

Article title: “The Yakub Memon frenzy: Clear, time bound procedures will end unnecessary controversy over executions”

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The frenzied discourse in the weeks leading up to and even after the execution of Yakub Memon saw different narratives being conflated, resulting in much confusion, frustration, anger and bitterness on all sides.

Take the arguments by those against the death penalty in principle. Indians in this category are not alone, and in fact resonate views shared by millions across the world, most commonly in many modern, democratic nations. In recent years, American opponents of the death penalty have had their stand vindicated by many US death row convicts who have subsequently been exonerated by new scientific breakthroughs, such as the latest DNA testing methods.

This view deserves respect, and it is important to note that subscribing to it does not automatically make someone unpatriotic or soft on terrorism. It is undoubtedly time for a sustained national debate on this topic, rather than only occasionally when there is an execution. However, the rightful place for that debate is in public and in Parliament. As long as the law provides for the death penalty it is useless, even damaging, to drag courts into it.

It was particularly galling for many when this debate reached a fever pitch on behalf of someone like Memon, during which many commentators got their vocabulary mixed up, not to mention their logic.

Many anti-death penalty advocates strayed from the core principles of objecting to any execution into defending a particularly heinous individual on specious grounds. And instead of treating the mercy petition as just that, some got caught up in arguing the merits of a conviction that had taken two decades and been settled by the Supreme Court itself.

Memon was not some innocent who somehow got caught up in a bad situation. The principle that his guilt must be established beyond a reasonable doubt was met by the SC, which observed that the evidence “amply proved his involvement” in arranging to receive ammunitions, conducting surveys, choosing targets, and loading vehicles with RDX. And SC’s own guideline that the death penalty must only be given in the rarest of rare cases was surely applicable to a key perpetrator of the Mumbai bombings, which killed 257 people and injured 713.

India’s excruciatingly slow judicial system and low conviction rates have led to much resentment. When there seems to be no end in sight even after a rare conviction, in such a horrific case, the anger boils over. And with convicted terrorists, there is an extra degree of angst about simply incarcerating them, with apprehensions that it could be an incentive for further acts of terror, especially hijackings aimed at getting them released.

The conflated narratives on Memon went beyond mixing up the plea for mercy with poorly argued critiques of the legal process. Many who conceded his guilt and the legitimacy of his conviction, nevertheless tried to make a case other than mercy for commuting the death sentence. They argued mitigating circumstances or alleged discrimination against Muslim death row convicts.

The allusion that Memon had turned approver and was subsequently ditched by the Indian establishment always seemed a bit of an afterthought and, in any case, rested on weak ground. The facts are murky, but a careful scrutiny of reportage is revealing. He may well have been lured out of Pakistan, along with evidence incriminating ISI and Dawood Ibrahim, and hope of striking a deal as an approver. But midway in Nepal he clearly did not like what was on offer and was headed back when he was apprehended.

The claim, rebutted by his supporters, of Memon being found wandering in Delhi's railway station was more than likely a bit of legal fiction, intended to overcome the awkwardness of an unofficial extradition across the Nepal-India border. But that by itself is much ado about nothing consequential. The crucial issue is that finally there seems to have been no agreement for seeking a lesser sentence in lieu of cooperation. And neither does that seem to have been claimed during the trial.

The allegation that Muslim death row convicts are being discriminated against is worrisome and deserves close examination. It is true that following political uproars, one Sikh and three Tamil death row convicts had their sentences commuted to life imprisonment in 2014. The SC, citing inordinate delay by the government in processing their mercy petitions, did this.

But it did exactly the same, also in 2014, in the case of one Jafar Ali, convicted of murdering his wife and five daughters, which clearly refutes the Muslim discrimination angle. Dragging in the case of Afzal Guru, hanged in 2013, is illogical since it predates the SC ruling on the principle of inordinate delay. Equally illogical was any expectation that the President, having once rejected a mercy petition for Memon filed by his brother, ought to drag out the decision on a second plea.

Nevertheless, the Memon saga showed that India's handling of death row convicts is hobbled by ambiguity and discretion, such as how long mercy petitions can linger on. This is a recipe for abuse, both by convicts gaming the system with multiple and overlapping appeals, as well as by politicians responding to sectional sentiments. Reform is essential, especially the introduction of clear, time bound procedures.