

## Resurrected Impressions

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My acquaintance with this Court goes back, in a sense to my childhood: it was a kind of vicarious acquaintance through maternal lineage: Sir Promoda Charan Banerji who was appointed a Judge of the High Court in 1893 was my mother's uncle. A High Court Judgeship in those days when Sir P. C. adorned the Bench, 1893 to 1923, was something "great". There were only six Judges then and at the time of his appointment he was the only Indian to adorn the Bench. The salary was Rs. 4,000 which would in terms of today's depleted purchasing power of money be something in the neighbourhood of Rs. 15,000. Income-tax was negligible, and service unbelievably cheap. Those were spacious days but the 'Court' was not as spacious as it is today.

The High Court on its transfer from Agra to Allahabad, sat in one of the blocks of buildings on the what is now, Sarojini Naidu Marg: it was the Southern-most block: a sombre, stone-flagged, double-storied mid-Victorian building. The building reflected the dignity and the stolidity of the early judiciary. In 1916 the High Court moved to its present habitation-it was not then the sprawling overgrown building which we now find, but it was then a more pleasantly proportioned construction. Looking at the building as it was then and as it is now, one is tempted to think whether 'over growth' and patch-work did not reflect something more than mere inartistry of building construction.

A High Court Judge in the early days of the 20th century conjured up in the mind of the common man an almost mythical figure. There was then a tremendous amount of respect, almost awe for the presence of a High Court Judge-'the public' saw so little of the Judges outside court: Were they dwellers in 'Ivory Towers' -they were not: not certainly in any disparaging sense. The Judges of the 'olden day s' knew everything worth knowing about the customs, manners, joys, sorrows, strengths and weaknesses of the peoples that went before them seeking justice. They were -'His Majesty's Judges'.

'His Majesty's Judges', in India, yielded place to Judges of the Constitution-'Constitutional Judges' if we may call them so or should we call them the President's Judges? Has the change over-a change in the constitutional position of the Judges made a difference-a difference in their mental attitude, a difference to their social position? Has it added to the 'Halo' or has it dimmed it? These are delicate questions which I prefer to leave to be dealt with by a future constitutional historian.

Even when Judges, were mostly Europeans and even when public appearance by Judges was much less than it is today one could see that there were colourful personalities on the Bench. There were sportsmen Judges, a "Cricketing" Judge, Actor Judges, and Judges who took keen interest in the educational activities of the town. Thinking of sportsmen Judges one is immediately reminded of Justices Stuart and Tudball. Mr. Justice Walsh was a cricketer-he was fond of cricket and gave one the impression that he was a cricketer of fame. His was a colourful personality in more senses than one. It was he, who as the Acting Chief Justice, created history for the Court. This needs recounting and recording.

A first Appeal Bench consisting of Mr. Justice Dalal and Mr. Justice Pullan (both of the Indian Civil Service) was constituted and First Appeals were listed before them (under the orders of the Acting Chief Justice, Mr. Justice Walsh: Sir Grimwood Mears, the Permanent Chief Justice having been on leave in England) under O. 41, rule II of the Code of Civil Procedure as the expression goes, for "admission", "admission" of First Appeals which raised questions of fact to be determined by a re-appraisal of evidence were traditionally, more or less, automatically 'admitted'. Dalal and Pullan, J J. were not prepared to have any 'automatic admission' so they started perusing the judgment appealed against, sometimes they read the judgments at home, and called upon Counsel to show how the judgment was wrong. This new trend in the fortunes of First Appeal admission caught counsel on the wrong foot. They had neither the material nor the opportunity at that early stage to meet the 'exacting demands' of the Bench with the result that a large number of First Appeals were dismissed summarily. This affected the business of senior members of the Bar. There was considerable resentment and the then Secretary of the Bar Association (Vakils' Association as it was then called) sent a letter to the Acting Chief Justice, in a sense, complaining against the new manner of disposing of First Appeals under o. 41, rule II of the Civil Procedure Code. The Acting Chief Justice thought that the letter written by the Secretary (Mr. Shyam Krishna Dar, who later became Mr. Justice Dar) amounted to contempt of Court. A notice was issued to the Secretary calling upon him to "show cause" as to why he was not to be punished for contempt. The Vakils' Association convened an emergent meeting to consider the situation that had arisen and at that meeting they decided to repeat what had been written by the Secretary in a letter which was to be signed by all the members who were on the 'rolls of the Vakils' Association: the object was to share the responsibility of the Secretary's letter by the entire body. The letter was sent under the signature of all the members-there were forty-seven members then and each member signed the letter: there were no waverers. It was a great gesture of unity shown by the 'indigenous bar'.

The entire membership of the "Vakils' Association" received a notice to show cause from the Court-there were now 47 'contemnors' in place of one.

The Vakils' Association briefed some members of the English Bar-Barrister-Advocates-to represent them at the hearing whenever it was fixed. The Acting Chief Justice constituted a Full Bench to decide the contempt matter but this Bench never met in open, Court, indeed no Bench met to hear the contempt matter, till the return from leave of Sir Grimwood Mears, the Permanent Chief Justice, when the notice was discharged-whether on account of any judicial order or because of 'default' I cannot for certain say. This incident, fortunately did not create any kind of schism between the Bar and the Bench-something which redounded to the credit of both the Bench and the Bar. The fight was on a question of principle and

it was apparently decided, on an understanding which was mutually satisfactory without the necessity of a judicial trial of strength.

Under the old Constitution a Barrister alone could be Chief Justice of this Court. Some Indian Judges had now and then officiated as Chief Justice but no Indian before Sir Shah Mohammad Sulaiman had the distinction of becoming a Permanent Chief Justice. Of the Judges I have known personally Sir Shah Sulaiman was undoubtedly the most brilliant-he radiated brilliance. He was raised to the Bench in 1923 and became the Chief Justice of the Court in 1932. Later he was translated to the Federal Court in 1937. Sir Shah Mohammad Sulaiman's predecessor, Sir Grimwood Mears came to India in 1919 and took over as Chief Justice of the Court. Earlier he had been Secretary to Lord Reading when Lord Reading went to America as a Representative of the British Government to settle the question of Britain's indebtedness to America in respect of the first World War. Sir Grimwood Mears had a dignified presence-He was the typical Victorian Englishman: formal to a fault.

As a Judge on the Murder Bench Sir Grimwood was the most convicting Judge I have known-his one great passion, in later years of his service was to discover corrupt judicial officers and to get rid of them. This 'passion' soon made him prone to believing glibly in complaints made against judicial officers. That there were a few corrupt officers in the service could admit of no doubt, but what was doubtful was the method employed by the Chief Justice to deal with persons whom he thought, not always on satisfactory evidence, to be corrupt. This brought him a good deal of unpopularity even though the attitude which he took had a very chastening effect on the Service.

Indians started 'adorning' the High Court Bench in larger numbers during the regime of Sir Grimwood Mears. I cannot say whether it was his liberality or it was the Government's policy to have more Indians on the High Court Bench because then the number of Judges had been increased to eleven. Amongst the Indians who were Puisne to Sir Grimwood were-Justices Mohammad Rafiq, Gokul Prasad, Sir Shah Mohammad Sulaiman, Kanhaiya Lal, Jamshedjee Dalal, Sir Lall Gopal Mukerji, Lalit Mohan Rwerji, Surendra Nath Sen, Niamat Ullah, Sir Iqbal Ahmad and Uma Shankar Bajpai. Each of the above were men of experience but then in the above list there were three outstanding figures-Sir Shah Sulaiman, Sir Lal Gopal Mukerji and Mr. Justice Niamat Ullah. They adorned their career on the Bench with a dignity which was distinctive. Sir Shah Sulaiman and Niamat Ullah were Lawyer-Judges of great learning and wisdom. Mukerji was deeply learned in Hindu Law and the Law of Transfer of Property. A junior was perfectly safe in their Court for no senior could take any advantage of any of the shortcomings of a junior appearing before these Judges.

Mr. Justice Lalit Mohan Banerji was the son of Sir Promoda Charan Banerji who with Sir George Knox became a legend of the Court. Lalit Mohan never achieved anything of the glory of his illustrious father. He was a kindly man fond of the good things of life. He was one of the premier motorists of the country. He was the first in Uttar Pradesh to own a Sunbeam Sports and a Rolls Royce. I vividly remember the day when his 'Rolls' arrived it was a secondhand purchase-even so it was a 'Rolls'. The U. P. Automobile Association owes its existence to his enthusiasm and foresight. There was hardly anything worth knowing about an automobile which Justice Banerji did not know.

Sir Iqbal Ahmad was elevated to the Bench first in 1926. Soon after he came back to the Bar and then again went up to the Bench in 1931. He had a very large practice. He retired as Chief Justice in 1946. He was one of the charming seniors of my time.

Mr. Justice Bajpai deserves mention for his colourful personality-a handsome man 'who handsome did'. He had great human sympathies. Bajpai in private life was generous to a fault-to his Juniors, while he was at the Bar, he was deeply devoted and he took, genuine pleasure in their successes: He was universally loved and respected.

Of the pre-Independence Indian Judges two other judges deserve mention-Mr. Justice Ganganath and Mr. Justice Mulla, both came to the High Court Bench from the Provincial Judicial Service the difference being that Mr. Justice Ganganath rose from the lowest rung of the ladder, namely from the position of a Munsif while Mr. Justice Mulla was directly recruited to be a District Judge. He, I believe, was the only person to have been so recruited. Mr. Justice Tej Narain Mulla was a difficult Judge in many ways, but he had his strong points. He had a stupendous memory-no one ever saw him making any elaborate notes even in heavy criminal appeals. Mulla was a good criminal Judge. In criminal cases he displayed great confidence and often became over-bearing, but sitting on the civil side, which was a rarity, he gave a different impression. He was a good bridge player, a good golfer, and in his younger days had been a forceful tennis player also. Outside Court Mulla exhaled the "culture of Lucknow:" from "*adab* to *Khoda hafiz*"

Mr. Justice Ganganath was however a different type altogether. He was dry, matter of fact, almost the sun-dried bureaucrat of the spacious 'British Raj' days. He wore 'West-end tailored' suits and enjoyed living an Englishman's life. He was very conversant with the case law and the Codes. He was completely hidebound by precedents. He was often impatient with the junior section of the Bar but outside Court he was very pleasant and appeared sympathetic. A section of the Bar-the observant section-saw many points of similarity between Mr. Justice Ganganath and Mr. Justice Bennet. The naughty section of junior Bar gave Ganganath the nickname of Gennet, J.

According to the law which governed the Constitution of the High Court, prior to Independence, it was necessary to have a certain percentage of Barristers on the Bench and a certain quota was reserved for the Indian Civil Service.

There had been persistent criticism against the policy of having members of the Indian Civil Service on the High Court. Bench-they were once described by the Privy Council as 'unprofessional Judges' and

indeed they were so, for they did not come from the 'profession'. The Civil Service, however, gave this Court some very able Judges.

Of the Civil Service Judges, I knew, were Justices Kendall, Pullan, Kisch, Collister, Smith, Allsop, Hunter, Hamilton, Plowdon and Bennet.

It was a motley set—having no common denominator save that all were foreigners and all belonged to the 'Heaven-born Service', each within the Steel frame: There were rude I. C. S. Judges, there were extremely courteous ones, there were clever men and not so clever ones.

The Judges of my early days provided the junior section of the Bar both pleasure and pain. The sarcasm of some of these Judges was often a source of pleasure, depending of course as to who the object of that sarcasm was. Mr. Justice Bennet provided the largest amount of material for gossip at the Bar's "Lunch tables" for he appeared to take a sort of malicious delight in "pitching into" the seniors. His extraordinary capacity for tortuous and tortured "legal jujitsu" to distinguish apposite case law was the despair of many.

Mr. Justice Kendall was the very opposite of Bennet, J. In my opinion, a greater gentleman never adorned the Bench of this High Court.

The attitude of the I. C. S. Judges towards the junior section of the Bar was, by and large, either patronizing or supercilious. A junior who dressed well and spoke English well was often treated deferentially.

The English. Barrister who came from England with a direct assignment was invariably a decent person, though all were not good lawyers. Most of these men had a fair grounding in the principles of law and they had the Englishman's "uncommon commonsense" to assist them in coming to correct decisions. Mr. Justice Harris was the best of the ones I have known. He was a good lawyer and a good Judge though a "talkative" Judge Mr. Justice Braund was another good lawyer—a Chancery lawyer. He was painfully thorough in his hearing of a cause—he often read and prepared on his own more than he heard or took from Counsel.

Those were spacious days. There was not the hurry and the speed of the present times, though there were even then 'arrears' (arrears have been with us in fairly recognizable form since at least 1927) but no one was then weighed down with a sense of the arrears. We 'opened our case' as we chose—a first appeal was more often than not 'opened' with a reading of the 'Pleadings of the parties'. No one wits hustled out of a point he attempted, to make. Even though Bennet, J. often attempted to 'talk' counsel out of his argument yet he too never made any attempt to "hustle counsel" or shut him up. The pace was seldom forced, arguments were often shrouded in a semantic and polemic maze. His one great passion was to convince - counsel that counsel was wrong—what a frustration it would have been to him if he could adequately realise that counsel was not paid to be convinced by the Judge.

Of Sir Shah Mohammad Sulaiman, one of our cleverest Judges, it was said that he talked more than counsel did. In this connection, it would be interesting to recapitulate an 'authentic story'. One day Sir Grimwood Mears, Chief Justice and Sen, J. who were forming a Bench had to wait for the appearance in their Court of Sir Tej Bahadur Sapru; and, after the Bench had waited patiently for some time, Sir Grimwood Mears asked the Reader, "Where is Sir Tej?" In the Court was sitting at the time Sir Charles Ross Alston the doyen of the Criminal Bar. He stood up and, before the Reader could reply, said promptly "My Lords, Sir Tej is hearing the arguments of Mr. Justice Sulaiman in the adjoining Court Room". Sir Tej made his appearance in the Chief Justice's Court room soon after, whereupon the Chief Justice said "Come along Sir Tej; we wish to hear you and not make you hear our arguments".

The succession of Chief Justices whom I knew, while at the Bar were—Sir Grimwood Mears, Sir Shah Mohammad Sulaiman, Sir John' Thom, Sir Iqbal Ahmad, Mr. Kamalakanta Verma and Mr. B. Malik. One could find nothing that was basically common in the aforementioned galaxy: the only common factor was that they were all Chief Justices. I am purposely refraining from making any 'record' of the work of. those whom God has spared to be with us today.

I have said something above about the brilliance of Chief Justice Sulaiman as a Judge. As an administrator (The Chief Justice has to be one) very few were willing to assign him any place of pride.

Chief Justice Thom who succeeded him had a comparatively short span of existence as Chief Justice and hence he made no indelible impress on the contemporary mind.

Chief Justice Malik marked the end of an era, the era of His Majesty's Judges and ushered in the era of Judges appointed under the Indian Constitution by the President of India.

On the 26th of January, 1950 all the sitting Judges and the Chief Justice took their respective oaths prescribed under the Constitution and undertook to uphold the Constitution—bearing allegiance to the Constitution. The oath was administered at the Government House at Lucknow by the Governor. It was a colourful ceremony: the Judges were all in their "ermine robes" wearing full-bottom wigs. On that date there were only twenty Judges.

One significant historical event of great forensic consequence must be noticed before proceeding further afield. The State of Uttar Pradesh—United Provinces of Agra and Oudh, as it was then named, had two Courts of the highest jurisdiction functioning within its territorial limits—the High Court of Judicature at Allahabad, established by a Letters Patent issued in March 1866 and the Chief Court of Oudh established by Act IV of 1925. The High Court exercised jurisdiction over all the territories which were outside the area known as Oudh—over this area the Oudh Chief Court exercised jurisdiction.

The existence of two Courts of Superior Jurisdiction within a single Province was something unique—the united Provinces of Agra and Oudh alone enjoyed this distinction. There was a historical basis for this novel judicial dichotomy. Agra and Oudh had been separate administrative entities and the latter came

into British hands after its "annexation" in 1856. There were for many decades many separate laws and administrative differentials. There existed in Oudh an aristocracy-the Taluqadars of Oudh-who, for political reasons, enjoyed a status at the hands of the Government of the day which was not enjoyed by any "class" in Agra. The Taluqadars wanted differential treatment, they wanted a High Court of their own, so to speak. The Government of the day thought it politic to pamper them with the result that Oudh got a Chief Court.

The Chief Court functioned as a Court of highest jurisdiction inasmuch as appeals lay from it to His Majesty in Council--the Judicial Committee of Privy Council. The Oudh Chief Court had Original Civil Jurisdiction in respect of a certain class of cases-Taluqa cases as they were popularly called.

The Oudh Chief Court had a Chief Judge to preside over its destinies; the first of these was Mr. Justice Stuart who came to the Chief Court as its Chief Judge from Allahabad and its last Chief Judge was Mr. Justice Ghulam Hasan.

The Oudh Chief Court ceased to function as an independent Court on July 25, 1948 when as a result, of the "Amalgamation Order" the High Court of Judicature at Allahabad and the Oudh Chief Court at Lucknow were amalgamated and a "New High Court" came into existence. By, virtue of the provisions of the Amalgamation Order it was obligatory to maintain a Bench of the High Court at Lucknow. In 1948 when the Courts were amalgamated there were five Judges sitting at Lucknow-this was obviously more than the minimum requirements under the "Amalgamation Order". The number of Judges sitting at Lucknow has since been augmented-there have been some changes in the territorial jurisdiction of this Bench from time to time.

After the legal "amalgamation" an impressive ceremony took place at Allahabad on July 26, 1948, in the Marble Hall above the stairs when all the erstwhile Chief Court Judges came to Allahabad and all the Judges of Allahabad and Lucknow-again took oath as Judges of the 'New Court'. The then Governor of Uttar Pradesh a most colourful personality, Sarojini Naidu presided. The then Chief Minister, the late Pandit Govind Ballabh Pant was also present. Speeches were made. New hopes were expressed in respect of a new era of forensic growth.

I had so far spoken mostly of the Judges. Let us now turn attention to those 'luminaries of the Bar' who had quit the stage before I joined the High Court Bar: Conlan, Moti Lal, Sunder Lal, Chowdhari, and their contemporaries. Even though they were not there their legend sustained and inspired the two sections of the Bar-Barristers and Vakils. I unfortunately did not see any of them. Even so, the glory that was Moti Lal and Sunder Lal was still there to dazzle our eyes. When I joined the High Court Bar Sir Tej Bahadur Sapru was the great giant--the towering personality. Sir Tej was not only a leader of the Bar but he led in many fields beyond the professional confines.

It is rare to find a man who is endowed with the qualities with which Sir Tej was endowed. He was cultured man in every sense of the word-a man of versatility and charm. The Bar owed much of the respect it commanded at that time to the towering personality of Sir Tej.

He was a, 'Liberal' in politics, he believed in constitutional methods for bringing about the emancipation of the country. He was often accused, by people who did not have sufficient realization that there could be an honest point of view that the better method of obtaining independence was through constitutional and legal methods, of being a luke-warm patriot: nothing could be farther from the truth. Those who had the privilege of knowing Sir Tej as intimately as some of us did, knew what an ardent patriot he was. I have not the slightest doubt that some day some future historian, with a proper historical perspective, will when assessing and recording the factors which were responsible for bringing about a change in the opinion of England and the consequent 'parting of power' by the British Government to the People of India would record the noble role played by Sir Tej and some of his close associates in the stormy days preceding 1947.

Sir Tej's influence with the members of the Bar was tremendous-nothing was done by the Bar which did not meet the approval of Sir Tej-he was the 'uncrowned King'. He had won great distinctions in the scholastic, forensic and the political field. His decorations included a K. C. S. I. and a P. C.

The other Advocate of great merit whom cruel death snatched away from the stage early was Pearey Lal Banerji. He was a gifted lawyer. His forensic eloquence was the envy of many. He was shy in social life but bold and fearless in Court.

With the departure of Dr. Kailash Nath Katju, and Shyam Krishna Dar, and the death of Pearey Lal Banerji a distinct era of this Court ended.

The world indeed is a stage where Judges and lawyers play their part in a great forensic drama-a drama of real life, often breath-taking.

As long as man would remain 'what he has been, Courts and lawyers would function as they have.