

AMITY LAW WATCH

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Editorial
AIALS Turns Major

AIALS was born on 9th of June 2003 and had the proud privilege of being the first Amity institution to launch a PhD program in any subject whatsoever, and a Master's degree program in law. Beginning with a humble student intake, it has now on its rolls a sizable number of PhD scholars and nearly three hundred students pursuing LLM in five different specializations.

The *Amity Law Watch* was launched in 2003 as the institution's house journal. Print editions were brought out until 2017 after which it had to switch on to online mode. This is the fourth online issue, and is being released on the occasion of the eighteenth anniversary of AIALS.

Like all other Amity institutions on the Noida campus, AIALS had been closed for a full calendar year since March 2020 due to Covid 19 pandemic. It briefly reopened in March this year but due to a renewed upsurge of the virus had to be closed again after about six weeks. Since then, like all other Amity institutions in Noida, AIALS has been functioning online, in full swing. LLM classes in all the five specializations it offers, meetings of Departmental Research Committee, Oral Defence Committee meetings for outgoing PhD students, and interviews for new incoming PhD students, all have been duly conducted online, regularly and on time.

Hopefully we will resume functioning at the campus in a normal way in the forthcoming new academic year.

Obituary
Amity Laments Loss of Godmother

The outgoing month of May this year has, unfortunately, been a month of bereavement for the Amity campus.

On the 9th of May this year passed away Amity's grand old lady, Smt Lilawati, who had all along Amity's existence been a great source of inspiration for all those who have been connected with this great institution in any capacity.



In a circular mail issued on 10th May our beloved Founder-President Dr. Ashok K. Chauhan announced the tragedy in the following emotional words under a spiritual caption "Invitation of God for Nani Ji of All" --

"With deep sorrow and immense pain I have to share with my people, near and dear ones, that the respected Smt. Lilawati Ji, mother of our Chairperson Dr. Amita Chauhan Ji, my mother-in-law, and for the whole family and for all Amitians the beloved Nani Ji, left for heavenly abode on Sunday 9th May 2021 at 5.11 pm at Kailash hospital.... She was admitted there since 28 April 2021. She successfully fought out with Covid but God called her to Him with a cardiac arrest at the age of 95 on the Mother's Day. The cremation took place early forenoon today at Antim Niwas, near our campus in Noida."

It was indeed a sad day for Amity. May the noble soul of our departed godmother be blessed with Heaven's choicest blessings.

Story of My Eighteen Years with Amity 2003-2021



Tahir Mahmood
Distinguished Jurist, Professor of
Eminence & Chairman, AIALS
Chairman, FRC (Law), AUUP

Once in mid-1999, as the Chairman of the National Minorities Commission, I hosted to a dinner at my house my good old friend – classmate in AMU and colleague in Delhi University -- Professor Madhava Menon of Kerala. During the conversation at dinner he told me that a new law school had been set up, with his academic assistance, by a reputed business house headed by Dr Ashok Kumar Chauhan. Sometime later, on my way to Jamia Millia Islamia in Okhla I noticed atop a huge building next to the Escorts Hospital a big sign board with ‘Amity Law School’ written on it. Always deeply interested in promoting high quality legal education, I became inquisitive to know about the new school teaching five-year LLB courses.

I and Dr. Chauhan corresponded for some time to know about each other. We had our first meeting at the AKC House in Defence Colony and I was impressed by his debonair disposition. He apprised me of his ambitious plan to set up a private university in Delhi by the same name [Amity]. I promised all help in his mission and he designated me as Honorary Chairman of the Amity Law School. We then kept meeting periodically, in academic events and at each other’s home, and before too long developed a sort of affectional relationship as brothers.

On making up my mind in May 2003 not to continue with the DU Law Faculty, where I could have retained my job for another three years, I was exploring other possibilities. The Academy of Third World Studies at Jamia Millia Islamia headed by noted historian Professor Mushirul Hasan offered me a Visiting Professorship. When I told Dr Chauhan about it he offered me a full-time position at the Amity Law School affiliated with Delhi’s Indraprastha University.

I was reluctant as I had always been opposed to post-schooling 5-year law course, and as the Dean of the Delhi University Law Faculty had not agreed to introduce it there. Just 12th class pass students were, in my opinion, too immature to study law, especially since law was not taught as a humanity course at the school level. The trend, however, gained currency and law schools offering 5-year LLB course began mushrooming in the country by the name National Law Universities – all given charters by local governments.

I failed to understand how a state-level law school could be called a ‘national’ institution and how a school having about a hundred students being taught one particular subject by a handful of teachers could be called a university. But today almost every state in India has a National Law University under hybrid names like National Law *School of India University* -- giving a chance to law teachers to be called vice-chancellor. I, therefore, declined such a position of honour offered to me in two premier cities.

On knowing of my disinclination to join the Amity Law School, Dr Chauhan asked me to suggest how else I could join his educational network which he fondly wanted. I proposed to set up for him an Amity School of Religion and Law [ASRAL] to conduct research in religion, state and law relations worldwide. Dr Chauhan hailed the proposal and the proposed school was started, on 9th June 2003, on Amity's Yasho Bhawan premises which then housed the Amity law School and Amity School of Physiology.

Dr Chauhan had set up some more institutions as well to teach various subjects and was trying to get statutory back up for setting up a private university as an umbrella organization for all his institutions. The newly created Chhattisgarh State, following the world-wide trend of privatization of education, enacted a Private Universities (Establishment and Regulation) Act, to recognize as universities non-governmental institutions of higher learning with their headquarters in the State capital but having powers to open off-campus centers anywhere in India and off-shore campuses anywhere in the world. This was a giant step towards the long-awaited privatization of education in the country. Dr Chauhan seized this opportunity by the forelock and the existence of a full-fledged Amity University Raipur [AUR] was proclaimed by a governmental notification in Raipur on 12 June 2003 – just three days after my ASRAL had come into existence.

I then met Dr Chauhan with a proposal to elevate the baby institution I had set up as 'ASRAL' to a proper Amity Institute of

Advance Legal Studies [AIALS] – a name that I had borrowed from my alma mater in England – for imparting Master's and Doctoral level programs in law. Once again Dr Chauhan hailed my proposal and ASRAL was quickly elevated as AIALS retaining 'Religion and Law Studies' as one of its special-interest disciplines. I worked as its Honorary Chairman until 30th September 2003 and, on demitting office at Delhi University on that date, began devoting all my time to developing AIALS, for which Dr. Chauhan offered me unfettered freedom and necessary financial support.

I launched a house journal for AIALS, to be known as the *Amity Law Watch*, and its maiden issue was soon released at the AKC House in Defence Colony by Dr Chauhan's wife Dr Mrs. Amita Chauhan, Chairperson of the Amity International Schools network. A little later the same year, with a handsome personal donation of books I set up a library for AIALS, which Dr. Chauhan agreed to be named after my late lawyer-father as the Syed Mahmood Hasan Law Library. It was inaugurated on my father's 28th death anniversary on 18 December 2003.

On setting up AIALS I first launched an interdisciplinary PhD program, keeping it open also to lawyers, judges and law officers who did not have a Master's in law but had, with an LLB degree, gained at least ten years' experience of legal or judicial work. My innovative initiative attracted many and within a few weeks the enrolment to first batch of PhD program shot up to fifteen. Law Faculties at the universities teach about

twenty subjects to the LLM students making them master of none and jack of all. Dr. Chauhan readily agreed to my proposal that we will offer specialization at Master's level in law in chosen subjects only. In July 2004 I then launched a two-year LLM program in Human Rights.

I personally guided full-time and part-time PhD students' research work and also taught LLM classes. My invitation to Indian and foreign scholars to spend one or more semesters for non-degree research at AIALS attracted a number of researchers from various countries.

Soon there was an unforeseen development. On late Professor Yashpal's petition the Chhatisgarh Private Universities Act was struck down by the Supreme Court, leaving in a lurch the institutions which had been recognized under it as universities. Amity's Founder-President was, however, not a man to concede defeat. Before too long Amity was given a charter by the UP Legislative Assembly and the university began building a sprawling campus in Noida where AIALS also got its new premises in 2006.

In the coming years new LLM programs were introduced and adoption of one-year duration for the course in 2013 resulted into a dramatic increase in student intake. I had been given also the onerous responsibility to chair the Law Faculty Research Committee. Despite a terrible deficiency in faculty and staff, I could successfully manage AIALS affairs for long years.

In 2005 the new Prime Minister of the country Dr Manmohan Singh, whom I had known since his days in Delhi University,

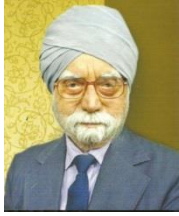
appointed me as Law Member of the newly set up Ranganath Misra Commission. As it did not require attending office daily, my work at Amity was not affected. At the end of this assignment in 2007 I was sent by the PM to the 18th Law Commission of India as its only full-time member. Dr. Chauhan then graciously made some special arrangements enabling me to take up my new assignment without affecting my work at AIALS.

My association with Amity never adversely affected my schedule of frequent visits to foreign countries to conduct short-term courses or attend global seminars. My routine as a prolific author was also not impeded in any way by my assignment at Amity. On the contrary, my thematic autobiography was first published by the Amity University Press in 2005. Since then till date I have written as many as twelve new books.

In my early years with Amity I managed all AIALS affairs independently with a fair degree of autonomy. Soon, however, came an era of intense centralization of university administration and its mechanical handling of academic affairs with the use of modern technology. There were anxious moments, but with the protective hands of Dr Chauhan and cooperation of my devoted colleagues I managed to adjust to the new system.

Throughout my eighteen years with Amity, along with all my other academic activities, I have nurtured AIALS to the best of my capabilities. Posterity will judge the worth of my contribution, if any, to the promotion of higher legal education in the country.

Story of my Association with AIALS



Justice Dr T. N. Singh
Ex-Judge, Assam & Madhya
Pradesh High Courts

[The learned judge has been a research programs advisor to AIALS and has instituted Yogita Mehta Annual Scholarship for Girl students of AIALS...Ed]

In December 1990 I had a chance to decide as a judge of the High Court of Madhya Pradesh a complicated case under Muslim law. In search of supporting materials I looked up the literature available. *Mulla* and *Fyzee* did not help. I could then lay my hands on a book captioned *Muslim Law of India*.

The title attracted my attention and, as I began reading it, the progressive interpretation of Muslim law found on every page of the book aroused feelings of deep appreciation. It became the source for my judgment which I began writing with the words:

“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”

I cited in my judgment some passages from that extraordinary book. The author of the book I am referring to was Professor Tahir Mahmood, then a Professor of Law in Delhi University, and this was my first acquaintance with him and his academic work. Out of curiosity I looked up for his credentials and found that he had won the admiration of former Chief Justice

of India Mohammad Hidayatullah, had been cited in a Supreme Court case by Justice V. R. Krishna Iyer, and Chief Justice Y. V. Chandrachud had reproduced several passages from his books in his judgment in the celebrated *Shah Bano* case of 1985.

In 2003, after leaving Delhi University and setting up an Institute of Advanced Legal Studies at Amity University, Professor Mahmood contacted me through the Registrar of Madhya Pradesh High Court. On being informed that I had demitted office and was living in Delhi he met me personally and told me that he wanted to associate me with his Institute at Amity in an advisory capacity. During the conversation we discovered, to our pleasant surprise, that both of us had pursued our doctoral research at different times in the same renowned institution – the School of Oriental and African Studies in London.

Since then Professor Mahmood and I have been good friends, and I am an eye witness to the phenomenal growth of the postgraduate education and research in law at Amity University owing to his tireless efforts and academic contacts worldwide.

Professor Mahmood has written a lot on various branches of law. Family law has been his lifelong passion and he has made strenuous efforts to offer progressive interpretations of traditional Hindu and Muslim laws with a view to ensuring justice to litigants. In his long career he has produced a large army of lawyers and judges all of whom have read his books during their

legal education days. In 2012, I was present at the function where Chief Justice Altamas Kabir, releasing his new book on Muslim law, paid glowing tributes to his scholarship and revealed that as a law student in Calcutta University even he had read his books. Former Chief Justice

Adarsh Sein Anand, who was his classmate in Lucknow University Law Faculty, had once said in a public function “Tahir used to study hard, he became a scholar, I took it lightly and became a judge.” A few months earlier Anand had relied on his opinion to resolve the misconception in legal circles about a misunderstood provision of the controversial Muslim Women (Protection of Rights on Divorce) Act 1986.

In 2013 when I decided to publish my memoirs, describing my experiences as a judge and incorporating parts of my doctoral thesis prepared in London, I requested Professor Mahmood to organize and edit the stray papers that I had prepared for this purpose. He readily agreed, and this is how came out my book *Quest for Justice; Miscellany of An Academic Judge*, published in 2014 by Universal Law Publishers. Our mutual respect for each other made him write about me in his book *Reminiscing on Law Brains* published in 2016.

Professor Mahmood continues to write, and the courts continue to benefit by his works and cite them in their judgments. The apex court’s long judgment of 2017 on the concept of triple divorce in Muslim law is full of references to his books. The number of High Court decisions relying on his views is almost countless.

AIALS Activities Update : 2020-21

R. P Singh

Academic Programme Officer, AIALS

Lamented Professor RL Kaul

On 27th May 2021 Amity University Law Faculty lost one of its ablest teachers Professor Ratan Lal Kaul. In his condolence message AIALS Chairman wrote:

“The news of our very dear colleague Professor Ratan Lal Kaul's sudden demise is extremely shocking. A great emotional setback to all those who, like me, loved him for his exceptional qualities of head and heart. May his noble soul rest in peace.”

Departmental Research Committee

The Departmental Research Committee of AIALS has been re-constituted inducting into it two new external members. The third external member – Director of the Indian Law Institute Professor Manoj Kumar Sinha – continues to be on the Committee for another term.

AIALS puts on record its deep appreciation of the valuable services rendered by the outgoing external members of its DRC -- Justice Jaspal Singh, former judge of Delhi High Court, and Supreme Court Advocate Dr. M. P. Raju -- both of whom have had high academic credentials and have written a large number of well-reputed books on various branches of law.

The new external members of the DRC are Professor Kiran Gupta of Delhi University Law Faculty and Dr. Manish Arora, Director of Universal Law Institute and a leading publisher of law books in India.

New Faculty

AIALS Professor Asha Verma left Amity during the current academic year. One Udai Pratap Singh, holding a Master's degree in law and pursuing PhD, has been appointed as an Assistant Professor. The number of faculty at the moment stands at four.

PhD Degree Recipients

Five PhD students registered with AIALS completed their research work during the academic year 2020-21 as detailed below and have since been awarded the degree:

Astha Mehta

Limited Liability Partnerships in India: A Comparative Analysis with Special Reference to the Law in Singapore

Lipika Sharma

Traditional Knowledge: A Tool to Mitigate Climate Change and Need for Legal Framework

Nirmal Rallan

Impact of Information Technology on the Legal Concept of Obscenity

Parul Yadav

Need of Gender Neutrality in Indian Criminal Law and Procedure – A Study in the Light of Moral Trends Worldwide

Smita Tyagi

Competition Law in India : A Comparative Analysis of Emerging Legal Issues

The viva voce examination of another PhD student Bhupal Singh, who had submitted his thesis in January this year, is slated to be held soon.

LLM Programs

Second semester examinations for the outgoing LLM batches are in progress. Admissions for the academic year 2021-22 have started and the intake this year is likely to touch 300 mark.

Alumni Reminisce about Days at AIALS

(a) General Research Program

Naima Haider

Judge, Supreme Court of Bangladesh

Professor Tahir Mahmood, a great legal scholar of India, was known to me through his books which I read as a law student in Dhaka and Columbia, and later as the Deputy Attorney General for my country. It was a pleasant moment of life for me when I met him during an international human rights conference in Malaysia.

Before too long I travelled to Delhi to become his student at AIALS to work on the problems of refugee law in Bangladesh. On several visits I had long learning sessions with him and enjoyed the excellence hospitality of his colleagues. The atmosphere at the institute was exceptionally congenial.

Now, as a judge, I make full use of his books, especially when I have a chance to decide a case under Islamic law. His progressive interpretation of the classical Shariah law is seen with deep appreciation at the Bench and Bar in my country. It was a proud moment for me when he invited me to India in 2014 to jointly chair, with an American and an Indian judge, the inaugural session of an International Law and Religion Conference that he had organized in Delhi.

It was like home-coming for me and an opportunity for reviving my contacts with my learned teacher, research guide, and advisor on academic issues. May God Almighty bless him with a long life.

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Joy S. Chambers
Attorney at Law, Alexandria, USA

In January 2005 I was at the National Law School of Bangalore in India, where I attended a few classes on Islamic inheritance law. It aroused my interest in the subject and I decided to do a short course in it with some reputed scholar.

Everyone I spoke to at the NLS told me that Dr Tahir Mahmood of the Delhi was *the* scholar I was looking for. Before too long I reached Delhi. Fortunately for me he had just launched a four-month course on Islamic law for which postgraduate students and researchers of various institutions in Delhi had registered, and I lost no time to become one of them. Indeed I could not have made a better investment of my time in India. It goes without saying that the substantive knowledge of Islamic law I gained from his lectures immeasurably enriched my knowledge and equipped me for handling Muslim law cases in my country.

Years later Dr. Mahmood informed me that he was in Washington DC. I was thrilled and drove to DC all the way from Alexandria to meet him and revive my sweet memories of being with him in India.

(b) PhD Program

KBS Rajan
Advocate, Supreme Court of India & Former Judicial Member, Central Administrative Tribunal

“Great men are always exceptional” said Samuel Smiles. Professor Tahir Mahmood, a versatile and erudite scholar, a legal luminary and internationally known academic figure fits in fully the this statement.

I have been his PhD student at Amity University where my research subject was socio-legal study of the caste system.. His first instruction was the seriousness with which I should take up the course and it put me in the right track. When my thesis was from my side complete and I was under the proud feeling that the same is perfect in all aspects, he pointed many shortcomings. Thanks to his continuous guidance, cautions and even admonitions, I eventually got my degree in 2006.

Whenever I think of him all that comes to my mind are the golden words of Oliver Goldsmith in his unique poem ‘The Village School Master’ found in *The Deserted Village* :

Yet he was kind or if severe in aught;
The love he bore to learning was in fault;
And still they gazed and still the wonder grew;
That one small head could carry all he knew.

Rakesh Gosain
Advocate, Supreme Court of India

Professor Tahir Mahmood is an ideal motivational teacher and an exceptional human being with superlative qualities of an inspiring and fearless leader wedded to the noble cause of perfect and accurate legal education. My association with him extends over three decades as his devoted student at different levels. There would hardly be any lawyer who has not read his books. On several occasions I have cited them in the courts with a matter of pride.

I was his PhD student in Amity University where I always found him either glued to books or teaching in the class. He is known for

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his phenomenal work on the family laws but I found him equally well-versed in other branches of law. My research topic was judicial approach to commercial frauds and it was amazing to find his deep insight also in this subject.

I can say that he has chiseled me not only for my profession but also for understanding humanism. He is one of the few who guide people regarding their duties to the society at large.

Ramesh Parajuli

Assistant Professor of Law, Tribhuvan University,
Kathmandu, Nepal

The Law Faculty of Tribhuvan University in my home country has on its teaching staff many former students of the Delhi University Law Faculty in India. Among them is Professor Ambar Pant who had finished his PhD in Delhi University when Professor Tahir Mahmood, Sir, was the Dean of the Faculty.

Barely after I finished my Master's in law, lady luck smiled on me and through Professor Pant's courtesy I met Tahir Sir in Kathmandu during an international conference. I told him of my desire of doing PhD under him and he readily agreed, Within a few weeks I was enrolled as his PhD student at Amity University.

My research topic was medical negligence in India and Nepal, and I was amazed to discover that, internationally renowned for his expertise in the disciplines of family law and laws relating to religion, Tahir Sir had a deep insight also into this subject.

During the long preparatory exercises for a new democratic and secular Constitution for my country Tahir Sir organized two international constitutional law conferences in Kathmandu and brought to our doors many world experts in constitution-making. It was a pleasant discovery for me to find that he commanded great respect among the high dignitaries in my country.

I revere him from the core of my heart. If God has any plan to give a next life to me, I would pray to be Tahir Sir's protégé.

(c) LLM Programs

Fenela Lyngdoh Nonglait

Former Chairperson, State Commission for Women &
Vice-Chairperson, State Law Commission, Meghalaya

In 2004 I got a rare distinction which I had never even dreamt of. On hearing that Amity University in Delhi had launched an LLM course in human rights, I felt deeply interested and travelled to Delhi to seek admission. The unique course had been started by the legendary legal scholar Professor Tahir Mahmood, Sir, who had moved from Delhi University to Amity and had set up there an Institute of Advanced Legal Studies. I met him there – and lo, became his very first student of the human rights program.

Enamoured by his profound learning and personal charm, on completing my two-year LLM course I decided to stay on at Amity as his PhD student. Gosh, what a journey ahead I had, knowing him in person and getting the privilege of sharing experiences with him.

He is a Muslim and I a Presbyterian Christian but, and yet side-stepping all these differences, a special Platonic relationship developed between us. He directed me to a new level of professional success and enabled me to tackle even most difficult encounters in life with ease.

I had heard of the Interfaith Summer School on Human Rights which Sir was conducting biannually at the St. Gabriel Institute in Vienna, and dreamt of someday participating in it. Sir made it a reality too soon. In July 2006 I travelled with him to Vienna and had a lifetime experience of being with him there for that extremely rewarding course. About fifty students from fifteen countries attended the program and Sir gave lectures, in his inimitable style, on human rights in a religious harmony perspective.

I remain in touch with him, seek his guidance on my personal and professional matters whenever necessary, and never miss visiting him whenever I am in Delhi. Undoubtedly, I owe my entire career to Sir. In the name of our Lord Jesus Christ I pray for his long life.

Sarvam Ritam Khare
Advocate, High Court of Delhi

I was an LLM (Human Rights) student at AIALS during 2006-08. Professor Tahir Mahmood's vast knowledge of the subject and unique style of teaching created inside me a sense of deep reverence for him. He knows several languages and an untiring and self-disciplined scholar. His special attention and affection for me shaped my personality and prepared me for future growth and I

remain deeply indebted to him till date. It has been his constant encouragement and inspiring guidance even after finishing my education Amity that enabled me to earn a PhD in law and enter the field of legal practice.

Kalivi Zhimomi

Assistant Professor, City Law College, Dimapur, Nagaland

I have known Professor Tahir Mahmood Sir since 2006 when I had taken admission to LLM (Human Rights) course in Amity University. From day one he was very kind and affectionate and gave special attention to my study requirements. After completing LLM I decided to practice in Delhi and on my request he sent me to his friend Dr. MP Raju for professional practice.

Later I was admitted to PhD program in Amity to do research work under his guidance on Christian laws in India. Gradually we developed a family relationship, which was indeed a great honour for me. I have travelled with Sir to Austria for attending a Summer School on interfaith studies and have attended with him a conference on constitutional law he had organized in Nepal.

Sir made me write articles on my research topic and published them in his journal, the *Amity Law Watch*. This prompted me to give up practice and go into academic career. Soon I was appointed on the faculty of a law college in my hometown, and for years I kept taking telephonic lessons from him before teaching my students. I remain under his affectionate guidance in all walks of life, which is a divine blessing for me.

Some Notable Supreme Court Decisions by DY Chandrachud, J. -- An Appraisal

Tahir Mahmood

Professor & Chairman, AIALS

A. Proactive Judge

“If the State targets individuals, they must realize that the apex court is there to protect them.”

This is what vacation judge Dhananjaya Chandrachud of the Supreme Court of India had said in November 2020 while hearing an appeal against the Bombay High Court decision in Arnab Goswani’s case. It was incidentally the young judge’s birthday and when a lawyer quipped that it was the “worst way” to spend a birthday, he retorted:

“No, this is actually the best way to spend it. I am in court judging and it is my life, I love it.”

Commendable, indeed. I am not concerned here with the facts of the case he was seized of, but hail his highly promising words that the apex court is there to protect the people against injustices inflicted by the custodians of state authority.

Antecedents

I have known Dhanajaya for over four decades, beginning with his student days in early 1980s in Delhi University Law Faculty which I had joined as a teacher seven years earlier. It was a pleasure for me to watch his growth through higher education at Harvard, followed by years of vibrant practice at the Bar and eventual elevation to judiciary – holding one after the other the posts of a High Court judge in Mumbai, the Chief

Justice in Allahabad and finally on the apex court bench. There has been something more than the old Delhi University connection to make me happy for his phenomenal rise. His learned father, former Chief Justice of India late Y. V. Chandrachud, and I were on friendly terms for long years.

The Habeas Corpus case of the notorious Emergency days (*ADM Jabalpur*, 1976) had been decided by a five-judge Bench of the apex court headed by the then CJI, AN Ray, handpicked for the coveted post by Indira Gandhi as Prime Minister by superseding three senior judges.

Among others on the Bench quietly supporting him were Hameedullah Beg and Y. V. Chandrachud, JJ. The former was soon rewarded with the position of CJI, once again out-of-turn, and on demitting office was succeeded by the latter in the order of seniority.

On becoming CJI, Chandrachud wiped out from his face the blot of having concurred with Ray in *ADM Jabalpur* by his own commendable ruling in *Minerva Mills* (1980) relating to the 42nd amendment of the Constitution which had attempted to overrule *Kesavananda Bharati* (1973).

Chandrachud had further built his reputation by his ruling in *Shah Bano* case of 1985 on divorced Muslim women’s rights. He had cited in it my appeal to the Muslims reproduced from one of my books that “they should begin exploring how the true Islamic laws, purged of their time-worn and anachronistic interpretations, can enrich the emerging common civil code of India.”

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Mourning Chandrachud's demise in 2008, late Justice VR Krishna Iyer had said "his vision was progressive, judgments lucid, diction exquisite, and performance at the Bench perfect."

When *Shah Bano*, believed in certain circles to have been overruled by legislation, was reaffirmed and revived fifteen years later in *Danial Latifi* (2001), I had written in a media column that "the late Chief Justice has been decisively vindicated."

Overruling ADM Jabalpur

The notorious *ADM Jabalpur* ruling had tarnished India's fair name as a democracy. Forty-seven years after it was pronounced, with Chandrachud senior as one of its silent supporters on the Bench, it was pointedly overruled by his son Dhananjaya in *KS Putthuswamy* (2017), saying:

"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."

What a commendable remorse indeed it was. Dhananjaya's laudable judgment in what is generally known as the Privacy Case (*Puttaswami*, 2017), overruling contrary decisions of six judge and eight-judge benches of the court pronounced during 1954-62, was another feather in his cap which he did uttering the following words:

"Life and personal liberty are inalienable rights. These are rights which are inseparable from a dignified human rights existence. The dignity of the individual, equality between human beings and the

quest for liberty, are the foundational pillars of the Indian Constitution."

Overruling Sowmithri

In the 2018 case of *Joseph Shine* Dhananjaya 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). Commenting on this development I had remarked in a media column "this sea change in judicial approach to the disputed provision of the Penal Code reflects 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 in my opinion abundantly logical and appealing to common sense.

Terming dissent as the "safety valve of democracy" Dhananjaya has authored several judgments affirming people's right to freedom of speech. His assurance that if the State targets individual citizens, the apex court is there to protect them is quite in keeping with his judicial philosophy. That certain cases have remained deprived of the impact of his zeal is a fact, unfortunate and undeniable. It is high time they are revisited in the interest of justice at the first available opportunity

B. Triple Talaq Case

"On a preliminary analysis it is clear that the appellant as the mother-in-law of the second respondent (wife) cannot be accused of the offence of pronouncement of triple talaq under the Act as the offence can only be committed by a Muslim man."

A Supreme Court Bench led by Dhananjaya. so observed in a case decided in January 2021 under the Muslim Women (Protection of Rights on Marriage) Act of 2019, popularly known as the anti-triple talaq law. The facts of the case show that the Act is being as gravely misunderstood as was, and still is, the true Islamic law on divorce.

Triple Talaq Tradition

The background of the anti-triple talaq law needs to be explained. The blatantly anti-women divorce customs prevalent in pre-Islamic Arabia had been given a severe blow by the teachings of Prophet Muhammad who was, indeed, a great social reformer. Demonstrating the truth of 'old habits die hard' unscrupulous men had innovated, in the course of time, ways and means to circumvent his noble teachings in that regard. One of these was the practice of 'triple talaq, – repeating the word talaq thrice -- which was believed to effect instant dissolution of marriage leaving no room for any reconsideration or reconciliation.

Instead of nipping into the bud that abominable innovation, law men of the time called it *talaq-ul-bidat* and declared it to be "sinful but effective." This self-contradictory concept remained in vogue for centuries in the Muslim societies across the globe.

Reforms Abroad

Twentieth century reformers in some Muslim-dominated lands at last woke up to the need to save families from devastation and demanded that what was "sinful" by religion must not be enforced by law.

Country after country in Asia and Africa, then, gradually abolished by legislation the detestable practice of triple talaq.

Concerns in India

India took a much longer time to follow suit. During the British rule the courts had accepted and enforced that "sinful but effective" form of divorce calling it a concept "bad in theology but good in law." In the early years after independence some High Court judges – VR Krishna Iyer of Kerala and Baharul Islam of Assam among them -- tried to awaken the custodians of state authority to the need for its abolition. A Muslim judge of Kerala bemoaned:

"Should Muslim wives suffer this tyranny for all times? Should their personal law remain so cruel towards these unfortunate wives? Can it not be amended suitably to alleviate their sufferings?"

Shayera Bano Case

Social reformers also demanded that what was bad in theology should be bad in law too. Finding that legislation required for it was nowhere in sight, the apex court of the country tried in some cases to indirectly curb the archaic practice and eventually outlawed it in *Shayera Bano* case of 2017. The anti-triple talaq Act of 2019 was the outcome of this judicial reform.

Provision for Bail

Section 498A of the Indian Penal Code [cruelty to a woman by her husband or his relatives] is often misused. This undeniable fact was once acknowledged by the apex court, though it had to withdraw under

feminist pressure the measures it had directed to be taken for curbing the trend. Like the said provision of the Penal Code the anti-triple talaq law of 2019 is also prone to misuse and their dishonest combination may play havoc with families.

In the triple talaq case under reference, lawyers of a Kerala woman had included her husband's mother in the FIR filed against him under the 2019 Act by vaguely alluding to the said IPC provision. For understanding the commonsense fact that this Act is meant to discipline erring husbands only, the learned lawyers needed a learning session with the apex court.

The provision for bail to be granted to the accused husband under Section 7 of the 2019 Act has been particularly misunderstood. Many lawyers misbelieve that it overrides the general provision for anticipatory bail under Section 438 of the Criminal Procedure Code. Soon after the enactment of the Act a man accused of committing the offence it had created sought anticipatory bail in the Bombay High Court. His wife's lawyers argued that the non-obstante clause in Section 7 of the Act had rendered the CrPC provision inapplicable to cases under its provisions. Rightly rejecting the argument, the court had granted bail.

On the contrary, in the case under reference the Kerala High Court had accepted the same faulty argument to refuse bail to the accused husband's mother, who then had to knock at the apex court's doors. Explaining the position under the Act, the court emphatically held:

"Parliament has not overridden the provisions of Section 438 of the CrPC. There is no specific provision in Section 7(c), or elsewhere in the Act, making Section 438 inapplicable to an offence punishable under the Act."

The verdict is a significant step towards the need to prevent misuse of the anti-triple divorce law.

C. Covid 19 Case

Another recent case decided by a Supreme Court Bench led by Dhananjaya that attracted my attention is the one relating to the Covid vaccine situation in the country of which the court took *suo moto* cognizance.

At the outset the learned judge clarified that the court was not breaching the principle of separation of powers between the three organs of the State – legislature, executive and judiciary – but had an obligation to perform its rightful role as assigned by the Constitution. Note these very meaningful observations:

"Our Constitution does not envisage courts to be silent spectators when constitutional rights of citizens are infringed by executive policies."

"Judicial review and soliciting constitutional justification for policies formulated by the executive is an essential function, which the courts are entrusted to perform."

Emphasizing the fact that the judiciary across the globe does respond to constitutional challenges to executive policies that directly or indirectly violate fundamental rights and liberties of the

citizens, the learned judge said:

"The courts have often reiterated the expertise of the executive in managing a public health crisis, but have also warned against arbitrary and irrational policies being excused in the garb of the wide latitude to the executive that is necessitated to battle a pandemic."

Reference was also made to the court's observation in *Gujarat Mazdoor Sabha* case of 2020 that:

"The policies to counteract a pandemic must continue to be evaluated from a threshold of proportionality to determine if they, inter alia, have a rational connection with the object that is sought to be achieved and are necessary to achieve them".

Summarizing the gist of the opinions expressed on the official policies relating to Covid vaccine the judge said:

"In grappling with the second wave of the pandemic, this Court does not intend to second-guess the wisdom of the executive when it chooses between two competing and efficacious policy measures. However, it continues to exercise jurisdiction to determine if the chosen policy measure conforms to the standards of reasonableness, militates against manifest arbitrariness and protects the right to life of all persons."

Concluding the arguments to justify taking *suo motu* cognizance the matter the judge said:

"This court is presently assuming a dialogic jurisdiction where various stakeholders are provided a forum to raise constitutional grievances with respect to the management of the pandemic. Hence, this court would, under

the auspices of an open court judicial process, conduct deliberations with the executive where justifications for existing policies would be elicited and evaluated to assess whether they survive constitutional scrutiny".

These observations of the judge will always be remembered by the students and scholars of ever-growing constitutional law of India.

D. Future CJI

Dhananjaya has already been on the court for over five years and has the making of a dynamic Chief Justice to serve the nation from November next year for about two years. I have a pious hope that his deep commitment to the primacy of citizens' fundamental rights under the Constitution of India will extend equally to all justice-seekers in each and every case and that several other wrongs of the past that need to be duly corrected will get his attention.

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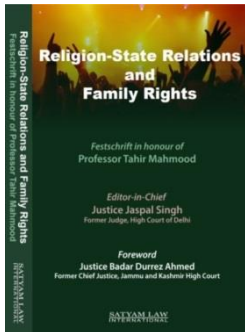
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Religion-State Relations and Family Rights

[A Festschrift for Professor Tahir Mahmood]

Yogesh Bhardwaj

Head, Publications Division, Satyam Law International



Published as festschrift in honour of India's highly reputed scholar Professor Tahir Mahmood, this book contains scholarly articles by foreign and Indian authors on the dual themes of the book (i) religion-state relations and (ii) family rights. It also includes a number of celebratory pieces written by the Professor's Indian and foreign admirers, friends and former students. The book ends with a selection of his own recent media pieces on its dual themes.

The 300-page book has been edited by Justice Jaspal Singh who has been a judge of the Delhi High Court during 1990-98 and after demitting office was designated as Senior Advocate of the Supreme Court of India. He is author of a large number of books on various laws and has been closely associated with the PhD program of the Institute of Advanced Legal Studies at Amity University.

Justice Singh as the Editor-in-Chief was assisted in the editing work on the book by the following former students of Professor Mahmood now holding high academic or professional positions:

1. Prof. Manoj Kumar Sinha
Director, Indian Law Institute
2. Dr. Kiran Gupta
Professor of Law, Delhi University

3. Dr. KBS Rajan
Advocate, Supreme Court & Former
Judicial Member of CAT
4. Dr. Rakesh Gosain
Advocate, Supreme Court of India

The book opens with a message from the former Vice-President of India saying "This volume is a tribute both to Professor Tahir Mahmood's academic excellence and to his contributions in a difficult and contentious area of public service."

Writing the Foreword to the book former Chief Justice of Jammu and Kashmir High Court Badar Durrez Ahmad, a former student of Professor Mahmood, says: "The contribution of Professor Mahmood in the field of law, through his decades of learning, scholarship, writing and teaching, is immense and is deserving of the greatest of respect for a true *ustad* that he is."

In his Preface Editor-in-Chief of the book Justice Jaspal Singh has said: "I feel Professor Mahmood comes out tall not as an author of scholarly books, not as a law scholar but as a teacher telling his students that they only are to author their lives. That what they need to do is to think, and not to applaud mindlessly."

The first Part of the book contains scholarly articles by the following foreign authors:

1. Professor Werner Menski : UK
2. Professor Silvio Ferrari : Italy
3. Professor Rik Torfs : Belgium
4. Professor Gerhard Robbers : Germany
5. Professor Carolyn M. Evans : Australia
6. Prof. Asher Maoz : Israel
7. Professor Navarro J. Floria : Argentina
8. Professor Hashim Kamali : Malaysia
9. Dr. M. Khalid Masood : Pakistan
10. Dr. Kamal Hossain : Bangladesh
11. Professor KB Thapa : Nepal

Three thematic articles by Indian authors included in this part have been written by Supreme Court Advocate Dr. MP Raju Madras High Court Advocate Sriram Panchu, Professor Kiran Gupta of Delhi University Law Faculty. The total number of scholarly articles on the dual themes of the book is fourteen, and each of these pieces is academically excellent and extremely informative

Celebratory articles

The second Part in the book contains the following five celebratory five articles about Professor Mahmood's personality and academic work:

1. Prof. Imtiaz Ahmed
Former Law Dean, Calcutta University
2. Prof. Manoj Kumar Sinha
Director, Indian Law Institute
3. Prof. SM Afzal Qadri
Former Law Dean, Kashmir University
4. Dr. Manish Arora
Director, Universal Law Institute
5. Dr. Saif Mahmood
Advocate, Supreme Court of India

Part II of the book also includes appraisals of Professor Mahmood's academic work by:

1. Professor W. Cole Durham
Brigham Young University in the Unites States
2. Professor Liviu Olteanu
Secretary-General of International Association for Defense of Civil Liberty in Switzerland
3. Journalist Hasan Suroor of London

Appraisal notes by Indian authors include those of:

1. Professor Upendra Baxi
Former Vice-Chancellor, Delhi University

2. Syed Shahid Mahdi
Former Jamia Millia Vice-Chancellor
3. Bollywood Lyricist Javed Akhtar
4. Dr. SY Quraishi
Former Chief Election Commissioner
5. Dr. Mohini Giri
Former Chairperson, Women's Commission
6. Advocate Indira Jaising
Former Additional Solicitor General of India
7. Advocate AS Chandhiok
Former Additional Solicitor General of India
8. Dr. Zeenat Shaukat Ali
St. Xavier's College, Bombay
9. Journalist Zia Us Salam
Editor, Frontline Magazine, Delhi

In a separate section in this Part glowing tributes have been paid to Professor Mahmood by some of his former students.

Among them are his three PhD students at Delhi University Law Faculty -- Nimal Samarasundera of Sri Lanka, Aliyar Arshadi of Iran, and Kiran Gupta

AIALS alumni who have written for this section are Attorney Joy S. Chambers of USA, Justice Naima Haider of Bangladesh and Ramesh Parajuli of Nepal. With them are KBS Rajan of Delhi and Fenela Nonglait of Meghalaya.

The Supplement to the book contains Professor Mahmood's nineteen media columns of 2019-20 on the current social and legal issues, published in leading dailies.

We at Satyam Law International are indeed proud to be the publishers of this very valuable anthology consisting of eminent Indian and foreign scholar's articles.

Gone with the Wind: Lamenting Loss of Some Legal Luminaries

In the second quarter of 2021 the world of law has lost several legal luminaries with some of whom I have had very special relations. With a heavy heart I pay my humble tributes to them. T. M.

A. Soli J. Sorabjee



Soli sitting with one of my books in his hands -- along with Chief Justice Altamas Kabir, Justice Badar Durrez Ahmed, myself, and Justice BA Khan

Eminent jurist and Supreme Court lawyer Padma Bhushan Soli Jehangir Sorabjee died on 30 April. A Parsi Zoroastrian by faith, he had served as the Solicitor General of India during 1977-80 and, in later years, twice as the Attorney General for India. I had known him since long and had published some of his brilliant legal articles in my two journals – *Islamic and Comparative Law Quarterly* and *Religion and Law Review*.

Later during my days as the Chairman of National Commission for Minorities I and he had become good friends. He launched my two books – *Politics of Minority Educational Institutions* in 2007 and *Muslim Law in India and Abroad* in 2012. I wrote a short piece about our friendship in my book *Reminiscing on Law Brains* (2015).

Soli used to regularly write in the Indian Express, often with a bit of humour. In one of his recent articles, describing an incident in the court he wrote:

“There are judges and judges and lawyers and lawyers, and as Charles Dickens wrote, “if the law supposes that the law is an ass” I wonder what would be Dickens’ reaction to this incident.” [18 May 2020]

On Soli’s death glowing tributes were paid to him in the same newspaper by a number of academic and professional lawyers. My classmate in London and a dear friend, former Additional Solicitor General of India Indira Jaising, wrote:

“Soli was a man of multiple talents. He was known not only as a lawyer, but also as a jazz lover, art critic, and his columns in the *Indian Express* were widely read. Despite his multiple successes, he never lost contact with ordinary members of the bar and was often found in the Supreme Court bar room interacting with all of us. His was a time when the bar was not politicized. He did not participate in party politics nor the politics of the bar. Today, it would be almost impossible to find such a person, for success is almost impossible without political alignments.”

Former Law Professor and Vice-Chancellor of Delhi University Brother Upendra Baxi wrote:

“I shared a warm and cordial friendship with this votary for human rights and multi-faceted personality. He not only protected the freedom to dissent but practised remarkable hospitality to public criticism. Mildness was a virtue of Soli as I knew him. In public life, he was not given to expressions even of just indignation. I have witnessed moments of great irritation and even flashes of exasperation, but never fits of temper. Soli believed in (as eminent philosopher Ludwig Wittgenstein said once about the task of philosophy) ‘showing the fly the way out of the fly bottle.’ He believed in the basic principles of law and justice, but all his life regarded principled pragmatism as a virtue of democratic lawyering and justicing.”

Soli’s contribution to the development of Indian law and human rights jurisprudence is indeed unforgettable. He will remain alive, always, through his monumental legal works.

II. Two Bright Law Scholars



Riyaz
Punjabi

Autar
Krishen
Koul

Half a century ago I had started my law teaching career at the Aligarh Muslim University. There was no law department then in Kashmir University and students from the valley used to come to either Delhi or Aligarh to study law.

In the first batch of LLB students I taught there were several Kashmiri boys, two exceptionally bright among whom were Riyaz Punjabi and Autar Krishen Koul. Both completed their two-year postgraduate LLB course from AMU. I then left Aligarh and they too went elsewhere for higher education.

Riyaz grew as an eminent legal scholar, taught law in Kashmir and JNU and finally rose to become the Vice-Chancellor of his alma mater, the University of Kashmir. Autar was, in later years, my colleague first at the Indian Law Institute and then at Delhi University Law Faculty. Finally he served as Vice-Chancellor of the National Law Universities of Jodhpur and Ranchi, one after the other. Both of them wrote many popular books and achieved high reputation in the academic world.

In recent years Riyaz was struck by cancer and after boldly facing the dreaded disease for long years died on 8 April this year. His wife Tarannum Riyaz, a popular writer and poetess, could not bear the loss and breathed her last barely six weeks later, on 20 May.

Autar was keeping bad health for some time and passed away at his Delhi residence on 21 April. May both the departed souls rest in peace.

III. My Elderly Friend in Austria



I with Father
Andreas Bsteh,
Professor &
Director, St
Gabriel Institute,
Vienna

In 1996 when I was serving as Chairman of the National Minorities Commission I received an invitation from an unexpected quarter for attending an inter-religious dialogue conference in the Austrian capital city of Vienna. The organizer was Father Andreas Bsteh, Professor of Ecclesiastical Law and Director of St Gabriel Institute for the Study of Religion and Theology in a suburb near Vienna.

I attended the conference in 1997, and this was the beginning of a long fraternal relationship with a noble soul whose qualities of head and heart attracted me towards him more and more each time I met him. We became brothers and comrades in arms to work for inter-religious peace around the world. Together we edited proceedings of several conferences he organized in Vienna. Soon came into existence a Vienna Inter-Religious Dialogue Foundation and I was put on its five-member International Steering Committee.

In 2006 the Foundation started a very attractive program of bi-annual summer schools at which I taught with several other world scholars. Year after year I sent student-participants from India, including two from Jamia Millia Islamia and three from the AIALS.

I had my last meeting with my dear friend in 2013 when he had organized in Vienna a valedictory conference to wind up his enormous work. We remained in touch till his sad demise on 9th June this year. May he be granted heaven's choicest blessings.