

## CHAPTER ONE

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# *An Attack on Democracy*

### **Terrorism and Preventive Measures**

Five armed persons entered the Parliament complex in New Delhi on 13 December 2001 at about 11.30 A.M. in a white Ambassador car when Parliament was in session. On being challenged near the arcade of the Vice-President of India, they opened fire. “For half an hour, a fierce battle raged outside the building; inside, around 200 trapped and terrified politicians listened to gunfire and grenade explosions. By noon, it was all over.”<sup>1</sup> All five persons died on the spot before they could enter inside the Parliament building. Nine other people, including some members of the security forces, died in the attack while sixteen persons from the security forces were injured. A much larger catastrophe was barely averted. In terms of the scale of the attack and its symbolic significance, it was perhaps the most daring terrorist assault on the Indian soil in recent years.

Since the attack took place just a few months after the terrorist attacks in New York and Washington on 11 September 2001, comparison with those events are inevitable. Speaking at the Annual Convocation of Visva Bharati University, Prime Minister Atal Behari Vajpayee likened the attack to the September 11 attack in

US. In this connection, Vajpayee suggested that “the phenomenon of terrorism has many dimensions and the strategy to counter it will have to be implemented across many fronts.”<sup>2</sup>

In a similar vein, Noam Chomsky wrote, while commenting on the judgment of the lower court in the Parliament attack case, “terrorism is a serious matter, and merits careful attention and scrupulous preventive measures and response” (Annexure 15). Citing the work of Jason Burke and others, Chomsky has suggested more recently that “there is a broad consensus of specialist opinion on how to reduce the threat of terror – keeping here to the subcategory that is doctrinally acceptable, *their* terror against *us* – and also on how to incite further terrorist atrocities, which, sooner or later, may become truly horrendous.”<sup>3</sup>

Apart from measures to improve intelligence and other law-enforcing mechanisms, two preventive measures of a more general and transparent character come immediately to mind: *public inquiry* and *protection of rights*. In fact, for reasons that follow, the ability of the law-enforcing arm of a state to prevent terrorist assaults depends heavily on the credibility of its democratic institutions. An authoritarian state only provides further fuel to terrorism even though it boasts of ruthless law-enforcing mechanisms.

Terrorists attacks, especially of the scale of September 11 and December 13, are designed, among other things, to cause deep injury to the psyche of a people. In the aftermath of such attacks, people are likely to suffer from a sense of diminishing control over their lives, especially in complex urban centers where people have less command on their lives anyway. The combination of fear and helplessness may then promote both a loss of confidence in open, democratic procedures and an increased dependence on the peremptory features that any state has.

Instead of securing the confidence of people, even “democracies” often use the opportunity to enforce the obedience by fan-

ning – in fact, *promoting* – fear: “In an age when all the grand ideas have lost credibility, fear of a phantom enemy is all the politicians have left to maintain their power.”<sup>4</sup> Allowed to grow, the paranoia may eventually lead to suspicion of specific communities, resulting in ugly division of people. The spiraling cycle of distrust, violence and loss of democracy only helps the terrorist.

As the reactions to both September 11 and December 13 illustrate, people are not naturally inclined to rush into such closed states of mind. In the December 13 event, unarmed and ill-equipped security people gave their lives to prevent harm to the building and the persons, including the members of Parliament, working inside it. The rest of the nation, instead of bursting into uncontrolled rage, simply expressed grief in the loss of lives with admirable restraint and waited for the government to take appropriate measures.

As for 9/11, there is some evidence that the passengers of at least one hijacked plane forced it to crash in a field; they died in saving some major national institutions. Policemen and firefighters of New York rushed in immediately to help the people caught up in the twin towers – saving many and dying in the process. Apart from a few and isolated incidents of attack on members of a minority community, the American people in general showed exemplary restraint. There were many reports of white Americans protecting the Arabs, and queuing up in Arab restaurants to promote their business.

This world continues to be livable because people, even in the face of extreme provocation, generally act with wisdom. This is the reason why terrorists of all shades work in small groups, and hide from the masses. It is the duty of a state to take measures that help sustain this resilience of people. After calamitous terrorist outrages, a responsible democratic state is expected to help people regain their full confidence in transparent, democratic procedures, thereby pulling the rug from below the terrorist.

One of the measures a government can take in that direction is to order a full-fledged inquiry by an institution that functions with transparency and has wide legitimacy with the general public. There is no doubt that the problem of terrorism is serious and complex. As such, any probe into terrorist outrages demands skills of management and deliberation of a high order, especially with respect to sharing and dissemination of information. As long as the institution is able to display an over-all transparency and human concern, the general public itself will appreciate the constraints under which the institution is compelled to function. The task is not easy, but it must be undertaken to secure the confidence of people.

A related measure is the preservation of rights. It is widely recognized that protection of civil and human rights is a significant preventive measure and response against terrorism. It could well be that terrorist groups in fact welcome the enactment of measures that infringe upon civil rights. As civil rights are curbed, as in an authoritarian state, the space for open democratic expression of dissent shrinks, while dissent itself grows because of the application of the measures themselves. The terrorist hopes, with some justification, that some of this unexpressed dissent will flow to swell their ranks and legitimize their goals in the general population.

Kofi Annan, the Secretary General of the United Nations, observed that “we should all be clear that there is no trade-off between effective action against terrorism and the protection of human rights. On the contrary, I believe that in the long term we shall find that human rights, along with democracy and social justice, are one of the best prophylactics against terrorism.” Similarly, Mary Robinson, former UN High Commissioner for Human Rights, urged states “to ensure that any measures restricting human rights in response to terrorism strike a fair balance be-

tween legitimate national security concerns and fundamental freedoms that is fully consistent with their international law commitments.”<sup>5</sup> Thus, in the context of the terrorist attack on Parliament on December 13, Chomsky hoped that “Indian democracy and its legal system will rise to the challenge, ... and ensure that human and civil rights are properly protected” (Annexure 15).

With respect to December 13 then, the envisaged commission of inquiry could have been entrusted with the task of addressing the following questions:

- *Who attacked Parliament?*
- *What exactly was the conspiracy?*
- *How could the attackers nearly succeed in blowing up the building itself?*
- *What are the domestic and international ramifications of this event?*
- *What steps have been taken to bring the real perpetrators to justice?*
- *Have the accused been given a fair trial and their human rights protected?*

No commission of public inquiry was ever instituted at any level.<sup>6</sup>

### **Windows of Opportunity**

In contrast, what followed after December 13 not only thwarted the composition of a commission of inquiry, it led to further erosion in democracy and social justice. As Chomsky observed, this is a general phenomenon in recent times: “the atrocities of 9-11 were exploited in a vulgar way by governments all over the world.” Thus, Chomsky found it “disgraceful” that, in the name of war on terrorism, “the authentic threat of terrorism [is often] exploited as a window of opportunity for intolerable actions.” Chomsky listed several ways in which such intolerable actions are promoted (Annexure 15):

- by escalating massive crimes on the pretext of “combating terrorism”
- by implementing repressive legislation to discipline their own citizens with no credible connection to preventing terrorist threats
- by carrying out programs that had not the remotest connection to terrorism and might even enhance it and that were opposed by the majority of the population.

The implicit reference here is to the actions of the US government following September 11 – actions which illustrated each of the concerns Chomsky raised. We will see later how the actions of the Indian government matched those of US.

As Michael Moore documented in his film *Fahrenheit 9/11*, the newly-elected Bush administration was fast losing ground by September 2001: the scandal of the Florida vote won't go away; the President could not get his cabinet nominations approved by the Congress; the economy was worsening with unprecedented rise in unemployment; for a new President, Bush's ratings fell to an all-time low. Moore's unconcealed suggestion is that state policy quickly took advantage of the carnage in New York as a fresh opportunity for aggression in the third world, thereby turning the attention of the nation away from its domestic failures. In other words, as the complex and time-consuming issue of how to bring the perpetrators of 9/11 to justice in accordance with civil norms and international law engaged political thinking in the world, the US pre-empted any consolidation of world opinion by a massive attack on the entire nation of Afghanistan.<sup>7</sup>

It is well known that immediately after 9/11, the Taliban government in Afghanistan not only condemned the attacks, they offered to join the international community in addressing the grave menace of terrorism. In particular, they offered to hand over Osama Bin Laden and his colleagues to a neutral country for interrogation

and trial, provided the US supplied the evidence it claimed to possess of Bin Laden's links to 9/11. By any rational standard, the Taliban offer was perfectly legitimate. If a sovereign state is asked to hand over one of its subjects, it has the right to examine preliminary evidence to decide whether the person ought to face judicial procedure at all. Satisfied, it has the right to ensure his justice and security. The Taliban could have claimed, as they did initially, that their own judicial system is adequate for the purpose. But, on the possible objection that they could be viewed as a party, they agreed to hand over Bin Laden to a judicial system that is not a party to the conflict. In effect, they asked for parity.<sup>8</sup>

The US rejected the Taliban offer and demanded the handing over of whomsoever it wanted unconditionally. When the Taliban justifiably failed to oblige, the US responded by mounting a full-scale war on the people of Afghanistan, ignoring all appeals of restraint from the international community. In the process, the US adopted methods that killed thousands of civilians,<sup>9</sup> turned fertile agricultural land into desert,<sup>10</sup> demolished hospitals, schools and power stations with high-tech gravity and cluster bombs,<sup>11</sup> prevented food-aid from reaching millions of starving people,<sup>12</sup> armed mercenaries and warlords to teeth, and filled an entire country permanently with mines, spies and special forces. Most of the world, including a vast majority of people in the US, opposed this war.

Violating the norms set by the Geneva Convention, the prisoners of war from Afghanistan were taken to the inhospitable island of Guantanamo Bay, and were subjected to atrocities of an unprecedented scale. Flushed with its apparent military success against a hapless foe, the US not only ignored the Geneva convention and UN resolutions on terrorism, it walked out of the Kyoto protocol on the environment, the ABM treaty, and the biological warfare convention, among others.<sup>13</sup>

At home, illegal surveillance and detention of people from the Arab countries were supplemented by several enactment of the “Patriot Act” that infringe upon the civil rights of US citizens. The planned “Domestic Security Enhancement Act of 2003” extends “powers of surveillance without court authorization, permits secret arrests, and further protects the state from the scrutiny of citizens,” among other things.<sup>14</sup> These intolerable actions continued in an even larger scale with the invasion of Iraq.

Not surprisingly, these actions have led to a manifold increase in terrorism in the regions most affected by US actions. Surveying a range of recent work, Chomsky reports: “Middle East expert Fawaz Gerges found that ‘It’s simply unbelievable how the war has revived the appeal of a global jihadi Islam that was in real decline after 9-11.’ Recruitment for the al-Qaeda networks increased, reaching more ‘menacing’ sectors, while Iraq itself became a ‘terrorist haven’ for the first time, also suffering its first suicide attacks since the 13<sup>th</sup> century. Suicide attacks worldwide for the year 2003 reached the highest level in modern times. Substantial specialist opinion believes that the war led to proliferation of weapons of mass destruction (WMD), also as predicted.”<sup>15</sup> Arundhati Roy explains: “In a strange sense, the U.S. government’s arsenal of weapons and unrivalled air and fire power makes terrorism an all-but-inescapable response. What people lack in wealth and power, they will make up for with stealth and energy.”<sup>16</sup>

Turning to the Indian scene, the actions of the government of India in the aftermath of December 13 matched US actions almost point by point, except for the scale – understandable due to the vast differences in the economic and military might of US and India. The National Democratic Alliance (NDA) government led by the right-wing Bharatiya Janata Party (BJP) came back to power in 1999. By September 2001, it had lost virtually every regional and civic election, often by a wide margin. Its façade of clean gov-

ernance stood exposed in a series of massive scams involving the Defence Minister George Fernandes in particular.<sup>17</sup> The Defence Ministry was charged with buying metal coffins for soldiers who had died in the Kargil war, at prices many times higher than those prevailing in the market. Further, a confidante of the Defence Minister was caught on videotape accepting bribe for the sale of defence equipment in the house of the minister himself.

Some sections of the electorate, who supported the NDA earlier on its claims of *swadeshi* (‘nationalism’), felt betrayed with the regime’s record of surrender to global corporate interests that led to neoliberal economic policies, and an unprecedented impoverishment of the masses, especially in the rural sector.<sup>18</sup> The BJP also began facing resistance from its own more ideologically adamant sections such as the *Bharatiya Majdoor Sabha* (BMS) and the *Swadeshi Jagaran Manch* – the labour and the economic forums – for its capitulation to foreign capital. The growing discontent resulted in a series of demonstrations by trade unions, including the BMS, culminating in the impressive hold-out for months by the workers of the recently privatized Bharat Aluminium Company, just prior to 9/11.

In fact, in its attempts to preserve the NDA, the government failed even to deliver to its most loyal constituency, namely, the militant Hindu fundamentalists in *Rashtriya Swayamsevak Sangh* (RSS), *Bajrang Dal*, *Viswa Hindu Parishad*, *Akhil Bharatiya Vidyarthi Parishad* etc, collectively known as the “*Sangh Parivar*.” In frustration, these forces began taking actions, such as intimidating and often murdering people from the minority communities (Graham Steins’ case, nun’s case, etc.), and issuing ultimatums on Ayodhya temple issue. The resulting appeasement of these forces by the government exposed the diabolical character of the BJP even further. Its meek attempts to revive its fundamentalist agenda by tampering with educational and cultural institutions met with

strong resistance from virtually all sections of the society. The election results clearly illustrated this array of exposures.

As it was forced to fall back on some populist measures – pushed primarily by the worried non-BJP allies in the NDA – to regain some credibility, it began to lose the strong corporate support that was one of the key elements of its ascendancy to power. Its failure to push through the labour ‘reforms,’ urged by the chambers of commerce and resisted by all trade unions including the BMS, illustrated its problems.<sup>19</sup> In sum, by September 2001, nothing was working in its favour.

Not surprisingly, 9/11 and then December 13 gave the BJP the fresh lease it desperately needed. Almost immediately after 9/11, the government adopted a belligerent posture towards its Islamic neighbour Pakistan. Even before December 13, General Musharraf had called the Indian Prime Minister to express his concern about the ghastly terrorist attack on the legislative assembly in Srinagar in October 2001; he had also urged the resumption of dialogue at the highest level.

The Indian government not only refused talks, it demanded an immediate stop to what it called “cross-border terrorism;” further, it gave a list of twenty “terrorists” to Pakistan with the demand that they be handed over to India unconditionally. It does not require great political acumen to understand that if Pakistan agreed to the Indian demands, then there was very little for it to negotiate with, especially on Kashmir. Assuming that the government of India understood this as well, the demands in effect amounted to a refusal to negotiate.<sup>20</sup> Pakistan repeated its concern and offered a joint probe immediately after December 13; India once again rejected the offer.

Instead, the government proposed – and the opposition agreed to – the adjournment of the winter session of Parliament *sine die* after the attack. Holding Pakistan responsible for the attack, the

government mounted a massive military offensive that brought India and Pakistan to the brink of war with fingers on the nuclear trigger. Several thousand crores of rupees were spent and hundreds of soldiers died in the war-effort. Reportedly, over one hundred children died and many farmers lost their livelihood due to heavy mining in the border areas. However, the actual war never took place because the US did not want its own plans of global violence to be disturbed by the Indian effort.<sup>21</sup> It is difficult to believe that the Indian government was unaware of the US position that a war at that stage simply would not be allowed; yet, a frenzied war-effort was sustained for nearly a year. The war-effort was finally withdrawn as expected, and dialogues with Pakistan resumed, without any of the earlier demands being met.

Furthermore, in the name of assisting the civilized world in its fight against terrorism, the government of India sided with the US military and economic interests with a straight face, and won back its corporate and media support. Having thus appeased the US and its neoliberal support in India, it returned to its basic communal-fundamentalist agenda in the atmosphere of unconcealed Islamophobia that engulfed the non-Muslim world after 9/11.<sup>22</sup> What the US aggression and the accompanying propaganda machine enabled the *Sangh Parivar* to do is to claim not only moral legitimacy, but also some form of international solidarity for its attacks on minorities, especially the Muslims.<sup>23</sup> Exploitation of this “window of opportunity” paid handsome dividends for both the right wing, jingoist governments in India and US.<sup>24</sup>

Prior to the attack, the government had failed to get the draconian Prevention of Terrorism Act (POTA) passed in Parliament despite repeated efforts. After the attack, the Prevention of Terrorism Ordinance (POTO-I) was first reissued as POTO-II and was duly converted to an Act in March 2002 in a joint session of the parliament.<sup>25</sup> It has now been exhaustively documented that this

draconian law, instead of addressing the menace of terrorism, has been widely used to target the minorities, the poor, the dalits, and inconvenient political opponents, among others.<sup>26</sup>

In Gujarat, the Muslim population was subjected to horrendous atrocities such as rape, murder, and pillage in an unprecedented scale by Hindu mobs during the communal carnage of February-March 2002; while over 2000 Muslims lost their lives, several hundred thousand were forced to take shelter in ill-equipped refugee camps for years.<sup>27</sup> Yet, POTO-II and then POTA were used “with great precision”<sup>28</sup> so that out of the 287 persons booked under them in Gujarat till 2003-end in nine different categories, one is a Sikh and the rest 286 are Muslims.<sup>29</sup>

December 13 was India’s 9/11 as the actions of governments in each case generated a sense of helpless fear resulting in heightened prejudice against the Muslim community. In the Indian case, these factors, coupled with the enactment of POTA and the prospect of an imminent war with Pakistan, plunged the nation virtually into a state of emergency. As a result, the BJP won hand-somely in the elections that followed in some major provinces. Subsequently, elections were also held in Gujarat where the BJP was returned to power with overwhelming majority despite the involvement of the *Sangh Parivar* in the pogrom of Muslims in February-March 2002. Basharat Peer explains: “This victory lengthened the shadow of Hindu religious violence and Islamic terror attacks that loomed over India throughout 2002. In Gujarat, the fear of Muslim-sponsored terrorism consolidated effectively the Hindu nationalist votes” (Annexure 13).<sup>30</sup>

In sum, the fear and the prejudice already generated by 9/11 grew rapidly after Parliament attack; the fear drove people to close their minds and huddle under state power, as elsewhere in the world.<sup>31</sup> The period between December 13, 2001 and May 2004, when the BJP-led government was finally thrown out of power,

could well be viewed as the darkest phase in post-independence India, outweighing perhaps the dark days of emergency imposed by Indira Gandhi in 1975. Ironically then, even though the terrorists failed to destroy the Parliament building itself, their action left a gaping hole in Indian democracy in terms of the consequences that followed.

### **Role of the Media**<sup>32</sup>

Apart from the general case for a transparent inquiry as a response to terrorism discussed above, the actions of the government in the aftermath of December 13 precipitated an additional need for inquiry. Soon after the attack on Parliament, the government declared war on Pakistan on the ground that it had sufficient proof for Pakistan’s involvement in the attack. As noted, this led to a massive build up of troops along the border, death of many soldiers and civilians, and a huge dent in the exchequer. Yet within a month, the chances of an actual war fell to less than 5%, according to none other than the President of Pakistan General Musharaff himself. What happened to the “proof” of Pakistan’s involvement? Was it the pressure from the Americans alone as the US Secretary of State Colin Powell had boastfully claimed?<sup>33</sup> Then why was the massive war-effort launched in the first place and *maintained for nearly a year*?

These concerns were further substantiated by the High Court judgment of 29 October 2003 which directly linked the war-effort with the Parliament attack case. The Court held two individuals accused of conspiring in the crime, Mohammad Afzal and Shaukat Hussain Guru, as guilty under section 121 of the Indian Penal Code (IPC) – waging of war against the Indian state. “After the unfortunate incident,” the Court observed, “this country had to station its troops at the border and large scale mobilization of

the armed forces took place.” As “the clouds of war with our neighbour loomed large for a long period of time,” “the nation suffered not only an economic strain but even the trauma of an imminent war.” With these words, the High Court enhanced the sentence of life imprisonment awarded by the Special Court<sup>34</sup> u/s 121 IPC to death sentence to these two accused (Annexure 16, para 448).

However, the Special Court found the accused guilty only in December 2002 when the *demobilization* of troops was nearing completion after a year of “the trauma of an imminent war.” It follows once again that the government must have had definite proof of the conspiracy to attack Parliament as soon as the accused were arrested so that the mobilization of troops could begin immediately after the attack. What was that proof? What if the accused were found *not guilty* later? In other words, did the government itself encourage a violation of the cardinal principle of natural justice that one is innocent until found guilty? How else do we explain the stunning fact that the Prime Minister and the Home Minister *endorsed* a film that portrayed just the prosecution side of the story even before the Special court delivered its judgment?

In a massive failure of democratic institutions in India, no mainstream political party, no group of prominent individuals, and none of the influential print or visual media ever raised the issue of an inquiry into these obvious questions. In an incisive article, the lawyer-activist Nandita Haksar points out that “(n)o one questioned the government’s story that the attack was the handiwork of Pakistan-based terrorists belonging to the Lashkar-e-Toiba and Jaish-e-Mohammad.” This is because the “media, in a willing suspension of disbelief, published whatever the police and investigating agencies put out.” Having swallowed the stories put out by the media, “the public no longer felt the need for a ‘judicial trial’ ... where was the need for formal proof.”<sup>35</sup>

As with other intolerable actions in the global war on terrorism, the role of the Indian media converged with that of most of the “democracies.” The political commentator for the BBC, Adam Curtis cites “the suspiciously circular relationship between the security services and much of the media since September 2001: the way in which official briefings about terrorism, often unverified or unverifiable by journalists, have become dramatic press stories which – in a jittery media-driven democracy – have prompted further briefings and further stories. Few of these ominous announcements are retracted if they turn out to be baseless: “There is no fact-checking about al-Qaida.”<sup>36</sup>

Since the issue is crucially linked to the absence of demand for inquiry into the Parliament attack case, a survey of the role of the media is needed at this point to examine how exactly the suggested complicity between the police and the media worked in India. We restrict our attention only to some samples from the print media – essentially, national English dailies, with one exception with which we begin.

The media coverage of S.A.R. Geelani’s role in the attack is particularly revealing. As we will see, the prosecution’s case against him was at best “absurd and tragic,”<sup>37</sup> and, as it turned out, the High Court acquitted him from all charges with adverse remarks that could not have been pleasing to the police (see ‘Acquittal of Geelani’). After his arrest, leading national newspapers reported on Geelani’s role in the attack with impressive detail within two days.

Sujit Thakur of *Rashtriya Sahara* captioned his Hindi write-up of 17 December 2001 GEELANI SOWED THE SEEDS OF TERRORISM FROM ALIGARH TO ENGLAND. Citing police sources, Thakur reported that, from what Geelani had “disclosed,” it was “clear” that the Jaish-e-Mohammad had an elaborate plan of securing the support of the intelligentsia around the world;



Geelani was assigned this task for India. To that end, he contacted students and teachers in several colleges and universities in India and abroad, including Aligarh Muslim University and the London School of Economics. In fact, Geelani was in close touch with a dreaded terrorist called “Ahmad Umar Saeed Sheikh” who was a student of LSE and was linked to the hijacking of IC-814.<sup>38</sup> However, the police failed to list these very specific charges in the chargesheet (Annexure 1). In any case, we will see that Geelani never disclosed anything or confessed to anything, although he was forced to sign on some blank sheets (Annexures 4, 7). Apart from police “sources,” the only other evidence Thakur cited for the preceding portrait of Geelani was (a) he had said to have watched a film titled “Destruction of a Nation” several times, and (b) he had read a book on the assassination of John F. Kennedy titled “Portrait of an Assassin.” Thakur failed to cite the sources from which he gathered these facts.

Sutirtho Patranobis of *Hindusthan Times* titled his piece of 17 December 2001 DON LECTURED ON TERROR IN FREE TIME. Patranobis wrote his piece after an interview with the Principal of Zakir Hussain College in Delhi where Geelani teaches Arabic. Throughout the interview the Principal made only nice remarks on Geelani: “a seven member team has selected him after going through his academic records and interviewing him”, “students liked him”, “seldom took very long leaves”, “I have also not heard any colleague complain about his behaviour”, “mixed around as any other professor”, “nothing extraordinary in his character”, etc. However, without citing any source at all, Patranobis concluded his piece with the following words: “In his free time, behind closed doors, either at his house or at Shaukat Hussain’s, another suspect to be arrested, he took and gave lessons on terrorism.” This is of course what the police claimed in their briefings to justify Geelani’s arrest.

Devesh K. Pandey of *The Hindu* began his piece of 17 December 2001 with the heading VARSITY DON GUIDED ‘FIDAYEEN’. As with the other reporters cited above and below, Pandey dispensed with routine qualifiers such as “allegedly” or “believed to have” or “reportedly” to assert that three of the four persons who supplied logistic support and provided a safe haven to the five ‘fidayeen’ studied at the prestigious Delhi University, one of whom turned out to be a highly qualified lecturer. Geelani had “disclosed” that he was in the know of the conspiracy since the day the ‘fidayeen’ attack was planned. Pandey could report this with confidence because, according to him, “intelligence agencies had been tapping Geelani’s telephone for sometime as he had contacts in Pakistan.” Unfortunately, the “intelligence agencies” failed to submit the intercepted conversations as evidence before the court.

Rajnish Sharma of *Hindusthan Times*, 17 December 2001, reported on HUNT FOR TEACHER’S PET IN JUBILEE HALL. Exploring Geelani’s “international contacts,” Sharma learnt about a Jordanian doctoral student of Delhi University in Astrophysics who knew Geelani. Sharma reports that they spent long hours together; also, lengthy phone-calls were made to West Asia from booths located in the Delhi University campus.<sup>39</sup> In a box situated in the middle of his write-up, Sharma listed PROFESSOR’S PROCEEDS in a suggestive deductive chain: Geelani recently purchased a house for Rs. 22 lakhs in West Delhi; Delhi police are investigating how he came upon such a windfall; the terrorists who planned the operation were flush with funds; before carrying out the attack on Parliament, the terrorists had sent back to Srinagar Rs. 10 lakhs of unspent money and a laptop. Sharma failed to mention the address of the house purchased by Geelani; also, the report did not carry either a photograph of the house or a copy of the sale-deed. In subsequent coverage, Sharma failed to follow up

on the police investigation into the “windfall.” Both Nandita Haksar and Basharat Peer reported on the difficulties faced by Geelani’s family in finding even modest rented accommodation in Delhi.<sup>40</sup> Mohammad Abdullah, Geelani’s father-in-law said, “A news report said Geelani bought a house worth 22 lakhs. If someone can find the house the family can move there in these difficult times.”<sup>41</sup> All this was reported within two days after the arrests, as noted.

The media coverage reached newer heights in “willing suspension of disbelief” with the dramatic event on 20 December 2001, exactly a week after the attack. On that day, the investigating officer in charge of the case, ACP Rajbir Singh, organized a press meet. In that meet, only one of the accused, Mohammad Afzal, was “brazenly paraded before the press” (Annexure 16, para 139). By then, Afzal was projected by the police as the principal link between Jaish-e-Mohammad and Lashkar-e-Toiba commanders in Kashmir and the terrorist operation in Delhi. During the parade, Afzal admitted to his active participation in the conspiracy. In what follows, we will not discuss the credibility of this “confession” since it had no legal validity; it was meant only for public consumption. We focus only on the media’s role in this sordid affair.

Commenting on the incident, the Amnesty International wrote that “parading accused before national media during which they are made to incriminate themselves violates their right to be presumed innocent until convicted according to law in the course of fair proceedings and their right not to be compelled to testify against themselves or to confess guilt. These rights are provided in Articles 14(2) and 14 (3) (g) of the ICCPR respectively” (Annexure 9). These are well established norms that the media in a democratic set up are likely to know and follow. In that sense, the fact that the police allowed this meet to take place at all should have been of major concern to the media.<sup>42</sup> But the media not only asked for it, they attended and reported the interview *en masse*.

In the interview, although Afzal admitted to his involvement in the crime, he categorically exonerated Geelani from any involvement. In full view of the assembled press, the investigating officer ACP Rajbir Singh reprimanded Afzal for mentioning Geelani despite his orders to the contrary. The ACP then asked the press not to report Afzal’s exoneration of Geelani. The whole thing was recorded on videotape which was submitted as evidence in the court by the defence (Annexure 8).

By any measure, this was big news. The “varsity don” who “sowed the seeds of terrorism from Aligarh to England” and who “guided the ‘fidayeen’” was exonerated from any involvement in the attack by the self-confessed principal operator in custody. It follows either that Afzal’s admission before the media was worthless, or, that the police (and the media) stories about Geelani’s involvement handed out for the past week were false. Moreover, Rajbir Singh’s reprimand to Afzal suggested that Afzal’s “confession” could have been dictated by the police. Why should the police take this recourse unless at least parts of the case against Afzal were fabricated? Finally, Rajbir Singh’s “request” to the press not to make Afzal’s statement public indicated that the police was trying to use the media to propagate a possibly suspect story. In sum, large sections of the police story announced so far began to collapse with this singular utterance from Afzal.

We would expect any self-respecting media to at least pick up the issue and tell the country that something was wrong somewhere. We would have expected headlines such as AFZAL ABSOLVES GEELANI FROM ANY INVOLVEMENT and PARLIAMENT ATTACK CASE TURNS MURKY to dominate the front-pages the next day. *The demand for a full-fledged public inquiry on the entire sequence of events, including the conduct of the police, would have been the next logical step.*

Instead, the entire media, with an interesting exception discussed below, simply followed the ACP's order by suppressing the utterance. The channel Aaj Tak showed the interview with Afzal on the same evening without the utterance; the channel showed the full interview 100 days later (Annexure 8). By then the 'truth' about Parliament attack was firmly established in the public mind and the attention of the nation had shifted to the carnage in Gujarat and the impending war with Pakistan.

However, the chargesheet was still two months away. An alert media, including Aaj Tak itself, could have pounced upon the unedited tape, and highlighted the momentous utterance with the disturbing implications that follow from it. Needless to say, the entire matter was shelved in silence until the defence brought it up in court many months later. Reportedly, one of the journalists involved with the case justified his silence on the ground that he could not afford to disobey Rajbir Singh as the ACP was a "very good" source of police information.<sup>43</sup>

The reports that appeared on the next day, 21 December 2001, continued the tirades against Geelani. Under the title TERROR SUSPECT FREQUENT VISITOR TO MISSION, Swati Chaturvedi of *Hindusthan Times* cited "authoritative sources" to report that Geelani had visited the High Commission of Pakistan on two different social gatherings: an iftaar party and a national day celebrations. Chaturvedi failed to mention whether officials of the Indian government, politicians, film stars, journalists and prominent citizens of Delhi, including some from the academia, also attended these functions. When contacted by the paper, a senior officer of the high commission had reportedly said, "we will have to go over our records," since a large number of people are invited to these occasions. As for Geelani in particular, the officer said, "we do not know him and Pakistan has nothing to do with him." Chaturvedi found these responses "non-committal;" she also

reported that the "security sources" did not "buy this argument." In the very next paragraph, Chaturvedi reverted to Geelani's (earlier) "admission" that he was in touch with militants of the Jaish-e-Mohammad based in Pakistan. The two paragraphs thus created a 'montage' that suggested a reason for Geelani's "frequent" visits to the "Pak mission."

However, shedding new light on the issue, Chaturvedi also reported Geelani's admission that he had been provided with funds by the Jaish to buy two flats for the militants to operate from. As it turned out later during the trial, none of the 80 prosecution witnesses ever mentioned Geelani's affiliation with any terrorist organization (Annexure 14). Moreover, the chargesheet mentioned only Afzal and Shaukat who were allegedly responsible for *renting* some rooms in Delhi to be used as hideouts by the militants.

This seems to be a persistent problem with much of the reporting on this case: the AMU and the LSE connections, the house worth 22 lakhs, the two flats, the Jordanian angle, the guidance to the 'fidayeen' etc. The "information" ascribed variously to "authoritative sources," "security sources," "intelligence agencies" etc. were not used by these agencies themselves in subsequent proceedings. It is questionable, therefore, whether these "sources" in fact passed on such information to Chaturvedi and other reporters. We return to this.

Neeta Sharma's 6-column headline report in *The Hindusthan Times* of the same day – PAK USES FANATICS TO SPREAD TERROR IN INDIA – was placed below coloured photographs of Afzal, Shaukat and Geelani, in that order from left to right. The photographs were cumulatively captioned CONFESSION TIME, and each photograph was accompanied by some remarks apparently made by the person whose photograph it was. The artwork gave the impression that these remarks are snippets from the "confessions" made by each of them individually. In reality, as noted,

only Afzal made an admission before the media, and the official confession under POTA of Shaukat was to take place only later on the 21<sup>st</sup> itself; Geelani neither disclosed nor confessed anything. These factual details are further obliterated by Sharma's opening sentence: "The Delhi Police on Thursday allowed four people held in connection with the attack on Parliament to go public with their version of how it was planned and how terrorists operate."

Embedded in the piece was a box with three headings in colour: "Perfectly Disguised" reported on Afzal's portrayal of the terrorists; "Inside Story of IC-814" reported, via Afzal, that one of the terrorists was also one of the hijackers; "The Elusive Gazi Baba" described the secretive Pakistani terrorist with many aliases who would not be easy to catch. The rest of Sharma's piece need not detain us since she basically repeated what we have already covered. However, we must emphasize that the story is false in at least two respects: (a) "four people" did not "go public", only Afzal did, (b) the Delhi Police did not "allow" Afzal to go public, it directed him to.

The point of interest about this story, and many similar stories across the country, is that it had all the features of settled truth. The country now knew who the terrorists and conspirators were, how they looked like, and what were their backgrounds. The country also knew from the horses' mouth how the operation was planned and executed. All that remained to be done was to catch Ghazi Baba – not an easy task, the author warned. All this within a breathtaking period of a week. The judicial trial became virtually redundant: "where was the need for formal proof," Haksar lamented.

*The Times of India* also reported Afzal's confession on 21 December 2001 under the heading TERRORISTS WERE CLOSE-KNIT RELIGIOUS FANATICS. The report is interesting in a variety of ways. The report focused entirely on Afzal and on the

politico-ideological aspects of the attack on the Parliament, rather than on its operational and conspiratorial aspects. Afzal narrated the religious influence of Masood Azhar, the leader of Jaish-e-Mohammad, and explained the geo-political goals of Pakistan. He described the mental profiles of the terrorists in detail: religious fanatics given to regular prayers, totally focused on their job, attired in Western clothes to deceive the police etc.; it is difficult to miss the suggested resemblance with the alleged attackers of 9/11. Thus, a complete and reassuringly familiar picture of Islamic terrorism was superimposed on the factual details of conspiracy and attack already settled by police investigation.

Interestingly, in apparent violation of the ACP's order, *The Times of India* story did actually report Afzal's exoneration of Geelani, but in the following words: "Afzal was also quick to point out that while he may have been guilty of abetting in the crime, his co-accused, Shaukat Hussain and Syed AR Geelani, had nothing to do with the attack."<sup>44</sup> While applauding this exception to the rule, we also note:

- The statement was buried in the fourth column of the report carried in the inside pages devoted to regional news and was placed under "DELHI."
- Afzal did not exonerate *both* Shaukat and Geelani; he absolved just Geelani when asked specifically by a correspondent. By falsely mentioning both the co-accused, the report gave the impression that Afzal was merely engaged in a general amiable gesture to save his friends; hence, Afzal's statement lost factual weight.
- During the trial, Afzal stated that in the interview he had said that Geelani was "innocent" (Annexure 8). During the said interview, he had also stated "I have never shared any of this information with him." Without these qualifications, just the indefinite phrase "had nothing to do with the attack" leaves

open the possibility that, even though Geelani did not directly participate in the planning and the execution of the attack itself, he was broadly aware and supportive of the militants' goals.

- The preceding apprehension was immediately borne out by the rest of the report in the same paragraph of the story: "According to [the police] all those arrested were in the know of the plan to attack which itself is sufficient ground to proceed against them."<sup>45</sup> The wording of this statement not only diluted the effect of Afzal's statement as noted, it also gave the police the last word in the sense that the police had merely asked "to proceed" after giving "sufficient ground" for arrest.
- Finally, the reporter failed to mention the utter contradiction between mere knowledge of the plan to attack and the tons of grave charges – "guiding the 'fidayeen'," "buying two flats for the militants," "keeping in touch with terrorists based in Pakistan," etc. – which emanated apparently from police sources for full one week.

In sum, Afzal's statement was couched in a way such that its far-reaching implications would not be seen. No wonder nothing happened after this report.

As a net effect of the campaign and the verdict by the media, the Parliament attack case gradually disappeared from the media and the public view within weeks. As the entire country bayed for their blood, the four accused, charged under POTA, languished in jail; as recent documents suggest, some of them were subjected to torture, humiliation and sexual abuse.<sup>46</sup> Shaukat's wife, co-accused Afsan, gave birth to their child in prison. The trauma of the past months broke her spirits and she developed psychotic symptoms. The young wives of Afzal and Geelani, both with small children, traveled long distances in hostile territory and waited for hours at the jail to meet their "high-risk" husbands in handcuffs,

praying desperately for competent legal defence and fair trial.<sup>47</sup> The children dropped out of school as the families moved from one shelter to another;<sup>48</sup> the eye-treatment of Geelani's little daughter had to be discontinued. Except for some occasional coverage in the Kashmir press, the national media largely ignored the human tragedy.

The lack of interest from the media persisted during the trial of the case that "has come to be something of a marker in the national psyche."<sup>49</sup> Basharat Peer reports: "I had expected a crowd of reporters at what seemed to me the most high-profile legal case in India, but was surprised to see very few there."<sup>50</sup> A handful of gallant human rights activists, such as N. D. Pancholi and Gautam Navlakha, worked hard to secure proper defence for the accused. Very few lawyers were willing to oblige: most "did not want to be associated with the Parliament attack case."<sup>51</sup> The defence was often insufficient with lawyers dropping out in succession. Moreover, since the Hon'ble judge of the Special Court had ordered a "fast-track" trial in this immensely complex case, the defence was always running short of time to gather and examine evidence; most importantly, crucial documents and depositions were admitted without cross-examination of witnesses.

Even then, as we will see in much detail, huge cracks appeared in the case: some of the arrest memos looked forged; the accused were 'identified' by shopkeepers, landlords etc. without identification parades; crucial physical evidence was found not to be sealed; call records from phone companies did not match the times recorded by the police; questions arose about the credibility of the evidence related to a laptop computer allegedly used by the terrorists; intercepted conversations were widely misinterpreted; SIM cards and transcripts of telephone conversations were either missing or were not made available, and much else as we will see (Annexures 12, 14). Much of this was either barely mentioned or

not reported at all, not to speak of subjecting them to incisive analysis.

Finally, with the arduous effort of some individuals, a high-profile national defence committee for S.A.R. Geelani was formed with Rajani Kothari as the chairperson. Over 200 teachers from Delhi and Jawaharlal Nehru universities signed a petition to the Chief Justice of India pointing out problems with the trial and asking for fair trial, especially for Geelani. With sustained campaign by the committee, at least the Geelani-part of the trial began to appear in bits in a few newspapers, notably *The Hindu* and *The Indian Express*.<sup>52</sup> *Afzal's and Shaukat's trials remained essentially unexamined by the media.*

In fact, in some write-ups pleading for Geelani's innocence, there was a conscious attempt to separate Geelani's case from those of Afzal and Shaukat. After a brief review of the Parliament attack case, the senior journalist Prem Shankar Jha, known for his concerns about civil rights and democratic values, criticized the police in fairly strong terms: "The police have become a law unto themselves and don't feel obliged to avoid disrupting a suspect's life and reputation without good prima facie cause ... they now believe in arresting people first and wringing a confession out of them, ... This is the true face of the democracy of which we were once so proud." Thus, in his review of the case, Jha asked, "why has [Geelani's] life been destroyed and why are the police desperately attempting to prove a case that doesn't exist?" However, Jha also stated, "the case presented by the police against Afzal looks prima facie to be fairly strong."<sup>53</sup> Jha failed to note that the act of "arresting people first and wringing a confession out of them" applies to Afzal, if at all, since Geelani never made a confession.

While these reports were few and far between and were carried in English papers with lesser reach, even this modest critical effort was massively confronted by the Zee television network. Just be-

fore the Special Court judgment was to be delivered, it repeatedly telecast a film on the Parliament attack case, entitled "December 13." The film was not only a re-enactment of the chargesheet, Nandita Haksar wrote, "it in fact made allegations against Geelani that went far beyond the prosecution case:" for example, "the film portrayed Geelani as the mastermind and showed scenes of him talking to the five dead attackers and planning the attack."

"The film was shown to the Prime Minister and then the Home Minister, and the media recorded their approval of the film," Haksar reports.<sup>54</sup> Although the defence secured a stay from the High Court restraining the broadcast of the film, the Supreme Court of India vacated it on the ground that judges could not be influenced. Thus, the 'whole truth' that was placed before the general public only in dribbles in print before, was now presented with the full vigour and the authority of the visual media. There are now reports of "uncanny resemblances" between the Zee film and a Bollywood film titled *Dil Se*, released in 2000.<sup>55</sup>

On the day the Special Court announced the verdict, "the courtroom was for once crowded with reporters," Basharat Peer reported. "Led by Singh," Peer described, "personnel from the Delhi police's anti-terrorism wing, who had arrested Geelani and conducted the investigation, filled the courtroom. The policemen, who were usually unshaven and shabbily clothed, were dressed in expensive suits, with matching neckties. They would look good in the newspaper photographs tomorrow, I thought."<sup>56</sup>

As the verdict sentencing Afzal, Shaukat and Geelani to death and Afsan Guru to five years' R.I was announced, "the members of the Special branch, in pressed suits and polished shoes, could not stop smiling; they had become national heroes."<sup>57</sup> Except for a very few restrained editorials, jubilation engulfed the media; there was all-out praise for a judgment in a trial the media had not really attended. With the sentencing, Afsan's condition deterio-

rated while Afzal, Shaukat and Geelani were shifted to the death row.

We skip another prolonged period of indifference shown by the media and move straight to the High Court judgment of October 29, 2003. The court confirmed the death sentences of Afzal and Shaukat while it acquitted Geelani and Afsan. At least one newspaper thought that the acquittals showed “the ineffectiveness of our intelligence agencies” and “the inadequacy of the judiciary’s vertebrae.”<sup>58</sup> The same newspaper also directly complained against the judgment: “the fact that Geelani had admitted his involvement to the police cannot be wished away.”<sup>59</sup>

However, most newspapers welcomed the judgment. *The Hindu* thought the “judgment is a welcome reflection of the strength of the judicial process, particularly its capacity for self-correction.”<sup>60</sup> According to the *Indian Express*, the judgment “highlights the strengths of the Indian judicial process and the eternal quest for justice.”<sup>61</sup> *The Hindusthan Times* admitted, “when the Delhi police announced that they had come across evidence beyond doubt Geelani was guilty, many including this news paper, made the mistake of believing them.”<sup>62</sup>

We recall some of the “evidence” against Geelani, discussed in detail above, that *The Hindusthan Times* “made the mistake of believing”: In his free time, behind closed doors, Geelani took and gave lessons on terrorism; Geelani recently purchased a house for Rs. 22 lakhs in West Delhi; Geelani admitted that he was in touch with militants of the Jaish-e-Mohammad based in Pakistan; Geelani also admitted that he had been provided with funds by the Jaish to buy two flats for the militants to operate from, etc. All of this was reported between December 16 and 21, 2001.

The chargesheet was finally filed in May, 2002. In the chargesheet none of the preceding evidence that the police “came across” was mentioned, as noted. Even then, the newspaper kept

quiet, not to speak of making the effort to visit the house and the flats that pointed to Geelani’s guilt “beyond doubt.” The silence was maintained throughout the trial. The judgment of the Special Court, sentencing Geelani to death, was hailed by the same newspaper, when it, for one, knew very well that the police had used the newspaper by passing on straight and horrendous lies about Geelani. The admission from the newspaper came only on 31 October, 2003 – full 18 months later – unaccompanied by any apology to Geelani and his family.

Furthermore, by any rational standard, the acquittal of Geelani and Afsan was expected to unleash a burst of investigative journalism. The defence lawyers Nitya Ramakrishnan and Nandita Haksar asked the most obvious questions about the police and the judiciary within hours of the High Court judgment. Ramakrishnan asked: “Why had the police, with the best legal advice and in such a high-profile case, not paused to consider if it had sufficient evidence to prosecute the case?” Haksar commented: “the question that remains to be answered is how did any court sentence a man to death on no evidence at all?”<sup>63</sup>

The issue is simple: the grievous miscarriage of justice for Geelani and Afsan cast an extensive shadow on the very credibility of the functioning of the police and the judiciary, notwithstanding a partial amelioration of the judiciary in the High Court judgment. Why should we now believe in the prosecution’s story for the rest of the case? In particular, what justifies the underlying assumption that, although the police, the prosecution and the Special Court have been horribly wrong in one part of the case, they have been vindicated for the other parts?

With Geelani out of the way, who was the guide, the local mastermind of the terrorists? Once we know that Afzal falsely implicated Geelani in his confession, why should we continue to believe the rest of his confession, especially the parts where he

described the transborder conspiracy to attack the Parliament, and for which the investigating agencies failed to submit any independent evidence? What are the implications of the disturbing fact that Afzal is a past militant of the JKLF who surrendered to the Border Security Force in 1993?<sup>64</sup>

As we saw, there were many moments in the Parliament attack case where an honest and unbiased media could have initiated the process of public inquiry by its own investigative efforts. Instead, it thwarted the process itself by either propagating the police stories or by maintaining silence during crucial junctures. As a result, the urgent issue of inquiry never reached the public domain. The High Court judgment was yet another occasion for the media to re-examine the intricate joints of this case, and to demand a comprehensive public inquiry to settle all doubts. The media failed the country once again.

### **Court documents**

An interesting aspect of the Parliament attack case is that, apart from the role of the media, the demand for comprehensive inquiry never engaged the public mind because, in a sense, the issue was taken over by the courts of law. As indicated already in connection with the sentencing in the case, the court proceedings themselves may be viewed as serving the purpose of an indirect inquiry, since, as it turned out, the courts of law largely upheld the police story. Thus, in effect, as the Parliament attack case took a legal turn, the trial by the media merged into a trial by the courts. The phenomenon arose as follows.

Terrorist acts are usually shrouded in mystery. The attack on Parliament appears to be a singular exception. Although there were initial reports of a sixth terrorist escaping from the scene, the Delhi police claimed to have shot down all the terrorists, numbering

five, on the spot. The terrorists not only did not blow themselves up, they left behind a thick trail of unused arms and ammunition, mobile phones supposedly used during the attack, addresses, phone numbers, and much else. Within days, the Delhi police traced and arrested four alleged local conspirators: Mohd. Afzal, Shaukat Hussain Guru, Afzan Guru, and S. A. R. Geelani. Afzal allegedly identified the dead terrorists, the hideouts, and the shops from where chemicals, mixer, the attack vehicle etc. were purchased. Finally, the police pieced together the entire story from the confessions made by Afzal and Shaukat. With the help of an obliging media, as documented, the Delhi police announced to the nation that the case has been solved. Also, the abundance of evidence enabled the state to frame chargesheets against the accused.

The case went on trial in May 2002 in the Special Court for POTA in Delhi and, following a “fast-track” trial, a judgment *upholding* the prosecution’s case was delivered in December 2002. The judgment was sent to the High Court in New Delhi which also delivered its judgment on 29 October 2003; this court also broadly *upheld* the prosecution’s case. *As per law, the Courts were not formally assigned the task of explaining the event; their only task was to decide whether the prosecution’s case against the accused was valid in law.*

However, the four accused were *not* charged with actually carrying out the attack; they were charged only with conspiring, planning and abetting the attack. Therefore, by proving the role of the accused in the conspiracy, the prosecution has deemed to have shown, at least in a broad outline, which terrorist acts and waging of war were planned and executed by whom. In other words, the proof of guilt in this case is also an explanation of the event. *By parity of reason, if there are doubts about the proof, the explanation of the event remains incomplete to that extent.*



The court judgments and the related material are the only official documents available to citizens who are anxious to learn the truth about the attack on Indian Parliament. In the absence of any other official paper, we are thus compelled to enter into an unfamiliar territory.

We are aware that the Parliament attack case currently rests with the Hon'ble Supreme Court of India.<sup>65</sup> We have no intention or interest in interfering with the judicial process; if anything, our intention is to co-operate with it. As indicated, we will be exploring aspects of the events surrounding the attack on Parliament that do not even directly fall under the jurisdiction of the courts; they fall under the jurisdiction of an inquiry commission that was never instituted. We are only marginally interested in questions of law, admissibility of evidence and the propriety of verdicts; needless to say, we do not judge the guilt or the innocence of the accused. As the angle and the style of presentation of this study will show, our only concern is to examine whether the legal documents contain a plausible explanation of the attack on Indian democracy.

As we will see, the story presented by the prosecution has too many grey areas to be credible. This is not to deny the possibility that it was indeed a genuine terrorist attack, perhaps masterminded by some terrorist organization across the border. Our only claim is that the story that appears in the court documents does not enable us to draw any inference either way. *Hence, despite the indirect inquiry conducted in the courts, the demand for a direct inquiry stands.*

Just to give a flavour of how we will proceed from now on, the argument will consist of the following broad steps. We will enumerate more detailed steps after presenting the prosecution's case in the next chapter.

— First, we will present an outline of the prosecution's case by piecing together elements of the chargesheet (Annexure 1) and

related documents such as the confessions by Mohd. Afzal and Shaukat Guru (Annexures 2 and 3). This will serve as the 'text' in which a complete story of the conspiracy planned and executed by the accused – dead and alive, in custody or at large – is told.

- Second, we will examine this text from a variety of directions, focusing especially on those aspects of the text which claim to offer an *explanation* of the event, to see how much of the prosecution's story actually stands, notwithstanding the 'truth' proclaimed by the police and the media. We will show in some detail that there are serious flaws in almost every aspect of the prosecution story. These flaws are of a character and gravity that raise disturbing questions about the very functioning of investigating agencies and the judiciary, especially when it concerns questions of national security addressed under POTA.
- Finally, following the analysis, we will briefly sketch a number of possible and conflicting scenarios. Only a full-fledged, transparent, and public inquiry into the entire affair is required for selecting one of the scenarios, if at all, as the truth about Parliament attack.

## NOTES & REFERENCES

- <sup>1</sup>Basharat Peer, "Victims of December 13", The Guardian, 5 July 2003 (Annexure 13)
- <sup>2</sup>"Terrorism dominates PM's convocation speech", The Times of India, Kolkata, 16 December 2001.
- <sup>3</sup>Noam Chomsky, "Afterword" to *Hegemony and Survival*, 2004.
- <sup>4</sup>Adam Curtis, cited in Andy Beckett, "The making of the terror myth", The Guardian, 15 October, 2004. Also, Noam Chomsky, *Hegemony or Survival: America's Quest for Global Dominance*, Henry Holt, New York, 2003, p. 115-21.

- <sup>5</sup> Statements from Kofi Annan and Mary Robinson are cited in Nandita Haksar, *A Presumptuous Judgment: A New Concept of Democracy? A critique on the lower court judgment on Dec 13 Parliament attack*, All India Defence Committee for Syed Abdul Rehman Gilani, 2003. (Annexure 14)
- <sup>6</sup> This is not to rule out the possibility that some internal inquiry on this matter may have been conducted by the government in secret.
- <sup>7</sup> See my "The moment of global support," Socialist Alliance, 30 September, 2001.
- <sup>8</sup> See my "Offers of peace", South Asean Citizens Wire #2, 17 October, 2001; also, Edward S. Herman and D. Petersen, "Who terrorizes whom?", Zmag.org, October 2001.
- <sup>9</sup> William Blum, "Civilian casualties: theirs and ours", Counterpunch, 17 December 2001 at <http://www.counterpunch.org/blumcasualties.html> for figures of civilian casualties in the Afghan war.
- <sup>10</sup> A. C. Thomson, "War without end", The Nation (USA), 2 December 2001, for environmental destruction of Afghanistan.
- <sup>11</sup> Human Rights Watch report on the types of bombs used in the Afghan war at <http://www.hrw.org/backgrounder/arms/cluster-bck1031.html>.
- <sup>12</sup> Chomsky, *Hegemony or Survival: America's Quest for Global Dominance*, Henry Holt, New York, 2003, p. 128-9.
- <sup>13</sup> Richard Du Boff, "Mirror mirror on the wall, who's the biggest rogue of all?", Znet, 7 August 2003, for a comprehensive list of recent violations of international treaties by US.
- <sup>14</sup> Chomsky, *Hegemony or Survival: America's Quest for Global Dominance*, Henry Holt, New York, 2003, p. 27.
- <sup>15</sup> Chomsky, "Afterword" to *Hegemony and Survival*, 2004. See the notes in this citation from Chomsky for extensive references.
- <sup>16</sup> Arundhati Roy, "Public power in the age of empire", Frontline, 22 October 2004, p.15.
- <sup>17</sup> See my "A parliament adjourned", Economic and Political Weekly, 29 December 2001. Also, "Attack takes heat off Fernandes", Times News Network, 16 December 2001.
- <sup>18</sup> For a study of Andhra Pradesh, see George Monbiot, "This is what we paid for: Britain's foreign aid has been used to bankroll a programme for mass starvation," The Guardian, 18 May 2004. Also, Utsa Patnaik, *The Republic of Hunger*, Sahmat, 2004.
- <sup>19</sup> It is well-known that the success of a labour movement is directly proportional to the viciousness with which it is portrayed in the corporate-

- controlled media. See, for example, the lead Editorial of The Times of India, 28 April 2001.
- <sup>20</sup> See my "Offers of peace", South Asean Citizens Wire #2, 17 October 2001.
- <sup>21</sup> See my "Manufacturing peace", South Asean Citizens Wire #1, 3 January 2002.
- <sup>22</sup> Vaskar Nandy, "War against terrorism: perspective on protests", Economic and Political Weekly, 27 October 2001. Also, Mahmood Mamdani, *Good Muslim, Bad Muslim: America, the Cold War and the Roots of Terror*, Pantheon Books, 2003. For the Australian scene, see Iain Lygo, "Who will be charged under terrorism laws?" Znet, 23 October 2004.
- <sup>23</sup> See my "Gujrat and the world order", Znet South Asia Watch, June 2002.
- <sup>24</sup> See Vidya Subrahmaniam, "Two gods, one message," The Hindu, 11 November 2004.
- <sup>25</sup> See my "Teachers and war on terrorism", Economic and Political Weekly, 25 October, 2003.
- <sup>26</sup> *The Terror of POTA and other security legislation: A report on the People's Tribunal on the Prevention of Terrorism Act and other security legislation*, Ed. Preeti Verma, Human Rights Law Network, New Delhi, March 2004.
- <sup>27</sup> *Crime Against Humanity: An Inquiry into the Carnage in Gujarat*, Concerned Citizen's Tribunal, published by Anil Dharkar for Citizens for Peace and Justice, 2002. Also, *State Sponsored Genocide: Factsheet Gujarat 2002*, CPI(M) Publications, 2002.
- <sup>28</sup> V. Venkatesan, "A reality check," Frontline, 13 August 2004, p.80.
- <sup>29</sup> Zakia Jowher, "POTA and the terrorized minority community in Gujarat", in *The Terror of POTA and other security legislation: A report on the People's Tribunal on the Prevention of Terrorism Act and other security legislation*, Ed. Preeti Verma, Human Rights Law Network, New Delhi, March 2004.
- <sup>30</sup> Basharat Peer, "Victims of December 13", The Guardian, 5 July 2003 (Annexure 13). See Ashim Roy, "Gujarat genocide: the passage to fascism," *Revolutionary Democracy*, Vol.8, No.2, September 2002, p. 3-15, for an incisive analysis of the phenomenon.
- <sup>31</sup> Chomsky, *Hegemony or Survival: America's Quest for Global Dominance*, Henry Holt, New York, 2003, pp.115-21.
- <sup>32</sup> Full texts of most of the media statements cited in this section are posted at [www20.brinkster.com/sargeelani](http://www20.brinkster.com/sargeelani).
- <sup>33</sup> Amit Baruah, "Now, a third party to the talks?", The Hindu, 22 October 2004.
- <sup>34</sup> This court is also known as the Trial Court, Sessions Court, Special Court for POTA, and POTA Court.

- <sup>35</sup> Haksar, "The many faces of nationalism", Seminar 533, January 2004, p.96. Also, Nandita Haksar, "Tried by the media: the S A R Geelani trial," Crisis/Media: Sarai Reader 04, Center for Studies in Developing Societies, Delhi, February 2004.
- <sup>36</sup> Adam Curtis, cited in Andy Beckett, "The making of the terror myth", The Guardian, October 15, 2004.
- <sup>37</sup> These words were used by Delhi University Teachers In Defence of SAR Geelani in their press statement of 18 September, 2003. Some of this statement was subsequently reported in the Statesman, The Hindu, Navbharat Times, Asian Age, and other papers on 19 September. These words were also used by Noam Chomsky in his statement (Annexure 15).
- <sup>38</sup> Readers aware of the profiles of terrorists allegedly involved in 9/11 cannot miss the resemblances.
- <sup>39</sup> The sordid case of the said Jordanian student with relentless harassment by the police and his ultimate deportation from India without any cause is discussed in Tripta Wah, "Qays' deportation case," Revolutionary Democracy, Vol.10, No.2.
- <sup>40</sup> Haksar, "The many faces of nationalism", Seminar 533, January 2004, p. 99. Peer, "Victims of December 13", The Guardian, 5 July 2003, p. 33 (Annexure 13).
- <sup>41</sup> "Geelani's family in dire straits," Milli Gazette, 1-15 February, 2002.
- <sup>42</sup> The issue was mentioned near the end of Neeta Sharma's colourful report in The Times of India, 21 December 2001, but only after all the damage to the accused had been done. The report is discussed below.
- <sup>43</sup> "Press, police suppressed information in Dec. 13 Case", The Hindu, 11 October 2002.
- <sup>44</sup> The TOI correspondent was also a defence witness in the court.
- <sup>45</sup> Ten months later, in a piece titled "Press, police suppressed information in Dec. 13 Case", The Hindu, 11 October 2002, reported, "Mr. Afzal stated that another of the accused, S.A.R. Geelani, had nothing to do with the attack and had no knowledge of it."
- <sup>46</sup> Haksar, "The many faces of nationalism", Seminar 533, January 2004, p. 97. Haksar, "Tried by the media: the S A R Geelani trial," Crisis/Media: Sarai Reader 04, Center for Studies in Developing Societies, Delhi, February 2004, p.162. "Complaint to the National Human Rights Commission on torture and Discrimination of detainees and prisoners in the high risk cells of Tihar Jail," by Syed Abdul Rahman Geelani, forwarded to the NHRC by All India Defence Committee for Syed Abdul Rehman Gilani, January 8, 2004.
- <sup>47</sup> Nandita Haksar and K. Sanjay Singh, "December 13," Seminar 521, January 2003, p.123.

- <sup>48</sup> Archana Jyoti, "Geelani children have no school to study in Delhi," Asian Age, 10 January, 2003.
- <sup>49</sup> "Justice speaks", Editorial, The Indian Express, 30 October, 2003.
- <sup>50</sup> Peer, "Victims of December 13", The Guardian, 5 July 2003, p. 33.
- <sup>51</sup> Nandita Haksar and K. Sanjay Singh, "December 13," Seminar 521, January 2003.
- <sup>52</sup> "Pota under trial in Dec. 13 Case", Indian Express, 25 July 2002; "Parliament attack accused complain of unfair trial", The Hindu, 6 August 2002; "I've been framed, alleges Geelani", Indian Express, 17 September 2002; "Fair trial sought for Geelani", The Hindu, 30 September 2002; "Holes in the Dec. 13 attack case", The Hindu, 10 October 2002; "Press, police suppressed information in Dec. 13 Case", The Hindu, 11 October 2002; "Police misinterpreted phone conversation", The Hindu, 12 October 2002, etc.
- <sup>53</sup> Prem Shankar Jha, "A lecturer in prison", Outlook Magazine.
- <sup>54</sup> Haksar, "Tried by the media: the S A R Geelani trial," Crisis/Media: Sarai Reader 04, Center for Studies in Developing Societies, Delhi, February 2004, p.161.
- <sup>55</sup> Deposition by Shuddhabrata Sengupta in Public Hearing on 'Media Trials' in the context of the 'War Against Terrorism,' SARAI, Delhi, 13 September, 2004.
- <sup>56</sup> Peer, "Victims of December 13", The Guardian, 5 July 2003, p.34.
- <sup>57</sup> Haksar, "The many faces of nationalism", Seminar 533, January 2004, p. 97.
- <sup>58</sup> Chandan Mitra, "Go 'home', Geelani & friends", The Pioneer, 30 October 2003.
- <sup>59</sup> "Go on appeal", Editorial, The Pioneer, 31 October 2003.
- <sup>60</sup> "Justice done," Editorial, The Hindu, 31 October, 2003.
- <sup>61</sup> "Justice speaks", Editorial, The Indian Express, 30 October, 2003.
- <sup>62</sup> The Hindusthan Times, Editorial of 31 October, 2003.
- <sup>63</sup> Anjali Mody, "Geelani, Afsan Guru acquitted in the Parliament attack case", The Hindu, 30 October, 2003. Also, Nandita Narain and Neeraj Malik, "The Parliament attack case: no redress for wrongly accused", The Times of India, 15 January, 2004.
- <sup>64</sup> Haksar, "The many faces of nationalism", Seminar 533, January 2004, p. 101.
- <sup>65</sup> We have not incorporated the new submissions and arguments currently being heard at the Supreme Court. However, most of the submissions and arguments have been carried over from the hearings at the Session and High courts.