



INTERVENTION TO THE HUMAN RIGHTS COUNCIL 22nd Session, March, 2013

Condemning the Execution of Muhammad Afzal Guru

International Human Rights Association for American Minorities (IHRAAM) and International Council for Human Rights (ICHR), condemn the secret execution of a Kashmiri youth, Muhammad Afzal Guru, at New Delhi's Tihar jail in Shashikumar Velath on the 9th February 2013, ordered by the Government of India in contravention of having accepted the recommendation to put moratorium on capital punishment during its Universal Periodic Review (UPR) in the United Nations Human Rights Council 21st session, in September 2012.

Indeed, given the United Nations Human Rights Council's (UNHRC) firm opposition to capital punishment on clear ethical, moral and human rights grounds, UNHRC shall have no hesitation in joining the global condemnation of the hanging of Afzal Guru.

The people of Kashmir have been anguished and shocked by the execution. IHRAAM and ICHR would like to raise the following points:

1. The evidence against Afzal Guru in this matter was entirely circumstantial. This was accepted by the trial court, the High Court, and ultimately by the Supreme Court of India. This is why the Supreme Court in its judgment stated: "As is the case with most conspiracies, there is and could be no direct evidence amounting to criminal conspiracies..... The incident, which is resulted in heavy casualties had shaken the entire nation, and the collective conscience of society will only be satisfied if capital punishment is awarded to the offender." In our opinion, this itself speaks in volumes, the conviction and the punishment being based on political considerations;
2. It has been widely recognised by the Indian legal fraternity that Afzal Guru was not provided with adequate legal assistance, as a result of which his entire trial was prejudicial and unfair. The Supreme Court judgement in its numbered paragraph 18 records this point raised by Mr Sushil Kumar, appearing for Afzal Guru stating - "...he was denied proper legal aid, thereby depriving him of affective defence in the course of trial. In sum and substance, the contention is that the counsel appointed by the court as "amicus curiae" to take care of his defence was thrust on him against his will and the first amicus appointed made concessions with regard to the admission of certain documents and framing of charges without his knowledge. It is further submitted that the counsel who conducted the trial did not diligently cross examine the witnesses. It is, therefore, contended that his valuable right of legal aid flowing from Articles 21 and 22 is violated..";
3. It was announced on television (broadcast on NDTV at 8:00, Brussels time - on the 8th February, the Burkha Dutt Programme) that the wife of Afzal Guru, Tabsum, had lodged a petition with the Supreme Court of India seeking the vacation of the death penalty given the eight years delay in the execution, and that petition is still pending in the Superior Court. It is the legal argument of the Indian lawyers that the death penalty could not have been carried out while the petition was still pending;
4. India's legal fraternity has also advocated that the domestic legal system provides for judicial review of a decision by the Indian President when rejecting a mercy petition relating to a death sentence. Clearly, the murdered Muhammad Afzal

Guru was denied this opportunity as well;

5. It is also shocking that Afzal Guru's wife, and his other immediate family members, were not informed of his imminent execution. In fact, his wife has indicated that she received a letter from the Indian Government in the mail, three days after the execution, on the 11th February 2013;

6. Tabsum has also been denied the right to perform religious rites for her husband after his death, within the compound of Tihar jail, New Delhi;

7. Amnesty International has condemned the execution of Afzal Guru "...in the strongest possible terms. This very regrettably puts India in opposition to the global trend towards moving away from the death penalty."

8. Human Rights Watch has described the secret hanging of Guru as: "...a major step back for India..." and stressed that "...questions need to be asked why the Indian Government executed Afzal Guru now.";

9. Since the execution, the entire Indian-Held Kashmir has been put under 24 hour curfew, for an indefinite period of time;

10. The entire Kashmiri leadership, both within the occupied territory and in India at large, has been arrested or detained in their homes; and

11. The people of Kashmir are expressing their anguish at the tragic hanging of Guru. Youths have taken to the streets to protest despite the curfew, resulting in the deaths of three young Kashmiris - Obur Mushtaq Rather of Sopor, Tariq Ahmed and Zameer Ahmed of Sumbal - by the Indian armed forces.

IHRAAM and ICHR oppose the death penalty in all cases - without exception - regardless of the nature of crime, the characteristics of the offender, or the method used by the state to kill the prisoner.

The death penalty is the ultimate denial of human rights. It is the premeditated and cold-blooded killing of a human being by the state. This cruel, inhuman and degrading punishment is done in the name of justice, but it violates the right to life as proclaimed in the Universal Declaration of Human Rights.

The Universal Declaration of Human Rights, adopted by the United Nations General Assembly in December 1948, recognises each person's right to life. It categorically states in Article 5 that: "No one shall be subjected to torture or to cruel, inhuman or degrading treatment or punishment." We firmly believe that the death penalty violates these rights.

IHRAAM and ICHR urge UNHRC, as champions of human rights, to condemn this execution, carried out by the Government of India despite having accepted the recommendation to put moratorium on the capital punishment during its Universal Periodic Review (UPR) in the United Nations Human Rights Council 21st session in September 2012. IHRAAM and ICHR seek assistance of UNHRC in calling on the Government of India to return the body of Afzal Guru to his wife and family, in order to allow them to perform his final religious rites with dignity.

In conclusion, the Government of India must be stressed to honor its commitment made to the international community through the UPR process to place the moratorium on capital punishment forthwith.