

## **SYNOPSIS**

That the Petitioner says that he is a death row convict who is moving this petition in extreme urgency as he is due to be executed tomorrow morning at 7 am in complete violation of the due procedure established by the law and the present matter pertains to Art. 21 and other fundamental rights, and is therefore entitled to invoke Art. 32 to move this Hon'ble Court.

That the Petitioner has handed the prison authorities his first mercy petition addressed to the President dated 28<sup>th</sup> July 2015 based on new grounds, which is pending consideration. That as per Rule 2 of the Ministry of Home Affairs, Government of India Rules titled "Procedure Regarding Petitions for Mercy in Death Sentence Cases", the execution of sentence shall in all cases be postponed pending receipt of the orders of the authority. Hence the Present Petition is being filed, seeking quashing of the execution warrant dated 30.4.2015 issued by the designated TADA Court, Mumbai for the execution of the Petitioner on 30.7.2015 and pending hearing and final disposal of this petition, this Hon'ble Court be pleased to stay the Petitioner's execution scheduled for 7 am on 30.7.15.

## **LIST OF DATES**

27.7.2007	That the Petitioner was sentenced to death by the Trial Court under TADA on 27.7.2007
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- 21.3.2013 That the conviction awarded by the Trial Court under TADA was upheld and confirmed by this Hon'ble Court on 21.3.2013.
- 6.8.2013 That the Petitioner's brother filed a mercy petition for the Petitioner on 6.8.2013.
- 9.4.2015 That the Petitioner thereafter filed a review which was dismissed by this Hon'ble Court on 9.4.2015.
- 11.4.2014 That the mercy petition filed by the Petitioner's brother was dismissed by the President on 11.4.2014.
- 30.4.2015 Petitioner says that on 30.4.2015, the designated TADA Court, Mumbai issued a death warrant under section 413-4 Cr.P.C for the execution of the Prisoner at 7 am on 30.7.2015 at Nagpur Central Prison.
- 21.7.2015 That the Petitioner handed the prison authorities a mercy petition dated 21.7.2015 addressed to the Governor of Maharashtra. Till date, there has been no decision communicated to the Petitioner on this petition. Furthermore, till date it is not known whether the State Government has forwarded this petition to the Government of India
- 21.7.2015 That the Petitioner thereafter filed his curative petition, which came to be filed on 21.7.2015 respectively.

- 27.7.2015 On or about 27<sup>th</sup> July, it was brought to the Petitioner's notice that the Governor of a State has no jurisdiction to entertain a mercy petition under a central statute, and that only the President of India can entertain such a petition under Article 72.
- 28.7.2015 The Petitioner then handed the prison authorities his first mercy petition addressed to the President dated 28<sup>th</sup> July 2015 based on new grounds which were not available hitherto.
- 29.7.2015 Petitioner HAD filed Writ Petition (Crl) No. 129 of 2015 before this Hon'ble Court which was dismissed by order passed today i.e. 29.7.2015, at about 4 pm.
- 29.7.2015 The present Writ Petition is filed.

**IN THE SUPREME COURT OF INDIA**  
**EXTRAORDINARY WRIT JURISDICTION**

**WP (CRL.) No..... /2015**

**IN THE MATTER OF:**

Yakub Abdul Razak Memon

(Presently incarcerated at Nagpur Central Prison)

Versus

1. State of Maharashtra  
through the Resident Commissioner, New Delhi
2. Union of India, through the President's Secretariat, Rashtrapati

Bhawan, New Delhi  
TO,

THE HON'BLE CHIEF JUSTICE OF INDIA  
 AND HIS OTHER COMPANION JUDGES  
 OF THE HON'BLE SUPREME COURT OF INDIA

THE HUMBLE PETITION OF  
 PETITIONER ABOVENAMED

1. The Petitioner says that he is a death row convict who is moving this petition in extreme urgency as he is due to be executed tomorrow morning at 7 am in complete violation of the due procedure established by the law and the present matter pertains to Art. 21 and other fundamental rights, and is therefore entitled to invoke Art. 32 to move this Hon'ble Court.
2. The Petitioner says that he filed Writ Petition (Crl) No. 129 of 2015 before this Hon'ble Court which was dismissed by order passed today i.e. 29.7.2015, at about 4 pm. The Petitioner says that none of the grounds urged in the present writ petition were urged in Writ Petition No. 129 of 2015. The said writ petition will be kept ready for the kind perusal of this Hon'ble Court.

3. That the Petitioner says that the present petition does not raise any grounds similar to his petitions hitherto and is not in any manner repeating any of the grounds urged before, and no such petition containing the present grounds has been filed before.
4. The Petitioner says that he was sentenced to death by the Trial Court under TADA on 27.7.2007 and the said conviction and sentence was upheld and confirmed by this Hon'ble Court on 21.3.2013.
5. The Petitioner says that on 6.8.2013, the Petitioner's brother filed a mercy petition for the Petitioner which was dismissed by the President on 11.4.2014.
6. The Petitioner says that he thereafter filed a review and then a curative petition which were dismissed by this Hon'ble Court on 9.4.2015 and 21.7.2015 respectively.
7. The Petitioner says that on 30.4.2015, the designated TADA Court, Mumbai issued a death warrant under section 413-4 Cr.P.C for the execution of the Prisoner at 7 am on 30.7.2015 at Nagpur Central Prison. Hereto annexed and marked as **Annexure P 1 ( Pages ...to ....)** is a copy of the said execution warrant dated 30.4.2015.
8. The Petitioner says that after the dismissal of the Petitioner's curative petition by this Hon'ble Court, the Petitioner handed the prison authorities a mercy petition dated 21.7.2015 addressed to the Governor of Maharashtra. Till date, there has been no decision communicated to the Petitioner on this petition. Furthermore, till date it is not known whether the State Government has forwarded this petition to the Government of

India. On or about 27<sup>th</sup> July, it was brought to the Petitioner's notice that the Governor of a State has no jurisdiction to entertain a mercy petition under a central statute, and that only the President of India can entertain such a petition under Article 72. The Petitioner then handed the prison authorities his first mercy petition addressed to the President dated 28<sup>th</sup> July 2015 based on new grounds which were not available hitherto. Hereto annexed and marked as **Annexure P 2 ( Pages ....to ...)** is a copy of the Petitioner mercy petition addressed to the President dated 28<sup>th</sup> July 2015. The grounds raised in this petition are almost entirely new grounds and based on fresh material.

9. The Petitioner says that Article 72 states as follows:

*Article 72. Power of President to grant pardons, etc, and to suspend, remit or commute sentences in certain cases*

*(1) The President shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence*

*(a) in all cases where the punishment or sentence is by a court Martial;*

*(b) in all cases where the punishment or sentence is for an offence against any law relating to a matter to which the executive power of the Union extends;*

*(c) in all cases where the sentence is a sentence of death*

*(2) Noting in sub clause (a) of Clause ( 1 ) shall affect the power to suspend, remit or commute a sentence of death exercisable by the Governor of a State under any law for the time being in force*

10. The Petitioner says that Article 161 states as follows:

*Article 161. Power of Governor to grant pardons, etc, and to suspend, remit or commute sentences in certain cases The Governor of a State shall have the power to grant pardons, reprieves, respites or remissions of punishment or to suspend, remit or commute the sentence of any person convicted of any offence against any law relating to a matter to which the executive power of the State extends.*

11. The Petitioner says that the Ministry of Home Affairs, Government of India has framed Rules entitled “Procedure Regarding Petitions for Mercy in Death Sentence Cases” which have to be followed by the State Governments and the Prison authorities.

12. The Petitioner says that Rule 2 of the said Rules states as follows:

“If the convict submits a petition within the above period it shall be addressed

(a) In the case of States to the Governor of the State

(Sadar – I – Riyasat in the case of Jammu and

Kashmir) and the President of India; and

(b) In the case of Union Territories, to the President of India.

**The execution of sentence shall in all cases be postponed pending receipt of their orders.”**

(emphasis added)

Rule III states as follows:

“The petition shall in the first instance: -

(a) In the case of States be sent to the State Government

concerned for consideration and orders of the

Governor (Sadar-I-Riyasat in the case of Jammu and

Kashmir). If after consideration it is rejected it shall be

forwarded to the Secretary to the Government of

India, Ministry of Home Affairs. If it is decided to

commute the sentence of death, the Petitioner

addressed to the President of India shall be withheld

and an intimation of the fact shall be sent to the

Petitioner;

**Note:** The petition made in a case where the sentence of

death is for an offence against any law exclusively

relateable to a matter to which the executive power of

the Union extends, shall not be considered by the

State Government but shall be forthwith be forwarded



to the Secretary to the Government of India, Ministry of Home Affairs.

(b) In the case of Union Territories, be sent to the Lieut. Governor / Chief Commissioner / Administrator who shall forward it to the Secretary to the Government of India, Ministry of Home Affairs, stating that the execution has been postponed pending the receipt of the orders of the President of India.”

Rule V states as follows:

“In all cases in which a petition for mercy from a convict under sentence of death is to be forwarded to the Secretary to the Government of India, Ministry of Home Affairs, the Lieut. Governor / Chief Commissioner / Administrator or the Government of the State concerned, as the case may be, shall forward such petition **as expeditiously as possible** along with the records of the case and his or its observations in respect of any of the grounds urged in the petition. In the case of States, the Government of the State concerned shall, if it had previously rejected any petition addressed to itself or the Governor / Sadar – I-Riyasat, also forward a brief statement of the reasons for the rejection of the previous petition or petitions.” (emphasis added).

**Rule VIII – A reads as follows:**

“In cases of death sentences where a petition for grant of pardon, etc, has earlier been rejected by the President of India in exercise of his power under Article 72 of the Constitution of India, it would not be open for the Government of a State to seek to exercise similar powers under Article 161 in respect of the same case. **However, if there is a change of circumstances or if any new material is available the condemned prisoner himself or any one on his behalf may make a fresh application to the President for reconsideration of the earlier order.** Once the President has rejected a mercy petition all future applications in this behalf should be addressed to and would be dealt with by the President of India.”

Hereto annexed and marked as **Annexure P 3 ( Pages .... To ...)** is a copy of the Rules entitled “Procedure Regarding Petitions for Mercy in Death Sentence Cases” framed by the Ministry of Home Affairs, Government of India.

13. The Petitioner submits that Articles 72 and 161 of the Constitution read with the aforequoted guidelines framed by the Union of India make it abundantly clear that every death convict has a right to have his mercy petition considered by the President of India, and that till this mercy petition is decided, the death sentence is unexecutable. The Petitioner’s right to file a mercy petition and have it decided on its merits

cannot be usurped by another person or substituted by the filing of a mercy petition by another person on the Petitioner's behalf.

### **GROUND**

The Petitioner relies on the following amongst other grounds

which are without prejudice to each other:

- A. That the Petitioner's lawyers have just seen press reports stating that the first Respondent has advised the President to reject the Petitioner's Mercy Petition as quickly as possible as it does not raise any fresh ground. In the event that this news is true and by the time the Petition is heard, the President has indeed rejected the Petitioner's Mercy Petition it will be a clear and blatant case of Pre determination and total non application of mind. A bare perusal of the Petitioner's Mercy Petition shows that fresh and new Grounds have been raised in it. It is not possible to consider these new grounds in less than one day of the Mercy Petition being filed. In the normal course the MHA prepares several detailed notes which are carefully considered by different officers in the bureaucratic hierarchy before being approved by the Cabinet and sent to the President. Furthermore the Petitioner has a right to challenge the same by way of a writ petition as held by this Hon'ble Court in ***Shatrughan Chauhan v. Union of India 2014 3 SCC***, and must be given time to do so. It has been explicitly held by this Hon'ble Court in the Shatrughan Chauhan's case

that the death convict cannot be hanged in less than 14 days after the rejection of his mercy petition. This Court has held that the Prisoner must be given atleast 14 days after the rejection of his mercy petition in order to inter alia file a challenge to the rejection this mercy petition.

- B. That the Petitioner has been suffering from schizophrenia from more than two decades. Schizophrenia is a serious mental illness. Indian law prohibits execution of the mentally ill person.
- C. Even a death row convict has rights under Art 21 even as the noose is tightening around his neck, as has already been held by this Hon'ble Court in ***Shatrughan Chauhan v. Union of India 2014 3 SCC 1.***
- D. That a bare perusal of the mercy petition filed by the Petitioner would reveal that this is the very first mercy petition filed by the Petitioner himself before the President of India.
- E. This mercy petition is based on new grounds including clinching facts regarding his role, his level of cooperation and other aspects, which were never in the knowledge of anyone, as the same were disclosed only by a posthumous publication of Mr. B. Raman's article. There are several other grounds, which were never raised hitherto. A perusal of the judgment of this Hon'ble Court in my case would clearly reveal that all these aspects were the basis of my conviction. Now with this new material coming into light, it would make a material difference with regard to my role in the chain of events.

- F. As per the procedure established by Ministry of Home Affairs, it is mandatory to consider a mercy petition which is under changed circumstances.
- G. That the Petitioner cannot be executed in violation of the procedure established by law.
- H. Adjudication by the President of the Petitioner's mercy petition is part of the procedure established by law, and the Petitioner has a right to have his mercy petition considered and decided with proper application of mind by the President. Till this is done, the Petitioner cannot be executed.

### **PRAYER**

14. The Petitioner therefore most respectfully prays as follows:
- A. That this Hon'ble Court be pleased to quash the execution warrant dated 30.4.2015 issued by the designated TADA Court, Mumbai for the execution of the Petitioner on 30.7.2015;
- B. That pending hearing and final disposal of this petition, this Hon'ble Court be pleased to stay the Petitioner's execution scheduled for 7 am on 30.7.15; and
- C. That this Hon'ble Court be pleased to pass any other and further orders in the interest of justice.

**AND FOR THIS ACT OF KINDNESS THE PETITIONERS AS IN DUTY BOUND SHALL EVER PRAY.**

**Drawn by**

Yug Mohit Chaudhary/ Rishabh Sancheti

**Filed by**

Anindita Pujari

Counsel for the Petitioner

GOVERNMENT OF INDIA

# MINISTRY OF HOME AFFAIRS

## PROCEDURE REGARDING PETITIONS FOR MERCY IN DEATH SENTENCE CASES



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INSTRUCTIONS REGARDING PROCEDURE TO BE OBSERVED  
BY THE STATES FOR DEALING WITH PETITIONS FOR  
MERCY FROM OR ON BEHALF OF CONVICTS UNDER  
SENTENCE OF DEATH AND WITH APPEALS TO THE  
SUPREME COURT AND APPLICATIONS FOR  
SPECIAL LEAVE TO APPEAL TO THAT  
COURT BY SUCH CONVICTS.

A. PETITIONS FOR MERCY.

I. A convict under sentence of death shall be allowed, if he has not already submitted a petition for mercy, for the preparation and submission of a petition for mercy, seven days after, and exclusive of, the date on which the Superintendent of Jail informs him of the dismissal by the Supreme Court of his appeal or of his application for special leave to appeal to the Supreme Court.

Provided that in cases where no appeal to the Supreme Court has been preferred or no application for special leave to appeal to the Supreme Court has been lodged, the said period of seven days shall be computed from the date next after the date on which the period allowed for an appeal to the Supreme Court or for lodging an application for special leave to appeal to the Supreme Court expires.

II. If the convict submits a petition within the above period, it shall be addressed:—

(a) in the case of States to the Governor of the State (Sadar-i-Riyasat in the case of Jammu and Kashmir) and the President of India; and

(b) in the case of Union Territories to the President of India.

The execution of sentence shall in all cases be postponed pending receipt of their orders.

III. The petition shall in the first instance:—

(a) in the case of States be sent to the State Government concerned for consideration and orders of the Governor (Sadar-i-Riyasat in the case of Jammu and Kashmir). If after consideration it is rejected it shall be forwarded to the Secretary to the Government of India, Ministry of Home Affairs. If it is decided to commute the sentence of death, the petition addressed to the President of India shall be withheld and an intimation of the fact shall be sent to the petitioner;

Note:—The petition made in a case where the sentence of death is for an offence against any law exclusively relatable to a matter to which the executive power of the Union extends, shall not be considered by the State Government but shall forthwith be forwarded to the Secretary to the Government of India, Ministry of Home Affairs.

(b) in the case of Union Territories, be sent to the Lieut.-Governor/Chief Commissioner/Administrator who shall forward it to the Secretary to the Government of India, Ministry of Home Affairs, stating that the execution has been postponed pending the receipt of the orders of the President of India.

IV. If the convict submits the petition after the period prescribed by Instruction I above, it will be within the discretion of the Chief Commissioner or the Government of the State concerned, as the case may be, to consider



the petition and to postpone execution pending such consideration and also to withhold or not to withhold the petition addressed to the President. In the following circumstances, however, the petition shall be forwarded to the Secretary to the Government of India, Ministry of Home Affairs:

- (i) if the sentence of death was passed by an appellate court on an appeal against the convict's acquittal or as a result of an enhancement of sentence by the appellate court, whether on its own motion or on an application for enhancement of sentence, or
- (ii) when there are any circumstances about the case, which, in the opinion of the Lieut.-Governor/Chief Commissioner/Administrator or the Government of the State concerned, as the case may be, render it desirable that the President should have an opportunity of considering it, as in cases of a political character and those in which for any special reason considerable public interest has been aroused. When the petition is forwarded to the Secretary to the Government of India, Ministry of Home Affairs, the execution shall simultaneously be postponed pending receipt of orders of the President thereon.

V. In all cases in which a petition for mercy from a convict under sentence of death is to be forwarded to the Secretary to the Government of India, Ministry of Home Affairs, the Lieut.-Governor/Chief Commissioner/Administrator or the Government of the State concerned, as the case may be, shall forward such petition as expeditiously as possible along with the records of the case and his or its observations in respect of any of the grounds urged in the petition. In the case of States, the Government of the State concerned shall, if it had previously rejected any petition addressed to itself or the Governor/Sadar-i-Riyasat, also forward a brief statement of the reasons for the rejection of the previous petition or petitions.

VI. Upon the receipt of the orders of the President, an acknowledgment shall be sent to the Secretary to the Government of India, Ministry of Home Affairs, immediately in the manner hereinafter provided. In the case of Assam and the Andaman and Nicobar Islands, all orders will be communicated by telegram and the receipt thereof shall be acknowledged by telegram. In the case of other States and Union Territories, if the petition is rejected, the orders will be communicated by express letter and receipt thereof shall be acknowledged by express letter. Orders commuting the death sentence will be communicated by express letter in the case of Delhi and by telegram in all other cases and receipt thereof shall be acknowledged by express letter or telegram, as the case may be.

VII. A petition submitted by a convict shall be withheld by the Lieut.-Governor/Chief Commissioner/Administrator or the Government of the State concerned, as the case may be, if a petition containing a similar prayer has already been submitted to the President. When a petition is so withheld the petitioner shall be informed of the fact and of the reason for withholding it.

VIII. Petitions for mercy submitted on behalf of a convict under sentence of death shall be dealt with, *mutatis mutandis*, in the manner provided by these Instructions for dealing with a petition from the convict himself. The petitioner on behalf of a condemned convict shall be informed of the orders passed in the case. If the petition is signed by more than one person, it shall be sufficient to inform the first signatory. The convict himself shall also be informed of the submission of any petition on his behalf and of the orders passed thereon.

VIII-(A) ~~SECRET~~ In cases of death sentences where a petition for grant of pardon etc. has earlier been rejected by the President of India in exercise of his powers under article 72 of the Constitution of India, it would not be open for the Government of a State to seek to exercise similar powers under article 161 in respect of the same case. However, if there is a change of circumstances or if any new material is available, the condemned person himself or any one on his behalf may make a fresh application to the President for reconsideration of the earlier order. Once the President has rejected a mercy petition, all future applications in this behalf should be addressed to and would be dealt with by the President of India.

B. APPEAL TO THE SUPREME COURT AND  
APPLICATIONS FOR SPECIAL LEAVE TO  
APPEAL TO THE SUPREME COURT.

IX. Whenever a sentence of death has been passed by any Court or Tribunal, the sentence shall not be executed until after the dismissal of the appeal to the Supreme Court or of the application for special leave to appeal to the Supreme Court or, in case no such appeal has been preferred or no such application has been lodged, until after the expiry of the period allowed for an appeal to the Supreme Court or for lodging of an application for special leave to appeal to the Supreme Court:

Provided that if a petition for mercy has been submitted by or on behalf of the convict, execution of the sentence shall further be postponed pending the orders of the President thereon.

Note:—If the sentence of death has been passed on more than one person in the same case and if an appeal to a higher Court or an application for special leave to appeal to the Supreme Court is lodged by, or on behalf of, only one or more but not all of them, the execution of the sentence shall be postponed in the case of all such persons and not only in the case of the person or persons by whom, or on whose behalf, the appeal or the application is lodged.

X. On receipt of the intimation of the lodging of an appeal to the Supreme Court or of an application for special leave to appeal to that Court or of an intention to do so, the Lieut.-Governor/Chief Commissioner/Administrator or the Government of the State concerned, as the case may be, shall forthwith communicate by telegram to the Government Advocate, Ministry of Law, and also to the Secretary to the Government of India, Ministry of Home Affairs:

- (i) the name of the convict under sentence of death, and
- (ii) particulars relating to the appeal or the application.

If it is desired to oppose the appeal or the application, three copies of the Paper Book and of the Judgment of the High Court or the Judicial Commissioner's Court or the Tribunal, as the case may be, (one copy of each being a certified copy), a power of attorney in the form prescribed by the Supreme Court and instructions, if any, for the purpose of opposing the appeal or the application shall be immediately sent to the Government Advocate, Ministry of Law. Notice of the intended appeal or application, if and when served by or on behalf of the convict, shall also be transmitted to him without delay. If the intended appeal or application is not lodged within the period prescribed by the Supreme Court Rules, the Government Advocate shall intimate the fact by telegram to the Lieut.-Governor/Chief Commissioner/Administrator or the Government of the State concerned, as the case may be. The execution of the sentence shall not thereafter be postponed, unless a petition for mercy has been submitted by or on behalf of the convict.

XI. If an appeal or an application for special leave to appeal, has been lodged in the Supreme Court on behalf of the convict, the Government Advocate, Ministry of Law, will intimate the fact to the Lieut.-Governor/Chief Commissioner/Administrator or the State Government, as the case may be, and also to the Secretary to the Government of India, Ministry of Home Affairs. The Government Advocate will keep the aforesaid authorities informed of all developments in the Supreme Court, in those cases which present unusual features. In all cases, however, he will communicate the result of the appeal or application for special leave to appeal, to the Lieut.-Governor/Chief Commissioner/Administrator or the State Government, as the case may be, by telegram in the case of Assam and by an express letter in other cases, endorsing a copy of his communication to the Secretary to the Government of India, Ministry of Home Affairs. The Lieut.-Governor/Chief Commissioner/Administrator or the State Government, as the case may be, shall forthwith acknowledge the receipt of the communication received from the Government Advocate, Ministry of Law. A certified copy of the judgment of the Supreme

Court in each case will be supplied by the Government Advocate, Ministry of Law, in due course to the Lieut.-Governor/Chief Commissioner/Administrator or the State Government, as the case may be, who shall acknowledge the receipt thereof. The execution of the sentence of death shall not be carried out until after the receipt of the certified copy of the judgment of the Supreme Court dismissing the appeal or the application for special leave to appeal and until an intimation has been received from the Ministry of Home Affairs about the rejection by the President of India, of the petition for mercy submitted, if any, by or on behalf of the convict.

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INSTRUCTIONS RELATING TO THE DUTIES OF  
SUPERINTENDENTS OF JAILS IN CONNECTION  
WITH PETITIONS FOR MERCY FROM OR ON  
BEHALF OF CONVICTS UNDER  
SENTENCE OF DEATH.

I. Immediately on receipt of a warrant of execution consequent on the confirmation by the High Court or the Judicial Commissioner's Court of the sentence of death, the Jail Superintendent shall inform the convict concerned that if he wishes to appeal to the Supreme Court or to make an application for special leave to appeal to the Supreme Court under any of the relevant provisions of the Constitution of India, he should do so within the period prescribed in the Supreme Court Rules, 1950.

II. On receipt of the intimation of the dismissal by the Supreme Court of the appeal or the application for special leave to appeal to it lodged by or on behalf of the convict, in case the convict concerned has made no previous petition for mercy, the Jail Superintendent shall forthwith inform him (the convict) that if he desires to submit a petition for mercy it should be submitted in writing within seven days of the date of such intimation.

Note:—In cases where no appeal to the Supreme Court or no application for special leave to it, has been lodged by or on behalf of the convict, the said period of seven days shall be counted from the date next after the date on which the time allowed for an appeal to the Supreme Court or for lodging an application for special leave to appeal to it, expires. On expiry of such time, if the convict has made no previous petition for mercy, it shall be the duty of the Jail Superintendent to inform the convict concerned that if he desires to submit a petition for mercy he should do so in writing within seven days of the date of such intimation.

III. If the convict submits a petition within the period of seven days prescribed by Instruction II, it should be addressed in the case of States to the Governor of the State (Sadar-i-Riyasat in the case of Jammu and Kashmir) and the President of India, and in case of Union Territories to the President of India. The Superintendent of the Jail shall forthwith despatch it to the Secretary to the State Government in the Department concerned or the Lieut.-Governor/Chief Commissioner/Administrator, as the case may be, together with a covering letter reporting the date fixed for the execution and shall certify that the execution has been stayed pending receipt of the orders of the Government on the petition. If no reply is received within 15 days from the date of the despatch of the petition, the Superintendent shall telegraph to the Secretary to the State Government or the Lieut.-Governor/Chief Commissioner/Administrator, as the case may be, drawing attention to the fact, but he shall in no case carry out the execution before the receipt of the State Government's or the Lieut.-Governor's/Chief Commissioner's/Administrator's reply.

IV. If the convict submits a petition after the period prescribed by Instruction II, the Superintendent of the Jail shall at once forward it to the State Government or Lieut.-Governor/Chief Commissioner/Administrator, as the case may be, and at the same time telegraph the substance of it, requesting orders whether the execution should be postponed and stating that, pending a reply, the sentence will not be carried out. If such petition is received by the Superintendent later than noon on the day preceding that fixed for the execution, he shall at once forward it to the State Government or the Lieut.-Governor/Chief Commissioner/Administrator, as the case may be, and at the same time telegraph the substance of it, giving the date of execution and stating that the sentence will be carried out unless orders to the contrary are received.

V. In the event of its coming to the knowledge of the Superintendent at any time before the execution of the sentence that altogether exceptional circumstances have arisen which plainly demand a reconsideration of the sentence, he is at liberty, anything in the foregoing Instructions notwithstanding, to report the circumstances by telegraph to the State Government or the Lieut.-Governor/Chief Commissioner/Administrator, as the case may be, and ask for its/his orders and to defer execution till they are received.

VI. The Superintendent shall at once repeat back to the Secretary to the State Government in the Department concerned or the Lieut.-Governor/Chief Commissioner/Administrator, as the case may be, all telegrams communicating orders to him regarding petitions for mercy, by way of acknowledgment of their receipt.

## **Exclusive! B Raman's unpublished 2007 article: Why Yakub Memon must not be hanged**

Last updated on: July 24, 2015 13:26 IST

'The cooperation of Yakub with the investigating agencies after he was picked up informally in Kathmandu and his role in persuading some other members of the family to come out of Pakistan and surrender Constitute, in my view, a strong mitigating circumstance to be taken into consideration while considering whether the death penalty should be implemented,' B Raman had written in August 2007.

With possibly days left for Yakub Memon's hanging, [Rediff.com](#) secured permission from Mr Raman's brother to publish the article.



Image: A 2007 photograph of 1993 Mumbai blasts convict Yakub Memon being taken to the TADA court in Mumbai. Photograph: PTI Photograph.



In August 2007, writes **Sheela Bhatt**, I had written a two-part report: [The strange case of Yakub Memon](#), and [Why Yakub Memon's death sentence is surprising](#).

Before writing it I had interviewed B Raman, former Additional Secretary in the Cabinet Secretariat, on the telephone as at that time he was based in Chennai and I in Mumbai. He was very critical about the story because when Yakub Memon was lured back to India, Mr Raman headed the Pakistan Desk at the Research and Analysis Wing, India's external intelligence agency.

He was the key person who, along with officers of the Central Bureau of Investigation and the Intelligence Bureau, had put in best efforts to crack Yakub Memon and bring him to justice in India.

No less than Prime Minister P V Narasimha Rao had monitored the operation and was very pleased when the team met with success.

By all means it was an intelligence coup.

Mr Raman retired on August 31, 1994, just a few days after Yakub Memon was back in India. Yakub Memon claimed that he came to India on July 19, 1994, on his own while the Central Bureau of Investigation says he was arrested in New Delhi on August 5, 1994.

Mr Raman knew it all.

Mr Raman, who sadly passed away on June 16, 2013, had been a regular columnist for [Rediff.com](#) since 2002, and I requested him to share the inside story of Yakub Memon in the form of a column in 2007.

To my surprise, he agreed. But when the details arrived in my mailbox along with it came his note. In it he insisted that I should use the data in my reports without attribution. For my two-part story, lots of details had been given to me by Mr Raman and a former chief of the Intelligence Bureau who Mr Raman had suggested to me.



**M**r Raman, *image, left*, was meticulous. He was an intelligence officer, but in some strange way he had a tremendous urge to 'educate' the people. He always treated media-persons including me as 'pupils.'

Intelligence officers normally do not write e-mails to share secret details. But, after his retirement from R&AW, Mr Raman revealed his thoughts frequently through e-mail conversations. (In the final years of his life he was madly in love with Twitter, he was in fact addicted to it).

**W**hen Yakub Memon was sentenced to death Mr Raman was in pain. He called me to share why it was very wrong on the part of the Indian establishment to allow Yakub Memon to die by decree of law.

He was quite disturbed to see the deception by officers of the investigating agencies, in the Mumbai courts and in higher courts, that he was once part of. On August 2, 2007, at 9.39 am, I got Raman's column in my inbox, written in bullet points and bold font, a style he was famous for. He sent it to me to publish in [Rediff.com](#).

I was delighted. But, with the attachment, he also added, 'I wrote this, but I am having second thoughts. Don't use it. Others might escape as a result of this article if the higher court holds that the entire case has been vitiated as a result of the prosecution concealing a material fact from the sentencing court. R.'

Then, he changed his mind again and told me on the phone that I could use the details in my report. Obviously, I found the details useful.

Unfortunately, Mr Raman is no more. He died on June 16, 2013. But anybody who knew him enough can vouch that if he was alive today he would have written an article a day and would have gone on Twitter to stop Yakub Memon from going to the gallows.

Mr Raman's argument was that while for Indians the country is bigger than anything else, a country can command respect only by honouring its commitments.

The promise given by serving officers who represent a sovereign State is not negotiable. The system should uphold what is promised by representatives of the sovereign State.



Even if the promise is given to doubtful characters like Yakub Memon who do not deserve our sympathy for running away from the motherland. Mr Raman argued, 'By bringing back Yakub Memon the Indian State strengthened its standing.'

Mr Raman, who was a nationalist and supported patriotic issues, argued that the system of R&AW, IB and CBI worked wonders to bring back an Indian from an adversarial country like Pakistan. It was a historical intelligence achievement. Terrorists like Dawood Ibrahim and 'Tiger' Memon should not have been harboured by Pakistan in the first place. They must not be given protection for another day by any country.

Pakistan remains guilty of disregarding Indian sentiments by keeping Dawood Ibrahim under wraps. Indian diplomacy's peace overtures have failed in bringing the terrorists to justice.

But, in the process of cracking the anti-India forces of Pakistan, Indian sleuths surprisingly got back Yakub Memon.

**Y**akub Memon, who has helped India prove a point, must be defended. In October 2006 [Mr Raman had written an article \(external link\)](#) on Parliament attack convict Afzal Guru, who was hanged in February 2013, advocating a deeper investigation of his case.

In reply to a query from reader Vijay Shankar, he had replied: 'I have no views other than what I have already expressed. I have been of the view 'kill them in action and not in custody, even after a fair trial, make the State-sponsor of terrorism bleed and differentiate the individuals who let themselves be used by it.' Regards. Raman'.

He had sent his reply to me too.

Mr Raman would argue that Yakub Memon should be differentiated because he allowed India 'to use' him and show Pakistan how from under its nose Indian intelligence officers have got back an Indian to appear before Indian courts.

Whatever be Yakub Memon's logic or compulsion to return to India, he did help India cock a snook at Pakistan, which was refusing to change its vicious ways of harbouring two of India's most wanted.

Here is Mr Raman's article that was not published in 2007. [Rediff.com](#) publishes it now with the permission of his elder brother, Mr B S Raghavan, a retired distinguished IAS officer and a [Rediff.com](#) columnist himself.

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## Memon brothers and the Mumbai blasts

**I** have been going through a moral dilemma in my mind ever since I read in the media about the sentencing of Yakub Memon to death by the court, which tried the accused in the Mumbai blasts of March 1993, and his tantrums in the court after the death sentence was pronounced.

Right though the trial, he has been claiming that he was not arrested in Old Delhi as stated by the prosecution, but in Kathmandu, Nepal. This was disputed by the prosecution, which asked for the severest penalty against him and others, who were sentenced to death. All those sentenced to death have the right of appeal to the higher court and to petition the President of India for clemency if their appeals are rejected.

I have been repeatedly asking myself: Should I write this article? Would I be a moral coward if I did not do so? Would the entire case get unravelled if I wrote it? Would the undoubtedly guilty escape punishment as a result of my writing it? Would my article be adversely viewed by the court? Would I be committing contempt of court? It is impossible to have definitive answers to these questions. Ultimately, I decided to write this in the belief that it is important to prevent a person, who in my view does not deserve to be hanged, from going to the gallows.

As the head of the counter-terrorism division of the Research and Analysis Wing (R&AW), I had dealt with the external aspects of the investigation between March 1993 and my retirement on August 31, 1994. I like to believe that my work, with the help of some outstanding field officers of R&AW, was highly appreciated by P V Narasimha Rao, the then prime minister, who described our contribution to the investigation of the external aspects as worth its weight in gold.

I was disturbed to notice that some mitigating circumstances in the case of Yakub Memon and some other members of the family were probably not brought to the notice of the court by the prosecution and that the prosecution did not suggest to the court that these circumstances should be taken into consideration while deciding on the punishment to be awarded to them. In their eagerness to obtain the death penalty, the fact that there were mitigating circumstances do not appear to have been highlighted.

It was an outstanding piece of investigation by the Mumbai police and the Central Bureau of Investigation, with the excellent help of the IB. The nation ought to be proud of the officers who handled the investigation and prosecution, for their outstanding success in painstakingly collecting all the relevant evidence and placing before the court a watertight case.

The aura surrounding them would have shone even brighter had they taken the initiative in underlining before the court that there were some mitigating circumstances and that keeping those circumstances in view, they would refrain from asking for the death penalty even though perpetrators of such barbaric acts of terrorism deserve the death penalty.

The prosecution was right in saying that Yakub was arrested in Old Delhi. Yakub was right in claiming that he was not arrested in Old Delhi. In July 1994, some weeks before my retirement, he was informally picked up in Kathmandu, with the help of the Nepal police, driven across Nepal to a town in Indian territory, flown to Delhi by an aircraft of the Aviation Research Centre and formally arrested in Old Delhi by the investigating authorities and taken into custody for interrogation. The entire operation was coordinated by me.

He had come to Kathmandu secretly from Karachi to consult a relative and a lawyer on the advisability of some members of the Memon family, including himself, who felt uncomfortable with Pakistan's Inter-Services Intelligence, returning to India and surrendering to the Mumbai police. The relative and the lawyer advised him against surrender due to a fear that justice might not be done to them. They advised Yakub to go back to Karachi.

Before he could board the flight to Karachi, he was picked up by the Nepal police on suspicion, identified and rapidly moved to India.

He cooperated with the investigating agencies and assisted them by persuading some other members of the Memon family to flee from the protection of the ISI in Karachi to Dubai and surrender to the Indian authorities. The Dubai part of the operation was coordinated by a senior officer of the IB, who was then on deputation to the ministry of external affairs. Neither the R&AW nor I had any role in the Dubai part of the operation.

The cooperation of Yakub with the investigating agencies after he was picked up informally in Kathmandu and his role in persuading some other members of the family to come out of Pakistan and surrender constitute, in my view, a strong mitigating circumstance to be taken into consideration while considering whether the death penalty should be implemented.

There is not an iota of doubt about the involvement of Yakub and other members of the family in the conspiracy and their cooperation with the ISI till July 1994. In normal circumstances, Yakub would have deserved the death penalty if one only took into consideration his conduct and role before July 1994.

But if one also takes into consideration his conduct and role after he was informally picked up in Kathmandu, there is a strong case for having second thoughts about the suitability of the death penalty in the subsequent stages of the case.

B Raman

## How to rectify injustice to Yakub? SC should take suo motu notice of Raman piece



### Yakub must not hang, we brought him back: Key RAW man in '07

EXPRESSNEWS SERVICE  
NEW DELHI, MUMBAI, JULY 23

coordinated the operation to bring back Yakub and other members of the Memon family from Karachi.

Justice H S Bedi (left); The

Indian Express report on July 24

I have with a sense of uneasiness read the news item “[Yakub must not hang, we brought him back: Key RAW man in '07](#)”, published in [The Indian Express](#) on July 24, 2015. To get further details, I read the complete article and other related material on rediff.com and my uneasiness has been transformed into a sense of outrage as I take all that is written to be correct in the light of the outstanding record and character of the R&AW officer, Mr B Raman, who wrote it.

[READ — 1993 Mumbai serial blasts: How the trail took off](#)

Let me at the very beginning say that I am in principle against the imposition of death penalty. It serves as no deterrent, as statistics worldwide show, and on the contrary brutalises society. My predilection, however, has had no bearing on my decisions as a High Court and Supreme Court Judge for almost 21 years, as I have often upheld the death penalty. The Supreme Court of India, as indeed courts all over the free world, are agreed on the fact that all mitigating factors in favour of an accused facing a capital sentence must be put before the court and that this obligation rests equally on the prosecution as well. It also appears that some commitment by the government or its agencies had been made to [Yakub Memon](#) and that he had fully cooperated with the investigative agencies after his arrest. I take it that this commitment would relate to the sentence that he would receive.

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Yakub Memon

I remember him as someone who was persistent: Justice Kode on



Yakub Memon gets no relief from SC, to be hanged July 30

Mr Raman writes that these mitigating circumstances “in the case of [Yakub Memon](#) and some other members of the family were probably not brought to the notice of the court by the prosecution and that the prosecution did not suggest to the court that these circumstances should be taken into consideration while deciding on the punishment... in their eagerness to obtain the death penalty”. He further concludes that the aura and outstanding investigative work that the intelligence agencies had achieved would have been enhanced yet further had they put all the mitigating circumstances before the court.

#### From our archives A Tear For Yakub Memon

The second disturbing aspect is the role of the public prosecutor in such cases. The perception which has grown over the last few years, and actively encouraged by some public prosecutors themselves, that they are agents of the police, is completely misplaced. A public prosecutor is an officer of the court and, as someone put it, “an agent of justice”. He represents the crown (state), not the police. It is, in this background, imperative that he should put all facts for and against an accused before the court so that a just decision can be arrived at.



1993 Mumbai blasts convict

[Yakub Memon](#). (Source: Express Archive)

The Supreme Court in the case of Shiv Kumar versus Hukam Chand decided on August 30, 1999 observed “that a public prosecutor is not expected to show thirst to reach the case in the conviction of the accused somehow or the other irrespective of the true facts involved in the case. The expected attitude of the public prosecutor while conducting prosecution must be couched in fairness not only to the court and to the investigating agencies but to the accused as well. If an accused is entitled to any legitimate benefit during the trial, the public prosecutor should not scuttle/ conceal it. On the contrary, it is the duty of the public prosecutor to winch it to the fore and make it available to the accused. Even if the defence counsel overlooks it, the public prosecutor has the added responsibility to bring it to the notice of the court if it comes to his knowledge”... as the public prosecutor should “not obtain an unrighteous conviction — but to see justice has been vindicated”.

Quite to the contrary, we often see TV savvy public prosecutors, gloating over their legal victories, preening themselves, and strutting around like film actors.

[READ — He said don't worry, I will come out: Yakub's wife](#)

What can now be done to rectify the injustice to [Yakub Memon](#) on the question of sentence? The options are indeed limited and time is running out. I think the Supreme Court should suo motu take notice of Mr Raman's article and after hearing both sides remand the case to the trial court to take further evidence on the question of the sentence or in the alternative take the evidence itself. This is still possible under the power conferred on the Supreme Court under Article 142 of the Constitution. This exercise would greatly enhance the prestige and glory of the Supreme Court of India, more particularly as Mr Raman's article has been published only after the dismissal of the curative petition. I believe that [Yakub Memon](#) has filed a mercy petition before the Governor. Action could be taken on this as well.

— Former Supreme Court Judge Harjit Singh Bedi authored the 2010 judgment in Vikram Singh versus State of Punjab, awarding death sentence to two kidnappers who had poisoned a schoolboy to death as his father did not pay the ransom. While observing that “the theory which is widely accepted in India, however, is that as death penalty is on the statute book, it has to be awarded, provided the circumstances justify it”, Justice Bedi ruled, “When the murder is committed in such an extremely brutal, grotesque, diabolical, revolting or dastardly manner as to arouse intense and extreme indignation of the community or when the victim of murder is an innocent child who could not have or has not provided even an excuse, much less a provocation, death penalty could be awarded.”

Justice Bedi was also part of the SC Bench that commuted the death sentence of Santosh Kumar Singh, who had raped and murdered law student Priyadarshini Mattoo in Delhi in January 1996.

He retired in September 2011.



## Fresh mercy petition from MPs, ex-judges and activists



'We most humbly request your Excellency to consider the case of Yakub Abdul Razak Memon and spare him from the noose of death for a crime that was masterminded by someone else to communally divide the country,' the petition reads.

A fresh mercy petition for [Yakub Memon](#) filed with the President includes the signatures of eminent members of the legal fraternity, academics and MPs from parties including the [BJP](#). Shatrughan Sinha and expelled [BJP](#) MP Ram Jethmalani are among those who have requested the President to commute the death sentence, saying there are "substantive and fresh grounds" that can be considered on merits.

"We most humbly request your Excellency to consider the case of Yakub Abdul Razak Memon and spare him from the noose of death for a crime that was masterminded by someone else to communally divide the country," the petition reads. "Grant of mercy in this case will send out a message that while this country will not tolerate acts of terrorism, as a nation we are committed to equal application of the power of mercy and values of forgiveness, and justice. Bloodletting and human sacrifice will not make this country a safer place; it will, however, degrade us all."

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[President urged to grant Yakub Memon reprieve from execution](#)



Jurists, artists file mercy plea with President



1993 Mumbai blasts: Supreme Court junks Yakub Memon's plea,

confirms death penalty



SC extends stay on execution of Mumbai blasts convict Yakub Memon's death sentence



Supreme Court stays execution of Yakub Memon

MHA forwards Yakub mercy plea to President, wants it rejected

The **BJP**, meanwhile, stressed the execution was decided after a legal process and should be honoured. Spokesperson Sambit Patra said his comments are meant for all, whether they are in politics or not. "Anyone and everyone in this country should respect the law of this country. No one is above the law of the country. The case has been going on in various courts of law for last 20 years... Everyone should refrain from commenting on the process of the law." Asked about the fresh petition, he said he would not like to comment on it as it is with the President.

Those who have signed the petition include MPs Mani Shankar Aiyar (**Congress**), Majeed Memon (NCP), Sitaram Yechury (CPM), D Raja (CPI), K T S Tulsi and H K Dua (nominated) and T Siva (DMK), former CPM general secretary Prakash Karat, CPI(ML-Liberation) general secretary Dipankar Bhattacharya, Brinda Karat (CPM) and filmmakers and actors Naseeruddin Shah, Mahesh Bhatt and M K Raina, and Tushar Gandhi. It also included retired judges Panachand Jain, H S Bedi, P B Sawant, H Suresh, K P Siva Subramaniam, S N Bhargava, K Chandru, and Nagmohan Das, lawyer Indira Jaising, academics Irfan Habib, Arjun Dev, and N Jha, and social activists Aruna Roy, Jean Dreze and John Dayal.

# Yakub Memon does not deserve to be hanged, top intelligence officer wrote

TNN | Jul 24, 2015, 04:08 PM IST



*File photo of Yakub Memon.*

NEW DELHI: An article written by former R&AW officer and prominent strategic affairs expert, the late B Raman, who played a key role in bringing Bombay blast accused Yakub Memon back from Pakistan, opposing his capital punishment, is finding support also among other intelligence officers, both former as well as serving.

The reputed spymaster did not dispute that there was not "an iota of doubt about the involvement of Yakub and other members of the family in the conspiracy and their cooperation with the ISI till July 1994". He also said: "In normal circumstances, Yakub would have deserved the death penalty if one only took into consideration his conduct and role before July 1994."

However, he made a strong pitch for leniency to be shown for Yakub after his arrest in Kathmandu. Raman, who passed away in 2013, wrote in 2007, just days after the court handed out death penalty to Memon: "If one also takes into consideration his conduct and role after he was informally picked up in Kathmandu, there is a strong case for having second thoughts about the suitability of the death penalty." Raman's essay was made public on Thursday by Rediff.com.

Raman retired from R&AW on August 31, 1994, just days after he played a critical role in ensuring the younger Memon left Pakistan to land in Kathmandu. Yakub, whose elder brother Tiger Memon and Dawood Ibrahim were the key conspirators of 1993 Bombay blasts in which 257 people were killed—had got tired of leading a life in the captivity of ISI and wanted to return to India in exchange of an iron clad guarantee that he would not be handed death sentence if he helped Indian agencies in nailing Pakistan's role in the blasts. He decided to return from Kathmandu after one of his cousins told him that it will be difficult for him to escape the gallows.

Once in Indian custody, he handed to Indian investigators a huge cache of documents, videos, photographs, passports etc that proved the role played by Pakistan's ISI in carrying out the serial blasts, days after the Babri Masjid demolition on December 6, 1992.

"He (Yakub) definitely had an assurance from us, and that is why he voluntarily came to Kathmandu, handed over so much data and details to us. We have betrayed him," one former R&AW official said. He said Memon actively cooperated with Indian agencies, persuaded many of his family members to leave Pakistan, provided critical intelligence and trusted Indian courts. "There is something not right about what is playing out," the official, who along with Raman and a few others played a role in Memon's return to India, said.

"As the head of the counter-terrorism division of the Research and Analysis Wing (R&AW), I had dealt with the external aspects of the investigation between March 1993 and my retirement on August 31, 1994. I like to believe that my work, with the help of some outstanding field officers of R&AW, was highly appreciated by P V Narasimha Rao, the then prime minister, who described our contribution to the investigation of the external aspects as worth its weight in gold," Raman wrote in his essay.

"I was disturbed to notice that some mitigating circumstances in the case of Yakub Memon and some other members of the family were probably not brought to the notice of the court by the prosecution and that the prosecution did not suggest to the court that these circumstances should be taken into consideration while deciding on the punishment to be awarded to them. In their eagerness to obtain the death penalty, the fact that there were mitigating circumstances do not appear to have been highlighted," Raman said.

Another R&AW officer, who too had direct knowledge of the entire operation, said Memon's landing in Kathmandu, he drawing attention of security forces at the airport to get arrested, suitcase full of intelligence against Pakistan's involvement in the 1993 blast was all part of "one of our finest operations." And Memon would not have done it all "without some kind of assurance, isn't it?" he said, without elaborating what the understanding was.

Raman said, "In July 1994, some weeks before my retirement, he was informally picked up in Kathmandu, with the help of the Nepal police, driven across Nepal to a town in Indian territory, flown to Delhi by an aircraft of the Aviation Research Centre and formally arrested in Old Delhi by the investigating authorities and taken into custody for interrogation. The entire operation was coordinated by me."

Raman also claimed that Yakub Memon cooperated with the investigating agencies and "assisted them by persuading some other members of the Memon family to flee from the protection of the ISI in Karachi to Dubai and surrender to the Indian authorities. The Dubai part of the operation was coordinated by a senior officer of the IB, who was then on deputation to the ministry of external affairs."

Some other retired and serving intelligence officers, contacted by TOI, too shared the same arguments. They said there was no doubt about Yakub's involvement in the conspiracy. "He may not have planted a bomb, but he actively aided Tiger. However, what needs to be taken into consideration is his decision to return to India, and help with investigations," a serving officer said.



## Intelligence officers on B Raman's Yakub Memon piece: 'He wrote it, so has to be true'

Last updated on: July 24, 2015 15:45 IST



'Raman knew everything and was privy to all the details of Yakub's movements.'

- **MUST READ: B Raman's unpublished column from 2007 [Why Yakub Memon must not be hanged](#)**

"

It is brave of B Raman to speak the truth, I admire his courage. We intelligence-*wallahs* are always accused of doing hanky-panky but here is an Indian Police Service officer who put down his version honestly. I totally believe what Raman says, I have no reason to not believe him," A S Dulat, former chief of Research and Analysis Wing, India's external intelligence agency, told [Rediff.com](#)

Yakub Memon, the March 12, 1993 Mumbai blasts convict sentenced to death, has moved the Supreme Court, seeking a stay on his execution which is expected July 30, which is also his 53rd birthday.

President Pranab Mukherjee has already rejected his mercy plea, and the Supreme Court has dismissed his curative petition.

Mr Raman, a former additional secretary in the Cabinet Secretariat, in his unpublished column from 2007 that was published by [Rediff.com](#) on Thursday, July 23, argued that Yakub Memon did not deserve to be hanged.

**'I was disturbed to notice that some mitigating circumstances in the case of Yakub Memon and some other members of the family were probably not brought to the notice of the court by the prosecution,' Mr Raman wrote in his column, 'and that the prosecution did not suggest to the court that these circumstances should be taken into consideration while deciding on the punishment to be awarded to them. In their eagerness to obtain the death penalty, the fact that there were mitigating circumstances does not appear to have been highlighted.'**

Mr Raman, who headed the Pakistan Desk at R&AW during Yakub

Memon's return in 1994 and was intimately involved in the operation, also revealed that Yakub Memon had been flown to Delhi in a government plane from Nepal.

'In July 1994, some weeks before my retirement, he was informally picked up in Kathmandu, with the help of the Nepal police, driven across Nepal to a town in Indian territory, flown to Delhi by an aircraft of the Aviation Research Centre and formally arrested in Old Delhi by the investigating authorities and taken into custody for interrogation. The entire operation was coordinated by me,' Mr Raman wrote.

'Further, (*Yakub*) cooperated with the investigating agencies and assisted them by persuading some other members of the Memon family to flee from the protection of the ISI in Karachi to Dubai and surrender to the Indian authorities. The Dubai part of the operation was coordinated by a senior officer of the IB, who was then on deputation to the ministry of external affairs. Neither the R&AW nor I had any role in the Dubai part of the operation.'

**M**r Raman's version thus puts a question mark on the basis upon which Yakub Memon was awarded the death penalty.

Another former RA&W chief Vikram Sood told [Rediff.com](#), "Raman had lots of credibility."

In fact, the publication of Mr Raman's column has stirred a debate over how a criminal could be sent to the gallows on the basis of information that was incorrect.

So what next in the Yakub Memon saga, when the very premise upon which he was convicted has fallen flat after the

publication of Mr Raman's version?

So far, none of his colleagues in service, or in retirement, has questioned Mr Raman's credibility or the authenticity of what he has said.

**T**he *Indian Express* on Friday, July 24, published Mr Raman's version, along with his colleague and now retired R&AW officer Vappala Balachandran's opinion.

'I was aware of the case, but I was not present in the country when the event happened and when he (*Yakub Memon*) was finally brought in. I was then on a special assignment outside the country and held the rank of a special secretary. Raman was a close friend and if he has said this in writing, then it has to be correct.'

'But at this stage, when the event has gone through so many judicial layers, it would be incorrect for me to say anything on this matter... Raman at that time was asked by (*then Maharashtra chief minister*) Sharad Pawar's office to assist in this operation, and I am aware that he helped in everything. Raman knew everything and was privy to all the details of Yakub's movements. He had assisted the Central Bureau of Investigation and the Mumbai police and he did that in the capacity he was assigned. I read the piece just late evening, and I can only say if Raman has written it, it has to be true.'

"I think Raman's version must be correct because look at the way he has done it," Dulat told [Rediff.com](http://Rediff.com), "He was the officer, so he had a dilemma over speaking the truth or not. But, in the end, he settled for speaking out. See, ultimately, you have to be honest to yourself."

A Correspondent in New Delhi

## I can vouch for Raman's column on Yakub Memon: Brother

Last updated on: July 25, 2015 10:50 IST

'I well remember the article you have published because prior to sending it to you, he had shown it to me and I can vouch for its contents in the form in which you have published it. That was why I gave the permission to [Rediff.com](#) for publishing it,' says B S Raghavan, the distinguished retired IAS officer who himself handled intelligence matters for nine years.

Sheela Bhatt reports.



**A**s expected, the forces who stubbornly refuse to see the legal facts of the Yakub Memon case have tried to undermine the significance of [Mr B Raman's column, which Rediff.com published on Thursday, July 23](#).

Mr B S Raghavan, the distinguished retired IAS officer and Mr Raman's elder brother, has come out with the strongest defence of his brother who died in June 2013, saying he remembers Mr Raman's views on the Yakub Memon case and that the details of Mr Raman's column are correct.

"My brother, B Raman, and I used to have discussions on almost all matters connected with security and intelligence, as they were interests shared between us," Mr Raghavan told [Rediff.com](#)

"In his case, it was from the perspective of an intelligence operative, while I had handled security and intelligence issues in the home affairs ministry for nine years (1961 to 1969), besides being a member of the Joint Intelligence Committee. This common ground led both of us to exchange ideas and views on most topics connected with security and intelligence in person or over the phone," Mr Raghavan added.

Mr Raman, *image, left*, was unmarried and every week he would visit his brother at his Adyar, Chennai, home where they would discuss security issues for hours.

**"H**e more or less used me as a sounding board for whatever he wrote," Mr Raghavan added. "I well remember the article you have published because prior to sending it to you, he had shown it to me and I can vouch for its contents in the form in which you have published it. That was why I gave the permission to [Rediff.com](#) for publishing it."

Mr Raman's contention -- a very important legal point -- that Yakub Memon was picked up by Indian intelligence agencies not from the Old Delhi railway station but from Kathmandu, Nepal, is being ignored.

Mr Raman, who headed the Pakistan Desk at the Research and Analysis Wing, India's external intelligence agency at that time, wrote, 'In July 1994, some weeks before my retirement, he was informally picked up in Kathmandu, with the help of the Nepal police, driven across Nepal to a town in Indian territory, flown to Delhi by an aircraft of the Aviation Research Centre and formally arrested in Old Delhi by the investigating authorities and taken into custody for interrogation. The entire operation was coordinated by me.'

Since these facts were not brought before the court which awarded the death penalty to Yakub Memon, his lawyers and human rights activists are looking for legal avenues to address the anomaly of the case presented by the prosecution.

### ALSO READ

- [Exclusive! B Raman's unpublished 2007 article: Why Yakub Memon must not be hanged](#)

- Intelligence officers on B Raman's Yakub Memon piece: 'He wrote it, so has to be true'

Sheela Bhatt



# Break the official omerta

In Yakub Memon case, state displayed bad faith



MASEEH RAHMAN

AFTER I MET Yakub Memon at the CBI headquarters in Delhi shortly after his formal arrest in August 1994, I got an unusual break as a journalist. The senior police officer who introduced me to Yakub gave me a piece of paper with some Karachi addresses written on it. "Can you get them photographed," he asked.

I had visited Karachi a few times, and I could see that all the addresses were from upmarket residential areas. I was told that two of the addresses were the homes of the most wanted men in India — Dawood Ibrahim and Mushtaq "Tiger" Memon, the chief executor of the horrific March 1993 serial bombings in Mumbai. The third address was of Karachi-based smuggler Taufiq Jallianwala who, the CBI had discovered thanks to Yakub, was the key link between Pakistan's ISI agency and the Mumbai bombings.

Since I was working on a follow-up report for *India Today* on Yakub's sudden and mysterious return to India from Pakistan, I immediately put an intrepid Pathan photographer in Karachi on the job. The pictures arrived a few days later, and the photographer confirmed that the grand bungalows indeed belonged to those notorious characters. All the photos were published in *India Today*. The senior CBI officer was so excited by this journalistic coup that he showed up at my house early one morning. And then I got to hear the full story.

Yakub Memon had decamped from the Memons' plush sanctuary in Karachi with a cache of material that exposed the close relationship between the ISI and his older brother Tiger. He had flown to Nepal with the intention of crossing the border and assisting Indian authorities in exposing the heinous bomb conspiracy. But what Yakub had done seemed too good to be true. Was his return another devious conspiracy by the ISI? Was the Pakistani spy agency laying a trap for Indian investigators? CBI sleuths desperately needed to confirm at least one crucial piece of material evidence Yakub had brought along in order to believe his story. The plucky Pathan photographer had done just that. My CBI source was understandably elated.

How has it come about that a man like Yakub, who provided critical assistance to Indian investigators to nail the ISI for the first time ever in the long-running proxy war against India, is going to hang on Thursday morning in Nagpur jail?

When an individual betrays your trust, you have the option of a legal remedy. But when a state displays bad faith, what do you do? The legal dictionary defines "bad faith" as "the fraudulent deception of another person; the intentional or malicious refusal to perform some duty or contractual obligation". This is exactly what Prime Minister P.V. Narasimha Rao's government can be accused of for what it did to Yakub and the other Memons who surrendered to the CBI on his initiative, convinced they would get justice in India.

The CBI showed me the video Yakub had shot, at great personal risk, of the bungalows, including extensive shots of the inside of the mansion given to Tiger by the ISI. I also heard an audiorecording made by Yakub of conversations between Tiger and his associates. Yakub also provided detailed and authentic information on how the ISI had chaperoned the Memons, first in Karachi, then for a while in Bangkok, then back in Karachi, and the identity of the Pakistani army officer who acted as their minder.

But here's the rub. "All the invaluable material Yakub provided us was produced during the trial," a CBI officer recalled. "But it was interpreted in court as proof that all the Memons — and not just Tiger — were hiding from Indian authorities with the ISI's help. The evidence that should have helped the Memons was read against them." The reason was political. By the time the trial started a jittery Rao government was mortally scared of accusations that it had gone "soft on terrorists".

The irony is that after Yakub's return, not just CBI officers but even top Indian diplomats based in Dubai and Delhi had helped get the rest of the Memons safely back to India. Yet the top-level clampdown meant that none of these officials could testify in court. Overnight, the Memons were dog meat.

But truth has a way of revealing itself. Quite unexpectedly, the highly respected intelligence officer B. Raman, who had organised the logistics for Yakub's return, broke the official omerta, albeit from his grave. Following Raman's plea that Yakub should not hang as he had assisted the Mumbai bombings investigation, retired Justice H.S. Bedi has suggested that the Supreme Court take suo motu notice of Raman's revelations and ask a trial court to re-examine the evidence. The evidence is already part of the legal record. A judge only needs to reassess it with the help of all the officials who played key roles in l'affaire Memon. But the officials will testify honestly only if they get an amnesty from the charge of contempt of court. For, as he admitted, the fear of contempt was one important reason why Raman did not publish his article against Yakub's death sentence during his lifetime.

*The writer is a Delhi-based journalist*

JUMP CUT

## **Doubling The Deal**

The security establishment's inability to honour the deal it may have struck with Yakub will seriously erode its credibility.

**PRANAY SHARMA**

The Indian security establishment's refusal to honour a deal it appeared to have struck with Yakub Memon not only raises some embarrassing questions but is likely to adversely impact several key investigations in future. Obviously there is no record of a deal that the two sides may have struck soon after Yakub's return to India. But journalists who closely tracked the case for years were always aware of it. The breakthrough that the investigators managed, especially in getting most members of the Memon family back to India from Pakistan, would not have been possible without this deal.

The Supreme Court's decision to uphold the death penalty given to Yakub Memon, one of the conspirators in the 1993 Bombay serial blasts case, has silenced most members of the investigation. Some key members have passed on from the scene. Those who are around refuse to even acknowledge the existence of a deal, especially since it seems to have gone sour. The details of the deal struck by the sleuths—or the reason why it went sour—are difficult to ascertain. More so because Yakub himself has stuck to his commitment and refused to divulge the contours. But several questions still remain unanswered.

The first has to do with Yakub's arrest in Delhi. According to his wife Raheen, he returned to India in July 1994 to face trial because he was confident he was innocent. But the CBI showed his arrest nine days later, from near New Delhi railway station. What happened during the intervening time is not known. The second question has to do with the return of most of the Memon family members from Pakistan. If Yakub was picked up by the CBI investigators, then the other members of his family are unlikely to have returned to India to face trial on their own! There was a 'special arrangement'—that's how it was talked about in those days, the deal that made the Memon family give up their shelter in Karachi to return to India, via Dubai. And much of this would not have been possible if Yakub had not been able to convince them that they would face a fair trial in India.

The return of most members of the Memon family to India was a huge diplomatic coup for New Delhi. Since the serial blasts, it had been smarting under the knowledge that, along with Dawood Ibrahim and Tiger Memon, their other family members were also in Pakistan. Their return to face trial in India allowed South Block to showcase it as a major breakthrough in investigations and helped it send out a strong signal: it's not as if you can commit grave crimes in India and escape to Pakistan and find yourselves kept there in great comfort and honour.

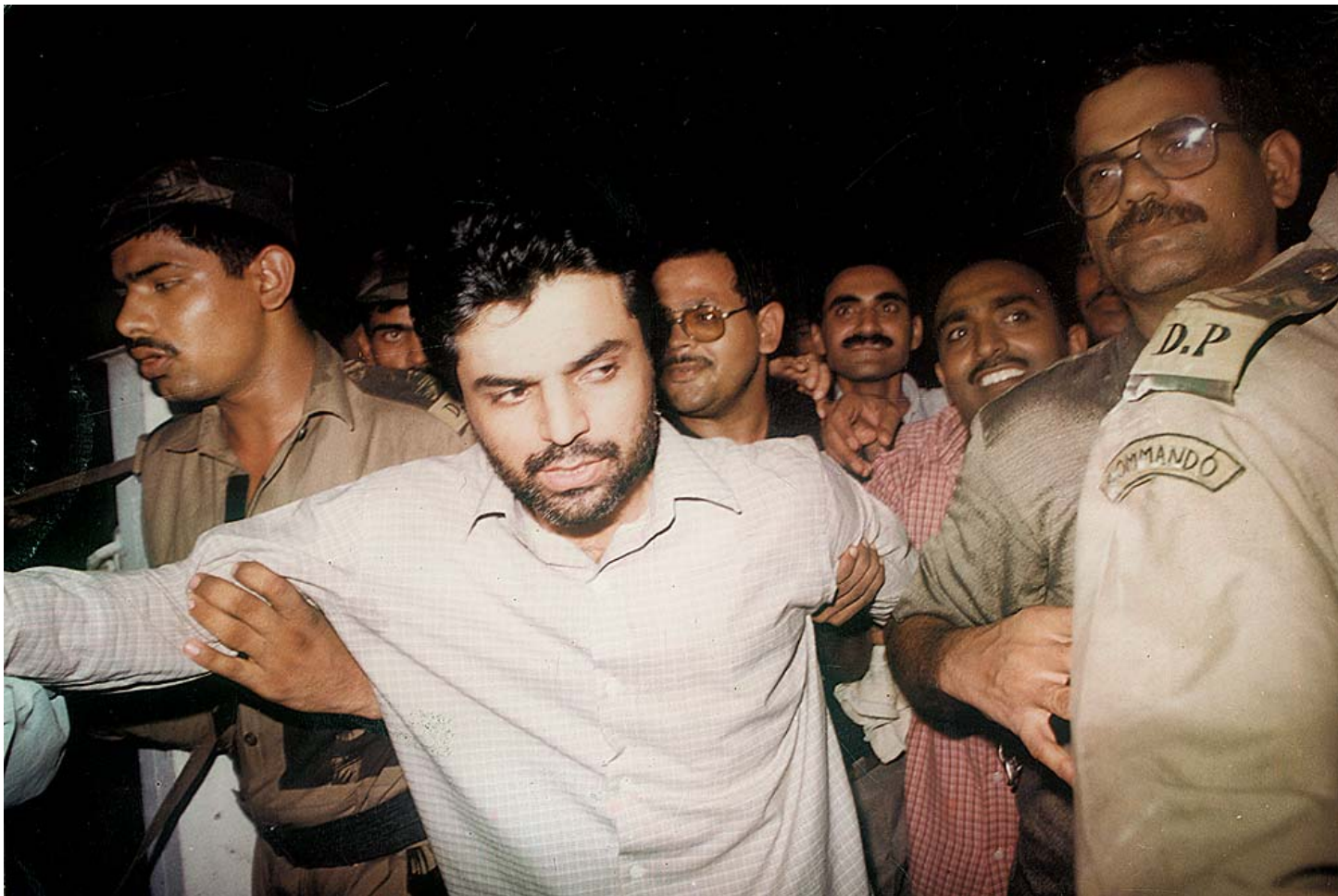
The decision to hang Yakub may have stemmed from the prevailing political atmosphere in the country. The ruling BJP, cornered on corruption charges, may not like to open yet another front by being seen as going soft on a terror accused. However, the security establishment's inability to honour the deal it may have struck with Yakub will seriously erode its credibility. Will people with inside knowledge still come forward to cooperate with Indian investigators to help them crack similar high-profile terrorist acts in future?

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*Outlook senior editor Pranay Sharma covered the home ministry for The Telegraph, at the time of Yakub Memon's arrest; E-mail your columnist: pranayda [AT] gmail [DOT] com*

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Yakub Memon after his arrest in 1994 in Delhi

OPINION

## An Atrocity Devours All

For his naive, lofty faith in Indian justice, Yakub must hang

MASEEH RAHMAN

Neither Yakub Memon nor the CBI has told the truth about one of the most incredible episodes in the annals of crime—the return of the Memon family to India more than a year after the March 12, 1993, serial bombings in Bombay. Ordinarily, it may not have mattered. But their return and the long-drawn-out trial constitutes a saga of honour, faith, identity, the need for redemption, and the trauma of betrayal by the state.

So a lot depends on the answer to the question: how and why did Yakub Memon, younger brother of the notorious ‘Tiger’ Memon, return to India in 1994, followed by 10 of his family members, including his wife and newborn daughter?

The CBI maintained that it arrested Yakub while he was loitering outside a railway station in Delhi. It would require a very gullible judge to swallow this. Yakub has insisted that he surrendered voluntarily. But he too has never fully clarified the circumstances of his arrest.

I met Yakub in a CBI officer’s cabin shortly after his arrest. Dressed in a burgundy-coloured shalwar (his favourite colour), the handsome, bearded chartered accountant was cowering in a corner and looked apprehensive. I subsequently realised the cause of his anxiety—Yakub had just taken an incredible leap of faith and conviction. Knowing that all but two of his family members were innocent, and trusting in the fairness of India’s judiciary, he was bringing the Memons home. Only the two prodigal brothers who were involved in the bomb conspiracy, Tiger and Ayub, stayed behind in their plush, ISI-arranged sanctuary in Karachi. The rest, Yakub believed, would redeem their name.

It was this belief that had brought Yakub to Nepal in July 1994 with a bagful of material implicating Pakistan as Tiger Memon’s sponsor and protector. He wanted to cross the border and surrender. But a cousin who met him in Kathmandu advised caution. While Yakub may believe that the rest of the Memons had nothing to do with Tiger’s conspiracy, the cousin told him, public opinion was strongly against the family.

So Yakub decided to fly back to Karachi via Dubai. But then fate intervened. A large bunch of keys in his burgundy briefcase looked suspiciously like a handgun in the airport security x-ray. He was asked to open the briefcase, and out tumbled his Indian passport, along with those of the other Memons. Yakub was travelling on a Pakistani passport under the assumed identity of an Urdu-speaking Mohajir. He was handed over to the Intelligence Bureau, who passed him on to the cbi—outside a railway station, for sure!

So Yakub fell into CBI hands by chance, but also by his own volition. He had wanted to clear his name. His motivation became apparent during the CBI operation to get the remaining 10 Memons back to India from under the nose of the ISI. Neeraj Kumar, who retired as Delhi’s police commissioner, masterminded this tense, three-week-long operation.

When Yakub did not return to Karachi, a pre-arranged escape plan was set in motion. In Karachi, the Memons had got new identities, a bungalow to live in, and assistance for starting new businesses. More than a year after the Bombay bombings, the ISI had relaxed its vigil, convinced that the Memons had nowhere to go. But the agency was

oblivious of their unhappiness with the charade of their new life, and their determination to return to Bombay (where they had been branded as terrorists and traitors) to clear their name. Incredibly, the family flew back to India via Dubai without first working out a deal with the government in the serial bombing case. After their return, they were all sent to jail. "The Memons had a kind of naive faith that since they were innocent they would be acquitted," said a CBI officer.

Until Yakub's return, prime minister P.V. Narasimha Rao's government was trying without much success to convince the world of Islamabad's perfidy. S.B. Chavan, who was home minister, told me that thanks to Yakub, his officers gave a three-hour-long audio-visual presentation to the American ambassador to "clearly establish beyond doubt that Pakistan was fully involved (in the Bombay bombings)". For the first time, New Delhi could nail the ISI.

But at home New Delhi developed cold feet. The Memons' return was too incredible for the public to accept. The government was accused of doing a deal with terrorists. It decided to throw the Memons to the wolves. So three of them will now spend their lives in prison. And Yakub must hang.

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*(Maseeh Rahman was the first journalist to meet Yakub Memon after his arrest by the CBI in 1994)*

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