



A plea for Sarabjit By Zubeida Mustafa

India declines to fix date for resumption of dialogue India declines to fix date for resumption of dialogue At an informal meeting between a group of Indians and Pakistanis in the Swiss village of Caux, the venue of the second forum of human security in July 2009, one suggestion put forward was for the governments in New Delhi and Islamabad to abolish capital punishment. It was argued that it would help improve relations between the two neighbours. Yes it would, if this suggestion were to be taken seriously.

Given the number of prisoners from each country languishing in the jails of the other at any point in time and the fact that a number of them have been on death row for years makes this an issue worth taking up. The charge most frequently slapped on such prisoners is of indulging in acts of terrorism or ISI/RAW-inspired espionage. Invariably the fate of one man is tacitly interwoven with that of another.

This strategy results in a tit-for-tat game with the two sides retaliating to each other's actions in similar fashion. If there is a man linked to India on death row in Pakistan, be assured there will be one awaiting a similar fate in India. Today, Mohammad Afzal Guru stands convicted in India for storming the Lok Sabha in December 2001. In Kot Lakhpat jail, Lahore, we have Sarabjit Singh arrested in 1990 and convicted of carrying out serial bomb blasts in Faisalabad, Kasur and Lahore.

Sarabjit's case will be coming up in court shortly and there are many reasons why thousands in Pakistan, as well as India, feel that he should not be hanged. Sarabjit was sentenced to death in 1991 by Lahore's anti-terrorism court. He filed a petition before the Supreme Court which was dismissed in 2005 on the grounds that it was time-barred. An appeal to review the petition was again dismissed in June 2009 when the government-appointed lawyer for the convict failed to appear before the court on two consecutive occasions when the case came up for hearing.

Now a new lawyer, Awais Shaikh, has been appointed and he is committed to fighting his client's case. A fresh application has been filed before the Supreme Court seeking review of its earlier decision to dismiss Sarabjit Singh's petition challenging his death penalty. A mercy petition is also being made to the president for clemency. The former Indian cricket captain, Kapil Dev, has collected 100,000 signatures calling for reprieve for Sarabjit and the same is being done on this side of the border.

Sheikh's recent visit to India and the warm welcome he received there symbolises the popular sentiment in that country in favour of Sarabjit's reprieve, as pointed out by the foreign minister.

Thus Sarabjit's case has now acquired the dimension of an India-Pakistan issue which can be a factor in promoting amity among the people of the two countries. True, there are people lacking compassion who would argue in support of an eye for an eye and stern punishment for those who have 'wronged'.

But the problem with capital punishment is that it is a frightfully 'ultimate' action that is irrevocable. Can one really be sure if the convict has really committed the deed? Whether a man is judged innocent or guilty depends on so many factors beyond his control. The interpretation of the law, the quality of legal assistance the defendant is provided, the efficiency or otherwise of the prosecution, even the political, international and social circumstances at the time the alleged crime was committed etc. All of these go into the making of a case for or against the person in the dock.

In Sarabjit's case it is said to be based on conjectures and surmises. His name is disputed and is not even cited in the FIR. Given factors such as these, jurists now regard the death penalty to be an anachronistic punishment that has, to use Amnesty International's words, "no place in a modern criminal justice system". And the main question to be asked is, has capital punishment really deterred serious crime?

One doesn't have to repeat all the arguments advanced by the opponents of capital punishment over the decades that have been so convincing that 133 governments have seen the wisdom of abolishing the death penalty. It is time others followed suit. In Pakistan's case it is all the more difficult to condone what can be described as a lapse on the part of the government.

Last year, on the occasion of Benazir Bhutto's birthday, Prime Minister Gilani had promised the National Assembly that all prisoners on death row in Pakistan would have their sentences commuted to life imprisonment. This proposal was approved by the cabinet and reaffirmed by President Zardari when he took oath of office.

Why hasn't this promise been fulfilled? Here is an opportunity for the government to show its commitment to two causes — that of human rights and that of peace in South Asia. The fact is that Sarabjit's case has a direct bearing on India-Pakistan relations. The Indian government has been following the case closely, and has appealed a number of times to Islamabad to commute Sarabjit's sentence to life imprisonment or grant him clemency.

Significantly, last year Sarabjit's family members were granted visas to enable them to visit him in prison. It was then that he met his younger daughter for the first time. She was born after he had been arrested when, according to his family, he had strayed into Pakistani territory in a state of drunken stupor. His hanging was first put off for a month in April 2008 and then indefinitely.

The political implications of such cases, that also have strong humanitarian undertones, have not escaped public notice. Last year another Indian, allegedly a spy, Kashmir Singh, was released after 35 years in Pakistani prisons. Why not Sarabjit Singh who has already spent 18 years behind bars and was allowed consular access only four years ago? zubeidam@gmail.com

Zubeida Mustafa, "A plea for Sarabjit," *Dawn*. 19-08-2009.

Keywords: Social sciences, Political leaders, Politics, Crimes, Terrorism, Terrorists, Human rights, Prisoners, Supreme court, National Assembly, Kashmir issue, President Zardari, Prime Minister Gilani, Benazir Bhutto