AMITY LAW WATCH

House Journal of
Institute of Advanced Legal Studies
Amity University

ISSN : 2320-2270

ISSUE NO. 33 : AUGUST 2019

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CONTENTS

EDITORIAL

The Amity Institute of Advanced Legal Studies [AIALS] had come into existence in June 2003. On completing my hectic tenures as the Chairman of National Minorities Commission and Member of National Human Rights Commission, followed by sabbatical leave, I had returned to my position in Delhi University Law Faculty but did not want to continue there. It was at that juncture that I opted for Amity as my next academic destination.

With complete logistic and financial support extended by Amity's Founder-President Dr Ashok Chauhan I set up AIALS as the very first institution on the campus for postgraduate education and research in law. The institution is now in the 17th year of its life and has produced till date a large number of Master's degree holders, besides a sizable number of PhDs, in various branches of law and jurisprudence.

The *Amity Law Watch* -- house journal of AIALS -- was launched by me within three months of establishing the Institute as a medium of legal writings for our faculty and students. For ten years it was published in the form of a magazine, the last of these being Issue No. 24 of 2013. At the beginning of 2014 it was transformed into a regular academic journal. Seven issues were published in that form, ending with Issue No. 31 of 2017.

Last year in 2018, realizing that the journal produced in hard copies with a strenuous exercise on my part and at heavy costs incurred by Amity was not serving its real purpose, I decided to switch on to the online publication mode. Issue No. 32 of 2018 was then published in the said mode -- on an experimental basis -- once again in a magazine form. This one is the second issue in the new series.

I have been including in successive issues of *Amity Law Watch* -- for the benefit of the faculty, researchers and students of various Amity institutions imparting education in law and allied subjects – abridged versions of my articles published in national media, supplementing them with necessary footnotes and references. This issue contains such texts of my select media articles on various burning issues of the time published since the beginning of the current year. Among these are my comments on two very significant laws enacted by Parliament in the preceding month – the Protection of Human Rights (Amendment) Act and the Muslim Women (Protection of Rights on Marriage) Act, both of July 2019.

The latest legal measures of far-reaching impact are the Constitution (Application to Jammu and Kashmir) Order and the Jammu and Kashmir Reorganization Act, both of August 2019. On these new laws I have yet to write in the media.

As in the past, this issue of *Amity Law Watch* also ends with a brief update on the progress and activities of AIALS.

-- T. M.

MUSINGS IN NATIONAL MEDIA

Tahir Mahmood

[Articles published in national media since the beginning of 2019]

(1)

Remembering Father of the Nation on His Anniversary

[Indian Express : 8 February 2019]

Dard-o-gham-e-hayat ka darman chala gaya

Wo Khizr-e-asr-o-Eisa-e-dauran chala gaya

Hindu chala gaya na Musalman chala gaya

Insan ki justuju mein ek insan chala gaya

[Gone is the therapist for the miseries and agonies of life

Gone is that Khizr of the time, Messiah of the age

Gone is one who was neither a Hindu nor a Muslim

Gone is a human being searching for human beings]

This is how eminent Urdu poet of India the late Asrar-ul-Haq Majaz had lamented Mahatma Gandhi's tragic assassination less than sixth months after Independence. To his credit, the great poet had put the Father of the Nation on a high spiritual pedestal, in the company of some great religious icons of Islam and Christianity.

Informing the nation of the ghastly catastrophe via a radio broadcast, Prime Minister Jawaharlal Nehru had said:

> "The light has gone out of our lives; that light will be seen, world will see it and it will give solace to innumerable hearts; for that light represented something more than the immediate present; it represented the living, the eternal truths, reminding us of the right path, drawing us from error, taking this ancient country to freedom."

The nation had heard him breaking the stunning news in utter disbelief. All eyes were wet, all hearts sad.

I was a primary school kid when that horrendous catastrophe had struck the nation. Many words of the saddened prime minister's sentimentally-charged broadcast on the Mahatma's tragic assassination stuck in my mind and, once I became an adult, prompted me to express my feelings for him in prose and poetry. On the 22nd anniversary of that darkest day in India's post-Independence history, I addressed my fellow Indian students in London with an Urdu couplet:

Tu iss dharti ke har vasi ko Bapu ka jigar de de

Tou jhagra dham aur bhasha ka sab pamal ho jaye

[God! put Bapu's ideals into the heart of every inhabitant of Earth

That will put an end to all discords based on religion and language]

But alas, today it is the same discords over religion and language that are wreaking havoc across the globe, including in Bapu's own sacred land, plunging the society into a terrible state of inhumanity which is repugnant to the great Mahatma's concept of global human camaraderie.

Year after year on January 30, right from 1949, sirens have been blaring out in government offices and educational institutions, reminding people of independent India's most heinous tragedy and alerting them to remember for a while the man who had played the key role in the struggle for Independence. This year, too, the sirens did their duty. At precisely the same time, however, in a city near the nation capital, some people were gleefully staging a mock assassination of the great Mahatma amid chanting of the slogans of *"amar rahe*" (long-live) for his killer, using for him (the killer) the epithet "Mahatma". The ghastly scene made public by some news websites wounded my soul and heart. And, surely, the same must have been the case with millions of my fellow citizens across the nation.

Majaz, who had showered encomiums on the Father of the Nation using religious jargon, was a Muslim. And so am I, with my deep devotion to the Mahatma. But our religion is today seen as an alien faith, thanks to the forces that are hell-bent on destroying the centuries-old communal harmony in our great country. No amount of feelings expressed by the followers of this faith for the great Mahatma or for the motherland, in prose and poetry, succeeds in changing this perception. People do not hesitate, even in branding us as anti-nationals, while others hurling filthy abuses on the Father of the Nation and celebrating his assassination are seen as devout patriots. Their abominable actions do not make them less patriotic, nor are these seen as *deshdroh*.

Years ago, the Supreme Court of India also had so linked the Mahatma to certain provisions of the country's Constitution:

> "The object of articles 25 to 30 was to preserve the rights of religious and linguistic minorities, to place them on a secure pedestal and withdraw them from the vicissitudes of political controversy. These provisions enshrined a befitting pledge to the minorities in the Constitution of the country whose greatest son had laid down his life for the protection of the minorities."
>
> [*Ahmadabad St. Xavier's College v State of Gujarat* AIR 1974 SC 1389].

But, alas, that extreme step taken by the Mahatma did not succeed in sparing minorities the "vicissitudes of political controversy."

Nor is his light, to use Nehru's words, "reminding us of the right path, drawing us from error" any more.

Seventy years after Independence, the nation's chief freedom-winner is being abused and punished for his crime — preaching '*Ishwar Allah tero nam'*

(2)

No More Opium Please : Religion Must be Kept in its Place

[Indian Express : 11 March 2019]

> "For God's sake conduct God out of our national frontiers"

This is an appeal I have long been longing to make to fellow citizens but, conscious of the morbid religiosity prevailing in the society, have been a bit ambivalent. Kaushik Basu's article, 'About divinity' (*Indian Express*, 7 March 2019), comes as a shot in the arm and his so-called third hypothesis — "there is god but he is not that powerful" — is just the fillip I needed.

The awkward question of whether God exists or not has been posing itself to mankind throughout history and nobody could ever give a decisive answer. There have always been all sorts of people in the world — firm believers, convinced unbelievers, fanatics, atheists, agnostics and nihilists. The sickening obsession with religion in general in the mid-19th century had prompted Karl Marx to call it the "opium of people". But in our time, particular religions seem to be the opium of particular people.

Modern nation states have chosen one or another religion — expressly under national constitutions or by implication in practice — as their natural and, hence, privileged faiths. This often plays havoc with followers of the other locally prevailing creeds. Paying lip-service to the belief in one omnipotent and omnipresent God, each religious community reserves God's benevolence for itself, leaving others at the mercy of their own gods who seem to be less powerful than theirs.

In my school days, I read in a Hindi textbook a passage which, still stuck in my mind, would read in English as:

> "On initially coming to the world, man had faced grave problems for whose solution he had given birth to God. But poor God instead of solving man's problems, himself became his biggest problem."

Today, the truth of this proposition can be witnessed throughout the world. A man vs man tug of war is being played in the name of religion. Human rights, ironically believed to be enjoined by every religion, are the biggest casualty of religious zealotry.

The evil of religious inhumanities provokes me to share the questions Epicurus had once put forth:

> Is God willing to prevent evil, but not able? Then He is not omnipotent.
>
> Is He able but not willing? Then He is malevolent.
>
> Is He both able and willing? Then whence cometh evil?
>
> Is He neither able nor willing? Then why call Him God?

I was once a firm believer in the existence and omnipotence of God. But observing what is happening in the name of religion has made me irreligious. I cannot resist now sharing the agony of a great a jurist-judge of India, V R Krishna Iyer:

> "Religion is a terrible Satan in its decadent status when people plunge into spiritual illiteracy, miss the divine essence of the lessons of the sages, prophets and seers and kiss the holy nonsense of 'my religion right or wrong' and 'my religionists alone to me belong'. In this vulgar barbarous degeneracy humanism dies and values of tolerance and compassion perish. In the perverse reversal of higher meanings the man on earth becomes the blind ammunition of divine rivals in the skies."
>
> [*Abdul Hussain v Shamsul Huda* AIR 1975 SC 1612]

The learned judge's sardonic reference to "divine rivals in the skies" reminds me of how poet Vipin Jain, on seeing human miseries being inflicted in the name of religion, had once lamented: "Burning human life like coal turning into ashes, I look at these tears, miseries and crashes; who caused this world burn with such brutal flame. whom shall I question who do I blame; do I ask my God or your God or my own soul. I am confused as to who rules the world as a whole."

The late Enver Hoxha, leader of the communist regime in Albania till 1985, had once said that in a bid to avoid horrors of religious rivalry and bigotry his country had "conducted God out of its frontiers thanking Him for His provisional services".

It is high time, in my opinion, for our beloved motherland to follow suit. Only that can, perhaps, retrieve our perfect religious harmony.

(3)

Growing Menace of Religion-Based Electioneering in the Country

[Indian Express : 12 April 2019]

Deciding an election petition forty-five years ago, Supreme Court judge V R Krishna Iyer had lamented:

> "It is a matter for profound regret that political communalism far from being rooted out is foliating and flourishing, largely because parties and politicians have not the will, professions apart, to give up the chase for power through politicizing communal awareness and religious cultural identity. The Ram-Rahim ideal and secular ideology are often politicians' haberdashery, not soul-stuff. Micro and mini-communal fires are stoked by some leaders whose overpowering love for seats in the legislature is stronger than sincere loyalty to secular electoral process."
>
> [*Abdul Hussain v Shamsul Huda* AIR 1975 SC 1612].

Fifteen years later, eminent journalist Kuldip Nayar said:

> "Never before has the Indian electorate had to face such intense communal and casteist slogans" [*India Today*, May 1991]

The two observations were made during two different Congress regimes. The learned judge breathed his last in December 2014, and Nayar in August last year, both during the present political dispensation at the Centre. Watching the continuing legacy of communal politics and its

escalation, they must have indeed been even more disgusted.

The first parliamentary election held after I returned from Europe and settled in Delhi, was that of 1977: Communal overtones in the electioneering process were heard all around, then. It was a novel experience for the nation: A sitting prime minister lost the election in the aftermath of Emergency. That was also the beginning of coalition rule: Some disgruntled Congress leaders who had left the party and the Bharatiya Jan Sangh, once each other's bitterest opponents, had buried the hatchet in pursuit of power. The marriage of convenience, however, did not work. There was another election soon, and the Congress returned to power. The two major political formations, led by the Congress and BJP, have since been playing the communal card. The victims of this tug of war have been the minorities — mainly, Muslims. One side is obsessed with "Muslim problems" and the other, with "Muslims as a problem."

The 1996 election led to the formation of a Congress-supported coalition government led by a regional leader from the South. Having been tied that year to the chair of the National Minorities Commission, I had a chance to interact with political leaders of all hues and found them generally self-centered. The Congress soon pulled the rug from under the new premier's feet, calling him "nikamma and communal". Surviving the onslaught, the ruling coalition found a new leader who fell in the battle of internal scuffles. Warring partners, by their sheer conduct, set the stage for enthroning the rival coalition. The majority of citizens being against communal politics, the professedly secular Congress eventually got another chance to rule the country. But old habits die hard and the new head of the government could not rid the party of its vices and shortcomings. The nature of democracy is to envisage a change of guard, and, in the electoral battle of 2014, votaries of cultural nationalism captured power. And, in a span of five years it has changed the face of India. Now, it is the time for another election, and communal electioneering is the order of the day, again.

The Representation of the People Act 1951 conspicuously prohibits all sorts of communal electioneering by putting in place civil and criminal sanctions against it. Candidates making religious appeals can be prosecuted and, if elected, their election can be set aside. Citing these provisions of the Act in the SC case mentioned above, Justice Iyer had said:

> "The founding faith of our poll process is to ostracize the communal vice from the campaign." [*ibid*]

But never in its lifespan of seven decades has this law been able to make a dent on the evil of communal politics. Nor has the long chapter on "Offences against Religion" in the

Indian Penal Code [Chapter XV] ever been able to stop the brewing of the toxic religion-politics cocktail.

Has, then, communal electioneering become an inseparable characteristic of Indian politics? Are we, the citizens of secular India, to perpetually bear with it?

(4)

Parda System : Religion, Law and Judiciary in India

[Indian Express : 9 May 2019**]**

> "To my husband who took me out of *parda* and spent the rest of his life regretting it"

This is how the dedication page reads in a Muslim woman author's autobiography published a century ago. It speaks volumes about the age-old tradition of keeping women in purdah. Having originated in early Islamic history, the controversy as to which of a wide range of outfits -- from the *burqa* [tip to toe gown covering entire body] to *hijab* [scarf covering head and shoulders] -- answers the Quranic injunction on women's dress code remains unabated till this day.

The *burqa* and hijab have been part of religious and social debates across the world and its total or partial ban anywhere makes international news. In recent days, the Indian media has given prominent coverage to three related developments — the ban on face-covering *hijab* in Sri Lanka after the devilish dance of terrorism on the island, the Shiv Sena's demand for a similar state action in India, and a Kerala educational organization's circular to its schools directing that no girl student should cover her face on its campuses across the state.

In India, purdah has had a local variant called *ghoonghat* (long veil covering head and face) and both have generated legislation and case law. Since the days of British rule, there have been special provisions for *pardanashin* (literally, sitting in purdah) women in the laws of evidence and civil procedure, irrespective of their religion. In a Kolkata election case, two women voters -- a Hindu and a Muslim -- approached the High Court seeking exemption from the requirement of a photo identity card on religious ground [*Nirmal v Chief Election Officer* AIR 1961 Cal 289].

The court dismissed the Hindu woman's plea:

"The system of purdah is alien to our soil and never existed during the period of the Hindu civilization. It may be that amongst very orthodox families women are not readily photographed. That however is not an inexorable social practice and in modern days it is neither widespread nor popular." [*ibid*]

The claim of her Muslim sister was also dismissed. Referring to the Quranic verses, the court said:

> "There is no express injunction about keeping *parda*. Moderation of social intercourse is advocated and it has been laid down that women should

> cast down their looks and not display their ornament in public. Annotators hold that there is no absolute injunction against uncovering of the face or the hands. What have been laid down are questions of prudence and general deportment. The matter therefore rests not on religion but on social practice." [*ibid*]

In a similar case of a Muslim woman in Hyderabad, the judge deciding the matter however thought otherwise.

> "A citizen professing Islam cannot be put to election to act contrary to religious injunctions to be able to exercise his franchise or to observe the religious practice and forgo the right to vote." [*M. Peeran Saheb v Collector* AIR 1988 AP 377].

In 2015, a purdah-related case reached the Supreme Court. The Central Board of Secondary Education conducting the AIPMT [All India Pre-Medical Test], in a bid to prevent copying in examination, announced a dress code that prohibited full-sleeve shirts and headscarves. Some Muslim women sought exemption from it on religious grounds and obtained relief from the Kerala High Court, subject to a direction to submit to necessary frisking by women invigilators. An appeal to a larger bench of the court by the CBSE was dismissed. A Muslim students' organization tried to outsmart the board and in a bid to preempt further appeal approached the Supreme Court with a PIL. It requested the court to direct the CBSE to not apply its dress restrictions to Muslim girls in general. The organization claimed that the code was repugnant to Islam and hence violated its members' fundamental right to freedom of religion, but the apex court issued a reprimand:

> "Faith is not connected to the clothes you wear, your faith will not disappear if you go to the examination centre without headscarf."[*Mariam Naseem v CBSE* 24 July 2015]

I am nobody -- despite my command over Arabic and lifelong study of Islamic tenets through their original sources -- to explain what the Quran actually says in respect of women's dress code, as I do not belong to the clan that has monopolized the task of understanding Islam's holy book. I would just draw attention of all concerned to the recent news items from two Muslim countries, both of which recognize Islam as their state religion and hold the sharia as their main source of legislation. In February this year, Saudi Arabia -- the seat of Islam's holiest places -- appointed a woman member of the royal family as its new ambassador to the US. And early this month, Malaysia appointed a woman judge of its federal court as the country's chief justice. Both these women are seen in public wearing hijab but faces fully uncovered. Will those who claim that face-covering by women is an essential Islamic practice take notice?

The ban on face-covering in Sri Lanka as a security measure and the Kerala educational organization's circular prohibiting the practice -- notably,

issued before the Sri Lanka incident -- is an admirable attempt to put the record straight on the Quranic injunction concerning women's dress. A political outfit jumping into the fray may not measure up to the legal test of *locus standi* but the argument of religious freedom to justify face-covering — always and everywhere with no exceptions — will not stand the constitutional touchstone of such a freedom.

Commenting on some judicial decisions relating to *parda*, I have said in my books on Muslim law:

> "Forcing a woman to strictly adhere to the purdah system against her wish is grossly unconstitutional, but so is dragging one out of it against her own personal decision."

Alas, I cannot invoke the Constitution anymore -- in this or indeed in any other matter whatsoever -- as we are now sadly living in an age when "Constitution? who cares" seems to be the order of the day

(5)

New Political Dispensation and the Minorities

[Indian Express: 27 May 2019]

"Please pray to God for India, that is Bharat" a Sikh friend who is a former High Court judge, messaged me at dawn on May 23, the day of election results. "No use, God superannuated long ago and relieved himself of the job of listening to the prayers of the faithful", I instantly replied. Later I sent both his text and my response to a Muslim friend, a former state dignitary, who wrote back: "The Creator has other worlds to look after, why waste efforts on a wayward creation." To my query "which other worlds, the heaven and hell where he is taking care of the houries for the believers and readying fire and filth for others", he kept mum.

The comments I made reflected my alienation from religion as a whole owing to the inhumanities and communal polarization it has bred in recent times. The remarks of the other two echoed simmering discontent among the minorities of the country, including their elite, with the recent political landscape. I hate sermonizing but I have reproduced these dialogues as a prelude to offering some suggestions, unsolicited of course, to both the rulers and the ruled.

For the minorities, I am reproducing some verses of an eminent Urdu poet, Jagannath Azad:

Bharat ke Musalman kyon hai tu pareshan
Bharat ka tu farzand hai begana nahin hai

Ye desh tera ghar hai tu iss ghar ka makin hai
Meri hi tarah hai ye gulistaan tera bhi

Iss khak ka har zarra-e-taban hai tera bhi
Ham sab ki tamannaon ko phalna bhi yahin hai

Har manzil-e-mushkil se guzarna bhi yahin hai
Jeena bhi yahin hai hamen marna bhi yahin hai

> [Muslims of India, why are you so upset, you are the children of India not aliens, it's your home, you are its co-owners, like mine this garden is yours too, every shining particle of this land is yours too. All of us have to realize our aspirations here, brave all kinds of difficult times here, live and die just here].

Every word of this poetic gem composed by the great non-Muslim poet after the country's unfortunate division, when the Muslims refusing to migrate to the other side of the artificially created borders were facing difficult times, is extremely relevant for the community at this political juncture. They have to accept the ground reality, reconcile with the situation and cooperate with the rulers of the day. There is no wisdom in committing the proverbial blunder of "*darya mein rah ke magarmachh se bair*" [making an enemy of a crocodile, while living in the water].

The rulers of the day, basking in the glory of an unprecedented electoral victory, and their ardent admirers, must also realize that the 250 million-strong minorities of India are equal citizens of the country. They are as patriotic as the one billion-strong majority. A fairly large number of citizens from the minority communities have already voted for the ruling dispensation. Winning over the rest of the community too — not by undue appeasement but by implementing on the ground their human and constitutional rights — will make the regime a force to reckon with. But to achieve this, it is necessary to shun the political culture of hate speeches which, though strictly prohibited by law, are a favourite pastime for politicians of all hues.

The proper course of action that needs to be pursued by the jubilant majority, and the disgruntled minorities, is to shun morbid religiosity and accept the apex court's injunction that genuine religious beliefs have to be distinguished from superstitions

[*Durgah Committee, Ajmer v Syed Hussai*n AIR 1961 SC 1402]

The truth and equality of all religions alike must be accepted and religious sentiments of all must be respected. But that should happen within the parameters set by the Constitution which clarifies that professing, practising and propagating religion is assured but subject to morality, health and public order, and that religious freedom shall be no hindrance for introducing necessary social welfare and reform [Article 25].

All citizens, whichever religion they may be following, must also fulfill their fundamental duties under the Constitution

(b) "to cherish and follow the noble ideals which inspired our national struggle for freedom;

(e) to promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities;

(f) to value and preserve the rich heritage of our composite culture;

(h) to develop scientific temper, humanism and the spirit of inquiry and reform"

[Constitution of India : Article 51A, clauses (b), (e). (f) and (h)]

(6)

Desirability of Settling Ayodhya Dispute Outside the Court

[Indian Express : 12 July 2019]

Law is an ass" and "justice is blind" are oft-quoted proverbial expressions. The asininity attributed to the law and blindness to justice indicate, inter alia, that the ideal solution to every dispute may not lie in the dry bones of law or the blindfold of justice — reconciliation and compromises in a spirit of mutual give and take may yield more gratifying results. The impossibly complex temple-mosque dispute arising from the holy city of Ayodhya has sunk into a triangular quagmire of religion, history and law. A community conflict turned into an imbroglio, it belies a strictly legal solution acceptable to all. In such an intricate situation, reconciliation will be the most workable and ideal way to ensure lasting peace and social harmony.

Legislation, governmental action and judicial intervention till date have failed to bring about an equitable solution. When the controversy was at its peak pointing out to disastrous possibilities, a parastatal body had proposed the enactment of a law to seal and render unalterable the character of every religious place as it was on our Independence Day. The government of the day did put on the statute book a Places of Worship (Special Provisions) Act in 1991, but felt constrained to exclude from its purview the Ayodhya shrine, which, in its judgement, had by then reached a point of no return.

The Ayodhya case before the Lucknow court, which had begun as a title suit but ended up with a partition decree, did not end the conflict. Nor did the Liberhan Commission report, produced after seventeen years of investigation at a whopping cost, on which the then government could take no action beyond the ritual tabling in Parliament. Several issues relating to the matter reached the apex court, both before and after the demolition of mosque, but the judicial handling of none of these could salvage the situation. The dispute remains unresolved and with each passing day, is becoming more and more complex to be settled strictly in accordance with law.

The disputants must not lose sight of how the apex court has thus far looked at the issue. In a pre-Independence case, the Privy Council had endorsed a Lahore High Court ruling that "the view that once consecrated a mosque always remains a place of worship as a mosque is not the Muhammadan law of India as approved by the Indian courts" [*Masjid Shahidganj* case AIR 1940 PC 116]. Legally, Privy Council decisions remain intact unless dissented to by the apex court. Far from striking a discordant note, the Supreme Court cited it in its hitherto most elaborate judgment on the

dispute [*Ismail Faruqi v UOI* AIR 1995 SC 605]. It even added a note that a mosque is "not an essential practice of the religion of Islam" and has since not agreed to relook at the contentious observation.

Erection of a temple on the disputed site is indeed a fait accompli and dreaming of retrieval of the demolished mosque is crying for the moon. Carrying the emotional baggage of the past in perpetuity and continuing with the perennial blame game will serve nobody's interest. The parties before the court and their respective communities will do well to reach a compromise on reasonable terms, the *sine qua non* of which should be burying the hatchet with a solemn resolve not to let the unpleasant history repeat itself elsewhere.

Adopting the "forgive and forget" policy for the sake of ensuring peace will not be repugnant to the religion of either community. Islamic texts and history indicate that making compromises on reasonable terms will neither be unIslamic nor lower the prestige of the community. On the contrary, it will be quite in keeping with Quranic teachings and recorded policies of the Prophet. "*Fa-man* '*afa wa-aslaha fa-ajruhu alallahi*" -- those who condone and reconcile, for them there is reward from God -- proclaims the Holy Quran (XL:42). The verse is preceded by a reference to the practice of meeting evil with evil and concludes with the assertion of divine dislike for all evildoers. The message of "*al-sulhu khairan*" (reconciliation is best) is found in the words or implications of several verses of the holy book, revealed in different contexts including familial discords.

The explicit and implicit injunctions of the Quran on the advisability of condoning and reconciling in conflict situations are highly significant for the ongoing efforts for a consensual settlement of the Ayodhya dispute. So are numerous historical instances in which the Prophet had preferred compromise to conflict. He loved mediation and often played the role of mediator to end hostilities between warring groups. In his youth, he had participated in the *Hilf-ul-Fudhul* known to western scholars as "League of the Virtuous" — an alliance of Arab tribes aimed at ensuring peaceful coexistence — and in his later years often expressed his predilection for being part of more such peace-building measures

In Makkah, after establishing Islam as a new monotheistic faith, the Prophet invited religious communities to get united on the bare minimum in common in their faiths. On migrating from the troubled waters of his birthplace to the sociable city of Madinah, he secured the concurrence of all communities for a pact that came to be known as "Mithaq-e-Madinah" -- a charter of participative coexistence meant to exterminate

centuries of inter-tribal rivalries. The most prominent reconciliatory agreement which the Prophet entered into was the celebrated Sulh-e-Hudaibiya — Hudaibiya Agreement — enveloping a 10-year plan in which, with a view to buying lasting peace, he had agreed even to some conspicuously lopsided terms.

All those wishing for an early resolution of the inordinately stretched Ayodhya conflict should take the time by the forelock and wisely avail the chance furnished by the apex court for a friendly extrajudicial settlement. All right-thinking citizens should wholeheartedly cooperate with the court-appointed mediation committee of three eminently well-meaning members. There is no wisdom in flogging a dead horse and missing out on this singular opportunity by obstinacy and intransigence.

(7)

National Human Rights Commission's New Charter

[Indian Express: 30 July 2019]

A former chief justice of the apex court with one of its judges, a retired high court chief justice, two non-judge dignitaries, and heads of national commissions for scheduled castes and tribes, minorities, and women. This high-ranking eight-member group was assembled in September 1993 by the congress government of the time to form a new parastatal entity to be known as the National Human Rights Commission [NHRC]. A bill enabling the government to establish such a body had been moved in Parliament three months earlier but could not be passed due to severe criticism of its flawed provisions in and outside the house. In view of the upcoming 45th anniversary of the Universal Declaration of Human Rights the government then hastened to constitute the proposed commission through an ordinance. Early next year the ordinance issued for the purpose was transformed verbatim into the new commission's statutory charter.

In the coming years NHRC's functioning and performance earned censorious critiques. Jurist-judge VR Krishna Iyer called it "the biggest post office in India" [forwarding complaints to the government and its replies to complainants]. Commenting on its first two official reports noted lawyer Rajiv Dhawan said it had "assumed a stance far too grandiose not commensurate with its resources and internal will" and was "a mere showpiece to convince the world that the government is committed to human rights protection."

Former chief justice Ranganath Misra was appointed NHRC's first chairman. Two days after he demitted office I took over the chair of the National Minorities Commission and hence became NHRC's ex officio member. A month later former chief justice MN Venkatachaliah joined as its next head. I worked with him for nearly three years, and also for some time

with his successor JS Verma. My friendly terms with the next two NHRC chiefs – Adarsh Anand and Rajendra Babu – let me continue closely watching its working. Utterly disappointed, I kept stressing the need for a speedy overhaul of the commission's charter.

Venkatachlaiah as NHRC chief had invited former chief justice Aziz Ahmadi to head a committee he had formed to review the commission's statute. Eminent human rights activist Rajinder Sachar was on the committee and its report bore imprint of his ideas.

In 2006 the government of the day had the NHRC law revised, ignoring however Ahmadi committee's focal submissions. The exercise failed to rid the commission of the infamy of being a toothless tiger.

The present government has now once again amended the NHRC charter. Cleared by Parliament, the Protection of Human Rights (Amendment) Bill 2019 making sweeping changes of far-reaching consequences in the composition of the commission will soon be in force. Under the amended law the government's choice for the NHRC chair will not be limited to former chief justices of the apex court – it can now hand it over to any of the court's retired judges. The impact of this change cannot be predicted with certainty -- only time will tell whether the wide extension of government's options in selecting NHRC chief is a change for the better or the worse.

Under the initial NHRC law its two non-judge members had to be "persons having knowledge of or experience in matters relating to human rights." The number of such members has now been raised to three including necessarily a woman, but the imprecise provision keeping the coveted positions open to any person of government's unguided choice remains unchanged. Former governments filled them with its retired officers, and the present dispensation once chose to appoint a ruling party office-bearer – though on being challenged in the court he wisely declined the offer. International human rights jurisprudence is a fast-growing legal discipline and there is no dearth of eminent scholars specializing in it, but successive governments have never considered any such specialist – nor any known human rights activist -- for membership of the commission.

To the list of national commissions whose heads are NHRC's ex officio members have now been added two more commissions – those for backward classes and protection of child rights -- along with the chief commissioner for persons with disabilities. The commission will thus have more adjunct than full-timer members. Instead of heads of its sister-bodies engaged in class-specific work, it would have been far more fruitful to associate with NHRC representatives of a few leading NGOs promoting human rights in general.

With a view to ensuring independence of the commission its Act prohibits further government employment for its chair and members. Nevertheless there have always been waiting for them greener pastures technically not covered by the phraseology of the ban. The practice was started with the first commission itself when two of its sitting members were given gubernatorial positions overnight, and continues till date. The new amendment bill does not disturb the related provision of the Act.

NHRC's main function is to inquire into complaints of "violation of human rights or abetment thereof, or negligence in the prevention of such violation, by a public servant" -- but it cannot execute its decisions based on its findings in any case, for that this high-profile body has to depend either on the central or state government or on the judicial hierarchy in the country – from the top court down to magistrates of three cadres. The statutory provisions to this effect are not touched by the new amendments.

The situation of human rights in the country remains as bad, if not worse, as it was at the time of establishment of NHRC and earlier. Is there really no way to make it a truly effective watchdog powerful enough to crack the whip on the spate of human rights violations in the society? Unfortunately, the 2006 amendments in the commission's law introduced by the previous government had not addressed this pressing ne ed of the time. The 2019 changes made by the present dispensation too leave a great deal to be desired. By all counts the NHRC is yet to be assigned its rightful role in the affairs of the country and the society.

(8)

Statutory Ban on Triple Divorce in the Muslim Society

[Tribune, Chandigarh : 7 August 2019]

Unilateral divorce by married men was not an Islamic innovation -- it was a practice already rampant in the society which Islam tried to reform. The Quran discouraged it by telling men that a wife who they did not like might be carrying some divine good for them, and the Prophet declared it to be "the worst of permitted things in the eyes of God."

The Quranic law on divorce was indeed ahead of its time. Read judiciously, it confirms the truth of Justice Krishna Iyer's observation

> "A deeper study discloses a surprisingly rational, realistic and modern law of divorce."
>
> [*A. Yusuf Rawther v Sowramma* AIR 1971 Ker 261]

It was in fact based on what is now known as the 'breakdown theory of divorce.' For failed marriages it provided for divorce at the instance of either party or by their mutual consent, all in accordance with fixed procedures ensuring justice to both parties

Unfortunately by efflux of time that humane law got distorted beyond recognition. While women's rights to divorce fell into disuse, men's law for divorce fell into blatant misuse. Clerics began giving effect to divorces pronounced by men even in gross violation of Quranic law, calling it *talaq-ul-bidat* [innovative divorce]. According to them such a divorce, though causing instantaneous end to marriage, would be "sinful but effective." Scholars of some other schools of thought among the Muslims dissented from this strange logic, but the majority went ahead.

In India Muslim men are blissfully ignorant of true Islamic law and believe the so-called triple divorce to be the only way of discarding wives. The distortion has now reached such ridiculous heights that triple divorce is pronounced even by phone, SMS or e-mail. This is indeed a devastating state of affairs playing havoc with Muslim women.

Talking of the abominable practice a Muslim judge in Kerala had once observed:

> "Should Muslim wives suffer this tyranny for all times? Should their personal law remain so cruel to these unfortunate wives? Can it not be amended suitably to alleviate their sufferings? My judicial conscience is disturbed but the question is whether the conscience of the leaders of public opinion will also be disturbed."
>
> [*Mohammad Hanifa v Pathummal Beevi* 1072 KLT 512]

In later years some other judges tried to awaken the Muslims to the need for putting their house in order. Religious leaders however remained adamant in demanding status quo, erroneously citing constitutional provisions for religious liberty.

The judiciary at last stepped in and, deciding several petitions by Muslim girls against triple divorce, outlawed the abominable practice by the majority decision in a divided verdict of August 2017. Chief Justice Jagdish Khehar in his minority judgment imposed only a temporary stay on the practice and urged the government to amend the law on the lines of reforms introduced over the years in country after country in the Muslim world from Morocco to Pakistan which he detailed in his judgment.

[*Shayera Bano v UOI* (2017) 9 SCC 1]

Taking the heed four months later, the government of the day moved a bill in Parliament but, instead of acting on the court's advice to introduce reforms of a civil nature as in the Muslim countries, proposed to criminalize the practice of triple divorce while at the same time declaring it to be void *ab initio*. Failing to get the bill passed, it soon enforced its contents *in toto* through an ordinance.

After the ruling party returned to power at this year's general elections the government repeated the exercise by bringing in another bill with some minor changes which, it expected, would satisfy the opponents.

Eventually it has now managed to have its proposal turned into a binding law by putting on the statute book the Muslim Women (Protection of Rights on Marriage) Act 2019.

Look at the scope of the Act. Islamic law enables married women to get rid of failed marriage by resorting to *khula* (divorce by husband on wife's demand) or *talaq-e-tafwiz* [divorce by wife herself in terms of her marriage agreement]. For married men it makes the provision for to resort to *talaq-us-sunnat* [single revocable divorce which even if not revoked within permissible leaves room for remarriage of the parties any time later]. In addition, it also provides for *mubara'at* [divorce by parties' mutual consent]. The new Act of 2019 does not touch in the least any of these humane concepts.

What it declares to be void and penal is only the inhuman practice of triple divorce by men which according to a universal consensus is repugnant to the Quran, has been abolished in Muslim countries and -- above all -- clashes with the letter and spirit of the Indian Constitution.

The only demerit of the new Act is its provision for an unduly long jail sentence for an action which it declares to be void and hence legally ineffective. It should, in the fitness of things, be changed to heavy fines, or at best imprisonment for a short period, -- as it is for marriages within prohibited degrees under the Hindu Marriage Act 1955 [Section 18].

AIALS Update

R.P. Singh
Academic Programme Officer

PhD Program

Amity University's PhD program in law was initiated by AIALS in 2003. AIGLER followed suit three years later. Since the merger of AIGLER into the Amity Law School [ALSN] the program is being shared by AIALS and ALSN. Students are registered either at AIALS or at ALSN. A sizable number of PhD degrees have already been awarded till date.

Five students registered at AIALS, named below along with their Guides and research topics, have nearly completed their work this year and will shortly be submitting their thesis:

1. Astha Mehta
   [Guide: Dr Sachin Rastogi]
   Limited liability partnerships in India: comparative analysis with special reference to Singapore law
2. Lipika Sharma
   [Guide : Dr Sachin Rastogi]
   Traditional knowledge: a tool to mitigate climate change and need for a legal framework
3. Nirmal Rallan
   [Guide : Dr Komal Vig]
   Impact of information technology on the legal concept of obscenity
4. Parul Yadav
   [Guide : Dr Komal Vig]
   Need for gender neutrality in Indian criminal law and procedure : a study in the light of moral trends worldwide
5. Smita Tyagi
   [Guide : Dr Sachin Rastogi]
   Competition law in India : a comparative analysis of emerging legal issues

LLM Programs

AIALS had launched its Master's degree program in 2004 with a single specialization and four students. By 2015 the number of specializations had risen to six – viz., human rights laws, family law, business law, constitutional law, criminal law and intellectual property laws. Admission intake has been increasing year after year. At the beginning of the academic session 2018-19 the number of students was 215. This year it has already reached the figure of 230, while more admissions are in pipeline. The most crowded specialization this year is LLM (Criminal Law).

Curriculum Revision

Until the end of the academic session 2012-13 all LLM programs were of two-year duration. When in 2013 UGC gave the option of adopting one-year duration the Amity University decided to reduce the duration of all of its LLM courses to one year. The curriculum for each of the six specializations at AIALS was then condensed to fit in reduced duration.

In the coming years a pressing need was felt for a thorough revision of the curriculum for all specializations. The strenuous exercise was completed in 2018 but compliance with formalities and crossing technical hurdles delayed its implementation. Now the revised curriculum for all six specializations has been adopted for the students of the academic session 2019-20.

SACRALS Conference

A multinational body called South Asia Consortium for Religion and Law Studies [in short SACRALS] was founded by AIALS Chairman Prof. Tahir Mahmood in December 2017. The organization had organized its first international conference in 2018, and some of its sessions were held at Amity university campus.

The 70th Anniversary of the Universal Declaration of Human Rights 1948 [UDHR] falling on 10 December 2018 was celebrated all over the world. SACRALS decided to organize on this occasion an international conference captioned "UDHR in Its 8th Decade -- Promoting Rights to Dignity and Equality" to be held in consecutive sessions in Bombay and Bangalore. After hectic planning the conference was held during 3-8 February 2019.

Conference sessions in Bombay were organized in collaboration with the Bombay University Postgraduate Law Department, and in Bangalore with Bangalore University Law College. Eminent foreign scholars from the US and various countries of Europe participated in both segments of the conference. Among local participants of both segments were High Court judges, leading lawyers, senior law teachers and a large number of postgraduate and research students of various law schools in both cities.

On the sidelines of the conference a brief consultative session was held in the city of Poona.

World of Books

Professor Tahir Mahmood's new book titled *Finger on the Pulse : Socio-Legal Concerns of 1998-2018* was published in February this year by Satyam Law International. The 350-page book contains a selection of his media articles published in leading English dailies since the beginning of 1998 till the end of 2018.

Professor Mahmood's latest book in Urdu – *Kis Se Munsifi Chahen* [Who to Seek Justice From] – was also published in February this year, by M.R. Publications. It is a collection of his media articles published in leading Urdu dailies during 2016--2018.

Asiatic Society Award

A prestigious academic organization was set up during the British rule in Calcutta under the name Royal Asiatic Society with aims and objects of encouraging and promoting higher studies and research in various social sciences. It is now a statutory body governed by parliamentary legislation -- the Asiatic Society Act 1984.

The Society has been conferring Gold Medal Awards on reputed scholars in various social sciences and allied subjects. This year the Society conferred one of its Gold Medal Awards on Professor Tahir Mahmood for his "Outstanding contribution to the study of law and society." The conferral ceremony was held in Calcutta on 3 June 2019.

Mourning Madhava Menon

On Wednesday 8 May 2019 breathed his last in Kerala, in his 85th year, a great law brain of the country and a great human being. This was NR Madhava Menon with whom my friendship lasted for half a century. We had first met in 1961 in Aligarh Muslim University where both of us were LLM students. A few years later we were colleagues in the Faculty of Law at Delhi University. In the years that followed Menon rose to great academic heights, set up many law schools in the country and came to be deservingly known as the doyen of legal education. His sudden departure was a great personal loss for me.

On the morning of Thursday 9 May I convened a condolence meeting at AIALS to mourn the loss of my distinguished friend. Our Scholars Room bore a gloomy look where I spoke with a disturbed mind and a heavy heart about the departed soul's qualities of head and heart.

Among the others who spoke at the emotionally surcharged meeting were Chairman of the Amity Law Schools Dr Dilip K. Bandyopadhyay, Director of Amity Law School Delhi Professor Arvind P. Bhanu, Additional Directors of the Amity Law School Noida Professors Shefali Raizada and Aditya Tomar, and Deputy Director of AIALS Arun Upadhyay. All hearts were sad, all eyes wet. May the departed soul rest in peace.

-- T. M.