PRETTY ONES

This article was written as a tribute to the Allahabd High Court on its 125th anniversary, when I was a practising lawyer. It traces history of 'Person' clause cases where women claimed equal rights with men and Allahabad High Court which has the distinction of enrolling first woman advocate under 'Person' clause when its order was not upset.

ALLAHABAD HIGH COURT

It has been long since 1861, the time when Allahabad High Court was established. In these years Allahabad High Court has established traditions, peculiarities, and distinctions. One distinction is special- But before that some history.

In the last century a dual judicial system was prevalent. The royal courts; Supreme Courts at the three presidency towns and the Company courts the Sadar Adalats. The Sadar Adalats of the Bengal presidency at Calcutta governed the North Western Provinces. It was thought proper to judicially administer them through a separate Sadar Adalat. This was done by the Bengal Regulation of 1831. The Sadar Adalat was ordinarily to be based at Allahabad but started at Agra.

At that time there were two parallel judicial systems; which exercised independent, but often-concurrent jurisdiction, jealously viewing the exercise of power by those connected with the other. And what else could they produce- Infighting and confusion. There was a debate to consolidate them. After the uprising of 1857 the East India Company was dissolved and the British Crown took over. The action to consolidate then became imperative.

The Indian High Courts Act, 1861, provided for abolition of the dual system and establishment of High Courts. Accordingly High Courts were established at Calcutta, Bombay and Madras. They were the fusion of the Supreme Courts and the Sadar Adalats and inherited their jurisdiction. They still have original jurisdiction.

The Act of 1861 also provided for the establishment of a High Court for the North Western Provinces. This was done by notification in the official gazette of 13 June 1866. It was the first and the only High Court to be set up in the last century by upgrading a Sadar Adalat and inherited its jurisdiction. This was appellate only--- with limited original jurisdiction relating to the British. Today the Allahabad High Court has original jurisdiction in the matter of probate, company and election petitions as in any other High Court.

The Sadar Adalat used to sit at Agra. There was no building at Allahabad. A Bench started sitting there. Then the full court sat from 1869, known as the Allahabad High Court. The building was completed in 1870. It is said that the only thing wrong with it was that one could not hear or see inside the building. But the Calcutta High Court building was even worse. Today the old building houses the Board of Revenue. The High Court moved to a new building in 1916.

LUCKNOW BENCH

A Bench of the Allahabad High Court also sits at Lucknow. There are historical reasons for this. While regulations could be made for the three presidency towns, there was no power to frame regulations for the newly acquired territories. The Governor General in Council with his seat in Calcutta started governing them in his executive capacity. They came to be known as '*Non-Regulation territory*'. Oudh was one such territory. A judicial commissioner's court was established in Oudh in 1856. It was the highest court for Oudh in 1871. Its status was raised by the Oudh Court Act of 1925. It used to sit at Lucknow and was merged with Allahabad High Court on 26 July 1945. This is the reason for the Bench at Lucknow.

PERSON CLAUSE CASES

Women all over the world were claiming equal rights with men at about the same time as the Allahabad High Court was established:. The majority of the statutes at that time used the phrase '*any person who has... is entitled to vote or to take admission or to practise*.' And soon the question was raised. '*Does the word person include women?*'

In the first case *Chorlton Vs Lings* (1869) the word 'man' was used. Despite an Act, similar to our General Clauses Act, in England that masculine includes feminine the court held that women were not included in the term man and are not entitled to vote. Then started the 'person cases' holding that women were not included in the term person. They are *Beresford-Hope Vs Lady Sandhurst* (1889), *Ball Vs Incorp, Society of Law Agents* (1901). Gray's Inn refused to enrol Berthe Cave in 1903. The House of Lords in Nairn *Vs Scottish University* (1906) expressly held that women did not fall within the meaning of the term 'person'. In *Benn Vs Law Society* (1914) the Court of Appeal opined similarly. This trend continued in England until 1918 when women were given the right to vote and in 1919 the Sex Disqualification Removal Act removed this disability.

The US Supreme Court in *Bradwell Vs Illinois* (1875) held that a State could preclude a married woman from practising law. Though, two years later in *Minor Vs Happier Sett*, it conceded that women were citizens as well as persons but held them to be a special category of non-voting citizens. In 1894 the U.S. Supreme Court decision denying women the right to practise law on the grounds that the word person meant men only. The problem in the USA was partially solved by ratification of the 19th Amendment to the US Constitution (1920) permitting women over 21 to vote.

South Africa deserves special mention. In the first case *Schle Vs. Incorporated Law Society* (1909) it was held that women were not included in the term 'person' and were not entitled to become attorneys. But in a subsequent case in 1912 the Cape Supreme Court held that the term 'person' included women and were entitled to become attorneys. It is said to be the first decision of its kind. But it did not last long. In an appeal against it, the appellate courts in the *Incorporated Law Society Vs. Wookey* (1912) case overruled the decision. It took the established line that women were not included in the term 'person'.

Lord Curzon was former Viceroy of India and leader of the anti suffrage movement. He, from his experience, declared that millions of British subjects would cease to have respect to the Government if they got to know that it had been put into office by the votes of women. Such arguments prevailed until 1918.

The curtain to 'person cases' was rung down in the *Edwards Vs Attorney General* Canada case. The Supreme Court of Canada had unanimously decided that women were not included in the term 'persons'. In appeal, the Privy Council, in a one-line ruling, expressed the obvious. '*The word person may include members of both sexes and to those who ask why the word should include females the obvious answer is 'Why not'*. But this was in 1929.

INDIAN CASES

India also had its share of 'person' cases but not many. Legal practitioners were enrolled by the High Courts until recently, when the work was taken over by the Bar Council. The Legal Practitioners Act used the word 'person'. The Calcutta and Patna High Courts while dealing with the enrolment of women, held that they were not included in the term 'persons' and rejected the applications. These cases are reported in *In re Regina Guha*[1] *and In re Sudhansu Bala Hazra*[2]. It fell on Allahabad High Court to enrol the first woman.

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[1] ILR 44 Calcutta 290.

[2] AIR 1922 Patna 269.

Cornelia Sorabji[3] was enrolled on August 24, 1921. In the Patna case there is a reference to it. She was enrolled at the English or administrative meeting of the High Court. The decision being on the administrative side is not reported. Unfortunately the Allahabad High Court has not preserved the minutes of the meeting. Cornelia was not only the first woman to be enrolled in India but also the first to be enrolled anywhere in the world under the 'person' clause. Only earlier case from South Africa did not last long. It was overruled in the same year. There were others who were enrolled before her but that was due to a special law. The question did not arise subsequently because of the enactment of the Legal Practitioners Women Act in 1923.

It is not known if Cornelia[4] argued any case. At least none is reported. She is said to have left for Bombay two years after the enrolment. And got married. This trend continues in the Allahabad High Court. Very few women are practising here. Even the lower courts have many more. It is sad that the court that enrolled the first woman is denied the grace and charm of the fairer sex.

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[3] May be because of the name, I thought Cornelia Sorabji was related to Soli J. Sorabjee Sr. Advocate. I thought of confirming it from him. This is what he has to say about her and the article.
'*I enjoyed reading your article 'Pretty Ones'. It was informative and interesting.*
Cornelia Sorabji was not a relation of mine. She and her sister were quite active in public life also.'

[4] Cornelia Sorabji was a Parsi girl from Bombay. She came to Allahabad to set-up the house of her brother who chose to practise there. I had no information about her when 1st edition of this book was published. Since then I have received some information which is printed under separate heading.

CORNELIA SORABJI (1866-1954)

'Pretty ones' was published on the 125th anniversary of the Allahabad High Court. Cornelia Sorabji was the first lady admitted to the Bar by the Allahabad High. At that time, I had no information about her except the letter of Soli Sorabji, which is already printed. Since then I had come across 'Women writing in India 600 BC to the present' *edited by* Susie Tharu *&* K. Lalita*, published by* Oxford University Press*. This excerpt about Cornelia Sorabji, is from that book. It also includes part of the book* 'India Calling'*, written by Conelia Sorabji which explains the reason why in the first place she came to Allahabad and the reason her first application to enrol in 1897 was rejected. It also describes Allahabad of that time.*

WOMEN WRITING IN INDIA 600 BC TO THE PRESENT

When young Cornelia, "to (her) surprise," took first place in the Bombay Presidency (an administrative unit of the colonial government), in the final degree examination and automatically obtained the Government of India scholarship for a course at an English university in 1887, her long battle began to open the public world to women. "In spite of the University Constitution declaring that women were as men, I was not allowed to hold any scholarship. The rest had been the same, and all conditions fulfilled, but the Authorities said, 'No!' It was in fact impertinent of any woman to produce circumstances which were not in the mind of Authorities as a possibility when they dangled a gilded prize before eyes that should have been male eyes alone!" Cornelia had been the first woman to graduate from Bombay University; the next one did so only twenty-four years later, in 1911.

Similar experiences were to await her when she finally got to Oxford in 1889. She wanted to study law, but was told that no woman might do so. The warden of Somerville College suggested she read English, "the then most popular school for the nondescript." But Benjamin Jowett, the master of Balliol College, who seems to have been a friend and guardian to this young Parsi girl, intervened. She spent a term sitting in on law lectures before she was allowed to read for the B.C.L., "the best that Oxford had to give." The hazard of being the first woman to do this, Cornelia writes, "found me looking into the barrel of a pistol at the most crucial moments." She sat for the examination but it was not possible for her to actually qualify as a practicing lawyer until she had been "called to the Bar," and that she could not do until thirty years later, in 1923[5], when women were admitted there, and when Cornelia finally acquired the "label I had longed for all my life."

Though she kept a diary for most of her life, a richer record of her experiences is found in the letters she regularly wrote, initially to her parents in India, later from India to Eleanor Rathbone, the social activist and campaigner against child marriage in England, and finally from England to the Allahabad judge Harrison Faulkner Blair, with whom she had a close relationship from about 1900 to his death in 1907.

On her return to India in to India 1894, Cornelia made a place for herself working with widows in purdah (most often royalty) who had, under the new legislation, become "wards" of the British government, under whose guardianship their estates now fell, and who had difficulty using the courts. Large sections of her memoirs, *India Calling*, 1934 describe with a wry wit her life between 1894 and 1923 helping these women.

She was a prolific writer and had incredible resources of physical energy and mental strength. She worked all day at court, and often spent the evenings responding to calls from her clients before she came home later to write. She published several books; the most important among which are her memories and her account of her younger sister, Susie Sorabji, 1932. Her first collection of essays, Behind the Twilight's came out in 1908.

[5] This is incorrect. Cornelia was enrolled on 24th August 1921 before the law was amended.

It was soon followed by Sun Babies, and in 1917 by The *Purdahnashin and Shubala: A Child Mother.* She wrote regularly on matters of public interest, the law, politics and women, for important British journals such as *Nineteenth Century and National Review.* In 1936 she published her last book, *India Recalled.*

Cornelia Sorabji's private life seems to have been extremely lonely. The years at Oxford provided many opportunities for interaction, but her memories mention no friends in India. She was clearly fond of the women she worked for, but the only friendship is maintained over the yeas was the one with Eleanor Rathbone, Around 1944, Cornelia grew very weak and left for England. For a few months she thought that blindness was imminent. Her physical condition improved with the rest and medical care, but in March 1945 her mental health deteriorated. She rambled, spoke incoherently, was restless, and developed acute paranoias. Neither her solicitors nor her youngest sister, Dr. Alicia Pennel, could get her to grant a power of attorney to anyone. She hated hospitals, doctors, and nurses and when she was forced into a hospital in 1947, she simply refused to eat. The next seven years of life, documented in her sister's letters to Eleanor Rathbone, are a pathetic journey from hospital to hospital. It is a horrible, tragic end for this singular woman, who was both a fighter and a victim of her times.

INDIA CALLING Part II (1894-1902), Chapter 4

About this time my Brother had returned to India from his long sojourn in the West-Public School, Oxford, London. He was a Barrister and had decided to practice at the Allahabad High Court, United Provinces.

I went up North to help him settle into his house: and a thought, which had for long been with me arrived at maturity. The work I was doing as a roving and privileged Practitioner of the Law was without doubt interesting: but it did not amount to beating out a path which other women could follow. It was too personal: Privilege might be withheld from my successors, curiosity stated: and to what practical purpose was the beginning of work so well worth doing, if provision were not made for others to carry on?

In the interest of professional posterity, then, a recognized title to practice at the Bar seemed a necessity" and to obtain this in Britisbnh India would mean the best recommendation to confidence. Work in Native States could still be continued from any British-Indian center as headquarters.

Allahabad differed from Bombay, Bengal and Madras, in that here there were no Solicitors. Barristers took instructions directly. As I have already said, I had in practice found direct contact with clients useful. This was another point in favour of Allahabad.

Practitioners in the United Provinces included Barristers, Vakils (i.e. Graduates of Law, of the University of any Presidency), High Court Pleaders (qualified by a Special Examination, held by the High Court), and in the Districts, Mukhatars, etc. (less well qualified). Barristers had pre-audience: and the High Court had just instituted the distinction of Advocate, i.e. eminent Vakils of long standing, who were, in consequence of being termed “Advocate,” admitted by grace of the Court to the status and courtesies of Barristers in the Allahabad High Court. Tej Bahadur Sapru and Motilal Nehru were the Vakils so honored.

As a Bachelor of Laws of the Bombay University I was entitled to be enrolled as a Vakil, and I made an application to this effect in 1897.

After consideration by the entire Bench- Sir J. Edge, C.J., presiding in what I believe was called “English Meeting,” i.e. the Controlling and Administrative Department of the Court- I was told that as the University door was not their own special High Court door, the Court hesitated to make an innovation on the ground that I had cited. But if I would do the High Court Pleader's examination (their own creation) they would have power to act.

By this time I was sick to death of examinations, and this new one included

proficiency in Shikasta, Now Shikasta (lit. “broken” writing, or writing “in ruins”) is the running hand of the Persian character, and a nightmare to decipher. Dots and strokes, both so essential to the distinguishing of letter from letter, with other characterizations, are omitted: and letters are joined which are only recognizable apart.

Shikasta is used in Court documents, though the language of the Courts is now Urdu: and [the need for] its inclusion in the tests for this special High Court Examination was obvious.

Yes- I was thoroughly sick of examinations; but there could be no question of my not complying with the new condition- “one more river to cross”- and I buckled to the re-study of Hindu and Mohommedan Law, of the rubbish-heap of codified British- Indian Law, and the acquisition of Shikasta.

The bright spot of the adventure was my dear old Moslem Munshi who taught me Persian, Urdu and the reading of Court documents.

He was a character, and deserves a monograph. In due course I passed my Examination: but the High Court said, almost shamefacedly, that “on reconsideration” they felt it would be impertinent of an Indian High Court to admit women to the Rolls before England had given the lead. [6]

It was a bad jar, and I could have said much in protest. After all, in matter of this kind, the advantage of India lay in the very newness to which I suppose the Court referred; in having, that is to say, unlike England, no traditions to outrage. She was therefore herself in the position of Leader; and it would have been fun if that particular Court had recognized this!

But protest would have been of no use. I was a single individual. At that time I could not produce even one other woman student of the Law: and I had no assurance that other women would want to follow my Profession.

There was nothing for it but to continue being a “rover,” working from the end of a need to be met, not from that of an equal title with men to the reward of legal work.

And with this intention I set myself to collecting the opinions of experienced judges, lawyers, and administrators, all over India.

[6] The English meeting referred here was under Sir John Edge. He was the Chief Justice of the Allahabad High Court from 1886-1898. It appears that later Allahabad High Court decided to admit women to the bar in 1921 before England took the lead.