



Dr Afia's case: legal options

By Ahmer Bilal Soofi

THE jury of the Manhattan court found Dr Afia Siddiqui guilty of charges of attempted murder and convicted her. Now on the next date of hearing, the judge after listening to the lawyers shall sentence her.

The conviction prevents the executive branch of the US government from intervening. Therefore no matter how much effort the Pakistani government puts in on a diplomatic level, the conviction cannot be reversed through political or diplomatic means. This is the system of the separation of powers under the US constitution.

So the question is what should be done to bring Dr Afia to Pakistan given that notwithstanding the merits of the case it has become an emotional issue for the people of Pakistan and political parties, putting further pressure on the government to 'force' America to return Dr Afia.

Under these circumstances there are three legal options available to the Pakistani government.

Firstly the government can provide or further strengthen the legal team so that they can file an appeal against the conviction and also the forthcoming sentence.

In the appeal the lawyers need to question the inadequacy of the evidence, the extra-legal considerations that may have weighed with the jury and plead other grounds that the US appellate lawyers would be familiar with, based on US jurisprudence and precedents of the US Supreme Court. In this regard the government must make available to Dr Afia any additional specialised appellate lawyer so that from a legal point of view all necessary grounds are raised and well pleaded.

The second legal option to bring back Dr Afia would be for the US president to pardon her. The US president has the legal competence to pardon both, the conviction and the sentence.

This power is exercisable normally by all heads of state and is part of the executive competence of the president's office. The Pakistan government through the US ambassador or State Department can lobby that in this particular case circumstances warrant that President Obama should exercise his presidential discretion to grant a pardon as this would have a strong bearing on improving relations between the people of Pakistan and the US government.

This may not be an easy route as President Obama will feel the domestic pressure not to extend pardon to a woman who was facing serious charges. With the Department of Justice and the

attorney general's office taking the decision to prosecute her and incurring expenses on the said trial, it may feel compelled to disregard the initial decision-making of the executive on the basis of political considerations alone.

The third option to bring back Dr Afia is that she can be transferred to Pakistan to complete her sentence here.

This option has not been explored by the Pakistani government and perhaps even the US government so far. Neither has it been debated in parliament or deliberated in a parliamentary committee.

There exists in Pakistan a specialised statute called the Transfer of Offenders Ordinance 2002. This ordinance as a prerequisite only requires that Pakistan should have a bilateral agreement with US, for the mutual transfer of offenders. Pakistan may already have this agreement and if not it can be made and executed without delay.

The advantage will accrue to both countries. Offenders in Pakistan can be transferred to the US, and offenders in the US can be transferred to Pakistan to complete their sentences. It is a kind of post-conviction extradition. This way the foreign country can fulfil its constitutional mandate of bringing a perpetrator to justice by obtaining a conviction successfully and, thereafter sending him to his country of origin, for completion of the sentence.

The power to transfer an offender exists in US law under Title 18, Part III, Chapter 306, Section 4100 of the US Code, which states "an offender may be transferred from the United States pursuant to this chapter only to a country of which the offender is a citizen or national".

Once she is transferred to Pakistan to complete her sentence under the above-mentioned ordinance of 2002 or under US law, then her house can also be notified as a sub jail, or she could be put in a separate premises in Pakistan somewhere. She would be entitled to remissions as per Pakistan's jail manual.

Although she would continue to be in custody to complete the sentence the fact that she will be doing so in Pakistan would be extremely reassuring to the people of Pakistan and would also be taken as a very positive gesture by the US administration given the circumstances. This would hopefully resolve tensions surrounding this issue between the people of Pakistan and the US administration.

This option will result in a win-win situation for all concerned. Firstly the US government would have fulfilled its mandate of bringing Dr Afia to justice, secondly the Pakistani government would have brought back Dr Afia to Pakistan and thirdly Dr Afia would be close to her relatives and friends.

The writer is an advocate of the Supreme Court of Pakistan and president of the Research Society of International Law. He may be contacted at ahmersoofi@hotmail.com