

TO: The Honourable President of Pakistan,
Islamabad
The Honourable Governor of Punjab,
Governor House Lahore

CC: Home Secretary,
Home Department,
Punjab

Senior Superintendent
Faisalabad Central Jail

RE: Mercy Petition for Abdul Basit s/o Allah Ditta, condemned prisoner currently held in Central Jail Faisalabad, through Mst. Nurat Parveen, mother of condemned prisoner

Abdul Basit, s/o Allah Ditta, was arrested and tried in a case registered under F.I.R No. 208/2008 under sections 302/449/34 of the Pakistan Penal Code (Police Station A-Division, Okara). He was convicted and sentenced to death under section 302(b) of the PPC by the trial court on 19 May 2009. He was directed to pay compensation of Rs.1,00,000 under section 544-A of the Code of Criminal Procedure and fined Rs.20,000 and sentenced to five years under section 449 of the PPC.

An appeal to the High Court was brought under section 410 of the Code of Criminal Procedure, but was dismissed on 12 June 2012. A subsequent appeal was brought in Supreme Court which was dismissed on 13 December 2012.

On 30 January 2013, a Mercy Petition was lodged by Abdul's mother, Mst. Nurat Parveen, which was unsuccessful. In that instance, the Petitioner had relied on the despair of the family at the prospect of Abdul being sentenced to death and the desperation they would face should this punishment be realised. While it is submitted that the previous grounds still apply, the present petition is based on grounds which have not previously been considered, namely the medical condition of the condemned prisoner and the fact that his execution would constitute double punishment and the very act of his execution would clearly involve inhumane and unusual treatment.

Rule 101 of the Pakistan Prison Rules (1978) provides for the submission of subsequent mercy petitions when fresh grounds arise. In this current petition our submissions are based entirely on Abdul's medical condition and the compelling circumstances of his incarceration that arise from it. It

is submitted that the basis of this current petition is substantively different from the former, and it is respectfully requested that as such the current Mercy Petition be treated as an entirely new matter.

The petitioner submits the present petition in accordance with Article 45 of the Constitution of Pakistan, and with Rule 104 and Rule 107 of the Pakistan Prison Rules (1978).

It is noted that **Rule 107 (iv)** provides that:

*(iv) In case where the condemned prisoner takes plea of young or old age, unsound mind or **ill-health**, two copies of the Medical report by the Medical Officer, of the prison shall also be submitted, stating therein the correct age, ailment, infirmity, etc. as the case may be. (Emphasis added)*

A Medical Report in respect of Abdul dated 03 April 2012 is attached herewith as Annexure A. This report diagnoses his current condition as being permanently paralysed from the waist down and makes reference to a need for physiotherapy. Abdul Basit also requires further treatment for his condition and suffers from numerous other health problems as a result of his paralysis.

It is respectfully prayed that, on the basis of Abdul's severe and permanent disability which causes him on-going suffering and which provides ample grounds for mercy to be granted in this case, he should be pardoned or, at the very least, his sentence should be commuted. It is hereby respectfully requested that the Honourable President should grant Abdul Basit permanent clemency or pardon him from execution on the following grounds:

I. PAKISTAN LAW CLEARLY AUTHORISES GRANTING MERCY IN THIS CASE

Mercy is an act of grace, placed outside the judiciary and entrusted to the Executive by the Constitution of Pakistan. It does not reverse the judgment of the courts. At the heart of the concept of executive clemency is to grant clemency as a matter of grace, thus allowing the executive to consider a wide range of factors not comprehended by earlier judicial proceedings and sentencing determinations.

The legal provisions that provide for the Executive to grant clemency are found at Article 45 of the Pakistan Constitution. That Article provides that pardon may always be granted, irrespective

of time limits referred to in the Pakistan Prison Rules (Rule 104). As such, the Executive's power to pardon may be exercised at any time:

Article 45: President's power to grant pardon, etc.: The President shall have power to grant pardon, reprieve and respite, and to remit, suspend or commute any sentence passed by any court, tribunal or other authority.

In addition to the law of Pakistan, the religious faith that guides us all encourages mercy. The 1,400-year-old Islamic system of Shari'a law encourages mercy. Mercy is at a premium and one of the best known verses of the Qur'an likens saving the life of another person as the salvation of the whole human race:

"...If anyone kills a ... it would be as if he killed all people. And if anyone saves a life, it would be as if he saved the life of all people"

Qur'an 5:32.

II. MERCY IS CALLED FOR IN THIS CASE

It is respectfully submitted that mercy is appropriate and just in this case. The following reasons are stated:

1. Abdul Basit is seriously disabled as a consequence of disease contracted during his imprisonment

Abdul was originally held in Sahiwal jail for almost 18 months until he was transferred to Faisalabad Central jail. While in Faisalabad jail, for a month he suffered with very high temperature before being transferred to DHQ Hospital, Faisalabad, where he was diagnosed with tuberculous (TB) meningitis. His condition was so severe that he fell into a coma and was in such a condition for approximately three weeks. He was treated for TB and jaundice and remained in hospital for thirteen months. Abdul learned through an MRI scan that his spinal cord was damaged by his illness. He was temporarily treated in Services Hospital, and following several months' subsequent detention in Kot Lakhpat prison, he was transferred back to Faisalabad Central Jail. It appears that during this time, his condition deteriorated, resulting in paralysis of his lower abdomen and necessity for a wheelchair.

Medical reports have concluded that Abdul has paraplegia in addition to long-term complications arising from spinal cord atrophy which are direct consequences of the TB meningitis that he suffered.

Consequently, he is now paralysed from the waist down and unable to walk. He suffers a loss of sphincter control, can only urinate with the assistance of a catheter, and has decreased power in his upper arms.

Meningitis, if not treated immediately, is known to cause permanent damage¹. In Abdul's case, he suffered for one month before admission to hospital and it was only during his treatment there that he was diagnosed with TB meningitis. The late diagnosis of the disease has directly impacted on Abdul's physical state; medical information relating to the length of time prior to diagnosis and the effects that delay can have on recovery clearly correspond with Abdul's experience. For example, the Meningitis Research Foundation website explains that: "*Without medical treatment, the disease will progress causing confusion, obvious signs of nerve damage and eventually resulting in coma*"²." The Medical Report of 03 April 2012 confirms that Abdul indeed suffers from spinal cord damage and paralysis, and in light of what is understood about TB meningitis, it is clear that Abdul's physical condition has been exacerbated by the delay in his treatment.

2. Degradation of Abdul's "almost irreversible" condition with "minimal chances of recovery"

The Superintendent of Central Jail Faisalabad in response to the Writ Petition of Mst. Parveen stated that "*Patient needs rehabilitation and physiotherapy in jail. Now this problem is almost irreversible and there are minimal chances of recovery*". The use of the word 'now' indicates that there was a window of opportunity in which appropriate medical treatment could have mitigated against the physical damage to Abdul, and yet his physical condition has not improved. Indeed, his health condition, in the Medical Report of 03 April 2012 is classed as "almost irreversible". The emotional impact on Abdul and his family following such a rapid decline in his physical health and in the knowledge that he will never regain use of his legs has been devastating.

In spite of the conclusion by the Medical Superintendent in 2011 that management of Abdul's condition "would be very difficult in jail" the prisoner remains in a mainstream jail. In the past, Abdul has had access to a wheelchair but he is currently confined to lying on a mattress on the floor of his cell. He cannot move independently. This confinement to a cell on the basis of physical incapacity is inappropriate and humiliating. A copy of the letter of the Medical Superintendent is attached as Annexure B. A Medical Board constituted in April 2012 to consider Abdul's condition confirmed that the patient "*...needs physiotherapy which can be done easily in the jail because no equipment is*

¹ http://my.clevelandclinic.org/health/diseases_conditions/hic_Bacterial_Meningitis

² <http://www.meningitis.org/disease-info/types-causes/tb-meningitis>

required for this physiotherapy.” However, Abdul suffers from bed sores and it is apparent that he is spending sustained periods in the same position rather than being moved regularly. Abdul suffers from loss of sphincter control and regularly requires prison officers to assist him with the most basic physical functions. It is respectfully submitted that imprisonment of a paralysed prisoner in a mainstream jail does not enable him to be treated in a dignified manner.

Formal Writ Petitions have been made to request for Abdul to be transferred to a medical facility so that his medical condition can be properly treated have been unsuccessful. In spite of sparse and inadequate medical care and the dire conditions in which Abdul lives, he continues to be detained in Faisalabad Central Jail.

3) To execute Abdul Basit in spite of his disability would violate the prohibition on double punishment and the guarantees for the integrity of human dignity enshrined in the Constitution of Pakistan

In Abdul’s case, it is evident that the prohibition on double punishment is being violated. His protracted detention and the serious deterioration of his physical condition, resulting in his permanent paralysis, has resulted in a suffering to a far greater extent than that which was envisioned by the courts at the time of his sentencing. The law does not envisage that a prisoner should be punished with both lengthy imprisonment and the death penalty, and certainly not in the degrading conditions that Abdul endures. As the Courts have recognized, to serve a term of imprisonment and then to execute that prisoner would be to exact a double punishment for his crime – which is forbidden by the laws of Pakistan and by the *International Covenant on Civil and Political Rights* (ICCPR), which Pakistan has signed and ratified.³

Furthermore, it has long been recognized in many other jurisdictions, which share a common law heritage with Pakistan, that to keep someone in death cells for many years, with the constant threat of execution hanging over them and their families, is a violation of their right to dignity and integrity of the person, a right protected by Article 14 of Pakistan’s Constitution as well as by international law.

Given that the imprisonment of Abdul has caused him to suffer disease which has led to permanent, life-changing disability, it is submitted that this is indeed punishment enough and that a serious

³ See, e.g., *Pratt and Morgan v. The Attorney General of Jamaica* [1993], 3 SLR 995, 2 AC 1, 4 All ER 769 (P.C.) (en banc); *Soering v. United Kingdom*, 11 Eur. H.R. Rep. (ser. A) 439 (1989).

violation of Article 14 of the Constitution has already taken place. This is in addition to being imprisoned on death row, a phenomenon which held to be of itself a serious punishment. To execute Abdul now, after he has already suffered such a level of trauma would clearly be unconscionable, violating the Constitutional safeguards against double punishment, and against torture and cruel, inhuman, and degrading treatment. To exact the ultimate punishment against one who has already suffered greatly, can serve no legitimate end. We pray instead that he be granted clemency.

4) Recommendation for release when diminished physical capability prevents recidivism

Furthermore, the Pakistan Prison Rules indicate that should the physical condition of a prisoner preclude them from being capable of committing another crime, the Superintendent has the power to recommend premature release. It is submitted that this provision to consider medical incapacity as a justification for premature release be taken into account when considering the compelling nature of Abdul's case. It is submitted that it further strengthens the reasons for which mercy should be granted.

Rule 146 of the Pakistan Prison Rules (1978) states:

146: The Superintendent may recommend a prisoner for premature release who owing to old age, infirmity or illness is permanently incapacitated from the commission of further crime of the nature of that for which he has been convicted. The case shall be submitted to Government through the Inspector General. It shall be accompanied by the recommendations of the Medical Officer. The Inspector General will, in all such cases, obtain the Medical opinion of the Medical Board which will be convened by the Director of Health Services. (emphasis added)

The conclusions of the Medical Board in their 2012 report are that the prisoner has paraplegia. As a likely consequence of his disease he also suffers from decreased power in his upper limbs. The Board confirm that *'the problem is almost irreversible and there are minimum chances of recovery.'* He is fully reliant on a wheelchair. At the time of the crime for which he was convicted, Abdul was an able-bodied adult, yet as a consequence of the illness he contracted whilst on death row, he is now critically disabled and debilitated and he is incapable of carrying out even the most basic of human functions such as walking and cleaning himself. It is self-evident that the risk of recidivism no longer exists given that he is physically incapable of committing another crime similar in nature to the one for which he has been convicted. It is respectfully submitted that these provisions for leniency on the basis of medical incapacity be borne in mind when considering this petition.

5) The very act of his hanging would give rise to inhuman and degrading treatment

It is submitted that were Abdul to be issued a warrant for his death, the practical implications of his execution would raise serious procedural difficulties which would render the very act of hanging virtually impossible. Instructions on hanging by execution in the Pakistan Prison Rules, written on the assumption that the condemned is an able-bodied prisoner capable of standing on their feet, which Abdul is not, raise insurmountable difficulties in the conducting of his execution. Pakistan's procedure of death by hanging does not envisage the execution of a condemned prisoner who is incapable of standing to await his death and by proceeding to allow him to meet his death in this manner would be an affront to human dignity.

The starting point is the precision required in length of the rope used to conduct the hanging. Should the rope be too long, the condemned may be decapitated; should the rope be too short, Abdul will die of a protracted, painful and inhumane strangulation that could last up to 45 minutes⁴. **Rule 345** of the Pakistan Prisons Rules instructs that:

*“(i) The drop is the length of the rope from a point on the rope outside the angle of the lower jaw of the condemned prisoner **as he stands on the scaffold**, to the point where the rope is embraced in the noose after allowing for the constriction of the neck that takes place in hanging.”* (emphasis added).

Given that the condemned prisoner is unable to use his lower body to support his own weight and unable to stand, it is not possible to accurately measure the length of rope required for his hanging. Consequently, no provision can be safely made for the accurate measurement of the rope that would hang him and to proceed with an inaccurately-measured length of rope would place him at risk of an appalling death.

⁴ <http://www.deathpenaltyinfo.org/descriptions-execution-methods>

Further, in order to conduct his execution, **Rule 362 (iv)** provides that “*The condemned prisoner shall mount the scaffold and shall be placed directly under the beam to which the rope is attached, the warders still holding him by the arms.*” (emphasis added).

Abdul is physically incapable of mounting the scaffold. The Rules do not offer guidance to circumvent the issue of Abdul’s disability in ensuring he mount the scaffold. There are no legal provisions in place to recommend an alternative procedure for the hanging of paraplegics and consequently, without such a process, Abdul’s hanging is not possible. Any attempts to provide for Abdul’s hanging can only be carried out in contravention of the Prison Rules and can only result in inhuman and unusual treatment that would be a clear and flagrant violation of his human rights.

CONCLUSION

The Presidential power of mercy under Article 45 of the Constitution of Pakistan is fundamental and entirely distinct from the judicial process. As made clear by the Indian Supreme Court in *Shatrughan Chauhan & Anr vs Union of India & Ors* (21 January, 2014):

“The President acts in a wholly different plane from that in which the Court acted. He acts under a constitutional power, the nature of which is entirely different from the judicial power and cannot be regarded as an extension of it.

The power under Article 45 is of the widest amplitude, can contemplate myriad kinds of categories of cases with facts and situations varying from case to case, in which the merits and reasons of state may be profoundly assisted by prevailing location and passing time and it is of great significance that the function itself enjoys high status in the constitutional scheme.”

The Court further explained that “*the power of the President to grant [mercy] is an act of grace and humanity in appropriate cases i.e. distinct, absolute and unfettered in its nature.*”

This has been confirmed in the Pakistani case of *Haji Bismillah v Government of Balochistan* (2004 PLD 1), where it was stated that the power of the President to exercise his powers of mercy under Article 45 and grant remission or pardon to any prisoner is absolute, and in fact, overrides the provisions of the PPC or CrPC.

The power of mercy is one that “*every civilized country recognizes... Without such a power... a country would be most imperfect and deficient in its political morality*”⁵

In light of the foregoing, it is respectfully requested therefore, in consideration of his his debilitating physical condition *which is not in dispute* by the Pakistan prison authorities and which has led to him to suffering far above and beyond that of most prisoners, that the prisoner be granted clemency, or in the least, have his sentence commuted.

Submitted this: ___th Day of July, 2015

⁵ *Shatrughan Chauhan & Anr vs Union of India & Ors*, (2014) 3 SCC 1.