the hangman's justice" and should trigger a demand for the abolition of the death penalty.

The Constitutional impropriety lies in a failure of due process -- to inform Kasab of his right to seek a judicial review of the rejection of his mercy petition by President Pranab Mukherjee on November 5. While communicating the decision to Kasab one week later, the government should have told him that the rejection doesn't close all legal avenues; he could still move the Supreme Court to review it.

This was Kasab's right under the Constitution's right-to-life Article 21, which applies to foreign nationals too. The Supreme Court has the power to review and even reverse the president's rejection of mercy petitions, based on the home ministry's recommendation, if the rejection is based on bias and incomplete consideration of evidence, or is otherwise wrongful.

The Court explicitly clarified this in the Kehar Singh verdict (1989) on Indira Gandhi's assassination. It held the courts have the power to examine the material on the basis of which the rejection is decided. The president's pardoning power is totally different from the judiciary's power of review. But both institutions are fallible.

India's Constitution provides checks and balances against this. If the judiciary fails, the president has the power to correct it. If the president's exercise of this power is questionable, the judiciary can ask him to reconsider his decision.

The review right has been used many times by convicted people or their relations -- e.g. three men sentenced for Rajiv Gandhi's assassination, by Devinder Pal Singh Bhullar, convicted for a 1993 terror attack in Delhi, and even by rapist-murderer Dhananjay Chatterjee, the last person to hang before Kasab, in 2004.

In Kasab's case, the Indian state followed due process through the trial and right until he made his mercy petition to the president. But it faltered at the very last stage. President Mukherjee failed to disclose his reasons for rejecting the petition and lost an opportunity to promote transparency and the rule of law.

The suddenness and secrecy surrounding Kasab's execution raises suspicions that it was conducted for extraneous reasons -- on the eve of Parliament's winter session, when the ruling United Progressive Alliance is in the dock over scandals and unpopular policies.

The hanging took the wind out of the Bharatiya Janata Party's strident campaign claiming the UPA lacks the

tried under the highly controversial, now-repealed Prevention of Terrorism Act, which allows confession before a police officer as evidence.

It can be persuasively claimed that Guru's guilt wasn't established beyond doubt on strict judicial criteria. Yet the court order upholding his conviction said the Parliament attack "has shaken the entire nation" and society's "collective conscience" will be satisfied if "capital punishment is awarded" to him.

Given the secrecy, it wouldn't be uncharitable to conclude that the government didn't weigh the merits of summarily hanging Kasab vis-à-vis using his testimony in the trial in Pakistan of seven men led by Laskare-Toiba commander Zaki-ur-Rehman

attack Mumbai, including Lakhvi and Abu Jundal. If televised to international audiences, this would have impelled Pakistan to move faster on the trial and bring the attacks' plotters to justice.

This was not to be. The trial will probably soon lose its momentum. Pakistani courts have handed out just two convictions in terrorism cases in 15 years. In the first, the accused was eventually set free. In the second case, the judge who sentenced the killer of Salman Taseer fled Pakistan and hasn't been heard of since.

Kasab's execution will stoke mutual suspicions and set back the objective of achieving a breakthrough in India-Pakistan relations. If Sarabjeet Singh, convicted for terrorist attacks in Pakistan, is executed, relations will be further embittered.

The time has come to abolish the death penalty, as more than two-thirds of the world's nations have done. No state has the moral right to take anybody's life. Capital punishment is inhuman, cruel and degrading, and is disproportionately awarded to the poor and underprivileged everywhere.

It doesn't deter killing and heinous crimes. In the US, for instance, death-penalty states have a much higher rate of murder than non-penalty states. It's just a crass act of revenge, which legitimises senseless violence while undermining human solidarity.

Many innocent people have been executed because of inadequate legal representation, judicial misjudgment, false testimony or police prejudice and sloppiness. Such prejudice recently became starkly evident in India in the Lajpatnagar blasts case, leading to acquittals. In the US alone, more than 130 people were released from the death row since 1973 because they were proved innocent.

In India, 14 former Supreme Court and High Court judges have asked President Mukherjee to commute the death sentences of 13 people, based on the Supreme Court's own admission that some of these were rendered per incuriam (out of error or ignorance).

Such commutation must become the first step towards abolition. We cannot play with human life in a sordidly inhuman manner.

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courage to act against terrorists. The BJP cites the case of Afzal Guru, convicted for the Parliament House attack of December 2001. It also put out of the limelight the aftermath of Bal Thackeray's death. And it gave the Congress a majo image in competing with the BJP.

According to *The Indian Express*, Maharashtra's prison authorities had made elaborate preparations for hanging Kasab in Pune, whose timing would be decided by the state of Thackeray's health. The fallback plan was to hang Kasab in the Mumbai jail where he was lodged -- in contravention of Maharashtra's practice of hanging convicts only in Pune or Nagpur.

This speaks of the political executive's deviousness and venality and sets a terrible precedent. Tomorrow, the UPA may hang Afzal Guru just before the next election for political reasons.

There's a huge difference between Kasab and Guru. Kasab's gunning down of innocent people was televised in real time and watched by millions. Guru didn't kill directly, nor was he so charged. Explosives were allegedly recovered from his hideout later. Accused of conspiracy, he was

Lakhvi for the Mumbai attacks.

Kasab was a rare asset -- one of the few foreign terrorists caught alive in India. Yet, very little solid evidence based on his interrogation was provided to the Pakistani trial court. Nor was Kasab produced there.

Under Pakistani -- and Indian -- criminal procedures, Kasab's confessional statement won't count as evidence without his cross-examination. When a Pakistani judicial commission visited India in February, it recorded the statements of the magistrate before whom Kasab made his confession, and the police officer who interrogated him. But it wasn't allowed to cross-examine them, leave alone Kasab.

Kasab's elimination makes it unlikely that the Mumbai attacks' plotters/handlers will be convicted. Two among their battery of lawyers, Shahbaz Rajput and Khwaja Haris Ahmed, say that the defence "case just got stronger; Kasab's statements now" have no legal value."

Just imagine a different scenario, with Kasab's cross-examination. He would have identified the men who inspired, trained, guided, and commanded the 10 young men sent to

## Corruption takes toll on rating

Let's pull up our socks to improve on it

ACCORDING to Transparency International's Corruption Perception Index 2012, Bangladesh slipped 24 points on the graft scale. The CPI surveyed 176 countries this year where the country retained its 13th place from the bottom on prevalence of corruption. It is little consolation to learn that our score was better than that of North Korea, Myanmar and Afghanistan. The first a totalitarian state, the second being a country in transition from an authoritarian state to a democracy while the last being a nation still in the throes of civil war.

Yet, there remains room for improvement, especially when we see a country like Somalia taking giant steps for six years in a row to improve its CPI record and leave Bangladesh behind. Bangladesh scored 26 (from the bottom) whereas the average score across the globe was 46; we managed to scrape through to attain the second position in the worst performance order among the South Asian countries. The sad reality is that the incumbent alliance has failed to deliver on a number of pledges since it took power. The Padma bridge construction debacle refuses to go away; along with a series of high profile scams including one revolving around railway. This is followed by a range of banking scams where Hall-Mark takes the "gold" followed closely by the Destiny group of companies vying to take the "silver".

Leaving aside scams and other scandals, the government's move to clip the wings of the anti-graft body has done nothing to improve our track record. With the Anti-Corruption Commission's powers curbed and ability to go after high profile cases, the issue of delaying the process of making judiciary independent of the executive and indeed toying with the idea of amending the Companies Act to enable the administration to put a government-appointed administrator in any company deemed to be in financial trouble have all colluded together to put Bangladesh's ranking where it is today. Undoubtedly, corruption in the public sector remains a major hurdle to good governance in Bangladesh. It has emerged as the greatest stumbling block to attaining middle-income status by 2021 and threatens to derail Bangladesh's prospects of becoming the choice destination for foreign direct investment.

We must get our act together to roll back the trend.

## Terrorism in Bangladesh

IEP report no cause for complacency

THE Institute for Economics and Peace, based in the USA, has in fact validated by its report published on Tuesday, something that has been for long a fact in Bangladesh. In South Asia Bangladesh is the country least affected by terrorism. This has been acknowledged by knowledgeable circles of international practitioners and scholars too. There has been no terrorist attack in this country since 2006. However, the casualty figures mentioned in the report as regards Bangladesh, occurring between 2001 and now, are not quite accurate. The report perhaps has not taken the death toll in the August 21, 2004, grenade attack on the AL meeting in which 24 people were killed and more than 200 injured

The credit for the low prevalence of terrorism in this country over the last ten years, when in fact terrorism had quadrupled worldwide, must go to the government's policy of zero tolerance of extremism and proactive work of the law enforcing agencies. Since the last five years in particular, the security agencies have been able to pre-empt several planned destructive acts of the terrorists and have been able to arrest nearly seven hundred of them. And for this we commend them.

However, we must not sit on our laurels nor must we be overtaken by complacency since terrorism as phenomenon is sustained by ideology that is often hard, if not impossible, to counter. We must not overlook the fact that some of these elements may have gone into a temporary mode of suspended animation waiting for an opportune moment to reappear. And we say this without wanting to sound alarmist.

The government's counterterrorism strategy, which has been recently formulated, should be more vigorously implemented, particularly in so far as it relates to countering the extremists propaganda, by formulating appropriate counter-narratives. The government should also take note of reported radicalization in some private and public universities where the proscribed Hijab-Tahrir

## THIS DAY IN HISTORY

December 7

1941

World War II: Attack on Pearl Harbor The Imperial Japanese Navy attacks the United States Pacific Fleet and its defending Army Air Forces and Marine air forces at Pearl Harbor, Hawaii, causing a declaration of war upon Japan by the United States. Japan also invades Malaya, Thailand, Hong Kong, the Philippines, and the Dutch East Indies at the same time (December 8 in Asia).

1970

The first ever general election on the basis of direct adult franchise is held in Pakistan for 131 National Assembly seats.

1971

Pakistan President Yahya Khan announces the formation of a Coalition Government at Centre with Nurul Amin as Prime Minister and Zulfikar Ali Bhutto as Vice-Prime Minister.

1988

Yasser Arafat recognizes the right of Israel to exist.