

# A Sinister Game

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## 13 December – A Reader: The Strange Case of the Attack on the Indian Parliament

*with an Introduction by Arundhati Roy;*  
*Penguin Books India, 2006;*  
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The basic premise of this book is that the December 13, 2001 Parliament attack case in India was a major event of contemporary significance, which needs to be better understood than it has been so far. The Supreme Court delivered its final judgment on August 5, 2005 but as a court of law it was bound by “a structure of responsibilities”; the limited legal window through which it examined the matter precluded any attempt at explaining the attack. What we learn from its final judgment is that five persons named Mohammed, Rana, Raja, Hamza and Haider attacked Parliament, killed some people and were, in turn, killed. Mohammed Afzal having aided these attackers was sentenced to death based on the evidence placed before the trial court, the high court and the SC. Its judgment thus provides no answer to the grave issues about the Parliament attack case raised in this book, which need examination in forums other than the court of law.

Further, Mohammed Afzal was convicted of conspiracy mainly on the basis of statements of police witnesses and police seizures of material from him, which went un-rebutted during the trial since the accused was practically unrepresented. The SC acquitted three of the four persons charged with conspiracy since the confessions obtained by the police were rendered unreliable owing to the methods adopted. On the basis of such unreliable confessions, the then government of India committed the country to a full-scale war mobilisation against Pakistan with the prospect of a nuclear conflict. The military mobilisation was put to political use, Prevention of Terrorist Activities Act (POTA) was enacted, public feelings against Pakistan and communal sentiments were whipped up along with war hysteria.

Moreover, Mohammed Afzal, the only person found guilty of conspiracy by the apex court, was a “surrendered militant”

who reported regularly to the Special Task Force (STF) of the Jammu and Kashmir police and was kept under their strict surveillance. Could such a man mastermind and execute a complex conspiracy? Could a dreaded terrorist organisation, located in Pakistan, ever rely on such a man as the principal link for their operation? On whose behest was Afzal actually acting? He had stated that Mohammed, the leader of the attack, and Tariq, one of the masterminds in Kashmir, actually belonged to the STF. Media reports said that four terrorists including one Hamza had been captured by the Thane police in November 2000 and had been handed over to the J&K police. It is essential to find the truth behind these observations, which the hanging of Afzal would forestall. The acquittal of three out of four persons from the charge of conspiracy indicates that the investigating agency had tried to frame at least three innocent persons. The high court had found the agency guilty of producing false arrest memos, doctoring telephone conversations and illegal confinement of people to force them to sign blank papers. It was also clear that false confessions were extracted by torture.

Finally, the political system had failed to take steps to address the serious questions which arise: Who attacked Parliament? What was the basis on which the country was taken close to a nuclear war with Pakistan? What was the role of the STF vis-a-vis the surrendered militants? What was the role of the Special Cell of the Delhi police in investigating the case? What institutional and legal safeguards can be found to prevent a government from going to war unilaterally without the consent of Parliament? Mohammed Afzal is the only living person who may have a clue to some of these questions. Would it be wise to let him hang?

### Desperate Measures

The volume brings together 15 essays by lawyers, academics, journalists and writers on the attack. The political context in which the incident took place was marked by the hysteria caused by the terrorist attack on 9/11 in the US. While the US was exulting over its victory in Afghanistan, the communal situation in India worsened with the February 2002 violence in Godhra followed

by the carnage in Gujarat. The incumbent government in New Delhi was reeling under charges of high level corruption. There was a need to construct an “enemy of the nation” in Pakistan and to identify Islamic fundamentalism and Muslim terrorism as the main enemy. The attack on Parliament on December 13, 2001 came as a timely tool to be exploited for political purposes.

The contributors examine the prosecution evidence in the case and raise questions about critical issues: the many faces of nationalism (Nandita Haksar), role of the media and intelligence agencies (Shuddhabrata Sengupta), media construction of a terrorist (Syed Bismillah Geelani), communal harassment and expulsion from the country of a young student from Jordan totally unconnected to the incident (Tripta Wahi), unanswered questions to which Afzal alone may have the answers (Nirmalangshu Mukherji), reasons why Afzal must not hang (Praful Bidwai, Nirmalangshu Mukherji), limitations of the Indian strategy against terrorism (Jawed Naqvi), moral, legal, constitutional and political implications of the case (Ashok Mitra), suspicious features of the case (Sonia Jabbar, Mihir Srivastava), need to respect Kashmiri sentiments (AG Noorani) and denial of the right to legal aid for Afzal (Indira Jaising). Arundhati Roy provides an able introduction and also writes a fascinating essay on the implications of the case.

The essays demonstrate that there was hardly a single piece of evidence, which stood up to rigorous scrutiny. The authors call for an urgent, impartial and transparent parliamentary inquiry into the attack and its aftermath. Ideologically blinkered reviewers have tended to ignore the import of the volume, which has crucial significance in understanding the qualitative transformation in the Indian polity, which took place during 1998-2004 with serious consequences for the functioning of the political system today.

Public misgivings over the case arose right from the beginning when S A R Geelani, a lecturer in the Delhi University was arrested in connection with the case and a “conspiracy” to attack Parliament constructed. Geelani was later acquitted by the Delhi High Court and the acquittal was upheld by the SC. Geelani’s arrest was followed by the arrest, among others, of the prime accused Mohammad Afzal, a “surrendered” Kashmiri militant. The disturbing questions, which arose, led to the

setting up of a committee chaired by Nirmala Deshpande, which has demanded the institution of a parliamentary enquiry into the episode. Arundhati Roy highlights 13 critical issues related to the case, which need to be addressed. The overwhelming issue remains that of Mohammed Afzal who has been given a death sentence without having had the benefit of a proper defence throughout the trial process as brought out movingly by Indira Jaising.

Anyone who watched Davinder Singh, an officer of the STF of the Jammu and Kashmir police openly admitting on television that he had tortured Mohammed Afzal, brazenly declaiming that torture is the remedy for terrorism and proudly declaring that he tortured for the "nation", would have to agree with Roy on causes and depth of the present alienation among the Kashmiri youth. She argues that what has happened to Afzal has happened to thousands of these youth. Thus, to her, Kashmir is today awash with "militants, renegades, security forces, double-crossers, informers, spooks, blackmailers, blackmailers, extortionists, spies, both Indian and Pakistani intelligence agencies, human rights activists, NGOs and unimaginable amounts of black money and weapons". And STF and Special Operations Group (SOG) are among "the most ruthless, undisciplined and dreaded" elements of the security apparatus in Kashmir.

The role of the STF thus emerges as a key issue for a probe in this context. Mufti Mohammad Sayeed is said to have promised to disband the STF when he came to power but did nothing of the sort. The other issue which calls for a probe on the basis of evidence assembled in this book and on the basis of the strictures passed by the high court and the SC is the role of the Special Cell of the Delhi police. The massive military deployment along the Indo-Pak border by the then NDA government apparently on the basis of non-existent evidence also needs to be inquired into. The subcontinent was pushed to the brink of a nuclear war, an activity costing public expenditure to the tune of Rs 10,000 crore. What was the nature of the available intelligence with the government of India which justified such massive military deployment?

Despite the hyped up propaganda and media-generated hysteria, SARGelani, one of the alleged brains behind the Parliament attack was acquitted by the Delhi High Court (an acquittal later confirmed by the SC). This knocked the bottom out of the

prosecution case. The SC confirmed the death sentence on Mohammed Afzal who had gone undefended. With the recent rejection by the SC of his curative petition, Afzal's life appears to hang by a thin thread.

### Weak Evidence

Whether or not Afzal Guru hangs, the issues arising out of the Parliament attack case are unlikely to go away. Roy points out that Afzal's story is inextricably linked to the story and history of the conflict in Kashmir, its coordinates ranging beyond the confines of court rooms and the limited concerns of the people living in the national capital. It shows us the way the world's largest democracy actually functions connecting the biggest to the smallest things. "It traces the pathways that connect what happens in the shadowy grottos of our police stations to what goes on in the cold, snowy streets of Paradise Valley; from there to the impersonal, malign furies that bring nations to the brink of nuclear war". Roy believes that Afzal is only a pawn in a sinister game. "He is not the Dragon he's being made out to be but only the Dragon's footprint. And if the footprint is made to 'become extinct', we'll never know who the Dragon is".

The case against Mohammed Afzal was built upon the basis of testimonies of 80 prosecution witnesses including landlords, shopkeepers, technicians from cell phone companies and policemen. Even during the early stages of the trial, a story of accumulated lies, fabrications, forged documents and serious lapses in procedure in the police investigation became evident. The Delhi High Court and the SC acknowledged these as "disturbing features" but the police were not reprimanded or penalised. Almost at every step of the investigation, the Special Cell of the Delhi police displayed an egregious disregard for procedural norms. The shoddy callousness with which the investigation was carried out perhaps indicated its confidence of immunity and impunity. The irregularities related to aspects such as the time and place of arrest of the accused; seizure of properties; mobile cell phone call records; identification of the accused; and so on. All these together seriously undermined the integrity of the investigative process.

Nirmalangshu Mukherji, who has written a separate book on the subject *December 13: Terror over Democracy, 2005*, argues in one of his two essays in this

volume that apart from Afzal's coerced confessional statement to the police there is not an iota of independent evidence corroborating the prosecution story in this case. The SC set aside the confessional statement on account of procedural flaws. This undermined the prosecution story of a conspiracy linking the ISI, the terrorist organisations located in Pakistan, and the five terrorists who were killed in the Parliament attack. The court noted that even the minimal safeguards required under an otherwise draconian anti-terrorist POTA had been violated by the police.

All the essays in the volume are mutually reinforcing in upholding the basic premise of the book. It is to be noted that the general response to the Parliament attack case demonstrated massive failure of institutions meant to uphold the democratic and secular fabric enshrined in the Constitution of India: the media, the judiciary, the executive, the National Human Rights Commission and the political parties. Lawyer Nandita Haksar argues that this failure has much to do with what she terms a "sense of nationalism". When a perceived terrorist attack directed against the "nation" takes place, the universal norms of dissent displayed on other occasions gives way to concerns relating to "national security" and "sovereignty". Matters of national security are left unquestioningly to the state, no matter what its character, even though extraordinary facts may characterise a particular situation. In such situations, the capitulation of liberal democratic forces encourages malignant versions of "nationalism" to take centre stage. The few individuals who stand up against national chauvinism are branded as anti-nationals and sympathisers of terrorists.

The negative role of the mass media affected by a "sense of nationalism", and "majority sentiment", reflecting as well as whipping up mass hysteria and uncritically lapping up police-generated data is usefully documented by Shuddhabrata Sengupta and Arundhati Roy in their essays. This raises very important issues which need wider debate.

One is grateful to the authors of this path-breaking volume for posing questions which should be debated in a detached and objective manner rather than being swayed by public emotion. There is need and scope for serious concern in India today notwithstanding the 10 per cent growth rate! **EW**

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