

**S. C. R.**



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# The Supreme Court Reports.

PROCEEDINGS AT THE INAUGURAL SITTING  
OF THE SUPREME COURT OF INDIA,  
IN THE COURT HOUSE, NEW DELHI,  
ON JANUARY 28, 1950.

[SHRI HARILAL J. KANIA C.J., SAIYID FAZL ALI,  
M. PATANJALI SASTRI, MEHR CHAND MAHAJAN, BIJAN  
KUMAR MUKHERJEA and S. R. DAS JJ.]

The Hon'ble Shri Harilal J. Kania, Chief Justice of India, the Hon'ble Saiyid Fazl Ali, the Hon'ble Mr. M. Patanjali Sastri, the Hon'ble Mr. Mehr Chand Mahajan, the Hon'ble Mr. Bijan Kumar Mukherjea and the Hon'ble Mr. S. R. Das, Judges of the Supreme Court, took their seats at 9.45 a. m. There were present in the Chamber the Hon'ble Mr. Justice B. Malik, Chief Justice of Allahabad, the Hon'ble Mr. Justice M. C. Chagla, Chief Justice of Bombay, the Hon'ble Mr. Justice P. V. Rajamannar, Chief Justice of Madras, the Hon'ble Mr. Justice B. Ray, Chief Justice of Orissa, the Hon'ble Mr. Justice Thadani, Chief Justice of Assam, the Hon'ble Mr. Justice Vivian Bose, Chief Justice of Nagpur, the Hon'ble Mr. Justice Eric Weston, Chief Justice of Punjab, the Hon'ble Mr. Justice Divatia, Chief Justice of Saurashtra, the Hon'ble Mr. Justice Teja Singh, Chief Justice of Patiala and East Punjab States Union, the Hon'ble Mr. Justice Medappa, Chief Justice of Mysore, the Hon'ble Mr. Justice R. S. Naik, Chief Justice of Hyderabad, the Hon'ble Mr. Justice P. K. Kaul, Chief Justice of Madhya Bharat and the Hon'ble Mr. Justice Kunhiraman, Chief Justice of Travancore-Cochin Union.

There were also present the Attorney-General for India (Mr. M. C. Setalvad), the Advocate-General of Bombay (Mr. C. K. Daphtary), the Advocate-General of Madras (Mr. K. Rajah Ayyar), the Advocate-General

of Uttar Pradesh (Mr. P. L. Banerjee), the Advocate-General of Bihar (Mr. L. K. Jha), the Advocate-General of East Punjab (Mr. Basanta Krishna Khanna), the Advocate-General of Orissa (Mr. B. N. Das), the Advocate-General of Mysore (Mr. B. Vasudeva Murthy), the Advocate-General of Hyderabad (Mr. V. Rajaram Iyer) and the Advocate-General of Madhya Bharat (Mr. K. A. Chitale).

In addition, there were present on the occasion the Prime Minister of India, the Deputy Prime Minister and other Ministers, the Ambassadors, Ministers and diplomatic representatives of foreign States, a large number of Senior and other Advocates of the Court and several distinguished visitors.

*Mr. M. C. Setalvad, Attorney-General for India :* My Lords, It is my great privilege to accord to you, the Supreme Tribunal of the Indian Union, a cordial welcome. I do so on behalf not only of the Advocates-General of the States and the distinguished members of the Bar who are present but on behalf of the Bar and the legal profession throughout the Country.

A little over twelve years ago were assembled in this very Chamber a distinguished gathering to inaugurate the Federal Court of India. The main function of that Court was the interpretation of the Constitution Act of 1935 and the resolving of constitutional disputes. Circumstances prevented the Federal Court from rising to its full stature. Yet during the short period of its existence it laid truly and well, within its limited sphere, foundations of Constitutional law and practice in this Country. It built up a great tradition and not infrequently, in the turbulent years which followed the war, it stood between the arbitrary action of the Executive and the people, endeavouring to safeguard the liberty of the subject.

Few could have anticipated in 1937 the great and sweeping changes which have come over the Country since. The irresistible will of the people brought independence to the Country in 1947. Now in the fullness of our freedom we have fashioned ourselves into a Sovereign Democratic Republic, and given

ourselves a written constitution unique in many of its aspects.

By the Constitution creating the federation of the Indian Union you have been made a Court of Record, invested with original jurisdiction in disputes between the Union and the States and in interstatal disputes and are constituted the highest Court of appeal in Civil and Criminal causes.

The area, extent, and nature of your jurisdiction impress one with the great responsibility which the Constitution has placed on this Court. The writ of this Court will run over territory extending to over two million square miles inhabited by a population of about 330 millions. You will be called upon to exercise original jurisdiction in matters arising between the Union and its 18 component States and between the States *inter se*. You will be a Court of civil and criminal appeal from, I believe, at least eighteen High Courts or Chief Courts not only in matters involving the interpretation of the Constitution but in civil matters over a certain value and in specified criminal matters. For the enforcement of the fundamental rights of the citizen the Court will have power to issue directions, orders, or writs in the nature of high prerogative writs. The President of the Republic may also invite your opinion on questions of law or fact of public importance. This extensive jurisdiction conferred upon you is apt to be enlarged by Parliament. It can truly be said that the jurisdiction and powers of this Court, in their nature and extent, are wider than those exercised by the highest Court of any country in the Commonwealth or by the Supreme Court of the United States.

Your foremost task will be to interpret the Constitution which is but a means of ordering the life of a progressive people. The Federal Court has already laid down that a Constitution is to be interpreted in no narrow spirit. For, in the words of Justice HOLMES of the United States: "The provisions of the Constitution are not mathematical formulas having their essence in the form; they are organic living institutions. . . . Their significance is vital, not formal;

it is to be gathered not simply by taking the words and a dictionary, but by considering their origin and the line of their growth". The essence of a federation is the division of power between to governments in the same territory. In the large area of intersection of Union and State authority the Court will be called upon to mark the boundaries between State and Union action and to adjust the relationship of the Union to the States. The vital share of the Supreme Court of the United States in the interplay of the Country's political and economic forces is well known. So great has been its contribution to American legal and political thought that to-day, in the words of an American writer, an attitude of adoration and almost worship of the court" has become general and customary among large groups of people. "Justices of the Court are not architects of policy. They can nullify the policy of others", says a great jurist. This power of negation exercised with "judicial statesmanship" has earned the Supreme Court a high place in the hearts of a large number of Americans. 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.

Scarcely less important will be the role which the Court will be called upon to play in mediating between the individual and the Government. The detailed enumeration of fundamental rights in the Constitution and the provisions which enable them to be reasonably restricted will need wise and discriminating decisions. On the 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. No less onerous though far less spectacular will be the task of adjudging the private rights of citizens and interpreting and administering the law of the land.

In the performance of some of these duties you will be the successors of a great judicial tribunal which has

so well and so ably functioned as the highest Court of appeal for about a hundred years. The great judges who have from time to time presided over its deliberations have left a deep and ineffaceable impress on the law of this Country. Our tie with the Judicial Committee of the Privy Council has 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.

We at the Bar, have confidence that the Supreme Court of India which is being inaugurated to-day, will in course of time attain the same judicial eminence, and that memorable and epoch making judgments will illumine its records. The task before us all is the building of a nation alive to its national and international duties, consisting of a strong Central authority and federated units each possessed of ample power for the diverse uses of a progressive people. In the attainment of this noble end, we hope and trust that this 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". The heavy and responsible duties which rest on your Lordships cannot be adequately performed without the assistance of a strong, well equipped and independent Bar. A number of difficulties prevent at the moment the growth of such a Bar at the seat of this Court. These we hope will get resolved at no distant date so that this Court can command the assistance of a Bar distinguished for its learning and independence and devoted to the highest traditions of the profession.

My Lords, on behalf of the profession from all parts of India, I offer to your Lordships our loyal and whole-hearted co-operation.

KANIA C.J.—Mr. Attorney-General of India, we thank you for your words of welcome on the establishment of the Supreme Court of India. The presence of

the Advocates-General of several States and of Advocates from different parts of India today is a compliment to the Court. It is difficult to overestimate the significance of today's proceedings in the constitutional development of India, when we remember how the Supreme Court has come to be established and notice its functions and duties. The Federal Court was established in 1937 under the Government of India Act, 1935, in anticipation of a Federation being formed. For reasons which we need not ponder over now, the idea of Federation did not fully materialize. With the passing of the Indian Independence Act in 1947 a great change came over the structure of the Government of India. All foreign control over the determination of issues vital to the Government of the country disappeared. The Constituent Assembly which was then sitting got the power to make laws including the power to amend the Government of India Act itself. Once that step was taken, all control from outside over the Indian Judiciary had to go. By legislation in December 1947 all direct appeals, in civil matters, to the Judicial Committee of the Privy Council were stopped from the 1st of February 1948. When the draft constitution was about to be completed in its second stage and in order that the abolition of all appeals to the Judicial Committee may be smoothly brought about, the Abolition of Privy Council Jurisdiction Act, 1949, was passed in October 1949. Theoretically, before that in all civil and criminal matters a right of appeal to the Privy Council remained only with the leave of the Federal Court or with special leave of the Privy Council. On the ushering in of the Constitution of India that right has now also gone. The result is that the people of India have desired and established by their choice the Supreme Court as the final court of appeal for all its people. It is the final stage of the complete independence of the judicial system of the Country. Under the Constitution of India now in force the Supreme Court has been given powers not only to decide finally the ordinary civil or criminal litigation of the land, but also to decide disputes

between States and States and between the Centre and the States. In addition, powers are given to the President to refer to the Supreme Court questions of law or fact, for its opinion. A right of appeal in certain classes of criminal cases to the Supreme Court is newly created. Finally the Court is given powers to issue high prerogative writs like *habeas corpus*, *mandamus*, *certiorari* and *quo warranto*. The last, but by no means the least, important change is a result of the formation of several Indian States into Unions, having the same status of States in the matter of their judiciary. Their High Courts have now the same position as the High Courts of other States. Appeals from them lie direct to the Supreme Court. Clothed with the duty of performing such important functions, it is obvious that as in all democratic countries the Supreme Court should be quite untouchable by the legislature or the executive authority in the performance of its duties. No civilized democratic society can subsist and no nation can make progress if this position of the Supreme Court is not conceded and maintained. 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.

The Constitution of India divides the legislative powers between the States and the Centre. It has given overriding powers to the President in case of emergency. It has tried to provide for various contingencies which can be reasonably thought of. It has tried to include within itself various features of the Constitutions 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. As you observed, this 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 a search 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 *obita 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.

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 decision 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 lucid exposition of 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 Judicature.

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, the 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 its work can be considered obstructive or its attitude antagonistic.

A country may be governed by an unwritten Constitution, like the British Parliament, which is supreme in every respect. Its powers are unlimited. A country, on the other hand, may be governed by a written Constitution, like the United States of America. India has chosen to have a written Constitution. 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 organism, 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 civilized 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 that the Supreme Court will be able to make a substantial contribution towards the formation of India into a great unit retaining its own civilization, 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. The Federal Court as interpreting the Constitution of the country, had earned the confidence 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 its 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.

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 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 Court 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. Before the establishment of the Sovereign Democratic Republic of India, the relations between the Government and the Court were regulated by conventions. They have been established as a result of experience of several decades and were the basis of keeping the judiciary free from interference by the executive. One of the conventions was that the Chief Justice should be consulted before the appointment of a High Court Judge. 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 of India will be consulted before the appointment of a High Court Judge.

The establishment of the Supreme Court gives to the people justice nearer at hand and at a relatively smaller cost. The jurisdiction of the Supreme Court is now practically over the whole of India. Such jurisdiction, extending over such a vast area, with the multiple powers given to the court, will require in course of time 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. To maintain the high standard of our Judiciary recruitment from the Bar is the normal channel. You have assured us of the co-operation of the Bar in the administration of justice. Over thirty 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 by the Government. His position and status were recognized in all spheres. In those days, as you mentioned, everyone's attitude towards the court was of adoration and almost of worship. That honour and the life of comparative ease were considered sufficient compensation to balance the financial loss which a good practitioner suffered by accepting a judgeship. Unfortunately, during the last twenty years, that respect for the position, status and dignity of the judge has not been fully maintained. Without any compensatory benefit or advantage, it is difficult to persuade a good practitioner to accept a judgeship. We hope and trust that with the inauguration of the Republic the honour due to the position and status of a judge of a High Court and Supreme Court will be fully restored. Unless leading members of the Bar accept judgeships it will be difficult to strengthen the Bench and the hopes of producing great judges may not be realised.

Experience has shown that no court can perform its duty to the satisfaction of all concerned unless it

is assisted by a strong, intelligent and industrious Bar. 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. The Indian Bar has maintained the High traditions of the profession. Different conditions in different Provinces have so far prevented the creation of one Bar with one good reliable standard of advocacy, knowledge and etiquette. With the inauguration of the Independent Republic of India and the States Union Courts attaining the status of the States 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. When India and the world are passing through the transitional stage and travelling along somewhat uncertain paths of peace the profession of law is very important in the structure of the society. The lawyers equipped with knowledge of law are 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 cannot be permitted, the lawyers' profession will 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 of India, has thus also to discharge a more onerous obligation, which we are quite sure it is capable of and will be willing to do. The standard of the Bar of the State Unions will have to be raised considerably. More study and greater industry will be required of them. Unless the Bar makes a determined effort to raise its standard they will not be useful to the court in arriving at correct decisions. The decisions of the courts of those States will come for examination before the Supreme Court and unless the standard, knowledge and efficiency of the Bar are increased, defects in the conduct of the case

and ignorance of law, which may have caused failure of justice to the parties, will be noticed and naturally, come in for criticism.

The Supreme Court, an all-India Court, will stand firm and aloof from party politics and political theories. It is unconcerned with the 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 the Court will maintain the high traditions of the nation, and in stabilizing the roots of civilization which have twice been threatened and shaken by two world wars, and maintain the fundamental principles of justice which are the emblem of God. We 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 I should like to read to you a message which I have received from the Lord Chancellor of England on this occasion.

"May I send you and your brother Judges my sincere good wishes for the success of your Court?"

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 gain

strength and 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.

Please convey on behalf of myself and all the Judges of our Supreme Court the very best wishes to you all on the auspicious occasion".

May God grant us the strength and wisdom to discharge the duties and functions of the Court.

*Mr. M. C. Setalvad (Attorney-General for India) :—* My Lords, I now request that the names of all Advocates and Agents of the Federal Court may be directed by Your Lordships to be brought on to the rolls of the Supreme Court.

KANIA C. J.—Mr. Attorney-General, the rules of the Supreme Court have been published; and you will notice that the necessary provision has been made for the purpose in Rule 1 of Order IV of the Rules.

We direct that today's proceedings be recorded.