

The man who stayed on: a brief life of Justice William Broome

By Douglas McDonald-Norman

On 15 August 1947, at the stroke of midnight, India gained its independence. On 26 January 1950, the independent nation became a Republic under its new Constitution. Most British officials who had served and governed under the ‘Raj’ departed at, or soon after, Independence. This article examines a man who went against this trend, ‘staying on’ in service to the new nation – William Broome, later a judge of the Allahabad High Court.¹

The Constitution of India

There was substantial continuity between India’s constitutional order before 1947 and the new order which replaced it. Much of the structure of the 1950 Constitution was inherited from the 1935 *Government of India Act*, enacted by the British Parliament at Westminster; some of the powers of the new government, including powers of detention without trial, preserved prerogatives of the old regime. But in many other respects, the 1950 Constitution was drafted as a direct response to the experience of colonial rule and as an aspirational, even transformative document. Many of its drafters in the Constituent Assembly had been involved in the struggle for India’s independence; others, including the principal drafter of the Constitution, Dr BR Ambedkar, had suffered discrimination and vilification within Indian society because of their caste, religion or gender.²

Where the colonial regime suppressed ‘seditious’ speech and activity, the Constitution protects rights to freedom of speech, assembly and association.³ Where lower-caste people had been persecuted and ostracised, the Constitution abolishes ‘untouchability’ and prohibits discrimination on the basis of religion, caste and sex.⁴ And where India had suffered famines and impoverishment, the Constitution’s ‘Directive Principles’ set out (non-justiciable) precepts for the elimination of social and economic inequalities within India.⁵

Despite the character and origins of the Constitution, there was, and is, a striking degree of continuity between India’s colonial and independent judiciary. The first Chief Justice of independent India, Harilal



Kania, had been knighted by the British; as late as 1970, Chief Justice Hidayatullah was the holder of an OBE (conferred before Independence). Indian judges and members of the Indian Bar still robe; judges are addressed in Court as ‘your Lordship’, as in the United Kingdom; and civil and criminal procedure are still dominated by codes enacted under the Raj. Beyond protocols, honorifics and procedure, a striking example of colonial continuity is that several judges of British origin who had served under the colonial regime stayed on as judges of the new nation’s courts, shaping the development of precedent under the new Constitution. The longest-serving of these judges was William Broome.

The life of William Broome

William Broome was born in London on 18 March 1910. He joined the Indian Civil Service (ICS) – the ‘steel frame’ of the Raj, the small and elite cadre of civil servants who administered India under colonial rule – in 1932. After initial service as an administrative officer, he opted for the ICS’s ‘judicial branch’; he served as Registrar of the Allahabad High Court (1943–1945) and as a District and Sessions judge (1941–1943, 1945–1958), the equivalent to a NSW District Court judge.

In 1937, Broome married Swaroop Kumari Gour, daughter of the first Vice-Chancellor of the University of Delhi. His children were given names of Indian origin

and were raised as Hindus. Broome, a polyglot, spoke multiple Indian languages and collected Indian art and artifacts. He was not the only British person in India under the Raj, or even the only British official, to marry into an Indian family. But this was still a significant and unorthodox development. Colonial rule in India rested upon assumptions of ‘colonial difference’ – of separation and hierarchy between rulers and ruled. Broome’s marriage to Swaroop, his immersion into Indian culture and the way in which he raised his children were in defiance of those settled norms. After 1947, when most of his contemporaries left India, Broome stayed in service in the judiciary of independent India.

In 1958, Broome had lived in India for more than two decades and was the most senior District and Sessions judge in the state of Uttar Pradesh. That year, Prime Minister Jawaharlal Nehru wrote to the Secretary-General of India’s Ministry of External Affairs about Broome. Nehru noted that he had ‘seldom known any Englishman who has so Indianized himself in various ways as [Broome] has’:

He is, I believe, a good linguist in Indian languages. He has married an Indian wife. In fact, he is as much as Indian as anybody can be who is not born in India and indeed probably more so than many people born in India.⁶

Nehru said that Broome was ‘as near an Indian citizen as anyone can be’, and more Indian ‘than many people born in India.’⁷ The catch, however, arose from Indian citizenship law at that time – which prevented British citizens from becoming Indian citizens. After Nehru’s intervention, a solution was found: Broome could renounce his British citizenship and then, a few days later, become an Indian citizen. A few weeks after becoming an Indian citizen on 5 November 1958, Broome was appointed as a judge of the Allahabad High Court.

Broome as judge

William Broome had come to India as an official of a colonial power. But he proved

to be a creative, liberal-minded High Court judge, especially in the interpretation of India's new Constitution.

In *Lalai Singh Yadav v State of Uttar Pradesh*,⁸ he struck down the forfeiture of a book compiling speeches of Dr BR Ambedkar, principal drafter of the Constitution and a prominent representative and advocate for India's 'untouchable' Dalit population (the 'scheduled castes'). The government had sought to confiscate the book because its harsh criticism of high-caste Hindus was said to 'promote disharmony, enmity, hatred or ill-will' between castes; Broome J found that the language used did nothing more than to 'advocat[e], in reverse, the attitudes adopted by high caste Hindus towards the scheduled castes', and hence to demonstrate the folly of those attitudes.⁹ The government also sought to ban the book because of its criticism of Hindu gods; Broome J found that it was perfectly permissible for the book to engage in that criticism, because the stories that it relied upon were contained in Hindu religious texts themselves – 'and nothing that is mentioned therein can possibly be taken offence to or construed as an insult to Hinduism, however much it may be at variance with modern ideas of morality and ethics'.¹⁰

In *Smt. Kaushaliya*,¹¹ Broome J heard a challenge to section 20 of the *Suppression of Immoral Traffic in Women and Girls Act*, which permitted a magistrate to expel a sex worker from a district if the magistrate thought it 'in the public interest' to do so. Broome J found that this clause delegated 'unguided and unfettered power' to the magistrate, with no meaningful constraints upon how that power should be exercised and no ability to ensure that like cases were treated alike – and hence that the conferral of power violated the constitutional right to equality before the law.¹² He further found that the power to expel sex workers was 'unnecessarily drastic and wide', and an impermissible encroachment on constitutional rights to freedom of residence and movement.¹³ Broome's views in this regard were sufficiently ahead of their time that, on appeal to the Supreme Court of India, even the noted civil libertarian Subba



Rao J overturned Broome J's judgment and affirmed the constitutionality of the power.¹⁴

Broome left the Allahabad High Court in 1972, once he reached the constitutionally-prescribed retirement age of 62. He never returned to the United Kingdom. He died in Bangalore in 1986.

Contemporary implications

What can Australian lawyers learn from the life of William Broome? How are his experiences, and those of the Indian bench and bar after Independence, relevant to contemporary challenges in legal practice?

William Broome came to India as a servant of a colonial power; he died a citizen of India. Despite the traditions and institutions in which he was raised and which had brought him to India, he devoted himself to the service of the new nation and took a broad view of the rights of individuals, even unpopular and stigmatised individuals, under its Constitution.

As barristers, we are heirs to ancient traditions. But these traditions can be reinterpreted and can be put to new purposes. The life and experiences of William Broome demonstrate how traditional institutions can be reclaimed in the defence of individual liberties, and how the common law can adapt and thrive to suit new circumstances and new demands for justice. **BN**

This article is based upon the author's article 'Becoming Indian: William Broome and Colonial Continuity in Post-Independence India' (2015) 42 *Indian Historical Review* 303. The author is indebted to the family of William Broome (especially Indira Broome Chaudhary, Sharad Chaudhary, Niko Nair, Ashok Gour Broome and Leela Gour Broome) for their invaluable assistance.

ENDNOTES

- 1 India's final court of appeal is the Supreme Court. India's state superior courts of record are High Courts. Needless to say, the fact that Australians call our final court of appeal the High Court and our state superior courts Supreme Courts can cause confusion.
- 2 The canonical account of the drafting of India's Constitution is Granville Austin, *The Indian Constitution: Cornerstone of a Nation* (1966).
- 3 *Constitution of India* article 19.
- 4 *Constitution of India* articles 15, 16 and 17.
- 5 *Constitution of India* Part IV.
- 6 Jawaharlal Nehru, 'Grant of Indian Citizenship to William Broome' in Aditya Mukherjee and Mridula Mukherjee (eds), *Selected Works of Jawaharlal Nehru* (vol 41) 470.
- 7 Jawaharlal Nehru, 'Citizenship for William Broome' in Aditya Mukherjee and Mridula Mukherjee (eds), *Selected Works of Jawaharlal Nehru* (vol 42) 316.
- 8 1971 CriLJ 1773.
- 9 *Ibid* [5].
- 10 *Ibid* [8].
- 11 AIR 1963 All 71.
- 12 *Ibid* 74.
- 13 *Ibid* 73.
- 14 *State of Uttar Pradesh v Kaushalia* AIR 1964 SC 416.