The birth of India’s powerful Supreme Court

In summarizing the evolvement of the paramount judiciary in India between 1921 and 1964, one can single out at least ten events which are of special importance. In listing these chronologically, the first would be Sir Hari Singh Gour’s resolution, introduced during the first session of the Central Legislative Assembly in 1921, in which he urged the establishment of an indigenous appellate tribunal. Gour’s resolution marked the beginning of efforts made to persuade the colonial authorities, and Indian nationalist leaders as well, that there was real need and justification for the creation of a central judicial institution on Indian soil. The purposes Gour sought to achieve were really quite modest. He sought the establishment in India of a court which would be empowered to decide civil and criminal appeals from the High Courts of British India, and a reduction in the number of such appeals which for decades had gone directly from the High Courts to the Judicial Committee of the Privy Council in London. Although Gour and others could offer many substantial arguments in support of their proposals, their efforts met with failure for several years, chiefly because key Indian leaders were not convinced that India’s interests would be served best by decreasing the role of the Privy Council, which over the years had earned a reputation for impartiality and integrity which placed it in a category apart from all other colonial institutions.

The next development of significance took place in 1930 at the opening session of the Indian Round Table Conference in London. At this conference, spokesmen for the Indian States indicated a willingness to participate in a federation with the Provinces of British India, and the leaders of each side agreed that should a federation emerge, a Federal Court would be essential to interpret the constitution and settle disputes which might arise between the federated units.

This general agreement, however, concerned the creation of a central tribunal which would exercise only a purely federal jurisdiction. Considerable controversy was evident on the question of conferring a general appellate, not merely federal, jurisdiction on the proposed court. The result was a compromise, for the Government of India Act of 1935 made provision for a Federal Court without a general appellate jurisdiction, but which might at some future date take over the appellate jurisdiction of the Privy Council.

A third milestone was the inauguration of the Federal Court in 1937. Although this event marked the establishment of India’s first central judicial institution, this beginning was quite unspectacular. Composed of only two puisne judges and a Chief Justice, the Federal Court was smaller than any of the Provincial High Courts and looked little like an important institution. Its jurisdiction was very limited, the subcontinent-wide federation for which it was to serve as the demarcator of spheres of authority had failed to materialize, and its decisions were subject to review by the Privy Council.

For a few years, the existence of the Federal Court was almost unnoticed, for it handed down only twenty-seven decisions and two advisory opinions over the first four and one-half years. But in April of 1942 the Federal Court handed down the first of a series of decisions in which it either boldly struck down provisions of the infamous sedition, preventive detention and special criminal court ordinances and legislation, or declared that the executive had not acted within the limits of its authority. All but one of these decisions were unanimous, with the British Chief Justice joining his Indian colleagues in restraining the alien executive from interfering arbitrarily with individual liberties. These decisions were proof of the resoluteness, impartiality and independence of the Federal Court, and they served to inspire a high degree of confidence in the Court. Thus these World War II decisions must be regarded as a fourth milestone in the evolution of the paramount judiciary in India.

The achievement of national independence had hardly an effect on the functioning of the Federal Court. But just over two years later a very significant step was taken by the Constituent Assembly

when it passed the Abolition of Privy Council Jurisdiction Act. The fact that judicial autonomy was delayed until over two years after the achievement of national independence indicates that considerable thought was given to desirability of severing all ties with the Privy Council. In terms of the evolvement of the Indian judiciary, the effect of severing ties with the Privy Council was largely psychological, for as long as India maintained these ties the Federal Court was looked upon by many as an intermediate appellate tribunal, notwithstanding the fact that the Privy Council reversed Federal Court decisions only five times.

A sixth event of great significance was the replacement of the Federal Court by the Supreme Court in 1950 when the Constitution of India became operative.

Although continuity was apparent in that judges of the Federal Court continued to serve on the Supreme Court, the jurisdiction and powers of the Supreme Court bear little resemblance to those of its predecessor. Sitting at the summit of a pyramidal and unified judicial system, endowed with an extraordinarily wide jurisdiction, and explicitly authorized to exercise the power of judicial review, the Supreme Court was placed in a position of central importance.

Seventh in this listing must be the decision of the Supreme Court in the case of *A. K. Gopalan v. The State of Madras*. This was the first case in which the Supreme Court was called upon to interpret the new Constitution, the first to involve the fundamental rights, the first to involve the controversial Preventive Detention Act, the first in which an individual bypassed all lower courts and took his grievance directly to the Supreme Court, and the first in which the Supreme Court, in the exercise of its new powers, declared unconstitutional a portion of a Parliamentary enactment. Understandably, the *Gopalan* decision has been more commented upon by foreign writers than any other decision of the Court. In one important respect, however, the *Gopalan* ruling is atypical, for in this decision the Court was modest in defining its own powers and role vis-à-vis Parliament. While it is true that the Court started off on a modest and self-distrustful note regarding its powers of review in this case, this certainly has not been the general approach of the Supreme Court in cases involving other fundamental rights.

The next important development took place in 1951 when the Supreme Court handed down its ruling in the *Dorairajan* case. This decision must be regarded as one of the most important ever rendered by the Supreme Court, for it was the first to involve both the fundamental rights and the directive principles, and the Court in its decision not only enforced the fundamental right over the directive principle, but went so far as to describe the fundamental rights as “sacrosanct” and the directive principles as“subsidiary”.

Ninth in this listing, and the single most important constitutional development since 1950, is the enactment of the Constitution (Fourth Amendment) Act in 1955. Precipitated by several Supreme Court decisions concerning the degree to which property rights were protected by the Constitution, the Fourth Amendment had the effect of limiting the Court’s review powers in cases involving restriction and acquisition of property rights. If proof was necessary that the Government intended to proceed with its various programs affecting property rights irrespective of decisions of the Supreme Court, or that judicial review in India does not mean judicial supremacy, the Fourth Amendment provides the relevant evidence.

A tenth and final development of significance is the Supreme Court’s shift toward a more liberal interpretation of the Constitution, which has become perceptible since the late 1950s. In a few recent decisions, the Court has discussed rather freely the social and economic policy considerations which are either explicit or implicit in the Constitution and various enactments, and has even endorsed the directive principles as worthy goals. While such decisions have been too few to justify speaking in terms of a new trend, they may indicate that the Court is attempting earnestly to accommodate both itself and the Constitution with the welfare state aims of the

Government.

Although the Supreme Court has been treated here as the lineal descendant of the Federal Court, the differences between the two institutions are much more notable than the similarities. Small in size, limited in jurisdiction, and functioning during the tumultuous twilight of the British raj and the difficult period which followed national independence and the partition of the subcontinent, the Federal Court was an institution of peripheral importance. Few important questions were submitted to the Federal Court for its adjudication; indeed, the major questions which stirred the subcontinent between 1937 and 1950 were hardly justiciable.

The real importance of the Federal Court lies in the fact that it was a stable and respected institution which functioned according to the terms of its charter during the most critical period in the history of modern India, and that in spite of the severe handicaps under which it operated, it was independent of the executive. Indeed, it demonstrated all the qualities—independence, impartiality, integrity, and dignity—which Indians associated with the Privy Council, and which they wished to have emulated by the judiciary in India. The Federal Court earned the respect and confidence of the Indian public, and when the Supreme Court replaced the Federal Court in 1950, it inherited this invaluable legacy.

In contrast with the Federal Court, the present Supreme Court of India occupies a position of central importance. Its jurisdiction is so extraordinarily extensive that there are very few questions or disputes which can escape the scrutiny of the Court.

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