

Justice Mahmood - A Tribute*

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It was about the middle of the 19th century that Sir Syed Ahmed Khan, a person of broad and prophetic vision, like many others in India at that time, realised that the basic necessity for the advancement of this country was education. He gave his life to the starting of an institution which is today the Muslim University of Aligarh. It was a time when the introduction of separate electorates in India had not yet created a conflict between the Hindu and Muslim communities. I am only mentioning the father of Justice Mahmood because the wide sympathy and understanding of men, which Justice Mahmood had, appears to have been inherited from his father. Even what the father did would have been sufficient to confer immortality on any person. But Mahmood was to attain a greater immortality.

My Lord, during the early education of Justice Mahmood-I have tried to look into it-there is not visible that promise which is usually found in the early years of great and brilliant men. In fact, I have always felt that though Mahmood has shown to us an example to be followed ever afterwards, his studies, his academic career, his surroundings-none of these appear to furnish a clue to what he actually turned out to be when he became a Judge of this Court. His career is now well known and does not need recounting. The moment he stepped into judicial service he started obtaining recognition. I do not think it has ever happened in the history of India that a mere Judge of the district court, because of his judgment having been noticed by the Privy Council, has immediately been considered eminently fit to be made a Judge of the High Court. And those were the days, My Lord, when an Indian could aspire to a very limited elevation in any service in India. All the posts at the top were occupied by foreigners. In this Province, as it was then, it was a great ambition for an Indian to become a Deputy Collector. Everything is thrown open to us now. It is impossible today to realise that the merit of Mahmood must have been so absolutely extraordinary that it made the Judges of the Privy Council, when they came across one of his judgments, as District Judge of Rae Bareilly, feel that they had come across a person whose talents were being wasted in the subordinate Judiciary.

Mahmood was then just about 32. In fact, his career as a permanent Judge in this Court started at the age of 36 and ended at the age of 44, and, in this short span of eight years, he has contributed to the legal literature of the world judgments, scores and scores of them-when even one such judgment was sufficient to confer immortality upon any Judge anywhere in the world. It is impossible to explain how he was able to do it. The usual definition of 'genius' as a person having an infinite capacity for taking pains is impossible as an explanation for Mahmood. His genius-I may still use that language-did not consist in an infinite capacity to take pains. It was the brilliance of a nightingale's song. It came naturally to him. It is impossible to explain how it all came. It is true that when he had gone to England, he had devoted himself to the study of things oriental; and it may be that in those days he imbibed the subtle principles of Hindu and Muslim laws, which enabled him, sitting afterwards in the High Court, to make pronouncements on those laws, which are even today a beacon light to us. You see in his judgments all the knowledge of the world and of literature, of philosophy, of economics and of abstruse sciences, of languages and of the deep sources of law, not merely Indian but from almost every country of the world.

Mahmood saw with the eyes of an individual who is all knowing. It is always difficult for any person, occupying a judicial office, to keep aloof from active life, as he has to, and yet to know life, almost in its every aspect. This combination, the most difficult of combinations, was achieved in the case of Mahmood in a measure which, as I have said, is impossible to explain. It is remarkable that, as a Judge of this Court, he found himself in minority in many cases. But some of his minority judgments, I can recollect at least two, were in advance of the time in which they were delivered. Later they were to become judgments of the majority. Some of those minority judgments show an amazing grasp of legal principles. Things which have become to us matters of every day life, almost like axioms in law, were then totally unknown. The concept of natural justice is today on the lips of everybody. Every petition that is presented by a dismissed employee at any level asserts a violation of natural justice. But it was impossible then to perceive the greatness of his judgment, in which Mahmood expounded that concept, or to realise then that the principles of natural justice, enunciated by him, would bear comparison with any judgment, of the future, on those principles anywhere in the world.

My Lord, it was difficult to be fearless in those days. This country had completely forgotten its freedom. By the time Mahmood became a Judge, every part of our life was dominated and conditioned by British imperialism. Everything depended upon the will of the Rulers. And here was a person, suddenly and without precedent, raised from the post of a District Judge to the height of a Judge of the High Court. In sheer gratitude, there may be many persons even today, who would, in such a situation, almost unconsciously, say: "I am suddenly in such a high place. I must conform to all the wishes of the Chief Justice. I must conform myself to the wishes of the Rulers. Having obtained such a position, I must see that it remains with me." But in Mahmood's judgments-his minority judgments-there is an approach of fearlessness, not advertised fearlessness but real fearlessness. That again is amazing. This man knew that the only footprints that remain on the sands of time, the only footprints that are worth leaving, are the footprints that are formed and grow out of a man's competence and character. All outward embellishments, all that we consider most valuable, the trappings of office, the paraphernalia that

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surrounds it, the pomp and show that become an accompaniment of status, are grounded in the weakness of human nature. No man of vision attaches importance to them Mahmood, when he found himself in a position of conflict was prepared to throw aside everything that he had received. He was the first Indian Judge of this Court, and he showed not merely an amazing grasp of law, not merely a vast comprehension of human nature, not merely a wide field of vision that embraced almost the whole world in its ken, but a fearlessness that could be an example and has remained an example ever since that time.

My Lord, the Allahabad High Court, its greatness and its traditions have been spoken of by many of us. Everyone has spoken of its great Judges and its great Advocates. We are celebrating the completion of 100 years of the life of this Court. Many of the things we have inherited have descended visibly upon us from the past, as this robe, presented by the leader of the Russian delegation today, has descended upon the Chief Justice from his ancestors after a lapse of 200 years. One of the things which must, invisibly, be present today with us is the glory that Mahmood was able to contribute to this Court. If there is anything in the existence of a life here after, if it is possible for men, who have gone away in the past, to come back with their invisible presence, if it is possible for the Judges of this Court, who have passed into the eternal life to visit us again, and if it is possible that they are here today, they would all be saying: "Yes, Yes, we are great; but look at the person who is leading us all. It is our leader Mahmood, who has contributed to the glory of this Court more than anyone else". My Lord, the greatness of this Court, the glories of this Court are, in a large measure, due to Mahmood. If I were to make a selection today, if there was any kind of comparison of the Judiciary of this High Court, the Judges of this Court with the Judges of other great courts in the world, and if I had to select a delegate who would represent this High Court, nay the Courts of our country, in an international assemblage of Judges, past and present, I would unhesitatingly choose Mahmood.

My Lord, it is the portrait of that person, we are, respectfully, asking Your Lordship to unveil today. You will excuse my saying so, that Mahmood was such a great Judge-and even shorn of the fact that he was a Judge of this Court, such a great man-that by unveiling his portrait today you will continue to be remembered for years to come, and we shall continue to remember the association of your name with his great name. My Lord, we are deeply grateful to you, but it is also with the sincerest feelings of gratitude to Providence that it gave us a personality as towering as of Mahmood, that I now request Your Lordship to unveil his portrait.