

A Tribute to Justice Mehar Chand Mahajan

By Justice Jagdish Singh Khehar¹

1. Justice Mehar Chand Mahajan acquired his law degree from the Panjab University, Lahore, and started his legal practice at Dharamshalla. Soon, he shifted to Gurdaspur. It was at Gurdaspur, that he attained recognition as a lawyer. He thereafter, moved to the Lahore High Court. Within a few years, he became a leading advocate at Lahore, where he argued many important cases.

2. Maharaja Hari Singh, the ruler of Jammu and Kashmir (- in May 1947), sent Maharani Tara Devi and his son, Dr. Karan Singh, to meet Justice Mahajan, to offer him, the post of Prime Minister. It is known, that Justice Mahajan's name was proposed by Sardar Patel - the then Home Minister of India. Before the offer could fructify, Justice Mahajan was made a member of the Redcliffe Commission. As a member of the Commission, he made a momentous contribution, by persuading Lord Mountbatten, to award Gurdaspur (- initially awarded to Pakistan), to India. Gurdaspur district, was a muslim majority area, and in view of the principle, on which the division of the

¹ Judge, Supreme Court of India, delivered at the Convocation of Panjab University on 01.10.2016.

country took place, the Pakistan lobby expected the entire Gurdaspur district, to be annexed to Pakistan. Justice Mahajan's suggestion, that River Ravi should be made the boundary, dividing India and Pakistan, was the reason for the change. Only because Gurdaspur is a part of India, it became possible for India to make a road and rail link, connecting Jammu & Kashmir, with the rest of the country.

3. After the Redcliffe award, Justice Mahajan who was then the Chief Judge of the High Court of East Punjab, took leave with the permission of the Government of India, and joined the post of Prime Minister of Jammu & Kashmir, in September 1947. At that juncture Guru Golwalkar of the RSS, was visiting Srinagar, to persuade Maharaja Hari Singh to join the Indian Union. Justice Mahajan's role, along with Guru Golwalkar, in persuading Maharaja Hari Singh, to take the decision, regarding the accession of Jammu & Kashmir, with India, cannot ever be forgotten.

4. Justice Mehr Chand Mahajan was appointed judge of Federal Court and he took his oath of office, on 1st October 1948. On 4th December, 1953, Justice Mahajan took over as the third Chief Justice of India. Contributions of Justice Mahajan, both on

and off the Bench, will always remain a philosophical stimulus for the legal fraternity. Justice Mehr Chand Mahajan dispensed justice without fear or favour. Law Reports are a testimony of his work as a judge.

5. His bench redefined the scope of special leave to appeal, under Article 136. In the ***Bharat Bank v. Employees of the Bharat Bank***, it was unanimously held, that the right and jurisdiction conferred on the Supreme Court under the Constitution, could not be abridged, by any statutory provision. Justice Mahajan expressed the view, that to allow the election law to be interpreted independently, by scores of election tribunals, would greatly endanger the democratic process. The proposition was then extended, to other tribunals also.

6. One of his famous decisions, which created a furore, was in ***Romesh Thaper v. State of Madras***. The Supreme Court declared the Madras Maintenance of Public Order Act, 1949 as unconstitutional. It was held, that freedom of speech and expression, could only be abridged, when its exercise undermined the security of the State, or tended to overthrow the State. The same bench in ***Brij Bhushan v. The State of Delhi*** declared, that a pre-censorship order, passed against the

newspaper – ‘Organizer’, was unconstitutional. Thereafter, Parliament amended the Constitution, and widened the scope of permissible incursion, in the right of freedom of speech, by inserting ‘public order’, as one of the grounds of reasonable restriction.

7. Another landmark case, which led to an amendment of the Indian Constitution was, ***Dwarkadas Shrinivas v. Sholapur Spinning and Weaving Co. Ltd.***, where the Supreme Court held an act unconstitutional, because it had taken away all the rights of a Company, even though the paper title remained with the Company. The court declared this, as a deprivation of the right to property. The Parliament proceeded to amend the Constitution. The fourth amendment to the Constitution, undid the definition of property rights.

8. Justice Mahajan also had a strong inclination towards education, and educational institutions. The President of India, knowing his ability, designated him as his nominee to the Executive Council of the University of Delhi, and in the absence of the then Vice-Chancellor, Justice Mahajan acted as a *de facto* Vice-Chancellor, for around seven months, till the new Vice-Chancellor was appointed. He declined the Vice-Chancellorship

of many reputed Universities, such as, the University of Allahabad, the Banaras Hindu University, and the Panjab University. Despite that, he continued his active association with the Panjab University. Literally, till the last day of his life. It was while he was attending a Senate meeting of the University at Chandigarh, on 11.12.1967 he suffered a heart attack, which proved to be fatal. He also associated himself with dedication, to the DAV College Managing Committee, which was close to his heart.

9. His three famous writings were titled “**Preserving Unity of India, How to Increase Food Production,** and **Kashmir’s Accession to India**”. They exhibit, his patriotic bent of mind. He was a fervent nationalist.

10. With these words, I pay my humble tribute to Justice Mehr Chand Mahajan.

Thank you.

Jai Hind !