

Speech

By the Hon'ble Mr. K. Subbarao,

Chief Justice of India

Delivered on November 27, 1966, on the occasion of unveiling the portrait of Mr. Justice Mahmood

Mr. Chief Justice, distinguished friends from Russia, Malaysia and Nepal, distinguished guests, ladies and gentlemen-

I deem it an honour to unveil the portrait of one of the greatest Judges that our country has produced, Mr. Justice Mahmood. He had a short span of life. He was born in the year 1850 and passed away in 1903, i. e. he was barely 53 when he reached his end. He was the son of Sir Syed Ahmad Khan and was a Bar-at-Law. In 1879, he was appointed a District Judge at Rae Bareilly and within three years there after he was elevated to the High Court Bench as an officiating Judge at an early age of 32. After reverting to the Bar, he was again made a Judge of the High Court permanently in the year 1886. He was the first Indian Judge to be appointed to the Allahabad High Court. But a person's impact on the world does not always depend upon his longevity. His short life reflected his concentrated effort in the judicial field. Though he died young, he left an indelible mark in the field of law.

All details of his personal life are not available; but the judgments he left, reveal the characteristics of his robust mind.

He was a man of courage-true to his convictions, and of independent mind. These traits are the necessary ingredients of a judicial mind; without them a person is a Judge only in name. The comparative prominence of the said characteristics demarcates one Judge from another. Mr. Justice Mahmood possessed them in full abundance. His dissenting judgments on important points show the man. Dissenting for dissension's sake may be bad, for it is only the result of an inferiority complex; but a dissent based on conviction and expressed with humility with the consciousness of the finiteness of the human mind is an appeal to the brooding sense of the posterity; they are the musings of a man born before the times with a capacity to look into the future. They will contribute to the jurisprudence of our country. They may have the approval of the future generations. Indeed, many of the dissenting judgments of Mr. Justice Mahmood had the approving seal of his successors.

He was a man of vision and philosophy of his own. Rule of law to him was not an instrument of tyranny, but was the soothing touch to the afflicted and oppressed. Whether in the matter of construction of a provision of a statute or in elucidating a doctrine of Mohammedan Law, he did not adopt a wooden attitude but evolved principles to guide the future. To him the rule of law was a way of life.

His judgments are masterly expositions on the different subjects dealt with by him; they reflect research, scholarship, hard work and thoroughness in detail. Some of his judgments hold the field even now, though a century has passed by since they were delivered. Some achieve reputation when they are alive by power and sycophancy, some after they die; and only a few are respected both by the contemporaries and by posterity. Mr. Justice Mahmood was one of those few; and the public esteem which he enjoyed during his lifetime has not abated but indeed has cast a halo around him. He was one of the typical Judges of our country who brought about synthesis between ancient Hindu and Mohammedan Laws and the Common law imported directly or through statutes from England. His dissenting judgments expounding principles of natural justice-a man who asserts a right has a right to be heard evolving the concept of property-it includes the equity of redemption and laying down the doctrine-procedural laws are subservient to substantive laws reflect his equitable and balanced approach to the legal problems. His judgments propounding that on the death of a Mohammedan intestate, his estate devolved on his heir, notwithstanding the existence of debts, that an offspring of adultery could not be made legitimate by acknowledgment of the putative father, and that the law of preemption was not a personal right, but was a right of substitution, are masterpieces of erudition and products of analytical mind. His exposition of the doctrine of salvage, and the extension of it both to the perils of sea and perils of land discloses an original mind.

These are only a few out of the many illuminating judgments of the learned Judge. Whether it was Hindu law or Mohammedan law, whether it was procedural law or substantive law, whether the case involved evolution of new principles or a re-statement of accepted ones, his judgments are master pieces of scholarship, erudition and clarity.

Justice Muthuswamy Ayyar of the Madras High Court was a contemporary of Justice Mahmood. They shared many common traits; both of them were the first Indians appointed as Judges of their respective High Courts; both were learned and eminent Judges; both embodied in themselves the typical traits of a Judge, learning, clarity, objectivity, fearlessness and humility. For the first time, a marble statue was raised for Justice Muthuswamy Ayyar within the precincts of the Madras High Court~ Public, especially the villagers, worship the statue as the deity of justice. They had mutual respect; and I am told that Justice Muthuswamy Ayyar came all the way from Madras to Allahabad to meet him. Really great men do not require statues or portraits. These two gentlemen are shining examples of legal thought and they will be remembered so long the rule of law lasts in our country.

I have no doubt that the portrait I am unveiling today will inspire the future generations of Judges and lawyers alike in discharging their duties by keeping in mind the ideals for which Mr. Justice Mahmood stood and worked.