

Full Court Reference in Memory of The Late Justice Mohammad Hidayatullah

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By P.D. Desai, Chief Justice, High Court, Bombay

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Mr. Government Pleader, Mr. President of the Bombay Bar Association, Mr. President of the Western India Advocates' Association, Mr. President of the Bombay Incorporated Law Society and Members of the Bar:

We are assembled here to make reference to the sad demise of Justice Mohammad Hidayatullah, a former Vice President and Chief Justice of India, in the early hours of the 18th of this month.

It is difficult to encompass in a few words the variegated and distinguished career of the eminent jurist, scholar, educationist, author and linguist. His life span of four score and seven years symbolised significant achievement at each important stage, bringing honour and glory not only to himself but also to the institutions which he served and to our country.

Justice Hidayatullah was born on 17th December 1905 at Betul in the erstwhile Central Provinces and Berar. He was the youngest son of Khan Bahadur Hafiz Mohammad Wilayatullah, who was an Urdu poet of all India repute. He was educated at the Government High School, Raipur and Morris College, Nagpur. While in college, he was the recipient of the Philip's Scholarship. When he graduated in 1926, he was awarded the Malak Gold Medal. He went to England for prosecuting further studies in the Trinity College, Cambridge and obtained B.A. and M.A. Degrees from there. He was called to the Bar from Lincoln's Inn in 1930 when he was just 25 years old.

On his return to India, he was enrolled as Advocate of the High Court of Central Provinces and Berar at Nagpur on 19th July 1930. While at the Bar, he taught Jurisprudence and Mahomedan Law in the University College of Law at Nagpur and was also the Extension Lecturer in English literature. On 12th December 1942, he was appointed Government Pleader in the High Court at Nagpur. On 2nd August 1943, he became the Advocate General of Central Provinces and Berar and continued to hold the said post till he was appointed as Additional Judge of that High Court on 24th June 1946. He was appointed as Permanent Judge of the said High Court on 13th September 1946. On 3rd December 1954, he was appointed as the Chief Justice of Madhya Pradesh High Court. On 1st December 1958, he was elevated to the Supreme Court and became the Chief Justice of India on 25th February 1968. He retired from that high office on 17th December 1970. In his time, he was the youngest Advocate General, the youngest Chief Justice of a High Court and the youngest Judge of the Supreme Court of India.

While he was holding the post of Chief Justice of India, the then Acting President of India, late V.V. Giri, tendered resignation in order to contest the Presidential Election. Justice Hidayatullah was thereupon sworn in as the Acting President of India on 20th July 1969 and served in that capacity till late V.V. Giri was sworn in as the duly elected President of the Republic. After his retirement as the Chief Justice of India, he was unanimously elected as the Vice President of India as a result of a consensus amongst different political parties and occupied that high office with distinction from 1979 to 1984. As Vice President, he presided over the Rajya Sabha and conducted its proceedings with great dexterity and wisdom. During his tenure as Vice President, he again acted as the President in 1982.

Justice Hidayatullah was a man of many parts. Besides holding the high posts referred to above, he occupied responsible positions in diverse fields of human activity and interest. While prosecuting studies at Cambridge, he was elected as President of the Indian Majlis in 1929. From 1932 to 1935, and once again from 1943 to 1946, he was a Member of the Nagpur Municipal Corporation. He had the distinction of being appointed Honorary Bencher of Lincoln's Inn in 1968 and was also the President of Honour, Inns of Courts Society, India. He was Dean of Faculty of Law of the Nagpur University from 1951 to 1955 and was also a Member of the Faculties of Law of the Sagar and Vikram Universities. He was Pro-Chancellor of the Delhi University from 1968 to 1970, Chancellor of the Jamia Millia Islamia from 1969 to 1985, Chancellor of the Delhi and Punjab Universities between 1979 and 1984 and Chancellor of the Hyderabad University from 1986 to 1990. He was the President of the Indian Law Institute from 1963 to 1970, President of the International Law Association (Indian Branch) from 1968 to 1970 and of the Indian Society of International Law in 1969-70. He was, at one time, a Member of the Executive Council of the World Assembly of Judges and of the Managing Committee of the British Institute of International and Comparative Law. He was a Member of the International Council of Former Scouts and Guides, Brussels, and Chief Scout of the Boys Scouts Association of India. He held the posts of the President of Bombay Natural History Society and of the Patron of Schizophrenic Research Foundation of India and Commonwealth Society of India. He was also a Member of the World Association for Orphans and Abandoned Children and a Settlor of the Jawaharlal Nehru Cambridge University Trust. This is not a full account of his close association with various institutions and organisations but only a glimpse into his multi-faceted activities and interests.

Justice Hidayatullah represented India in International Conferences held in different countries and cities, such as, Washington, London, Geneva, Sydney, the Hague, Tokyo, Stockholm, Belgrade, Cairo and Bangkok. He was the recipient of many honours, awards and honorary degrees. He was given the Order of the British Empire in 1946, the War Service Badge in 1948 and the Key of the City of Manila in 1971. In our country, he was given the Shiromani Award in

1986, the Architects of India Award in 1987 and the Dashrathmal Singhvi Memorial Award of the Banaras Hindu University. As many as 12 Indian Universities and the University of Philippines conferred upon him the honorary degree of Doctorate of Law or Literature, as the case may be, between 1970 and 1987. He had to his credit as many as 15 Publications, amongst which "A Judge's Miscellany" and "My Own Boswell" are widely read in the legal world. He was also the editor of Mulla's Mahomedan Law and of the Indian Penal Code, the Indian Evidence Act and the Criminal Procedure Code authored by Ratanlal and Dhirajlal.

During his long tenure in the Supreme Court, he was a party to and author of a number of landmark judgments. In his concurring judgment in *Golaknath v. State of Punjab* (AIR 1967 SC 1643), he held that fundamental rights are outside the amendatory process, if the amendment seeks to abridge or take away any of the rights, and that for abridging or taking away fundamental rights, a constituent body will have to be convoked. In his leading majority judgment in *Madhav Rao Scindia v. Union of India* (AIR 1971 SC 530), popularly known as Privy Purse case, he held that the Order of the President directing that Madhavrao Scindia would cease to be recognised as the Ruler of Gwalior on and with effect from the date of the said order was ultra vires. This declaration of law resulted in restoration of the Privy Purses received by the Rulers and also ensured continuance of their personal privileges. In *Ranjit D. Udeshi v. State of Maharashtra* (AIR 1968 SC 881), he declared the law on the subject as to when a book can be regarded as obscene. The Judgment laid down important tests of obscenity and their application to the well-known book "Lady Chatterley's Lover" written by Lawrence shows his deep insight into law and literature. His Judgment in *E.M.S. Namboodripad v. T.N. Nambiar* (AIR 1970 SC 2015) illustrates his deep study of the teachings of Marx, Engels and Lenin. Indeed, in the course of the said judgment, he pointed out how Communists in our country distorted the approach of those eminent men. This brief reference to his decisions in only some of the many cases he decided shows that he was not only a learned man of law but also a person well versed in literature, philosophy and political theories. Justice Hidayatullah was a warm and friendly person who could mix with one and all on even terms. His death is a loss not only to the members of his family but also to a large number of his friends and admirers. His life was full of vigour and diligence till almost the last day. All that remains now is the memory of the work he did in the Apex Court and in diverse other fields.

On behalf of my colleagues and myself, I extend to Mrs. Hidayatullah and to his son who practices as a Counsel in this Court and to the other members of the family, our heartfelt condolences in their hour of sorrow. May his soul rest in peace.

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