

Homage to Justice Mahmood

By PRABODH GAUR Advocate, High Court, Allahabad

SAIYED MAHMOOD has stirred not only his own age but has given inspiration to the ages that have followed. The first Indian Judge of the Allahabad High Court and one of the greatest in the country, he draws the varied lines of law to a point and centres them all to turn the face of jurisprudence to philosophy. To call Mahmood merely an author of erudite judgments would be a poor tribute to him. We owe him something much more. He, like his great contemporary Muthusami Aiyar, laid bare the hidden roots of jurisprudence and effected a wholesome critical review of the legal institutions and opinions on Hindu and Mahomedan texts that for centuries had enjoyed acceptance of legal thinkers. Verity is verification; it is the heritage of continually accumulating modifications left to us by those elevators who keep on transforming into light and flame all that they discover in the realm of knowledge. This process of verification is continual, converting our denunciations into approbation and sometimes approbation into censure. Innovators are not merely getters but liberators as well. They create and also release the reality from the cobwebs of misconceptions. Law being nearer philosophy, its aim should be to equal the perfection of philosophy, to see things in the light of eternity as they may seem for ever. Who can be true to such a purpose and has the vision to see the sublimity in it. Obviously the philosopher in law and Mahmood's name can certainly be written in the serene brotherhood of such philosophers. With a candid and searching mind the flames of which were burning all the cobwebs incarcerating the spirit of jurisprudence, he stands as one of the greatest innovators in the realm of law.

Mahmood, the second son of Sir Saiyed Ahmad Khan, was born in 1850. After being called to the Bar in 1872, he joined the Allahabad High Court Bar and in 1879 he was appointed a District Judge. Having won approbation in several of his judgments in the Privy Council, he was offered a chance to officiate on the Bench at the early age of 32 in 1882. In 1886 he came to this Court as a permanent Judge. Early success is not without its dangers, but remarkably enough his career escaped its spoiling effects. That he could sustain his distinction with unwaning lustre in an age of great contemporaries is indeed a convincing proof of his dynamism. His conquest in the region of law as an explorer had been incessant. There was scarcely any domain which had not been greeted by his expositions. His intellectual independence, faculty of luminous exposition and his deep sensibility of the reason of law enabled him to determine the broad path to legal principles upon which the succeeding generations had been treading to reach their ultimate destination.

The depth of his thought matched by the beauty of his language imparts a rare excellence to his judgments. The fusion of law and equity in his expositions opened new windows of legal concepts, making that visible which hitherto seemed abstruse to the point of invisibility. On the principles of natural justice embodied in the maxim *audia alteram partem* his judgment in *Queen Empress versus Phopi* (I. L. R. XIII All. 171) remains unexcelled unto this day. His dissenting judgment in the Full Bench is more truly the reflex of his impartial perception of the objective, the essential and the universal, and he alone had asserted that no man-made law can be permitted to violate the divine injunctions for humanity. In the realm of personal laws of Hindus and Mahomedans the mainsprings of his expositions are the texts. To arrive at correct interpretation of the texts one must seek out its makers in the still sanctuary of their own works and very rightly his first counsel were the creators themselves than the expositors. Not only this, he travelled into the regions left unexplored by the commentators on the texts and his judgments like the sunlight pouring through the clouds revealed many a hidden truth. His judgments in *Jafri Begum versus Amir Mohammad* (I. L.R. VII All. 1289) and *Allahdad Khan versus Ismail* (I. L. R. X All. 1289) are indeed startling innovations in Mahomedan Law. On the law of preemption, his exposition in *Gobind Dayal versus Inayatullah* is classic and his conclusions on the origin of the right of preemption have enjoyed acceptance with unbroken consistency.

His minutes on the draft bill intended to be introduced in the Parliament are not less memorable than his judgments. The bill aimed at the extension of the territorial and other jurisdictions of the existing High Courts, something intended to be a kind of supplement to statutes 24 and 25 Vie. Cap. Mr. Justice Mahmood in these minutes suggested that the bill should empower Her Majesty to extend the High Courts' jurisdiction to any territory which had either been assigned to the Government of India or over which jurisdiction had been created by native States to the Government of India. In his views on the language in law courts he was far more advanced than his age. In these minutes one finds his words of censure on the practice of dismissal of appeals without any hearing on the meaningless ground of the appellant's failure to deposit the cost of translation and printing of the record into English. His other colleagues on the Bench did not view his suggestions with favour and for a time his proposals sank into the dark unfathomed caves until they were taken out by the succeeding generation of Judges for incorporating them in the Rules of Court. Many of them have found their way into the Rules, and the acceptance of the rest seems a certainty in the not distant future.

From the Bench he retired in 1893 and perhaps his early retirement was a price that he had to pay for his independence. The subsequent stages of his performance were the Legislative Council and the Bar of the Judicial Commissioner's Court, Oudh, but his laurels there are too few or perhaps none to be recounted. Looking back to his brilliant past, one finds their rays rather dim. For some time he was the Secretary of the M. A. O. College, Aligarh, the service of which was the legacy left to him by his father.

The thinkers and the innovators are always the enemies of the mob. This is the truth of history, nay that of eternity and from this rule of eternity Mahmood could not escape. He may have been refuted by his contemporaries and aspirants to legal fame, yet he stands as a distinct milestone in legal thought. The air of legal philosophy became clearer and fresher because of his expositions. The modern thinkers in law may find in his expositions an opening for objection and doubt, nevertheless, there is no escape from the truth that few Judges have given so many shores and lighthouses to the dark ocean of law as he.

The total picture of his life is rather painful and gloomy; nevertheless it is a reality the romance of which no fiction can match. A great intellectual energy completely burnt and extinct withered slowly into a childlike senility that

came at last. His race had been run, his course was over and his battles fought; one by one his sensibilities and powers had left him. On 8th May, 1903, he passed on to the Gods quietly like a leaf falling from the tree.

Amongst the record of the memorable dead hangs the portrait of Mahmood with veneration gathered round it and we see some invisible finger inscribing on it:

"Look, here upon this picture and on this."