

PRESIDENTIAL CLEMENCY FOR MOHD. AFZAL GURU – A PETITION

Petition may be seen at:

<http://www.petitiononline.com/CMAG/petition.html>

19 January 2007

Dr. A.P.J. Abdul Kalam
President of India
Rashtrapati Bhavan
New Delhi

Dear Dr. Abdul Kalam,

When the then President of India rejected the mercy petition of Kehar Singh, sentenced to death in the Indira Gandhi assassination case, the statement of the government was this: "The President is of the opinion that he cannot go into the merits of a case finally decided by the Highest Court of the Land."

This was challenged by Kehar Singh, and a five-judge Bench of the Supreme Court (AIR 1989 SC 653) held that the opinion formed by the then President was wrong because a decision of the Supreme Court can also be wrong.

The President, the Supreme Court held, can determine whether or not a convict is guilty – the findings of the courts, including the Supreme Court, notwithstanding.

Here are a few excerpts from the full-bench judgment:

"... To any civilized society, there can be no attributes more important than the life and personal liberty of its members. That is evident from the paramount position given by the courts to Article 21 of the Constitution. These twin attributes enjoy a fundamental ascendancy over all other attributes of the political and social order and consequently, the Legislature, the Executive and the Judiciary are more sensitive to them than to the other attributes of daily existence. The deprivation of personal liberty and the threat of deprivation of life by the action of the State is in most civilized societies regarded seriously and recourse, either under express constitutional provision or through legislative enactment, is provided to the judicial organ. But, fallibility of human judgement being undeniable even in the most trained mind, ... it has been considered appropriate that in the matter of life and personal liberty, the protection should be extended by entrusting power further to some high authority to scrutinize the validity of the threatened denial of life or the threatened or continued denial of personal liberty. The power so entrusted is a power belonging to the people and reposed in the highest dignitary of the state.

"... It is open to the President in the exercise of the power vested in him by Article 72 of the Constitution to scrutinize the evidence on the record of the criminal case and come to a different conclusion from that recorded by the court in regard to the guilt of, and sentence imposed on, the accused.

"... It is apparent that the power under Article 72 entitles the President to examine the record of evidence of the criminal case and to determine for

himself whether the case is one deserving the grant of relief falling within that power. The President is entitled to go into the merits of the case notwithstanding that it has been judicially concluded by the consideration given to it by the Supreme Court.”

You will be aware, Sir, that the Supreme Court has without explanation rejected the curative petition filed by Mohd. Afzal Guru, sentenced to death in the Parliament attack case. That petition was the last option available to him through the courts. Now his only hope of living is the mercy petition which is with you.

As we have seen, the Supreme Court itself has said, in a full-bench judgment, that it is in the nature of things that it can be wrong. We know that Mohd. Afzal Guru was convicted on the basis of circumstantial evidence and that from the start he had no effective legal defence. We know also that he was the victim of a shrill media campaign.

The President has the power to re-examine the evidence and come to a conclusion different even from that of the Supreme Court. While a court is limited to examining the material placed before it, the President can take into account a wide range of considerations, including political, social and moral ones.

The Supreme Court has referred only to the President’s power under Article 72 of the Constitution. We wish to go further and say that it is the President’s *moral responsibility* to ensure that injustice is not done to a citizen by depriving him of life or personal liberty.

We urge you, Sir, to exercise your constitutional power in the matter of Mohd. Afzal Guru’s mercy petition keeping in mind your moral responsibility and also the fact that your power was entrusted to you by us, your fellow citizens.

Yours truly,

Mukul Dube, N. D. Pancholi and Harsh Kapoor

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