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Dr Ankita Shukla
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Dr Raina Midha
Joined as Assistant Professor-II on 8 August 2022

Mishal Qayoom Naqshbandi
Joined as Assistant Professor-I on 18 July 2022

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Charu Shahi
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A Score of Years with Amity

Tahir Mahmood
Professor of Eminence & Chairman, AIALS

This year marks the diamond jubilee of my academic career. Having started teaching in 1963 at a college in Jaunpur, I have travelled a long journey of sixty years – the last one-third of which I have spent with Amity.

In mid-2003, while I could have continued in the DU Law Faculty for another three years, I decided to quit and after serving it for nearly three decades – half of my total teaching career -- put down my papers. Jamia Millia offered me a senior position in its Academy of International Studies, and the Founder-President of Amity University Dr Ashok Chauhan a Chair in Law. I opted for the latter which, in retrospect, was a wise choice as in the years to come Amity grew into Asia's largest private university with an intercontinental expanse. I set up here, separate from the Amity Law School established in 1999, an Institute of Advanced Legal Studies to conduct Master's and Doctoral programs in law. The Institute, and its library started with my gift of a large number of books, was inaugurated on 9 June 2003. As the official organ of the Institute I launched a journal called the *Amity Law Watch* -- and the Amity University Press published my thematic autobiography *Amid Gods and Lords: My Life with Votaries of Religion and Law* (2005).

My engagement at Amity has not been exclusive; the Founder-President gave me full freedom for other academic pursuits. In 2005 Prime Minister Manmohan Singh decided to associate me with either of the two new committees he proposed to constitute – one to examine the issue of reservation for minorities in general and the other to suggest special welfare measures for Muslims. Both of these were soon in place, the former chaired by ex-Chief Justice of India Ranganath Misra and the latter by ex-Delhi High Court judge Rajinder Sachar. As per my choice, I was made a member of the former body, set up by the name National Commission for Religious and Linguistic Minorities. As the other two members of the Commission – St Stephen's College Principal Anil Wilson and Punjab studies scholar Mohinder Singh – were from non-law background, I was given the onerous responsibility of writing the Commission's report. I wrote it, strenuously and against heavy odds, and it was presented to the Prime Minister in May 2007.

Soon after the Misra Commission was wound up, I was appointed a member of the Law Commission of India – the only full-time member besides the Chairman, former Supreme Court judge AR Lakshmanan. In three years I wrote three special reports for the Commission – on the need for a total secularization of the marriage law of India, enactment of a central law for mandatory registration of all marriages, and amendment of the Hindu Marriage Act to stop the trend of bigamy by fake conversion to Islam which the Supreme Court had outlawed in *Sarla Mudgal* (1995).

Law Minister Hansraj Bhardwaj wanted to give the Commission another term and, after his elevation as Karnataka Governor, his successor Veerappa Moily too was not

averse to the idea. However, the plan did not work and our term ended in September 2009. Among the later Chairpersons of the Law Commission former Delhi High Court judge Ajit Prasad Shah, reputed for his pioneering decision on decriminalization of homosexuality, sought my input on some of the issues under his consideration.

I maintained regular interaction between the two Commissions and my Institute at Amity. Debates on the issues under their consideration were held on the Amity campus, and its students were given the facility of interning in the Law Commission and consulting its library.

Simultaneously, I continued with my academic work both in and outside India. Since 1997 I had been associated with St Gabriel Institute of Religion and Theology in Austria headed by my friend Fr. Andreas Bsteh. When it started a biannual program of interdisciplinary Summer Schools I taught law subjects in its classes held in Vienna and attended by students from across the world. During 2006-08 three of my LLM students at Amity – Fenela Nonglait, SR Khare and Kalivi Zhimomi -- participated in these events.

At a conference of the International Centre for Law and Religion Studies in Brigham Young University of USA I was put by Director Cole Durham on his Advisory Board. In the coming years I participated in periodical events organized by him in various parts of the world. With the support of Cole's Center I organized law and religion conferences in India and Nepal, both in association with my Institute at Amity. While some sessions of the events in India were held at the Amity campus, those in Nepal were attended by Assistant Professor Nazia Khan of Amity Law School and PhD student of AIALS Kalivi Zhimomi.

A Consortium for Law and Religion Studies (ICLARS) was launched in Italy in 2008 with Silvio Ferrari of the University of Milan as its President, and I was included in its Steering Committee. After a similar regional body was set up for the African continent, I established a South Asia Consortium for Religion and Law Studies (SACRALS) in Delhi, to work in association with my Institute at Amity University.

Throughout my two decades at Amity I continued writing and editing books. OUP approached me to prepare new editions of Asaf AA Fyzee's classic works -- *Cases in Muhammadan Law of India Pakistan*, and *Outlines of Muhammadan Law* -- which had not been updated since his demise in 1981. New editions of the two books prepared by me were published in 2005 and 2008 respectively. In 2009 I was awarded an award for 'Contemporary Understanding of Muslim Law.'

During the next about eight years Universal published a number of my new books -- *Laws of India on Religion and Religious Affairs*,(2008), *Muslim Law in India and Abroad* (2012), *Religion, Law and Society across the Globe* (2013), *Principles of Hindu Law* (2014), and *Reminiscing on Law Brains* (2015). The first of these was extensively quoted from by Chief Justice JS Khehar in the famous *Shayara Bano* case of 2017. Its second edition published in 2016 was cited in *Mohammed Salim* (SC, 2019).

During 2015-16 Universal brought out also new editions of my 2001 book *Minorities Commission: Minor Role in Major Affairs*, and of my thematic autobiography *Amid Gods and Lords: My Life with Votaries of Religion and Law* that had been first published by the Amity University Press in 2005.

The quinquennium of 2017-21 brought me some exceptional honours. I was selected for the 'Best Law Teacher Award' instituted jointly by Kerala's Menon Institute of Advocacy Training and Delhi's Association of Law Firms (2017); and for Calcutta's Asiatic Society Award for 'Outstanding Contribution to Law and Society' (2018).

The same year a group of my former students decided to bring out a festschrift for me in my two major interest areas. Titled *Religion-State Relations and Family Rights*, and edited by former Delhi High Court judge Jaspal Singh, the book was published in 2021 with a foreword by my former student in DU Justice Badar Durrez Ahmad. The Introduction to it was written by Justice TN Singh, former judge of Assam and Madhya High Courts who had cited me in *Noor Mohammad* (MP, 1969). Since the establishment of my Institute at Amity University I had associated with its research work both Jaspal Singh and TN Singh.

During my twenty years with Amity there have been ups and downs but, thanks to the unfailing fraternal affection of the Founder-President, I have sailed through so far with personal dignity and academic integrity. If all goes well, my remaining active life will also be spent in association with Amity.

Legal Measures for Data Protection in India and Abroad

Arun Upadhyay
Professor & Deputy Director, AIALS

[Drawn on the writer's forthcoming PhD thesis for Noida International University]

Data protection is the process of protecting sensitive information from damage, loss, or corruption. As the amount of data being created and stored has increased at an unprecedented rate, making data protection increasingly important. In addition, business operations increasingly depend on data, and even a short period of downtime or a small amount of data loss can have major consequences on a business. The key principles of data protection are to safeguard and make available data under all circumstances. The term data protection describes both the operational backup of data as well as business continuity/disaster recovery (BCDR). Data protection strategies are evolving along two lines: data availability and data management. Data availability ensures users have the data they need to conduct business even if the data is damaged or lost. The two key areas of data management used in data protection are data lifecycle management and information lifecycle management. Data lifecycle management is the process of automating the movement of critical data to online and offline storage. Information lifecycle management is a comprehensive strategy for valuing, and protecting information assets from application and user errors, malware and virus attacks, machine failure or facility outages and disruptions.

The General Data Protection Regulation (GDPR) focuses on a comprehensive data protection law for processing of personal data. It sets a new standard for consumer rights regarding their data. The European Parliament adopted the GDPR in April 2016, replacing an outdated data protection directive from 1995. It contains provisions that require businesses to protect the personal data and privacy of EU citizens for transactions that occur within EU member states. The GDPR also regulates the exportation of personal data outside the EU. Any company that stores or processes personal information about EU citizens within EU states must comply with the GDPR, even if they do not have a business presence within the EU. The GDPR defines several roles that are responsible for ensuring compliance: data controller, data processor and the Data Protection Officer (DPO). The data controller defines how personal data is processed and the purposes for which it is processed. The controller is also responsible for making sure that outside contractors comply. Data processors may be the internal groups that maintain and process personal data records or any outsourcing firm that performs all or part of those activities. The GDPR holds processors liable for breaches or non-compliance. It's possible, then, that both your company and processing partner such as a cloud provider will be liable for penalties even if the fault is entirely on the processing partner. The GDPR requires the controller and the processor to designate a DPO to oversee data security strategy and GDPR compliance. Companies are required to have a DPO if they process or store large amounts of EU citizen data, process or store special personal data, regularly monitor data subjects, or are a public authority. The GDPR places equal liability on data controllers (the organization that owns the data) and data processors (outside organizations that help manage that data). Data subjects must be allowed to give explicit, unambiguous consent before the collection of personal data. Personal data includes information collected using cookies. Some information not usually considered "personal information" in the United States, such as the user's computer IP address, is "personal data" according to the GDPR. The organizations must notify supervisory authorities and data subjects within 72 hours if a data breach affects users' personal information in most cases. A third-party processor not in compliance means that the organization is not in compliance. EU data protection authorities may access, obtain information from, and inspect service providers to inform orders and sanctions. If a business is found to be in violation, it may be fined up to 6% of annual global turnover during the preceding financial year. If an information obligation under the DSA is violated, the maximum penalty is limited to 1% of the previous year's income or global turnover.

There is no comprehensive set of privacy rights or principles in the US that addresses the use, collection, and disclosure of data. The individual states have acted rather than wait on the federal government. There's a complex mechanism of sector-specific and medium-specific laws, including laws and regulations that address telecommunications, health information, credit information,

financial institutions, and marketing. The Federal Trade Commission (FTC) has broad jurisdiction over commercial entities under its authority to prevent unfair or "deceptive trade practices." The FTC uses its authority to issue regulations, enforce privacy laws, and take enforcement actions to protect consumers. Other federal laws that govern the collection of information online include Children's Online Privacy Protection Act, Health Insurance Portability and Accounting Act, Gramm Leach Bliley Act, Fair Credit Reporting Act, and Family Educational Rights and Privacy Act. In addition, U.S. has hundreds of sectorial data privacy and data security laws among its states including the New York (Stop Hacks and Improve Electronic Data Security) Act, 2019, California Privacy Rights Act 2020, Virginia's Consumer Data Protection Act 2021, Colorado Privacy Act 2020, Utah Consumer Privacy Act 2022, and Connecticut's Data Privacy Law 2023

In India the Information Technology Act 2000 as amended by the Information Technology (Amendment) Act 2008 (IT Act and IT Amendment Act) provides certain provisions relating to personal data privacy and protection in India. Certain rules such as the Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules 2011 (Privacy Rules) implement the IT Act and prescribe general information security requirements. The IT Amendment Act aims to address issues that the original IT Act failed to cover and to accommodate further development of IT and related security concerns since the original law was passed. However, the IT Act's primary focus is information security, rather than data protection, and while it does regulate certain aspects of personal data use on IT networks within India, it does not provide comprehensive rules or regulations on personal data processing or transfers.

Indian general laws such as the Indian Penal Code, 1860 (IPC) also regulate some aspects of cybercrime. For example, Section 403 of the IPC imposes penal consequences for dishonest misappropriation or conversion of movable property. While the definition of movable property does not expressly include data, data theft may be tried under this provision. Some sectorial regulators such as the Reserve Bank of India also regulate data protection through sector-specific regulations. These laws affect organizations operating in the banking and financial services sector, insurance industry, and telecommunications and online service provider sector.

The government of India appointed a committee of experts for Data protection under the chairmanship of Justice B N Srikrishna in August 2017, which submitted its report in July 2018 along with a draft Data Protection Bill. The Report has a wide range of recommendations to strengthen privacy law in India including restrictions on processing and collection of data, Data Protection Authority, right to be forgotten, data localisation etc. The draft of Personal Data Protection Bill, 2018 alongside the Expert Committee Report was submitted to the government on 27 July 2018. A revised version of this Draft, namely, the Personal Data Protection Bill, 2019, was subsequently introduced in Lok Sabha in

December 2019. The Bill was analysed by a Joint Parliamentary Committee, which submitted its report on 16 December 2021. After arguing against the privileges of the digital economy over data protection, it decided to continue with large parts of the 2019 Bill that place economic interests on the same footing as the need to protect informational privacy. The JPC Report changed the name of the draft law from the Personal Data Protection Bill to the Data Protection Bill. This was as per the expansion in the regulatory ambit as the draft law will also regulate non-personal data. The JPC also referred to some definitions such as Controller in GDPR which means a natural or legal person, public authority, agency or other body alone or jointly with others. The JPC recommended adding Non-governmental Organizations (NGOs) to be treated as data fiduciaries and falling under the purview of the law. The definition of data fiduciary was broadened to match that of the GDPR. GDPR had a two-year transition period for implementation and the JPC has also recommended a two-year period for implementation of the PDP regulations. The JPC also recommended a fair and transparent manner of data processing to ensure transparency and privacy. The JPC further recommended an exhaustive definition of Consent Manager that enables a data principal to give, withdraw, review, and manage his consent through an accessible, transparent, and interoperable platform. The GDPR states that any personal data breach should be reported to supervisory authority within 72 hours of controller becoming aware. The JPC has recommended a similar breach reporting timeframe. The Personal Data Protection Bill 2019 was withdrawn from the Lok Sabha on August 3, 2022.

Subsequently, on 18 November 2022, the Union Government released a revised personal data protection bill, now called the Digital Personal Data Protection Bill 2022.

Data Principal refers to the individual whose data is being collected. In the case of children less than 18 years of age, their parents/lawful guardians will be considered their Data Principals. Data Fiduciary is the entity (individual, company, firm, state etc), which decides the purpose and means of the processing of an individual's personal data. Personal Data is any data by which an individual can be identified. Significant Data Fiduciaries are those who deal with a high volume of personal data. The Central government will define who is designated under this category based on number of factors. Such entities will have to appoint a Data protection officer' and an independent Data Auditor.

The Bill ensures that individuals should be able to "access basic information" in languages specified in the eighth schedule of the Indian Constitution. Individuals need to give consent before their data is processed and "every individual should know what items of personal data a Data Fiduciary wants to collect and the purpose of such collection and further processing". Individuals also have the right to withdraw consent from a Data Fiduciary. Data principals will have the right to demand the erasure and correction of data collected by the data fiduciary. Data principals will also have the right to nominate an individual who

will exercise these rights in the event of their death or incapacity.

The Bill also proposes to set up a Data Protection Board to ensure compliance with the Bill. In case of an unsatisfactory response from the Data Fiduciary, the consumers can file a complaint to the Data Protection Board. It allows for cross-border storage and transfer of data to "certain notified countries and territories" provided they have a suitable data security landscape, and the Government can access data of Indians from there. It also proposes to impose significant penalties on businesses that undergo data breaches or fail to notify users in case of breaches. The penalties will be imposed ranging from Rs. 50 crores to Rs. 500 crores. If a user submits false documents while signing up for an online service, or files frivolous grievance complaints, the user could be fined up to Rs 10,000. The government can exempt certain businesses from adhering to provisions of the bill based on the number of users and the volume of personal data processed by the entity. National security-related exemptions, similar to the previous 2019 version, have been kept intact. The Centre has been empowered to exempt its agencies from adhering to provisions of the Bill in the interest of sovereignty and integrity of India, security of the state, friendly relations with foreign states, maintenance of public order or preventing incitement to any cognisable offence.

The new Bill is more focussed on personal data in comparison to earlier drafts and offers significant concessions on cross-border data flows, in a departure from the previous Bill's contentious requirement of local storage of data within India. It also offers a relatively soft stand on data localisation requirements and permits data transfer to select global destinations which is likely to foster country-to-country trade agreements. The bill recognises the data principal's right to privacy i.e., withdrawal of consent which was lacking in the PDP Bill, 2019 but had been recommended by the Joint Parliamentary Committee (JPC). It can be safely concluded that the new Bill tries to maintain a fine balance between the needs of the time and the Supreme Court's ruling on privacy as a fundamental right in the *Puttaswamy* case (2017).

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Termination of Pregnancy and Women's Reproductive Rights

Ankita Shukla
Associate Professor, AIALS

Abortion is now a practice that is widely accepted in many nations throughout the world. However, for a very long period, abortion was regarded as an unlawful practice in India. Several women lost their lives while attempting to end their pregnancies, either through unlawful means or inhumane means.

The position of abortion in India is now legally well founded, however, this was not the situation before 1971, as the providers of abortion services and women would face up to three to seven years of imprisonment, respectively, for providing and seeking an abortion. The only exception to this rule was

in the case that there was a threat to the life of the pregnant woman.

Before 1971 the Indian Penal Code of 1860 included the following provisions related to abortion:

1. Section 312 and 313: causing miscarriage
2. Section 314 : causing death of a woman during a miscarriage
3. Section 315 and 316 : injury caused to an unborn child
4. Section 317: abandonment and exposure of an infant
5. Section 318 : concealment of childbirth

Section 312 which is most relevant to the present discussion reads as:

> "Whoever voluntarily causes a woman with child to miscarry, shall, if such miscarriage be not caused in good faith for the purpose of saving the life of the woman, be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both; and, if the woman be quick with child, shall be punished with imprisonment of either description for a term which may extend to seven years, and shall also be liable to fine."

In the year 1964, Shantilal Shah Committee was established by the Central Family Planning Board of India to ease the rigors of the law on abortion. Hence to lower the incidences of botched abortions and maternal deaths that were linked to illegal and unsafe abortions, the report advocated liberalizing the rules governing abortion. Its purpose was to investigate and examine the moral, social, legal, and medical justifications for abortion.

On 4th December 1966, the Shantilal committee sent a report with thorough observations of the then prevailing circumstances and after an exhaustive deliberation, India's first law on abortion known as Medical Termination of Pregnancy Act, 1971 which provided that the termination of a pregnancy would be legal, if qualified medical practitioners allowed it. The MTP Act 1971 provided for conditions in which a women (only married) can choose to terminate her pregnancy (not beyond 20 weeks), those conditions include that if the:

a. The pregnancy arises from crimes such as sexual assault or rape.

b. It causes a risk or danger to the woman's physical or mental health.

c. The child has a risk of being born with a physical or mental malformation.

d. Girls under 18 who are insane or lunatic cannot get their pregnancy terminated without the written consent of a parent or guardian.

e. Abortion up to 12 weeks of pregnancy requires the opinion of one registered medical practitioner.

f. Abortion between 12 to 20 weeks requires the opinion of two registered medical practitioners.

Nonetheless, this Act was heavily criticized due to noteworthy shortcomings like:

a. Few tests are performed in the 20th week of pregnancy to ascertain abnormalities that are only confirmed

after the 20th week. However, the act did not allow the termination of pregnancy beyond 20 weeks.

b. Even married women had to prove contraceptives' failure to terminate their pregnancy, violating the fundamental right to privacy.

Taking note of these few of the many shortcomings, the Medical Termination of Pregnancy (Amendment) Act, 2002 was introduced with a view to provide for the facility of termination of pregnancy even in private hospitals and it suggested that the term 'lunatic' be substituted with 'mentally ill person'.

However, as technology advanced so did the cry to amend the erstwhile MTP Act also grew bigger as there were issues related to women's privacy and her reproductive rights and choices were at stake which needed urgent attention and hence the Medical Termination of Pregnancy (Amendment) Act, 2021 was set in motion and it ushered various novel changes in the Indian history.

This amendment increased the gestation period from 20 to 24 weeks for termination of pregnancy for special categories of women, including rape and incest victims, physically disabled women, minors, widows, and other vulnerable women. It emphasised on protecting the privacy and confidentiality of a women who opts for termination of her pregnancy and further allowed all women, irrespective of her marital status to access safe abortion of their pregnancies.

On October 12, 2021, the Union Government notified the Medical Termination of Pregnancy (Amendment) Rules 2021, in which the categories of women eligible for abortion of pregnancy up to 24 weeks were specified. They are:

(a) survivors of sexual assault or rape or incest;

(b) minors;

(c) change of marital status during the ongoing pregnancy (widowhood and divorce);

(d) women with physical disabilities [major disability as per criteria laid down under the Rights of Persons with Disabilities Act 2016;

(e) mentally ill women including mental retardation;

(f) the foetal malformation that has substantial risk of being incompatible with life or if the child is born it may suffer from such physical or mental abnormalities to be seriously handicapped; and

(g) women with pregnancy in humanitarian settings or disaster or emergency situations as may be declared by the Government.

Indian courts have often placed the issue of abortion rights within the ambit of constitutional doors, the case of *Suchita Srivastava v Chandigarh Administration* (2009) is an example of the situation where the court recognized the right of an intellectually disabled woman to continue her pregnancy and in turn made reproductive choices a part of the right to personal liberty under Article 21 of the Constitution of India, 1950.

The landmark case of *X v Health and Family Welfare Department* (2022) is another laudable piece of judgment as it has come at

a time when sexual and reproductive rights are being considered a rather contentious issue across the globe, particularly after the United States overturned the landmark *Roe v. Wade* judgment, which granted constitutional validity to the right to abortion. It has set both India and the issue of women's rights in the country on the path of progressiveness.

This case highlighted that any rule or regulation (Rule 3B of MTP, 1971) which discriminates between a married and unmarried woman is unconstitutional and is nothing but a manifestation of patriarchal mindsets and values.

In the end one should not lose sight of the fact that despite these changes, still a lot remains to be addressed as it is apparent that even though abortion is an inalienable right of a women, still she is at a mercy of doctors to exercise this indispensable autonomy.

Also given the fabric of our society, it is often a difficult choice for a women to think and opt for termination of her pregnancy so not only legal but also moral values also needs to be introduced so that in true sense the intrinsic right of bodily autonomy can be understood and bestowed to all women in its legal spirit.

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Maintenance Rights of Women in India

Raina Midha
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[Abstract from the writer's PhD thesis, degree awarded by Punjab University, 2015]

'Woman', this five-letter word in itself symbolizes the various facets of the relationship which every man has to pass by at the various stages of life in form of Mother, Sister, Wife, Daughter and Daughter-in-law. In India, women have been always held in high esteems.

In the long history of humanity and its development, in propagation of humans and in the social economy of the world, woman has been as important factor as man, yet she was always looked down as an inferior creature. Even under the Roman law, a woman was completely dependent. As an unmarried girl, she was under the perpetual tutelage of her father during his life and after his death of her agnates by the blood or adoption. When married, she and her whole property passed into power and possession of her husband.

A woman on her marriage very often though highly educated gives up her all vocations and devotes herself entirely towards her family. In particular, she shares with her husband, her emotions, sentiments, mind, body and her investment in her marriage is her entire life. When a relationship of such nature breaks, in what manner we could compensate her is far too enormous and away in terms of money.

This is not only in the case of married women only who has to pass by this kind of suffering and solace but we can take the example of unmarried daughters, widows or aged or infirm parents who not only have sacrificed a major part of their lives for bringing the happiness for the family by killing their own desires and the emotions, but at the end of the day they became so helpless to bring up themselves as well. They became the victim of other person's mercy.

In a culture-based country like India, the foundation of the society is built on that of family. In family all the members specially the female members and kids are to be cared and maintained by the family itself, which in their day-to-day life need a financial support system. Especially woman who has shown her emotional side by playing various roles in form of mother, daughter, sister, and wife efficiently is considered to be a weaker sex when it comes to her own financial an economic independence, since she has never thought of her own needs and has devoted her life for the upliftment of the family itself. In the ancient times also, it was obligation of males to maintain the various females related to him. The females as the embodiment of sacrifice and the strongest emotional support system of family need some kind of support to fulfil their financial needs. To keep the sanctity of obligations imposed on males to provide the financial assistance to the females and children, several legal provisions have been framed.

Various provisions have been incorporated in the Personal Laws and the Secular Laws in namely the Hindu Adoption and Maintenance Act, 1956, The Hindu Marriage Act, 1955, The Indian Divorce Act, 1869, The Parsi Marriage and Divorce Act, 1986, The Special Marriage Act, 1954, The Protection of Women from the Domestic Violence Act, 2005, the Code of Criminal Procedure 1973, The Maintenance and Welfare of the Parents and Senior Citizen Act, 2007 India for the upliftment of the females and to provide them a financial support system in form of institution of 'Maintenance'. Moreover, India being a multi religion Country, every religion has its own norms and conditions in relation to entitlement of maintenance, which at times create confusion. The proceedings are also time consuming and expensive.

The Indian cultural tapestry bespeaks its history of centuries weaving into single fabric strands of Islam, Christianity and other religious heritages. The base, of course, is Hindu and its lovely variants Sikh, Buddhist, and Jain. Our freedom struggle united all Indians of diverse faiths and respected the cultural identity of regional, religious, and linguistic communities. Every religion has its own different set of rules applicable in the same conditions on the same segment of the fair sex. Our law makers have always shied away from legislating on the various points of personal laws which are that of controversial or sensitive nature, for the fear that such legislation being labelled as intrusion on their rights thereby resulting in strong backlash. As far as Muslim women's right to claim maintenance is concerned, the hooliganism created after passing the judgement of *Shah Bano Begum* makes it apparently clear, which laid down that a Muslim woman can also claim Maintenance under Section 125 Code of Criminal Procedure. This led to great chaos from the later the government passed The Muslim Women (Protection of Rights on Divorce) Act, 1986, which curtailed the decision laid down in *Shah Bano* Case, which exempted the Muslim from the general law regulations of the Code of Criminal Procedure 1973.

The problem for seeking a financial support system as a Legal right become worst in the old age specially in the cases where the distressed female has no children or life

partner to support her emotionally as well as economically. Though several legal frameworks and provisions in personal and secular laws have been incorporated, but an effective mechanism or the effective execution of the same is always desired, as a destitute female who is in dire need of money for her subsistence has to run from pillar to post and get involve into another Legal battle for getting her legitimate dues, which is again great time consuming and create many hardships to her.

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RESEARCH NOTES

Preventive Detention as a Measure of Administration of Justice

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[Doctoral thesis submitted to Aligarh Muslim University, result awaited]

This research has dealt with the issue of preventive detention in India. The various constitutional provisions related to preventive detention have been examined. Thereafter the various Acts passed by the parliament of India and various state governments with reference to preventive detention, and their working has been studied. Various issues of preventive detention have been examined in the context of a democratic state and democratic principles vis a vis preventive detention. In this research, judicial developments in preventive detention law have also been analysed. The focus of this study has been primarily to examine judicial scrutiny of preventive detention orders to protect individual liberty while also considering the state's interests.

Although, the preventive detention laws were enacted and enforced to maintain peace and stability, which is very essential for the sovereignty of any country, but it has been observed that it has rather been misused by the agents of the State. The preventive detention laws provide no mechanism of checks and balances and therefore have created a serious concern of individual liberties in criminal justice system. There is no provision in the Act to obviate the illegal detention which results in serious impact on constitutional and human rights violations of the citizens. The unabated detention is a genuine and legitimate concern of the researcher to study the Act under the umbrella of both domestic and international law in a holistic manner.

Individual rights and liberties must be safeguarded by the state. Democracy can be jeopardised by threats from inside, such as fellow citizens. People can also pose a threat to one another's property. Because of the antisocial behaviour of a few people in society, there may be disorder and threats to public tranquilly. They could jeopardise the state's interests. In certain cases, whether in a Police State or a Welfare State, the State has a legal obligation to protect people and their property from such dangers. It is the responsibility of the state to preserve social peace and harmony. Standard, ordinary criminal law cannot be adequate to curb the despicable activities of certain adverse elements in some circumstances.

The State must take immediate and rigorous steps. It must take some preventive steps.

Under these situations, it was important to empower the State to put in place appropriate legislation in order to detain for a period of time certain undesirable elements. Thus, the laws of detention were born. Since it is contrary to the individual's freedom, for a specified time, it should only be a temporary measure. It should not be for an infinite time/long term.

The scope of Judicial Review in preventive detention cases is very narrow. It is because of the constitutional limitations. We are having a written Constitution. Limitations on the exercise of powers of various organs of the Government are prescribed in the Constitution itself. The exercise of power is constitutionally limited. Judiciary is the adjudicator of conflicts between citizens, between the Executive and the citizens. But, it cannot overstep the constitutional limits. Judiciary has become the ultimate hope of the people. It is the last resort of the people wherever there is injustice and lawlessness. In this respect, the Constitutional Courts play a key role. Where there is injustice, denial of freedom, Courts cannot cry in wilderness and the Court has a legal pious and obligation to intervene and provide relief in order to release those who have been unjustly, unlawfully, or capriciously cabined. But, it could be exercised subject to the constitutional limitations.

The main features of the various preventive detention laws and specific State preventive detention laws show that there are some built-in safety measures, and that the judiciary, particularly the Constitutional Courts, must play a crucial role in protecting the people's cherished fundamental human rights. The "Executive" and "Legislative" departments of government in a democracy must abide by the norms and guidelines established by the Constitution and the legislation passed by the legislature. Restraint must be shown by both the executive and legislative branches of government if they are to remain within their legal and constitutional restrictions. It is an essential and fundamental feature of a government based on a written constitution. Such a government is a constrained government. The executive branch must avoid establishing an autocratic regime.

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Family Law and Queer Communities

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[Note on doctoral thesis under preparation]

Criminal law of this country to some extent has changed and given some recognition to the fundamental rights of the queers. But do we have any place for them under our family laws. Not yet. Judicial decisions in *Naz Foundation* (2009), *KS Puttaswamy* (2017) and *Navtej Singh Johar* (2018) cases have changed the perspective on their rights to citizenry, life, liberty, privacy and dignity, but family law is yet silent on their rights to marriage, adoption and inheritance.

This study will be both doctrinal and empirical. It attempts to explore the problems faced by the queer communities in the society, especially in respect of family law issues, include and analyze qualitative and quantitative data on the issues under research, examine the ground realities as much as possible in this sensitive issue, and finally suggest possible legal measures to resolve the said problems.

MEDIA MUSINGS

Select Write-ups of Recent Days

Tahir Mahmood

New Chief Justice DY Chandrachud

It is the "worst way" to spend one's birthday, said a lawyer to a vacation judge of the apex court after an all-day hearing of an urgent bail matter. "No, this is actually the best way to spend it, I am in court judging and it is my life, I love it" replied the judge. This riveting dialogue had taken place in mid-November 2020 and the judge who had so responded to the counsel wishing him for his birthday was Dhananjaya Chandrachud. By a coincidence Dhananjaya is slated to be sworn in as the fiftieth Chief Justice of India around the same time this year.

I have known Dhananjaya for over four decades, since his student days in Delhi University' Faculty of Law which I had joined as a young teacher in 1974. With his learned father, Chief Justice of the time late Y.V. Chandrachud, I was in touch since 1980 when he had sent me an inspiring message for my newly launched journal of Islamic law. Just before demitting office in 1985 he had honoured me by citing two of my works in his celebrated judgment in the renowned *Shah Bano* case on divorced Muslim women's maintenance rights. With these personal associations in the background I keenly watched Dhananjaya's phenomenal rise through higher legal education at the prestigious Harvard Law School in the US, followed by vibrant days of practice at the Bombay Bar, and eventual assumption of the mantle of a judge. After initially serving on the Bombay High Court bench he took over as the Chief Justice of my state, Uttar Pradesh, and was eventually elevated to the country's highest temple of justice.

Dhananjaya has now been in the apex court for over six years, charming people by his debonair disposition and impressing the legal fraternity by an exceptional jurisprudential acumen. Remarkably, in some important cases he has overruled a couple of the apex court's old decisions which his late father had either personally written or endorsed as a member of a larger bench deciding the case. The first of these was none else than the infamous Habeas Corpus case (*ADM Jabalpur* 1976) of the notorious Emergency days decided by a Constitution Bench of the court, with the majority decision in which his father had concurred. On becoming the sixteenth Chief Justice of India two years later he had done his best to wash away the blemish by pronouncing a commendably liberal ruling in *Minerva Mills* (1980) on the inviolable basic structure of the Constitution. After his retirement from the court he had once frankly acknowledged, in an academic event where I was present, that the decision in *ADM Jabalpur* was conspicuously wrong.

Nearly half a century after it was pronounced, *ADM Jabalpur* was deservedly overruled. Expressing his views on it in the *KS Puttaswamy* case of 2017 relating to people's fundamental right to privacy Dhananjaya Chandrachud called it a "seriously flawed" verdict, adding that "When histories of nations are written and

critiqued, there are judicial decisions at the forefront to liberty. Yet others have to be consigned to the archives, reflective of what was, but should never have been."

Next year in 2018 Dhananjaya pronounced revolutionary decisions on two different provisions of the Indian Penal Code relating to sexual offences. In *Joseph Shine* he dissented from his learned father's thirty-three year old verdict on the constitutional validity of Section 497 of the Indian Penal Code relating to adultery (*Sowmithri*, 1985). The son's judgment overruling the father's on this issue reflected the proverbial generation gap. Dhananjaya's viewpoint that adultery by a married woman, being an issue of family law, should not fall in the domain of criminal law was abundantly logical. The other case was *Navtej Johar* in which the court, forsaking its earlier stand on the issue involved, had agreed to the attempted decriminalization of homosexuality. In his concurring judgment Dhananjaya held that the related provision of the Penal Code (Section 377) was an "anachronistic colonial law" which violated people's fundamental rights to life and privacy.

Also in 2018, Dhananjaya had a chance to express his views on individuals' freedom of marital choice. In the *Shafin Jahan* case from Kerala, decided by the apex court going against its initial response, he referred to the law on matrimonial remedies and said "These remedies are available to the parties to a marriage, for it is they who decide best on whether they should accept each other into a marital tie or continue in that relationship. Society has no role to play in determining our choice of partners."

And then came Dhananjaya's decision in the *Rahna Jalal* case of 2020 under the Muslim Women (Protection of Rights on Marriage) Act 2019, which had been passed in response to apex court's views in *Shayara Bano* (2017) on the horrendous practice of what is commonly known among the Muslims as triple talaq. Overruling a Kerala High Court decision that anticipatory bail was not available to a husband accused of the offence under the Act, he held that "The power of the court to grant bail is a recognition of presumption of innocence and of the value of personal liberty in all cases" and the 2019 Act does not override the CrPC provision for anticipatory bail.

In the case referred to above which he had heard on his birthday – incidentally also a bail matter – Dhananjaya had cautioned the custodians of State authority that if they "target individual citizens they must realize that the apex court is here to protect them." This enthusiastic commitment of the incoming Chief Justice of India to the primacy of citizens' fundamental rights carries a ray of hope for all justice-seekers, now and in future.

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Linguistic Artistry in Court Judgments

"The purpose of judicial writing is not to confuse or confound the reader behind the veneer of complex language" -- recently wrote Dhananjay Chandrachud, J of the Supreme Court of India, adding that judicial decisions "must make sense to those whose lives and affairs are affected by the outcome of the case" [*Indian Express*, 25 August]. He was disposing of an appeal against a

Himachal Pradesh High Court judgment about which he remarked that even he "found it difficult to navigate through the maze of incomprehensive language" and that "A litigant for whom the judgment is primarily meant would be placed in an even more difficult position."

In the leading case of *Ajit Mohan vs NCR Legislative Assembly* decided in July last year another brilliant judge of the court Sanjay Kishan Kaul had said more or less the same things about counsels' written submissions in appeals. Such submissions do serve as feeders for extraneous stuff in court judgments which incorporate long abstracts from them. This practice makes the judges' work easier but leaves the litigants in a lurch, sometimes leading to frivolous litigation which, in the words of the new Chief Justice U. U. Lalit, puts "additional burden on an already burdened judiciary."

Some learned judges have been known for their typical oratorical skills expressed through the use of deeply philosophical or literary expressions in their judgments. The most well-known name for this phenomenon has been of the late VR Krishna Iyer. The opening paragraph of his judgment in the *Fuzlunbi* case (1980) begins with the words "Twixt Tweeldedum and Tweeldedee" [characters in an old nursery rhyme] and talks of "*karuna* and *samata* (compassion and equality) of the law." An Australian judge Michael Kirby said about him: "The power of his oratory is likened to the hypnotic capacity of music to capture the attention of the cobra transfixing us by the majesty of language and the manifest sincerity of his ideas." And, an Indian judge Yatindra Singh wrote that "Many a time Justice Iyer's contribution to jurisprudence has been lost due to his language." Trying to imitate Krishna Iyer's inimitable style some judges of our times make their judgments awfully irritating.

Victorian English beyond the law students' intellect is not the only phenomenon impairing court judgments. Shakespeare had said in his *Tragedy of Hamlet* "brevity is the soul of wit" but the observation eminently applies also to court judgments. This sine qua non for an effective dispensation of justice is often overlooked by the judges. There is an inexplicable flair of stuffing judgments with obiter dicta, unnecessary and sometimes irrelevant, which makes them unduly long and even unintelligible. Judgments are written as if the writer-judge has to prepare a doctoral or post-doctoral thesis on the legal issue involved in the case. Higher courts of the country which, under our constitutional and judicial system, have to provide precedents to be followed by the lower judiciary often seek precedents for their decisions in foreign judgments by copying longish extracts from them. Further, cases that should be decided exclusively on the authority of the Indian Constitution and law are sometimes decided with reference to sacred religious texts.

In the recent *Shayera Bano* case on triple talaq (2017) learned CJI of the time wrote about 300 pages to reach an indefensible conclusion that the abominable practice was covered by the constitutionally protected fundamental rights of the citizens. Yet, contrary to this misbelief, he chose to stifle that "right" by issuing an impracticable

order of "injuncting Muslim husbands from pronouncing *talaq-e-bidat* as a means for severing their matrimonial relationship." Two other learned judges on the *Shayera Bano* Bench rightly dissented from his belief in the supposed constitutional cover for the anachronistic practice but the final order, based on their views – "the practice of *talaq-e-biddat*, triple talaq, is set aside" also left much to be desired in respect of its meaning and implications.

Some learned judges of the country's higher courts have innovated a new style of writing judgments with a lavish use of Urdu poetry which non-Urdu speaking lawyers and litigants hardly understand. In a PIL relating to the plight of an Indian prisoner in a Pakistan jail, Markande Katju, J of the Supreme Court concluded his judgment with Faiz Ahmad Faiz's famous couplet beginning with the words "*Qafas udaas hai yaro saba se kuchh tou kaho*" (prison is sad friends say something to the breeze). In another appeal, relating to police excesses, Katju alluded to another line of the great poet "*Baney hain ahl-e-hawas muddayi bhi munsif bhi; kise vakil karen kis se munsifi chahen*" (gluttonous are both the petitioners and the arbiters, who to seek advice from, where to look for justice).

An income tax appeal filed by a noted lawyer was dismissed by a Delhi High Court judge Rajiv Shakdhar citing a couplet of the great Ghalib *"Dil-e-nadaan tujhey huwa kya hai; aakhir iss dard ki dawa kya hai"* (what has happened to you O foolish heart, what after all is the cure for this pain). I wonder whether the litigants in any of these cases would have understood what the judges wanted to convey through poetry and what purpose of justice this judicial flair for Urdu poetry would have served.

The exhortation of Dhananjaya about the pressing need for simplicity and meaningfulness in court judgments has not come a moment too soon. I can only say three cheers for the learned judge who I have known since his student days in Delhi University where I taught law for three long decades. Last year, hearing as a vacation judge an urgent bail appeal he had so alerted the custodians of State authority: "If the State targets individuals they must realize that the apex court is there to protect them." A great promise indeed, rejuvenating confidence in the court's capacity to safeguard people's human and constitutional rights, The nation will look forward to the next Chief Justice of the court for much more important and long-awaited redresses than his timely reprimand about linguistic idiosyncrasies in court judgments.

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The Issue of Same-Sex Marriages

The demand for legal recognition of so-called same-sex marriages is now before a Constitution Bench of the apex court. The central government has opposed it, saying that it would cause "complete havoc" in the accepted societal values of the nation since the notion of marriage "necessarily and inevitably" presupposes a union between two persons of opposite sex. As constitutional justifications for the stand, it has been claimed that the principle of legitimate State interest overriding its duty to protect citizens' fundamental rights –

personal liberty in this case -- does apply to the matter, and that there is an "intelligible differentia" to distinguish between heterosexual couples and same-sex partners. As parties to a homosexual union may adopt children the government counsel has pointed out its likely impact, to which the CJI's reported response was that such a child need not necessarily be homosexual. I am afraid the counsel's genuine concern was not duly appreciated, which actually was about the embarrassments that the adoptees of same-sex partners may face in the society at large.

Human rights activist Indira Jaising, my former classmate in London, has criticized the government's stand and urged the court to unhesitatingly recognize what is called same-sex marriage (IE, 15 March 2023). With due deference to her views and sentiments, I have an urge to speak otherwise.

The British-law based Indian Penal Code of 1860 did not view consensual sex between a man and a woman (even without a matrimonial relationship) as an offence. On the other hand, sexual activity between partners of same gender, including that with their free consent, was declared to be an offence (Section 377). In the Naz Foundation case of 2009 Delhi High Court judge AP Shah held that this outdated IPC provision, to the extent it covered consensual sex, was ultra vires the Constitution of present-day India. After showing reluctance spanning several years, the Supreme Court eventually fell in line (*Joseph Shine*, 2018). This was, of course, a very logical decision – if two men or two women willfully make love to each other why should the State poke its nose into it?

The stand of the country's present rulers and their leading ideologues, in this context, has since been described by the observers as "sympathetic acceptance rather than inclusion." Now, reacting to the new case before the Supreme Court, they seem to be saying that living together in such cases is fine but recognizing their relation as a "marriage" would be erroneous as married couples live together "not only for themselves but for the family and for social good".

My critics may smell a rat in it and attribute motives, but in this matter I am in complete agreement with the government's viewpoint. The sanctity of, and reverence for, marital relationship is well established in our society. The Supreme Court has observed that marriage is "highly revered in India and we are a nation that prides itself on the strong foundations of our marriages" (*Kollam Chandra* 2014). A High Court has ruled that "marriage has a bearing not only upon two individuals but also among their family members and the society because family is a unit in the society" (*G. Durga*, AP 2013). The government's stand is clearly in tune with these, and many other similar, judicial observations.

Under the Special Marriage Act 1954 "any two persons" – and under the Hindu Marriage Act 1955 "any two Hindus" -- can marry, subject to prescribed conditions. These words have always been understood to mean a marriage between a man and a woman. The law under the two Acts -- which is more or less the same -- is already excessively modern; there is no rationale for making it ultramodern by extending its provisions to so-called same-sex marriages.

There are prevalent in some parts of India forms of personal partnership other than the sacrosanct matrimonial unions -- e.g., *maitri karar* (friendship pact) in Gujarat and *nata pratha* (relation assumed by custom) in Rajasthan. There is also now the concept of live-in relationship fully recognized by law in respect of the partners' rights and obligations. Such exceptional partnerships are generally heterosexual, but there is nothing in any law barring their use by gays and lesbians. In any case, the law of India does not stop homosexual partners from living together as a family with mutually settled terms. On the contrary, there have been cases decided by the courts in favour of their right to cohabitation. In 2018 the Kerala High Court had accepted the plea of a lesbian couple for a writ of habeas corpus to reinstate one of them who had been forcibly separated from the other.

Since the beginning of the present millennium several countries have enacted special laws for homosexual unions -- using for them expressions like civil union, civil partnership, domestic partnership and registered partnership. Here in India we now have a law called the Transgender Persons (Protection of Rights) Act 2019, which may be suitably amended to incorporate in it necessary provisions for the regulation of homosexual unions and protection of mutual rights and obligations of partners in such unions. These are a special category different from the socially predominant norm of heterosexual unions and should, in the fitness of things, be governed by a special law.

To the friends seeking inclusion of the so-called same-sex marriages under the general marriage laws I would say, with respect, do live with whosoever you want as per your mutually agreed terms -- for the whole of your lives if you wish – and the State will duly safeguard your rights. But why on earth should you insist on your extraordinary relationship being treated as a marriage covered by the laws regulating the sacred husband-wife relations that are clothed with a deeply spiritual aura? The State may, of course, enact a separate law for homosexual unions but the existing matrimonial laws should in my opinion be left exclusively for the *sanskar* called 'marriage' in our society.

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Social Evil of Minors' Marriages

If a 16-year old Muslim girl has married a boy of her community aged 21, is the marriage valid? The issue arose in mid-2022 before a Punjab and Haryana High Court judge who answered it in the affirmative. A few months later the National Commission for Protection of Child Rights challenged the ruling in the apex court which, hearing the matter last week, reportedly directed that it would not be treated as a precedent by any court till further orders.

So, what is the law in the country on the legality of a 16-year old girl's freedom to marry? Is it different for various religious communities? Had the girl in the case under reference been a Hindu – or a Buddhist, Jain or Sikh -- would it have been decided otherwise? And, what is the position of such a marriage under the anti-child marriage law of 2006?

In family matters people have since ages been following the dictates of their

respective religions. This is why the Indian Majority Act 1875, fixing eighteen years as the age of legal majority for all, had clarified that it would not "affect the capacity of any person to act" in matrimonial matters. Half a century later a reformist leader of Ajmer, Harbilas Sarda, moved in the central legislature a bill prescribing a minimum age for marriage of girls and boys. Passed in 1929 as the Child Marriage Restraint Act, it became popularly known as the Sarda Act. A marriage violating its age requirements was to incur penalties, but without in any way affecting its legal validity.

The Sarda Act had prescribed fifteen and eighteen years as the minimum age for marriage of girls and boys respectively. Enacted in 1955, the Hindu Marriage Act dittoed its provisions but required guardian's consent for the marriage of girls in the age group of 15-18. Like the Sarda Act, it also did not declare any minor's marriage to be void. Both the Acts were amended in 1978 to enhance the minimum age for marriage of girls and boys to eighteen and twenty-one, and to delete from the 1955 Act the requirement of guardian's consent. Under Muslim law the age for marital freedom for both girls and boys has always fifteen years, identified with the onset of *bulugh* (puberty). Yet the Sarda Act applied to the Muslims since its original enactment, and remained so also after its 1978 amendment.

Muslim law has a concept called *khiyar-ul-bulugh* (option of puberty) which enables boys and girls married during their minority to repudiate the marriage on attaining majority. For the girls it was incorporated in India into the Dissolution of Muslim Marriages Act 1939. A more or less similar provision is now found as a divorce ground for girls under the Hindu Marriage Act. Under the anti-child marriage Act of 2006 minor girls and boys married during minority can, at their option, get the marriage annulled by a court decree within two years of attaining majority. This new Act is applicable to all communities including, of course, the Muslims.

Under the Sarda Act an injunction could be issued by a court to stop an intended child marriage, and one solemnized overlooking such an injunction was to be void. There is a similar provision in the 2006 Act, which adds that marriage of all minors will be *ipso facto* void if they are enticed, misled into leaving their residence, or sold, with a view to getting them married. None of these additional provisions can even distantly cover a minor girl of any community who has willfully married a boy of her choice. The Act is currently slated for an amendment to equalize the minimum age for marriage for girls and boys, but the proposed amendment will also not affect the validity of any minor's marriage in normal circumstances.

In view of the present law explained above, the Punjab and Haryana High Court ruling was unassailable, and would have been the same if the couple before the court belonged to any of the communities governed by the Hindu Marriage Act. Also, this was not the first judicial decision of its kind so as to form a precedent. Cases had been decided earlier, on the same lines, both by the said High Court as well as by several other courts. The established judicial position till

date is that a minor's marriage is ordinarily not void under either the thousand-year old Muslim law or the modern Indian laws of 1955 and 2006.

Should this be the law even in the 21st century is, of course, a different question that must be answered in the negative. An early age marriage is undesirable on all counts, but the custom is so embedded in the traditions of our multi-religious and multi-cultural society that law alone will never be able to fully eradicate it. Invoking the Protection of Children from Sexual Offences Act 2012, in view of its entirely different objects and scope, is *prima facie* untenable. The Prohibition of Child Marriage Act 2006 requires the governments to establish a mechanism to prevent intended marriages of minors by creating awareness about their perils and alerting people to the legal consequences of even remotely facilitating such a marriage. These provisions, if effectively translated into action on the ground, will be much more fruitful in curbing the evil of minors' marriages than a law or judicial decision outlawing it. The proposed amendment of the 2006 Act must effectively actuate these dormant provisions.

As regards the Muslims, the basic sources of their religious law -- Quran and Hadith -- contain no provision on the ideal age for marriage; the entire law currently in force represents juristic wisdom of a bygone age based on the progress of human civilization till then. No general law or judicial decision outlawing minors' marriages, or their beforehand prevention by a legally created agency, will violate their constitutional right to religious liberty.

OBITUARIES

Lamented Justice TN Singh

My long-time friend Justice Dr TN Singh passed away in June 2022. He was alumnus of my alma mater in London – the Institute of Advanced Legal Studies – where he had done his research work long before I was there on a fellowship.

Dr Singh practiced as a lawyer for some time and was later appointed as a judge of the Assam High Court. He was then transferred to the Gwalior Bench of the Madhya Pradesh High Court. In the latter capacity he cited me in his judgment in the case of *Noor Mohammed v Jiauddin* in (1992). Calling the case "a hybrid action founded on laws of tort and contract" the learned judge introduced the case in a very scholarly manner: "A forsaken bride's pride and honour is put at stake by her father. A challenging problem of gender justice of a rare kind begs solution in this appeal." In the course of his judgment TN Singh cited my exposition of the true nature and importance of marriage under Muslim law from my book *Muslim Law of India* [2nd ed., 1982].

I thanked the learned judge in a letter of appreciation for his very scholarly decision, and for citing my viewpoint in it -- and this was the beginning of a long-lasting friendship between us.

After demitting office the learned judge had settled in Delhi. I associated him with the research degree programs of my Institute at Amity University. A few years later, on his request I arranged and edited his writings

under the title *Quest for Justice: Miscellany of an Academic Judge.* The book was published by Universal in 2014.

The learned judge had suffered the grief of his granddaughter's demise when she as a baby girl was studying at one of the Amity Law Schools. In her name he instituted at AIALS a scholarship called Yogita Mehta Memorial Scholarship for girl students of LLM programs which was regularly paid year after year.

His death was a loss to me as a friend, and to AIALS as an advisor who was always ready to help. May his noble soul rest in peace.

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Former Chief Justice AM Ahmadi

Former Chief Justice of India Aziz Mubashshar Ahmadi breathed his last on 2 March 2023. Aziz Bhai, as I called him, was a gem of a person. He was married to the younger sister of a dear friend of mine, lawyer Yusuf Hatim Muchhala of Mumbai, and hence we had a close family friendship. Since her demise last year, the learned judge had been dispirited and indisposed.

Aziz Bhai hailed from Gujarat and belonged to the Dawoodi Bohra Ismaili sect of Muslims. He had begun legal practice in Mumbai in 1954 and a decade later had joined the lower judiciary in his state. In 1976 he was appointed a judge of the Gujarat High Court and was elevated to the Supreme Court in December 1988.

After nearly six years he assumed the mantle of Chief Justice — the third Muslim Chief Justice of secular India after Mohammad Hidayatullah and Mirza Hameedullah Beg — and held the position till March 24, 1997.

The celebrated case of *SR Bommai v Union of India* decided by a nine-judge Bench in 1994 involved multiple issues including the secular character of the nation. Justice Ahmadi wrote a separate 37-page judgment "to indicate the areas of agreement and disagreement" with the views expressed by his brother judges on the Bench. Speaking of the "anxiety" of B R Ambedkar, chief architect of independent India's Constitution, to ensure that the secular character of the nation "bequeathed by Mahatma Gandhi was not jeopardised", he concluded that adequate provisions had been enshrined by him in the Constitution "to keep divisive forces in check so that interests of religious, linguistic and other groups were not prejudiced."

The distinguished judge was on the Bench that decided the Second Judges Case in 1993 and gave birth to the collegium system for managing judicial appointments. He shared Justice SP Bharucha's viewpoint in that case, and also endorsed his dissenting decision in *Ismail Faruqui* case (1994) relating to the Ayodhya Land Acquisition Act and Presidential Reference about the alleged existence of a temple beneath the demolished mosque in the holy city.

Writing the judgment in the Padma Awards case (1995), Justice Ahmadi cautioned the powers that be to preserve the dignity and reverence of the awards by limiting their number and selectively choosing the awardees.

In the Bhopal Gas Tragedy case (1996) Justice Ahmadi changed the charge of culpable homicide not amounting to murder against the accused to that of death by negligence, for which he faced the wrath of some human rights activists. The case was finally decided by the apex court, after his retirement, more or less in accordance with his ruling. In 2010 when the court rejected CBI's curative petition seeking enhancement of punishments for the accused, Ahmadi's point of view was vindicated.

In 1996, a few months after I took over the reins of the Minorities Commission, Justice Ahmadi as the CJI constituted a special 11-judge Bench of the court to take a fresh look at the interpretation of minorities' educational rights under Article 30 of the Constitution of India. In an informal meeting at a social function he told me how he wished the case to be decided before his retirement due early next year. I sought the Commission's formal intervention in the case as amicus curiae, but due to the government's dilly-dallying in filing its response there was no progress till Justice Ahmadi demitted office.

The Minorities Commission had been placed under an Act of Parliament in late 1992 and the first statutory Commission was constituted a year later. Justice Ahmadi was then in the last leg of his term as the CJI. In the fitness of things, the government of the day should have waited and offered him the chair of the Commission, which in the past had been occupied by another former CJI Hameedullah Beg for seven years. The government in its wisdom, however, gave it to a former High Court judge.

In 1997 NHRC Chairman Justice MN Venkatachaliah, Justice Ahmadi's predecessor as CJI, requested him to chair a committee constituted to suggest amendments in the Commission's governing statute of 1993. He undertook the important assignment and submitted a significant report recommending some drastic measures, but no action was ever taken on it.

I demitted the NCM chair towards the end of 1999. Sometime later, former Prime Minister HD Deve Gowda — whose government had entrusted that onerous responsibility to me — asked me to suggest a "suitable Muslim VIP" who could be the joint Opposition candidate for the position of Vice-President of India, election for which was at hand. I confidentially obtained Justice Ahmadi's consent, and conveyed it to him. The former PM, perhaps on a careful assessment of the political situation of the day, eventually decided not to embarrass the highly dignified judge with the indignity of a possible defeat.

Later the same year the Aligarh Muslim University honoured itself by electing Justice Ahmadi as its Chancellor.

In later years he initially accepted two important responsibilities but on second thoughts gave up both. One of these was the presidency of a proposed body to be established by the name All India Muslim Education Board — and the other the chair of a government-appointed Working Group

for negotiating peace in the troubled waters of the Kashmir Valley.

In either case he seemingly did not want to be the presiding deity of a noble mission which, he had soon realized, was destined to be an exercise in futility.

The Institute of Objective Studies, a centre for multidisciplinary research, conferred on Justice Ahmadi its 'Lifetime Achievement Award' in 2007. The great judge, however, deserved a much greater honour.

Juristic opinions about the value and veracity of some of his judicial decisions may vary, but those who knew him as a person from close quarters invariably found him a thorough gentleman — a dignified patriot through and through, ever willing to serve the nation but never to be dragged into unsavoury controversies and face indecencies.

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Professor Misbahul Hasan

My learned teacher and senior colleague in Aligarh Muslim University during 1960s Professor Syed Misbahul Hasan died in the United States this year in 2023 at the ripe age of ninety. Thus came to an end our long teacher-taught relationship of over six decades.

In 1961 when I had taken admission to the two-year LLM program in Aligarh Misbah Sahab was on the teaching faculty. In my final year he was the guide for my dissertation. With my first class Master's degree in 1963 I left Aligarh to teach law at a postgraduate college in Jaunpur. Next year, as the Dean of AMU Law Faculty he called me back to Aligarh and appointed me as a lecturer in a short-term vacancy. In later years he went to Academy of Administration in Mussoorie to teach law to IAS trainees, and finally settled in Malaysia as a Professor of the International Islamic University.

In 1997 when I was Chairman of the National Minorities Commission I attended an international human rights conference in Kuala Lumpur along with former Chief Justice of India PN Bhagwati. A former AMU colleague of mine hosted me to a dinner at his place. Finding Misbah Sahab sitting on a chair in a corner, I sat on the floor near his feet, saying "this is the right place for me." He became very emotional and invited me to dine with him at his residence, and that was my last meeting with him. He and I remained in regular touch on phone and whatsapp until the last days of his life. His death was indeed a personal bereavement for me.

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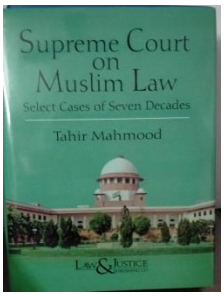
NEW BOOKS – 2022-23



Tahir Mahmood
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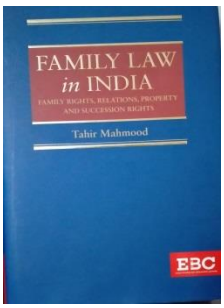

Tahir Mahmood
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