

Extradition Treaty with India: Why it is needed



IT is reported that India's Home Minister Sushil Kumar Shinde will be visiting Bangladesh from January 28 for three days. The border killing of civilian Bangladeshis will

hopefully be the key topic as it has been a visible spoiler of bilateral relations.

The senseless torture and killing of Bangladeshis by the "trigger happy" BSF at the border has led an overwhelming section of people in Bangladesh to believe that India does not care about the loss of lives of Bangladeshis. Such killings should be stopped forthwith.

During the visit it is reported that Bangladesh will sign two agreements with India:

- Extradition Treaty and
- New visa agreement to ease travel to India of certain categories of Bangladeshis.

This article focuses on the proposed extradition treaty which will ensure that criminals or sentenced persons of either country cannot avoid punishment.

It is noted that in the Joint Communique of January 13, 2010, following the visit of the Bangladesh prime minister to India, it was mentioned that the countries signed two agreements -- one on Mutual Legal Assistance on

Criminal Matters and the other on the Transfer of Sentenced Persons (Paragraph 49 of the communique).

Historically, countries have cooperated in matters pertaining to crime control by exchanging wanted criminals and fugitive offenders. Every state is obliged to comply with certain fundamental rules of international law and violations of such laws may threaten international peace and security, which is against the obligations of the UN Charter.

Request of extradition of a citizen can be made by a state even when that citizen did not commit any crime in its territory but committed crime in a foreign country. For example, if a Bangladeshi citizen commits crimes in Britain, Bangladesh government may seek extradition of that citizen to stand trial in Bangladesh under its law.

Extradition is a judicial process through which a fugitive criminal is brought to the altar of the law of a state from another state to which he has escaped. It is different from deportation because in the case of deportation, a state expels from its territory the undesirable person and the decision is at the executive level and does not involve the judiciary.

Every country has an extradition law. Bangladesh Parliament enacted the Extradition Act in 1974, which was notified in the Gazette on July 30, 1974. India put in place its Extradition Act in 1962. Both countries are empowered to con-

clude extradition treaties with other countries.

Domestic law enumerates a list of extraditable offences and ordinarily a magistrate has been given the power to determine whether a request of extradition falls within the list of extraditable offences.

Under domestic law, the list of extraditable crimes does not include politically motivated crimes, crimes related to religion, any offence that is a crime in one country but not in the other (often known

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as double criminality test), and the penalty is not too severe for the offence in the country of request (capital punishment /death penalty is considered to be too severe for murder in many countries where capital punishment has been abolished. European Union and Canada have abolished death penalty).

Once the magistrate is satisfied that the request of extradition complies with the provisions of the law, the court allows the extradition request. The magistrate's order can be appealed to the higher court. After the judicial process is complete, the

government is then empowered to decide whether it is appropriate to extradite the alleged criminal or sentenced person to another country.

Both India and Bangladesh have been keen to sign the extradition treaty since the AL government came to power in 2009. Some reasons are:

It is reported that two sentenced persons, namely, Captain Abdul Mazid (retd) and Risalder Muslehuddin (retd), involved in the brutal murder of Bangabandhu Sheikh Mujibur Rahman and his family, have reportedly escaped to India and Bangladesh wants them to be extradited to Bangladesh.

Besides, it is reported that twin brothers, Mursalin and Mustaqim who were allegedly involved in the August 21 grenade attack on the AL rally in 2004, killing 23 persons and injuring many others, are in custody in Delhi's Tihar prison and a request of extradition for them has been reportedly made by Bangladesh.

United Liberation Front of Assam (ULFA) has wanted secession of Assam (Assam) from India since 1979, and it does not consider itself a secessionist organisation as it claims that Assam was never a part of British India. ULFA's violent actions are of serious concern to New Delhi.

The banned ULFA's General Secretary Anup Chetia (Golap Barua) was arrested in 1997 in Bangladesh and sentenced to seven-year prison term for violations of Passport Act, Foreigner's Act and foreign

currency regulations. Chetia remains in prison in Bangladesh due to certain legal complications.

On December 7, 2008, Chetia had reportedly written to the United Nations High Commissioner for Refugees urging it to grant him refugee status and political asylum in Bangladesh. ULFA also appealed for political asylum in a safe country.

It is reported that India sought his extradition quite some time ago because it wants to negotiate a peace deal with Anup Chetia since ULFA's chief commander Paresh Barua and other leaders of Barua faction are against the proposed peace negotiations without addressing the question of independence for Assam.

Paresh Barua reportedly managed to escape from Bangladesh in 2009. On January 19, 2011, he created a sensation in the local media by publishing a group photo of himself along with 100 armed cadres in full camouflage uniform, reportedly from a hiding place near Chinese-Myanmar border.

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Under Article 145A of the Bangladesh Constitution, the extradition treaty with India needs to be placed before the Parliament.

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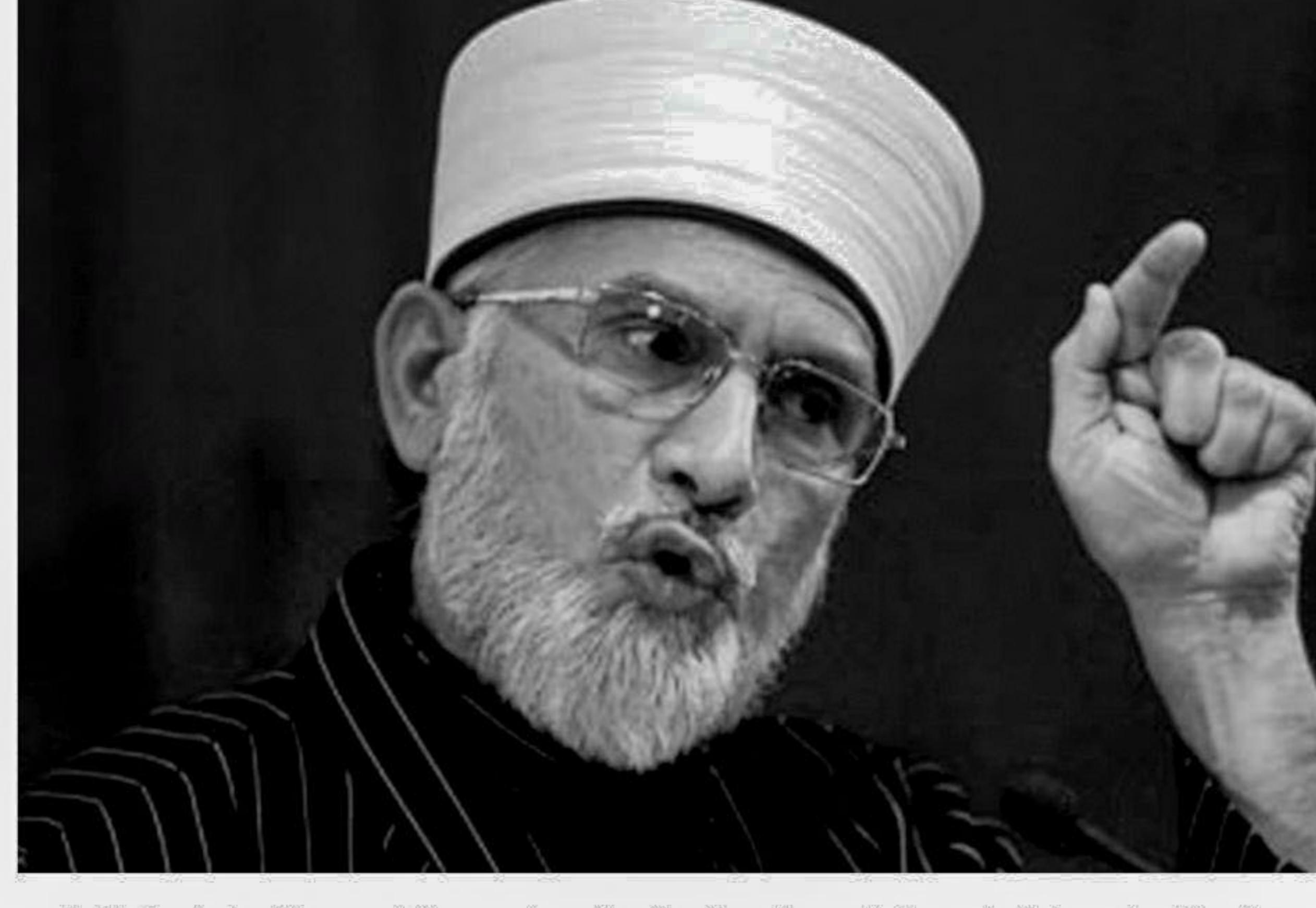
Qadri the charismatic cleric: creator of chaos or champion of a cause?

ITTEKHAR AHMED CHOWDHURY

FOR half a week in January 2013, many eyes in South Asia, and in much of the world, were focused on a maverick Mullah in Pakistan by the name of Muhammad Tahir-ul Qadri. Many saw him, and still do, as a harbinger of change. A Pakistani combination of India's Anna Hazare and Iran's Ayatollah Khomeini, he appeared suddenly like a comet on that nation's political horizon, summoning up the largest crowd ever gathered in that challenged country's capital, Islamabad, and nearly toppled the government. Just as suddenly, he melted away as did those myriads of followers who braved the rain and cold at his bidding. Pakistan's version of Xenophon's March of the Ten Thousand was over for now. But not without having left an indelible imprint on its political fabric, demonstrating that people's power still mattered in a system that, through most of its history, has been dominated by the proverbial uniformed "man on horseback" or the military. Qadri appeared for a time to render the streets of Islamabad chaotic. But those gathered around him saw his actions as reflecting a cause: not just for restoring honesty in governance but seeking to do that by using as the tool the tolerant, syncretistic, and Sufistic face of Islam which represents Pakistan's values, urgencies and ethos much more than that fierce, fundamentalist, and Salafist version that has been relentlessly battering the Pakistani nation, exhausting it, and sharpening the public's yearning for a positive change.

The cleric with a cause
Who is this cleric, Qadri, and what is he about? At 62, his role in Pakistani civic life had not been significant until now. A scholar, he taught constitutional law at the University of the Punjab, founded and chaired the Minhaj ul Quran International, an organisation that boasts of having established a number of academic institutions, and for a brief while served as a legislator. Disillusioned generally with Pakistan, he went away to Canada, whose citizenship too he holds, to a meteoric return to Pakistan's political firmament in November 2012. Pakistan by then was reeling from enormous problems, of terrorism, corruption, mis-governance, an economy on the verge of collapse, the judiciary and the executive locked in a deadly duel and an army with a reputation for intervention getting increasingly impatient. Pakistan's great, and perhaps only asset, was its strategic importance, but it was already drawing much too heavily upon it. The popularity of President Asif Ali Zardari's government of the Pakistan People's Party (PPP) was at its nadir, and the opposition, Nawaz Sharif's Pakistan Muslim League (PML-N) was no exciting alternative. A rising star was Imran Khan, the former cricketing hero, whose flamboyance was attractive to the crowds, but deemed an insufficient credential to head government. At such a moment, Qadri had chosen to return home, the right man, at the right time, at the right place. He used his firebrand style to quickly take his message to the people.

It was one that resonates with most Pakistanis today. He is a "good Muslim," a scholar, and one who over the past years had slowly built up a reputation of tolerance, moderation and anti-fundamentalism, representing the syncretistic Barelvi School rather than the more extremist Deobandis in terms of sub-continent Islamic leanings. In 2006 he issued a 600-



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page fatwa against terrorism, totally rejecting it under "any excuse or pretext." He travelled to India in 2012, and delivered a message of peace to admiring audiences, stating that "terrorism has no place in Islam." He urged that both India and Pakistan reduce their defence expenditures and spend the savings for the benefit of the poor. Then in December 2012 he returned to Pakistan after seven years in Canada, and almost immediately began his campaign for a "democratic revolution." In mid-January 2013, he led cheering crowds in a "Long March to Islamabad." In a country where 70% of legislators pay no income-tax, he declared, convincingly to the massed populace, that "our lawmakers are the lawbreakers." The centre of Islamabad became "Tahir Square" resembling Cairo's "Tahrir Square." It seemed Pakistan's Arab spring moment had arrived.

Demands and response

Qadri placed a list of demands. The government must resign immediately. It was to be followed by a caretaker regime that would initiate a series of reforms to cleanse the political system prior to elections (which implied a postponement of the polls). It was to be set up in consultation with the judiciary and the military. This was akin to the "Bangladesh model" followed in that country between 2007 and 2009. It was suggested that Qadri, backed by the judges and army, was attempting a "soft coup." Many thought the army was switching support from Imran Khan to who now seemed to be a more plausible player (the army of course denied extending

any such support to either). With or without army's support, Qadri was now invincible. Interior Minister Rehman Malik mulled over possible forced intervention to break-up the crowds, but Zardari, wisely, urged calm and offered to negotiate.

The tough talks that followed yielded fruitful results. The government of Zardari, which had dodged a bullet, heaved a sigh of relief. So did, interestingly, Pakistan's major opposition parties. Neither Nawaz Sharif nor Imran Khan was prepared to countenance the possibility of any delay in elections, which Qadri's initial pre-agreement demands had implied. They both were somewhat heady from the smell of possible electoral triumphs, though the Qadri phenomenon now injects some seeds of doubt into this. In any case Qadri has taken considerable wind out of the opposition's sails.

The Islamabad Agreement

The agreement followed five hours of intense negotiations between Qadri and an 11-member government team. It was signed by Qadri and Prime Minister Raja Pervez Ashraf among others. Significantly, it recognised a key role for Qadri's party, Pakistan Awami Tehreek (PAT). This party and the government "in complete consensus" would propose names of two "honest and impartial" persons for appointment as caretaker prime minister, with the Parliament being dissolved on March 16, 2013, and polls taking place within 90 days. Changes in the Election Commission would be discussed between the government and PAT on January 27, 2013. The proposed electoral reforms would take into account Qadri's demands. Cases

registered during Qadri's protest movement were to be withdrawn, and there were to be no "acts of victimisation and vendetta." Thereafter, Qadri asked his followers to go home, which they did.

On the face of it, for Qadri, it did not look like a great victory. The government, for instance, had remained intact, and the elections agreed upon were due to take place anyway. But Qadri's aim was perhaps not necessarily to extract the maximal demands, which he used effectively as negotiating chips. He had managed to catapult his own political party (even more than Nawaz Sharif's or Imran Khan's) as the principal interlocutor of the ruling PPP as far as the caretaker government was concerned, including with regard to the appointment of its prime minister. Far more importantly, his moderate Sufistic Islamic force had recaptured the ground from the al-Qaeda type extremists. He still had to confront allegations of military backing. Where else, it was asked, would he have got the funds and such organisational wherewithal at such short notice. Even if it were so, it was a positive achievement that a massive crisis was averted (for by then the judiciary and executive were jousting fiercely) without a shot being fired in anger! Also any need for a direct military intervention was obviated, and a non-military option to cut the Gordian knot was found (The appropriate time for an army takeover would have been now, rather than after the post-election assumption of office by a new government with a fresh mandate).

Regional ramifications

The events of January 2013 also had positive ramifications for the Muslims of both India and Bangladesh, the other predominantly Islamic country in South Asia, albeit with a penchant for moderation (Islamism has never been a preponderant factor in Bangladeshi politics, where faith has drawn upon other value-systems as reflected, for instance in the deep veneration for the Sufi Saint Hazrat Shahjalal of Sylhet, much like Khwaja Moinuddin Chishti of Ajmer, Shahbaz Kalander of Sind, and Hazrat Data Ganj Baksh of Lahore. Qadri seems to be a hyphen that links them all). Qadri emphasised the power of the tolerant face of his and their religion over and above any violent response to the supposed "threats of Islam being in danger" as advocated by many extremists. As his movement was taking place, there had been shootings across the Line of Control in Jammu and Kashmir between India and Pakistan. Politicians are apt to use such occasions to whip up populist and jingoistic support, but Qadri was remarkable in the calm he displayed. Also in Bangladesh, where a political imbroglio is brewing, the Qadri phenomenon would be studied for lessons to be drawn from it. What exactly, we are still unaware of. So, Pakistanis had braced themselves for the few days of chaos in Islamabad in the hope that out of it would emerge the dancing star! It may be a tad unclear as of now if that has actually happened, but the messianic role of Qadri would render him a serious candidate for Thomas Carlyle's pantheon of "heroes"!

(The views expressed in this article those of the writer and do not necessarily reflect those of ISAS.)
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