Uncomfortable questions

December 13: Terror Over Democracy

By Nirmalangshu Mukherji; Foreword by Noam Chomsky
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As a term, "terrorism" may yet remain slippery and evasive, though there is little that is vague about the real world manifestations of the threat. September 11, 2001 in the US remains the most vivid, but several other countries have had their own intimate encounters with the random and insensate violence of terrorism, designed with deliberate intent, to disrupt the rhythms of daily life for a civilian population and sap their loyalty to the political order. In this sense, December 13, 2001 was a defining moment in India. It marked a transition from a holding operation by the Indian State, to an offensive doctrine of prevention and even pre-emption of terrorism. It enabled a coordination on the terrain of principle and practice between India and other self-proclaimed leaders of the struggle against terrorism, notably the US and Israel. And in the domestic arena, it was to be the test case of the efficacy of newly crafted anti-terrorism legislation in bringing to book those guilty of heinous crimes against unarmed civilian populations.

Nearly four years after that pivotal event in India's history, the long-term consequences remain ambivalent at best. Of the four individuals who were arrested shortly afterwards and charged with waging war against the Indian State, three were swiftly convicted and sentenced to death under the harsh new anti-terrorism law. One other accused person, a woman, was sentenced to an extended term in prison, the sentence partly moderated by the fact that she had a child of tender years. In appeal before the High Court of Delhi, two of the convictions were quashed. For SAR Geelani, the reprieve was absolute. The lecturer in Arabic from a prominent college in Delhi, after nearly two years of incarceration—of which ten months were spent in the harrowing limbo of death row, awaiting execution—found himself on October 29, 2003, a free man, absolved of involvement in the December 13 attacks. Similarly set at liberty was Afsan Guru, wife of another of the accused. Her husband Shaukat Hussain Guru had no such good fortune, and neither did his cousin Mohammad Afzal. Both had their death sentences confirmed by the High Court.

The prosecution, led by the Special Task Force (STF) of the Delhi Police would have none of it. Choosing its occasion well, it went in appeal to India's Supreme Court on December 13, 2003, pleading that the acquittals handed down by the High Court were erroneous, stemming from a failure to appreciate the nature of the evidence. An appeal filed from the side of the accused, pleaded that Shaukat and Afzal too be set at liberty, since the evidence against them did not warrant conviction, far less the death sentence.

It was in this rather indeterminate situation, with a final word yet to be pronounced by the country's highest court, that Nirmalangshu Mukherji's book was researched and written. It is a book that is valuable as much for its analytical content, as for its documentation. No fewer than 18 annexures fill nearly three-quarters of its pages, reproducing in a usefully abridged form, the key documents pertaining to the case. Beginning with the charge-sheet filed by the Delhi Police and the confessions they recorded from some of the accused, through the judgments of the trial court and the Delhi High Court, and ending with the incisive reports prepared on the case by concerned citizens' groups. The value of this volume is considerably enhanced by the Foreword by Noam Chomsky, who argues that the "manipulation of fear" has always been a method by which ruling elites have suppressed dissent and created a climate of public acquiescence in their worst excesses.

How did Afzal, as a surrendered militant known to be beholden to Indian security agencies, come to be trusted by handlers across the border, to handle a spectacular attack on the institutions of Indian democracy? How did the hardened terrorists of the prosecution account turn out to be so inept that they fell relatively easy prey to the under-prepared and unaware guard detachments on duty that fateful day in the Parliament premises?

These embellishments are undoubtedly useful, but Mukherji's book—as an intervention in an evolving political debate—should be assessed by the sturdiness with which its conclusions have stood up to subsequent events. And its record in this respect has been remarkable. On August 4, 2005, at least four months since this book was released, India's Supreme Court confirmed the acquittal of Geelani and Afsan Guru by the Delhi High Court. It also absolved Shaukat of the charge of conspiracy, instead holding him guilty of the lesser crime of concealing knowledge about the conspiracy. Yet, even as it knocked out all the props of the case that the prosecution had constructed, the Supreme Court contrived, in a surviving curiosity of judicial reasoning, to uphold the death sentence on Afzal.

Meanwhile, the prosecution team that won honours for pursuing the case with unparalleled efficiency, fell on rather bad days. Rajbir Singh, an Assistant Commissioner of Police attached to the STF, was a hero of a November 2002 encounter in a prominent shopping mall in Delhi, when two alleged terrorists, supposedly of Pakistani extraction, were shot dead. Though the sequence of events as narrated by the Delhi police challenged the meanest intelligence and provoked the National Human Rights Commission into conducting an inquiry, Singh continued to be an officer in high standing in the force. Civil rights advocates and activists who demanded greater transparency and accountability, were ticked off in no uncertain terms by the political powers of the time; the Union Minister for Law describing them rather famously, as the "overground face" of the terrorist underground.

Ths was the climate of impunity and overwrought nationalism in which the December 13 prosecution was conducted. Though his core competences obviously lay in summary justice, rather than in the hard work of preparing and pursuing a prosecution, Rajbir Singh was entrusted with the case. His initial efforts won much acclaim, but while the case was in appeal before the Supreme Court, a wiretap operation conducted by the Delhi Police found Rajbir Singh engaged in a business transaction with a suspected narcotics dealer. Simply put, the encounter specialist was negotiating a price for lending his coercive authority to the worthy cause of driving down the value of some real estate that the narcotics dealer fancied. Around the time that the Supreme Court delivered its verdict on the case, Rajbir Singh was under a departmental inquiry. A month later, he was transferred out of the STF and assigned to the Foreigners Regional Registration Office. His putative expertise in recognising terrorists of foreign extraction may or may not, have been a factor determining the fresh billet he was allotted.

Rajbir Singh's role in pursuing the December 13 prosecution has been documented rather well by Mukherji. Every one of the armed intruders into the Parliament compound on that fateful December day, either died in the encounter with security forces, or blew himself up to evade capture. The dead tell no tales, but in a time of revolutionary advances in communications, they tend to leave generous clues in the form of mobile telephones and laptop

computers. A clutch of these devices recovered from the bodies and the vehicles of the slain terrorists, laid out an abundance of leads for the STF to follow. Geelani and Afsan were soon picked up, yielding the information under interrogation, that Shaukat and Afzal could be found in a fruit-laden truck bound for the Kashmir valley. Within two days of the attack, all four suspects had been apprehended. And within a week, Rajbir Singh was proudly parading his trophies before an adoring media community in the national capital.

Initial confusion about the identity of the attackers had by now been dispelled. A senior cabinet minister had on the day of the attack, rushed to the judgment that the Lashkar-e-Toiba was behind the attack. Later police accounts identified the Jaish-e-Mohammad, a relatively new entrant into the demonology of terrorism, as the perpetrator. A happy compromise soon emerged, with the incident being ascribed to the combined villainy of the two, and Afzal being identified as the link in the process of planning and execution.

On December 20, 2001, Rajbir Singh produced Afzal before the media community of Delhi and watched with quiet pride as his quarry spilt out the story of his involvement in the conspiracy to attack India's parliament. But then Afzal evidently exceeded his brief, concluding his self-incriminating narration with a quite unequivocal exoneration of Geelani. With little regard for legal niceties or public appearances, Rajbir Singh proceeded to publicly upbraid Afzal for his effrontery in mentioning a name that had specifically been proscribed. He then turned to the assembled media and urged them to simply ignore the mention of Geelani.

The following day, as recorded in Mukherji's work, the media went well beyond this highly unusual request in enlisting for the crusade against terrorism. They not merely ignored Afzal's disclaimer about Geelani's involvement, but went the extra mile in blazoning the obscure college lecturer's guilt, painting him as a sinister operative whose ideological inspiration was key to bringing the attack to fruition.

Mukherji reserves a special place in his narration for the inglorious role of the media. The December 13 event itself proved the pivot from which momentous consequences followed. These involved issues of war and peace, the security and well-being of the peoples of India and Pakistan, and the posture that national governments in the two countries would adopt towards the global struggle being waged between what was called "civilisation" and its supposed antithesis. Yet after the first flurry of interest, when the media proved more eager than a transparently self-serving clique of police officials in pronouncing a verdict on the matter, there was little sign of respect for the public right to know. The acquittal of Geelani and Afsan, Mukherji argues, should in all logic, have unleashed "a burst of investigative journalism", but the actual response was tepid and tame. His verdict is unambiguous:

> "There were many moments (in the) case when 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. The High Court judgment was yet another occasion for the media to reexamine (the) case, and to demand a comprehensive public inquiry to settle all doubts. The media failed the country once again".

The point that the media had developed an unhealthy coalescence of interests with the police force, acting with the full authority of the State, is easily established. As Mukherji records, defence counsel Nandita Haksar summed up her experience with the case at the trial court in ominous terms. The verdict handed down by the special judge for terrorism offences, she pointed out, made for "chilling reading". He had "shown scant respect for the principles and ideals of human rights enshrined in (the Indian) Constitution by the Founding Fathers". And if his judgment was upheld, "it would lay the foundation for a police state where every citizen would be a potential victim of institutionalised repression".

Yet, as they celebrated the devastating efficacy with which the Delhi Police had closed out the case, the media had little time for these dire warnings. Mukherji points out that when the December 13 case went up in appeal at the High Court, defence counsel Ram Jethmalani, appearing on behalf of Geelani, argued that "the evidence discloses total non-application of mind and an unforgivable frivolity of attitude". He also charged that the police case was "riddled with illegality", and the evidence disclosed "concoction and fabrication". In similar vein, the senior advocate Shanti Bhushan, appearing on behalf of Shaukat, contended that his client had "been falsely implicated in the conspiracy case by the investigating agency", which had "gone out of its way in concocting evidence".

These were lawyers of eminence and standing making devastating charges against the prosecution in a case of enormous public importance. Their exertions on behalf of justice and human rights remained obscure to the public. And the inferences of the higher judiciary were also telling, even though they finally tended not to follow their instincts to draw the conclusions that seemed eminently warranted. Mukherji essentially lays out the case: the "arrest memo" which records the moment that a suspect in a crime is taken into custody, was found to be falsified in all cases. The sequence of the arrests, as they were actually carried out, was in fact the precise opposite of the sequence in which the Delhi Police claimed to have unravelled the various links in the conspiracy. And every one of the confessional statements, which were in most cases the sole evidence that the prosecution could put forward, was most likely obtained under conditions of duress, if not torture.

A well informed citizenry obviously owes itself the duty of unravelling the facts behind the attack on a central institution of its democracy. And an indispensable part of the process of ascertaining facts, would be to establish the motivations that led the Delhi Police into its sordid saga of fabrication. Politically determined compulsions to show quick results are only a part of the story. A number of possible explanations arise from merely taking into account the fact, which even the trial court had no hesitation in recognising, that Afzal belongs to that category of individuals in Kashmir known as "surrendered militants".

These possibilities cease being outlandish conspiracy theories, once it is noted that Afzal, the only person against whom the charge of involvement in the conspiracy has stuck, was in regular contact with the anti-insurgency wing of the Jammu and Kashmir (J&K) Police till as late as 2000. After a brief career in the ranks of militants fighting for "*azaadi*" in Kashmir, Afzal surrendered to the security forces in 1993. It was an invidious position that he subsequently found himself in.

While he had to go the extra distance to prove his fealty to the security forces, Afzal was always under threat of liquidation by his erstwhile confederates in the Kashmir militancy. For a while, the way out of the conundrum was, seemingly, to pay up a sum—determined at the momentary discretion of his handler in the security apparatus—as protection money. The alternative was to enlist as a "special police officer", or in plain language, a police informer.

Afzal had according to his statements of self-incrimination—as recorded by the judicial process, rather than a cynical and inattentive media—teamed up, under the sponsorship of the J&K Police, with individuals of such nondescript appellation as "Moham-mad" and "Tariq". Both these indivi-duals were later ascribed significant roles by the Delhi Police in the conspiracy to attack India's parliament. One was killed in the assault, while the other is reportedly absconding.

Any Indian citizen with a basic level of civic involvement, would be assailed by a number of questions if she were to take the statements by Afzal in their entirety, and consider the evidence rendered by his wife Tabassum. How did Afzal, as a surrendered militant known to be beholden to Indian security agencies, come to be trusted by handlers across the border, to handle a spectacular attack on the institutions of Indian democracy? How did the hardened terrorists of the prosecution account turn out to be so inept that they fell relatively easy prey to the under-prepared and unaware guard detachments on duty that fateful day in the Parliament premises?

The logical finale of Mukherji's narration is quite simple: that it would have been impossible for the "officers of the investigating agency to come up with (their) extraordinary attempt" to nail the four accused in the December 13 attack, "without direction from higher authorities". Indeed, the conclusions that any observer who has not surrendered his critical faculties to the cult of the nation-state would be impelled to, would be "fraught with immensely disturbing consequences for the functioning of the Indian State and, hence, for the health of Indian democracy". In framing these questions with surpassing political courage and not hesitating to draw conclusions that seem eminently warranted, Mukherji's book is a testament to the vigour that public-spirited individuals can impart to the civic and intellectual life of a nation. After tons of newsprint have been expended in generating pulp fiction about terrorism in India, this is a contribution that would truly stand the test of time.