



V ALIGARH LAW JOURNAL, *Mahmood Number*. (1973). Edited by Arshad Masood and Anis Ansari. Faculty of Law, Aligarh Muslim University.

IN 1965 the maiden issue of the *Aligarh Law Journal*<sup>1</sup> was reviewed in these columns by a visiting scholar from the School of Oriental and African Studies, London.<sup>2</sup> After a lapse of nine years it is re-entering the galaxy of legal literature picked up for our review section. The reason meriting this re-entry is nothing else but the great significance and relevance to legal education and research which volume V of the journal, under review, undoubtedly possesses.

In the legal history of India judges have played a role no less important than the rulers and legislators. In the evolution of certain branches of our legal system judges have played in fact a more creative role than the other law makers. This is very true of the contribution of Justice Syed Mahmood, the first native judge of the High Court of Judicature at Allahabad, to the development of Indian family law. The Aligarh Law Faculty has done a great honour to itself by devoting a special issue of its journal to a study of this great jurist-judge to whom it, in a way, owes its existence. To all others interested in legal research the Faculty has rendered a valuable service in bringing out the study under review. It is a coincidence that while the two co-editors of the special issue have given personal attachment as one reason for their interest in the work,<sup>3</sup> this reviewer too can claim a special link with the great judge.<sup>4</sup> However, Syed Mahmood belongs to the whole of India. He is a national figure. His illustrious judgments, judicial philosophy and extra-judicial writings constitute a treasure belonging to the entire legal profession in India including judges, lawyers and teachers and students of law. A research in his ideas and opinions is surely a research in the academic riches of the nation. These ideas and opinions lying in the law reports inaccessible to common man, or in the archives, were *Paradise Lost*. The special issue of the *Aligarh Law Journal* collecting and presenting them in a systematic way is *Paradise Regained*.

---

1. Hereinafter referred to as *A.L.J.*

2. VI *J.I.L.I.* 170 (1965).

3. V *A.L.J.* (1973), Editorial Note. iii.

4. Rai Bareilly in Uttar Pradesh which had the honour of having Syed Mahmood as district judge during 1879-1882 is the present reviewer's ancestral home town. It was a case arising from and decided by Syed Mahmood in this district which led to his elevation to the High Court. See Arshad Masood, 'The case which raised Syed Mahmood to High Court Judgeship', V *A.L.J.* 245-66 (1973).



Considerable research has been done by most of the contributors for their articles. Their labour has brought to limelight the relevance to contemporary trends of many esteemable judgments of historical importance delivered by Syed Mahmood. Of special interest to this reviewer were Justice Krishna Iyer's befitting appraisal of *Abdul Kadir*,<sup>5</sup> Dean Hasan's significant comments on *Allahabad*,<sup>6</sup> Musharraf Ali's scholarly assessment of *Babulal*<sup>7</sup> and Arshad Masood's impressive exposition of the *Rai Bareli* case.<sup>8</sup> Justice S.N. Dwivedi's note on Syed Mahmood's contribution to "Humanitarianism in Law"<sup>9</sup> and Virendra Rekhi's "micro-study" of Mahmood's "realist-activist approach"<sup>10</sup> are real masterpieces not only reminding the readers of Mahmood's judicial philosophy but also leaving on them deep impressions of the two authors' great insight into the doctrinal features and jurisprudential values of judge-made laws. No less valuable is the classified study of Mahmood's judgments in the areas of contract, Hindu law, criminal procedure and religious freedom. These have been made by different authors, their names ranging from new entrants to law teaching fraternity to seasoned writer-teachers like I.C. Saxena. Shariful Hassan's comprehensive catalogue of Mahmood's judgments<sup>11</sup> is very informative and also well-tabulated. It will certainly earn the appreciation of researchers.

One of the most interesting and highly academic pieces in the volume is judge Mahavir Singh's comparative study of the verdicts on certain aspects of Muslim law given by Syed Mahmood and the great reformer-judge Syed Ameer Ali.<sup>12</sup> The learned author believes that Syed Mahmood's verdicts show a "highly pragmatic judicial approach" as against Ameer Ali's "great flair for theoretical analysis."<sup>13</sup> In making this rather sweeping observation the author seems to have been unconsciously influenced by the fact that he was writing for a Mahmood festchrift. Ameer Ali's exposition of some of the slips made by Syed Mahmood and his deviations from the latter's opinions call for a more cautious research.

Many do not know that Mahmood, the renowned judge, was also the author of some less known law books written in Urdu, the court language of Northern India in his time. Judge Mahavir Singh's review of Mahmood's

---

5. I.L.R. (1886) 8 All. 149; V *A.L.J.* 68-74 (1973).

6. I.L.R. (1888) 10 All. 290; V *A.L.J.* 82-86 (1973).

7. I.L.R. (1884) 6 All. 509; V *A.L.J.* 222-228 (1973).

8. Civil Case No. 4 of 1880; V *A.L.J.* 145-65 (1973).

9. V *A.L.J.* 60-62 (1973).

10. *Id.* at 108-131.

11. *Id.* at 234-95.

12. *Id.* at 181-196.

13. *Id.* at 196.



*Law of Evidence in British India*<sup>14</sup> and Fazlur Rahman's appraisal of his works on divorce (*Kitāb al-Talāq*) and pre-emption (*Kitāb al-Shuf'a*) in Muslim law<sup>15</sup> will, therefore, arouse great interest. It is unfortunate that these expositions of legal principles by such a great judge were never translated into any other language. He who delivered the historical judgments in the cases of *Abdul Kadir*<sup>16</sup> and *Gobind Dayal*<sup>17</sup> must have had something really important to say about the Muslim laws of divorce and pre-emption in his monographs on these subjects. The Aligarh Law Faculty may be advised to get these works translated into English.

The volume under review includes a piece on Syed Mahmood as an educationist<sup>18</sup> and another on his literary genius.<sup>19</sup> Though quite important in themselves, these articles seem to be rather out of place in a legal periodical which has constantly maintained the tradition of eschewing non-legal materials of all kinds. On the contrary we do not find in the volume any specific study of Syed Mahmood's ruling in *Jafri Begum*.<sup>20</sup> This was a judgment tantamount to a significant judicial reform in the *Hanafi* law relating to administration of estates.<sup>21</sup> It deserved coverage in a detailed and exclusive essay rather than a few petty references which some of the articles in the volume do contain.

The volume seems to be well edited. Though one of the editors in his preface humbly attributes "such merits as this 'Special Number has'" to his colleagues whose help he has acknowledged, the volume itself speaks aloud of the pains taken by him and the co-editor.

The hard work done by the various authors of the articles included in the volume, and by the editors, remind the present reviewer of what the *All India Reporter* had observed about the first issue of the *Aligarh Law Journal* :

If the example of the Law Faculty of the Aligarh University is emulated by the law faculties of other universities, we are sure, a day will not be far off, when we will have our Storys, Salmonds, Pollocks and Diceys.<sup>22</sup>

14. *Id.* at 318-322.

15. *Id.* at 323-334.

16. I.L.R. (1886) 8 All. 149, relating to Muslim matrimonial law.

17. I.L.R. (1885) 7 All. 775, relating to Muslim law of pre-emption,

18. V *A.L.J.* 313-22 (1973).

19. *Id.* at 98-107.

20. I.L.R. (1805) 7 All. 822.

21. See J.N.D. Anderson, Islamic Law of Testate and Intestate Succession and the Administration of Deceased Persons' Assets, in Tahir Mahmood (ed.), *Islamic Law in Modern India* 206 (1972).

22. *A.I.R.* 1965 *Journal* 15; reviewing 1 *A.L.J.* (1965). 2 *A.L.J.* (1966) was reviewed, again with deep appreciation, in *A.I.R.* 1967 *Journal* 44.



The very impressive Syed Mahmood festschrift should be well received in all sections of legal profession and must adorn the shelves of all law libraries.

*Tahir Mahmood\**

---

\* Associate Research Professor & Joint Editor, *Annual Survey of Indian Law*, Indian Law Institute, New Delhi.