

# The Hindu

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## SUPREME COURT INAUGURATED

### JURISDICTION OVER ENTIRE UNION

### "GUARDIAN OF LIBERTY"

NEW DELHI, Jan. 28.

For the first time in the history of India, the Supreme Court, a judicial tribunal exercising sovereign jurisdiction over the entire country, took its seat in the Court Chamber in Parliament House to-day.

The Prime Minister, Pandit Jawaharlal Nehru, the Deputy Prime Minister and other Ministers, the Chief Justices of the State High Courts, members of the Diplomatic Corps, Advocates-General of States, the Commanders-in-Chief of the three Services, Sir Maurice Gwyer, Vice-Chancellor of the Delhi University and former Chief Justice of the Federal Court, and Sir S. Varadachariar, former Judge of the Federal Court and Chairman of the Income-Tax Investigation Tribunal, were among the distinguished guests who were present on the occasion.

The Federal Court of India, the predecessor of the Supreme Court, which had come into being on December, 1937, had exercised jurisdiction only over the Provinces and that, too, in resolving constitutional disputes and interpreting the Government of India Act. Even its appellate authority, the Privy Council, had no control over the administration of Justice in the Indian States.

The attainment of independence resulted in the enlargement of the jurisdiction of the Federal Court in civil matters and later in October, 1949, it was made the supreme judicial authority in India, though the Indian States were still excluded from its jurisdiction.

Under its new jurisdiction, the Supreme Court has not only appellate authority in civil and criminal matters over the whole of the Indian Union, an area of over two million square miles inhabited by 330 million people, but it has original jurisdiction in regard to the enforcement of the Fundamental Rights guaranteed under the constitution. The rules of the court, which have been approved by the President, provide for the issue of writs for the enforcement of these rights. The Supreme Court is also invested with the authority to test the validity of the provisions of any existing law or future law in so far as they are repugnant to the constitution.

The six Judges of the Supreme Court were seated on the dais, while above them was the seal, the Ashoka Chakra, inset against a red background and surmounted by the Samadhi Lion. Below the dais, sat the 13 Chief Justices of the High Courts, facing the distinguished visitors seated in the semi-circular chamber.

Welcoming Their Lordships, the Attorney-General of India, Mr. M. C. Setalvad, referred to the inauguration of the Federal Court 12 years ago and said: "The irresistible will of the people brought independence to the country in 1947. Now in the fulness of our freedom, we have fashioned ourselves into a sovereign democratic Republic." By the constitution, the Supreme Court of India had been created which would exercise appellate jurisdiction over 18 High Courts and Chief Courts and would have original jurisdiction in disputes between the Centre and the States and also in the enforcement of the Fundamental Rights. "The jurisdiction and powers of the court are wider than those exercised by the highest court of any country in the Commonwealth or by the Supreme Court of the United States," he stated.

Mr. Setalvad referred to the role of the Supreme Court of the United States in marking the boundaries between State and Union action and said: "Our constitution is in many respects essentially different. The division of powers between the Union and the States has been carefully planned. Yet many vital domestic issues are bound to arise in a variety of forms before the court and its decisions are sure to exercise a far-reaching influence on these issues."

### ENSURING FUNDAMENTAL RIGHTS

Referring to the Fundamental Rights provided in the constitution and their enforceability, Mr. Setalvad said: "On this court will fall the delicate and difficult task of ensuring to the citizen the enjoyment of his guaranteed rights consistently with the rights of society and the State."

Mr. Setalvad referred to the Privy Council and said: "Our ties with the Judicial Committee of the Privy Council have now snapped. But the law laid down in their judgments will doubtless continue to mould and influence the decisions of this court. This is inevitable because the roots of our statute law and legal forms lie deeply enmeshed in the jurisprudence of England and the decisions of the English Courts."

Mr. Setalvad expressed his confidence that in course of time, the Supreme Court "will attain the same judicial eminence and that memorable and epoch-making judgments will illumine its records."

Mr. Setalvad said that in the task of "building a nation, alive to its national and international duties," the Supreme Court "will play a great and singular role and establish itself in the consciousness of the Indian people. Like all human institutions, the Supreme Court, we hope, will earn reverence through truth," he added.

### CHIEF JUSTICE'S REPLY

Replying to the address on behalf of the Bench, the Chief Justice, the honourable Sir Harilal J. Kania said it was "difficult to over-estimate the significance of the day's proceedings. The people of India have established by their choice the Supreme Court as the final court of appeal for its people. It is the final stage

of the complete independence of the judicial system of the country. In endowing the Supreme Court of India with very wide powers, the Constituent Assembly, the Assembly representing the voice of the people through their elected representatives, has shown complete confidence in the court as the final body for dispensing justice between individuals and also between States and States and the States and the Centre. We hope to deserve that confidence. We trust that the people of India will also maintain the independence, honour and dignity of the Supreme Court."

Sir H. J. Kania then referred to the powers and functions of the Supreme Court and said, "Clothed with the duty of performing such important functions, it is obvious that in all democratic countries, the Supreme Court should be quite unapproachable by the Legislature or the executive authority in the performance of its duties. Under the constitution of India, the Supreme Court is established to safeguard the Fundamental Rights and liberties of the people. An independent Supreme Court, as shown by the working of such courts in other democratic countries, will have far-reaching influence on the constitutional history and progress of the Union of India."

Referring to the constitution of India and the powers it had given to the various authorities, the Chief Justice said: "It has tried to include within itself various features of the constitution of other countries, in so far as they are suitable to India. The result is that different parts of the constitution will act and react on each other and the court will have to decide questions arising from such a situation. The court will be called upon to discharge its duties as perhaps no other court has so far been called upon to do. The only other country with so many States federating to form one Union, I believe, is the United States of America."

The decisions of the Supreme Court of that great country were not frequently referred to in our courts as research for an authoritative statement of law on the points in controversy was made in the decisions of the Privy Council, as those decisions were binding on the courts in India. Even the *obiter dicta* of the Board had to be treated as authoritative. With the establishment of the Supreme Court, although the Privy Council decisions are entitled to great respect, they have ceased to have compelling binding force. The result is that the decisions of the Supreme Court of the United States of America and the jurisprudence of that country and the principles of law laid down by that court will be perhaps more relied upon for our decisions than they have hitherto been done."

### PRIVY COUNCIL DECISIONS

Paying a tribute to the Privy Council, the Chief Justice said: "The law consists of acts of the Legislature, custom and judicial decisions. While the Supreme Court will no longer be under the control or supervision of the Judicial Committee of the Privy Council and the latter's decisions will no longer be binding on this court, the decisions of the Privy Council are bound to be treated with the greatest respect as they have become a part of the law of this country. Several judicial pronouncements of the Board are monuments of learning and, written with illuminating clarity, are a lucid exposition of the first legal principles, which will be treasured so long as our present system of law endures. The work done by that august body for Indian law will be always appreciated. In the constitutional development of India, these changes, though not noticed immediately by every man, are appreciated by many here and abroad as they have the unifying influence of the Central Jurisdiction."

Referring to the role of the courts, Sir H. J. Kania said: "In a democratic country, the people make the laws through their Legislature. It is not the function of the court to supervise or correct the laws passed by the Legislature as an overriding authority. It is its function and duty to point out, when examining the acts of individuals or of the executive authority

purporting to be done under some act of the Legislature, such lacuna or loopholes only with the object that, if so desired, the Legislative authority may put matters right. As it is often stated, in cases of hardship, the court tries its best to do justice between the parties, but if a clear provision of law exists, it has to administer the law and not to make one. The court is thus working always in co-operation with the Legislature and at no time can its work be considered obstructive or its attitude antagonistic."

### INTERPRETING THE CONSTITUTION

"India has chosen to have a written constitution and the duty of interpreting that constitution with an enlightened liberality falls on the Supreme Court. The Supreme Court will declare and interpret the law of the land and, with the high traditions behind the judiciary of this country, we are convinced that the work will be done in no spirit of formal or barren legalism. It will be our endeavour to interpret the constitution, not as a rigid body, but as a living organisation having within itself the force and power of self-government. We trust that in doing so, we shall allow the constitutional usages and conventions recognised in all civilised independent countries to be respected. The Supreme Court, however, under the colour of interpretation, cannot alter or amend the law. But within the limits prescribed, we are quite sure the Supreme Court will be able to make a substantial contribution towards the formation of India into a great unit retaining its own civilisation, traditions and customs. With the establishment of the Supreme Court of India, we shall develop our own jurisprudence based on our historical background and we trust that that will be an important and useful contribution to the creation of international law."

Sir H. J. Kania then referred to the High Court Benches and appointment of Judges and said: "In order that the Supreme Court may have full assistance in its work, the High Courts will have to be strong in their personnel. Under the old legislation, a fixed proportion of Judges from the Barristers and the Indian Civil Service had to be maintained. That rule was repealed some time ago, but the mental background still appears to exist. In the same way, for some years before 1947, there was a policy to appoint members of different communities in some proportion in the services, including the High Courts. In theory, it appears to be now accepted that appointments will be only on merits. The policy, however, does not appear to have been completely abandoned. We hope that political considerations will not influence appointments to High Courts. It is necessary that for the High Courts, merit alone should be the basis for selection, if the High Courts have to remain strong and independent and enjoy the confidence of the people."

### APPOINTMENT OF HIGH COURT JUDGES

Sir H. J. Kania referred to the convention before January 26 that the Chief Justice should be consulted before the appointment of High Court Judges and said: "It was understood that if the Chief Justice did not approve of an appointment, it was not made by the Government. Under the Constitution of India, we believe a statutory recognition is given to this convention by providing that the Chief Justice will be consulted before the appointment of High Court Judges."

The Chief Justice said that the jurisdiction of the court over a vast area and its multiple powers would require more Judges. "On the rapid achievement of independence, wide gaps were left in the judicial service and several members of the Bar have been appointed Judges of High Courts in the last two years. This has made fresh recruitment to the Bench more difficult and the process of expanding the Supreme Court will have to be slow."

Referring to recruitment to the Judiciary from the Bar, the Chief Justice said that 30 years ago, the offer of a Judgeship to a member of the Bar was considered a high honour and the "culminating apex" of his career as a lawyer. A Judge was respected by the people and the Government. His position and status were recognised in all spheres. Everyone's attitude towards

the court was of "adoration and almost of worship". That honour "and life of comparative ease" were considered sufficient compensation by leading lawyers to balance the financial loss of becoming a Judge. But during the last 20 years, "respect for the position, status and dignity of the Judges have not been fully maintained." Without any compensatory advantage, it was difficult to persuade a good practitioner to become a Judge. "I hope and trust," Sir H. G. Kania said, "that with the inauguration of the Republic, the honour due to the position and status of a Judge of a High Court and the Supreme Court will be fully restored."

The Chief Justice next referred to the need for a strong, intelligent and industrious Bar and said: "We have heard with pleasure your assurance of such assistance and complete co-operation in the administration of justice. We hope that with the realisation of the value of independence, which the country has achieved politically, such co-operation will be forthcoming from all other quarters also."

With the inauguration of the Republic and High Courts of the States Unions becoming State High Courts, "one can look forward in time to the existence of one Bar for India, with a very high standard of efficiency to assist the courts in the administration of justice."

The profession of law was "very important to the structure of society" when India and the world were passing through the transitional stage and "traveling along somewhat uncertain paths of peace," he said. The lawyers, equipped with knowledge of law, were expected to fight for the freedom of the citizen and also the maintenance of law and order. While in the name of independence, confusion or disorder in society could not be permitted, the lawyers' profession would naturally resist encroachments attempted in the name of law and order on the liberty of the subject and on fundamental human rights. The profession of law, with the inauguration of the Republic, had thus also to discharge a more onerous obligation, "which we are quite sure it is capable of and will be willing to do."

Sir H. J. Kania stressed the need for raising the standards of the Bar in the State Unions and said: "Unless the Bar makes a determined effort to raise its standards, it will not be useful to the court in arriving at correct decisions."

"The Supreme Court, as an all-India court, will stand firm and aloof from party politics and political theories. It is unconcerned with changes in the Government. The Court stands to administer the law for the time being in force, has goodwill and sympathy for all, but is allied to none. Occupying that position, we hope and trust it will play a great part in the building up of the nation, in stabilising the roots of civilisation, which have twice been threatened and shaken by two world wars, and maintain the fundamental principles of justice, which are the emblem of God. I hope and trust the Court will maintain the high traditions of the judiciary and perform its duties without fear or favour."

"If we succeed in doing so, we shall contribute our share to the progress of the Republic of India and render a service to the country which none else can render. The presence of the Chief Justices of different States of the Union of India and of the advocates of this court, who are also advocates of different High Courts, on this occasion gives us encouragement to cherish such hopes. We hope that we shall have frequent occasions to contact the Supreme Courts of other independent countries so that, with the exchange of views, the high standard of our judiciary may be further strengthened."

Before concluding, the Chief Justice read a message from the Lord Chancellor of England expressing "sincere good wishes." In his message, the Lord Chancellor had stated: "It is satisfactory to think that notwithstanding all the difficulties of the day, we are all determined to maintain and strengthen the rule of law and I feel quite confident that the Supreme Court of India will prove an effective instrument for this end. I like to think that you share with us common traditions and I feel sure that we shall each again strengthen wisdom from the development of each other's jurisprudence. I will do everything I can to maintain the closest contact with your court and with its Judges and I hope that from time to time, we may have the opportunity of meeting them either here or in your country."



A photograph taken on the occasion of the inaugural sitting of the Supreme Court of India, the highest court in the land under the new Constitution, on January 28, 1950. Photo shows: left to right: Justices S.R. Das, M.C. Mahajan, S. Fazl Ali, H.J. Kania, M. Patanjali Sastri and B.K. Mukherjee. Left to right: B. Malik, M.C. Chagla, Rajamannar, B. Ray, Thadani, Vivian Bose, Eric Watson, H.V. Divatia, Teja Singh, Meddappa, R.S. Naik, P.K. Kaul and Kunhiraman.