

Quaid-i-Azam Mohammad Ali Jinnah and Fundamental Rights

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The dynamic personality of Quaid-i-Azam Mohammad Ali Jinnah, the founder of Pakistan, was a combination of the characteristics of the eminent leaders of the world. Jinnah had the acumen of Ata Turk, charisma of Churchill, dignity of De Gaulle, frankness of Faisal, greatness of Gandhiji, magnetism of Mandela and rationality of Roosevelt.

Former US President Clinton at the Chief Executive's lunch in Islamabad in 2001 described Mr. Jinnah as a greatest constitutional lawyer of the Commonwealth. Dr. B.R. Ambedker, the Architect of the Indian Constitution, writes: "It is doubtful if there is a politician in India to whom the adjective incorruptible can be more fittingly applied". Mr. Jinnah declined the British offers: Judgeship of the High Court, membership of the Central Executive, knighthood and the Governorship of the Province and he always maintained that he would like to remain "plain Mr. Jinnah". His membership of the Indian Assembly from 1909 to 1947 and that of Constituent Assembly of Pakistan from 1947 to 1948 showed that he was a polished parliamentarian. His experience in dealing with

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Royal Commissions, Round Table Conferences and the Cabinet Mission displayed his negotiating skill.

In the Muslim League Session held at Delhi in December 1926 Mr. Jinnah proposed that the future Constitution of India should secure and guarantee, among others, the following basic and fundamental principles:

Full religious liberty i.e., liberty of belief, worship, observances, propaganda, association and education shall be guaranteed to all communities.

In the famous Fourteen Points formulated by the Quaid-i-Azam in 1928, point No.8 embodied the provisions relating to liberty, association, education, belief and other fundamental rights and it was demanded that such rights should be guaranteed to all the communities. He pleaded the cause of freedom of press and speech.

Whenever political leaders were detained like Ali Brothers, Sardar Patel, Subash Chanderbose, Khan Abdul Ghaffar Khan and Mrs. Annie Besent etc. Mr. Jinnah condemned the action of the authorities and demanded their immediate release.

When the infamous Rowlett Bill was moved in the Assembly, Mr. Jinnah said that he favoured judicial trials as opposed to action by executive. He recalled the words of the great jurist: "A freeman imprisoned without cause is civilly dead". When Rowlett Act was promulgated, Mr. Jinnah resigned from the Legislative Assembly as a protest. On 28 March 1919 Mr. Jinnah wrote to the Governor-General:

The Government of India had thought it fit to place on the Statute Book a measure admittedly obnoxious and decidedly coercive at a time of peace, thereby substituting the executive for the judicial... The fundamental principles of justice have been uprooted and the constitutional rights of the people have been violated... In my opinion a Government that passes such a Law in times of peace forfeits its claim to be called a civilized Government.

Jallianwala Bagh Massacre

On 13 April 1919, in Jallianwala Bagh, (Amratsar) a massacre of innocent men, women and children took place by the troops under the orders of the Brig. Dyer. As the public meetings were

banned in British India, Mr. Jinnah proceeded to Hyderabad (Daccan) to address the meeting. He was served with an order of externment and his entry was banned in the State. Mr. Jinnah, with another leading Lawyer, C.R. Das proceeded to Lahore to defend the leaders who were being prosecuted. The Governor of Punjab banned their entry in the province. However, after a year on 13 April 1920 a huge meeting was held in Bombay. Mr. Jinnah presided and said that Dyer was a butcher, and the massacre at Amratsar would move even the stones. The great poet Tigore sent a moving message. Mahatma Gandhi moved the Resolution of condemnation.

Deportation of B.G. Horniman

Mr. Jinnah had opposed deportation of B.G. Horniman, Editor of *Bombay Chronicle*. Speaking in support of readmitting Horniman, Jinnah remarked:

I do maintain, and I have drunk deep at the fountain on constitutional law, that the liberty of man is the dearest thing in the law of any constitution and it should not be taken away in this fashion. If you have any case, if Mr. Horniman has committed an offence, place him before a tribunal.... I speak very feelingly, because I feel that no man should be deported and certainly not on such fabricated allegations as these, which to my knowledge, are absolutely false.¹

Bhagat Singh

On 23 March 1931, Bhagat Singh and two of his associates were hanged at the Lahore Central Jail. This was the culmination of the notorious Conspiracy Case in which they were accused of hurling a bomb in the Legislative Assembly of India. The trial of Bhagat Singh and his associates was held under the special Law, which permitted the trial in absentia. The British treated Bhagat Singh as a terrorist but the Indians regard him as a martyr.

During the discussion of the Bill in the Assembly, Mr. Jinnah strongly opposed it and made a stirring speech on 12 and 14

1 *Legislative Assembly Debates*, 14 February 1924.

September 1929. Mr. Jinnah quoted a number of British and foreign precedents and said:

I say that no judge who has got an iota of a judicial mind or a sense of justice can ever be a party to a trial of that character and pass sentence of death without a shudder and a pang of conscience. This is the farce which you propose to enact under this procedure. I say this, that if ever there was a conscientious judge and he was strong enough, if he had a judicial mind, and if he had any independence, let me tell you, that in spite of the provision of yours, he would say, "True, the law has to be administered; I am obliged to make the order that the trial shall proceed *ex parte*; but I realize and I feel that it will be a travesty of justice and I cannot be a party to it; and I shall, therefore, adjourn this case until further orders.

Mr. J.N. Dixit, former Foreign Minister of India, writes:

Mr. Jinnah made the most forthright statement in his defence of Bhagat Singh from amongst the leading politicians of the time. It is relevant to remember that where principles of law and norms of justice were threatened, Jinnah's voice was that of a fearless leader.

Federal Court

In the Federal Structure sub-committee of the Second Indian Round Table Conference in November 1931, Quaid-i-Azam advocated the concept of independence of judiciary, and pleaded for the establishment of (a) the Supreme Court with Appellate jurisdiction from criminal and civil judgments of the High Courts; (b) the Federal Court, beating with the jurisdiction of the proposed Federal Court, Quaid-i-Azam expressed the view that if there is any measure which infringes any provision of the Constitution which includes Fundamental Rights, it should be open to the citizen to go to the Court. He was also of the opinion, that even a Bill can be assailed. The learned Chief Justice of Pakistan's judgment on Hisba Bill is illuminating in this respect.

Quaid-i-Azam's Pronouncements in Pakistan

Addressing the Constituent Assembly of Pakistan on 11 August 1947, Quaid-i-Azam said:

Now, if we want to make this great State of Pakistan happy and prosperous we should wholly and solely concentrate on the well-being of the people, and especially of the masses and the poor. If

you will work in cooperation, forgetting the past, burying the hatchet, you are bound to succeed. If you change your past and work together in a spirit that everyone of you, no matter to what community he belongs, no matter what relations he had with you in the past, no matter what is his colour, caste or creed, is first, second and last a citizen of this State with equal rights, privileges and obligations, there will be no end to the progress you will make. You are free; you are free to go to your temples, you are free to go to your mosques or to any other place of worship in this State of Pakistan. You may belong to any religion or caste or creed—that has nothing to do with the business of the State.

In an interview given to Mr. Weldon James of the Collier's Weekly Magazine on 25 August 1947, Mr. Jinnah said:

We expect to evolve a progressive democratic government in line with the Muslim belief in the equality of all men, and to work for international peace. As I have said many times before, Pakistan guarantees the just and equal treatment of all citizens, Muslim or non-Muslim, with freedom of worship, speech, press and assembly.

The position of women is already equal in law to that of men. It may be expected that their participation in civic affairs and in the professions will increase.

Quaid's concern for human rights and the purpose for which Pakistan was created and sacrifices made finds expression in the following memorable words in the speech of March 1948:

Similarly you are voicing my thoughts in asking and in aspiring, for equal opportunities for all. These targets of progress are not controversial in Pakistan for we demanded Pakistan, we struggle for it, we achieved it so that physically as well as spiritually we are free to conduct our affairs according to our traditions and genius. Brotherhood, equality and fraternity of man — these are all the basic points of our religion, culture and civilization. And we fought for Pakistan because there was a danger of denial of these human rights in this sub-continent. We aspired for these great ideals because of centuries of dual domination by foreign rulers and by a caste ridden social system.

On 9 April 1948, responding to the address of the French Ambassador Mr. Jinnah recalled the principles of liberty, fraternity and equality which were evolved during the great French Revolution and said these ideals will be cherished in Pakistan.

On first Anniversary of Independence of Pakistan on 14 August 1948 in his message he said: "Nature has given you every thing. You have got unlimited resources. It is upto you to build Pakistan". It may be mentioned that right to development of a country is now recognized in the declaration adopted by United Nations in 1986.

Let me conclude by saying that Mr. Jinnah believed in the independence of judiciary, rule of law and sanctity of human rights.