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# THE FUNCTION OF THE FEDERAL COURT IN BRITISH INDIA.

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## CHAPTER- 1

: -INTRODUCTION: -

'A Federal Constitution involves a distribution of powers between the centre and the constitutional units.'

---Report of the Joint Committee on Indian Constitutional Reform

The *Federal Court* of India was set up and inaugurated on *October 1, 1937*, and continued to be the supreme authority of the Indian judiciary until *1950*, when the present Supreme Court of India replaced the Federal Court of India. In this article, we will learn about the history and timelines that have led to the Supreme Court as we have it today. We will learn about the Government of India Act (1935), which led to the establishment of the Federal Court.<sup>1</sup>

The idea of the establishment of the Federal Court in India as embodied in the White Paper scheme received the unanimous support of the Joint Committee on the Indian Constitutional Reforms and a provision was accordingly made in the Constitution Act of *1935*.<sup>2</sup>

For the first time, lawmakers in India established a supreme body and a court of final appeals. This system of courts has evolved through phases of history in India:<sup>3</sup>

- The [Regulation Act of 1773](#) for the first time established the [Supreme Court of Judicature at Calcutta \(1774\)](#). This was established as a Court of Record. It was given authority to determine civil and criminal cases in Odisha, Bihar and Bengal provinces.
- This was followed by the establishment of the Supreme Courts of Madras (1800) and

<sup>1</sup> Federal Court of India by Ms. Sushree Surekha Choudhury available at: [Federal Court of India - iPleaders](#) (Last visited on 27.10.2023 at 11.40 am)

<sup>2</sup> The Federal Court in India BY RAI SAHIB B. R. BEOTRA available at: <https://www.aironline.in/legal-articles/The+Federal+Court+in+India> (Last visited on 02.11.2023 at 10.40 am)

<sup>3</sup> ibid

Bombay (1823) by King George III.

- In 1861, the [Indian High Courts Act \(1861\)](#) established high courts for all provinces. This abolished the Supreme Courts of Calcutta, Madras and Bombay.
- These high courts ran the judiciary in different provinces, but a need was felt to have an ultimate court of appeals. This was when the resolution was passed to establish the Federal Court of India.
- The Federal Court of India was established under the Government of India Act (1935).
- The jurisdiction of the Federal Court of India expanded from solving disputes between provinces and the federal state to hearing appeals from the High Courts of all provinces.
- Apart from the Government of India Act (1935), the Federal Courts were also empowered by the [Federal Court Act \(1937\)](#). This Act empowered the Federal Court to make rules and regulations to regulate the courts in India.
- The Federal Court continued to be the final court of appeals in India till 1950.
- When India attained independence in 1947, the [Constitution of India \(1949\)](#) was drafted and enacted in 1950. This also replaced the Federal Court with the present Supreme Court of India. The first sitting of the Supreme Court of India was held on January 28, 1950.
- Sir Hari Singh Gour was the first lawmaker to propose the need for a Court of final appeal in India. He suggested replacing the Privy Council with this court of appeal. He moved resolutions in this regard to the Central Legislative Assembly during the 1920s. In the 1931-32 session of the Central Legislative Assembly, this resolution was approved and passed for the establishment of a Federal Court for India. In November 1934, the Joint Select Committee of Parliament recommended the establishment of the Federal Court of India. The Supreme Court of India, as we have it today, has its traces in the Federal Court of India. It was for the first time that a supreme body and a court of final appeals were established by lawmakers in India.

### **1.1 NECESSITY FOR FEDERAL COURT IN INDIA: -**

Due to an increasing tendency in Indian public opinion in favour of ending appeals to the Privy Council from Indian high courts and the British Empire's evolving federal structure in India, a need for a federal court in India was recognised.

The Government of India Act of 1935 altered the Indian government's structure from "unitary" to federal. The distribution of powers between the Centre and the Provinces required a delicate

balance to prevent conflicts between the component entities and the Federation.<sup>4</sup>

The Federalist system necessitated establishing a Federal Court with jurisdiction over both the States and the Provinces. Unfortunately, the Federal Court only existed for 12 years. It was India's highest court. Privy Council was in charge of it. However, approaching the Privy Council forced the litigants to incur significant costs. As a result, the Federal Court had to be established.<sup>5</sup>

### **1.2 ESTABLISHMENT OF FEDERAL COURTS: -**

A Federal Court was established in India under Section 200 of the Government of India Act, 1935. The Federal Court of Delhi was established on *October 1, 1937*. *Sir Maurice Gwyer* was the Federal Court's first Chief Justice. It was a Recorded Court. It convened in Delhi and at such other locations as the Chief Justice of India may proclaim from time to time, with the consent of the Governor-General of India.

### **1.3 APPOINTMENT OF JUDGES IN FEDERAL COURTS: -**

His Majesty was to nominate judges and the Chief Justice. They were to serve until they were 65 years old. On the suggestion of the Privy Council's judicial committee, His Majesty was entitled to remove any Judge from office for misbehaviour or mental or physical infirmity.<sup>6</sup>

1. The federal court was to be made up of the chief justice and the monarch chooses no more than six puisne justices.
2. The king has the power to raise the number of judges.

### **1.4 QUALIFICATION CRITERIA FOR JUDGES: -**

Qualifications required for a judge are-

1. A high court judge with 15 years of experience, or
2. A barrister or advocate with 10 years of experience, or
3. A high court pleader with 10 years of experience.
4. When it came to the chief justice's appointment, it was stipulated that a person must have 15 years of experience as a lawyer, advocate, or pleader in a high court or have been one when initially appointed as a judge.<sup>7</sup>

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<sup>4</sup> Supra Note 2

<sup>5</sup>Privy Council and Federal Court: An Overview by JATIN PATIL AND YUVRAJ SHARMA, [ISSN 2581-5369] Volume 5 Issue 2

<sup>6</sup> ibid

<sup>7</sup> Supra Note 3

## CHAPTER-2

### 2.1 THE GOVERNMENT OF INDIA ACT (1935): -

**Part IX, Chapter 1 of the Government of India Act (1935)** made provisions for the Federal Court of India. **Section 200-218 of Part IX** made a detailed description of the Federal Court of India as:

- Section 200 established the Federal Court of India. It also spoke about the composition of this court. The Federal Court came to have a Chief Justice of the Court with the aid of six judges. The number of judges could be increased by the Chief Justice if deemed necessary after obtaining approval from the Governor-General of India.
- The judges of the court shall be appointed by the Chief Justice by warrant under the Royal Sign. These judges could hold office till attaining the age of 65 years unless resigned or removed from office for appropriate reasons.
- To be appointed as a judge, the following qualifications were required:
  1. He/she should have been a High Court judge in any province or of the federal state, or
  2. He/she was a barrister in England or Northern Ireland for 10 years or had been a member of the Faculty of Advocates in Scotland for 10 years, or
  3. He/she has been a leader in any High Court of India.<sup>8</sup>

### 2.2 FUNCTION OF THE FEDERAL COURT AND JURISDICTION OF THE FEDERAL COURT: -

#### 1. ORIGINAL JURISDICTION: -

The Dominion's original jurisdiction was limited to conflicts between Dominion Units or the Dominion and any of the units. Thus, before the Federal Court, private people had no right to sue any Dominion. The Original Jurisdiction was however circumscribed by the provisions content in **section 204**.

The Court was not authorized to enforce its own decisions directly but with the aid of Civil and Judicial authorities throughout the Federation. It was not to pronounce any judgment and its original jurisdiction. *Governor-General-in-Council v. Province of Madras<sup>9</sup> and Ramgarh state v. Province of Bihar.*<sup>10</sup>

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<sup>8</sup> Supra Note 1

<sup>9</sup> 1943 FCR I

<sup>10</sup> 1948 FCR 79

## 2. APPELLATE JURISDICTION: -

The Federal Court has appellate power in constitutional matters under the Act of 1935. In both civil and criminal cases, it possessed appellate authority. On the same basis and with the same power, India's Supreme Court was established.

- i. In constitutional cases: **Section 205** of the Government of India Act 1935 provided that the Federal Court would hear an appeal from any judgement, decree, or final order of a High Court if the High Court certified that the case involved a substantial question of law concerning the interpretation of the Act of 1935 or any other Act and law. Thus, every appeal required the certificate as a prerequisite.
- ii. In civil matters, since 1948, civil appeals that the Privy Council had previously handled have been heard by the Federal Court of India, which is governed by the Federal Court Act of 1947. **Section 3** of the Act of 1947 stated that civil matters might be appealed to the federal court beginning *February 1, 1948*, with or without special leave of the federal court.
- iii. In criminal matters, the federal court legislation of 1947 expanded the federal court's authority in India, and the procedure of appeals from India to the privy council was abolished entirely in 1949. The Federal Court of India, as such, used the same grounds as the Privy Council in exercising appeal jurisdiction in criminal cases (after 1948).

## 2.3 FORMS OF JUDGEMENT: -

*Section 209 of the Act of 1935* stated that the Federal Court of India had no mechanism of its own to carry out the judgments. Therefore, it was returning the matter to the individual high courts with its decision for its order to take the place of the high courts.<sup>11</sup>

## CHAPTER-3

### 3.1 THE FEDERAL COURT: AN ASSESSMENT: -

The Federal Court of India was established in *October 1937* and was superseded by the Supreme Court in 1950. following this short period of a little more than twelve years, it left a permanent mark on the legal history of India. It was not only the first Constitutional Court but also the first all-India Court of extensive jurisdiction.

The Court was liberally conceived by the British Authorities as an indispensable adjunct to the

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<sup>11</sup> Supra Note 5

Federation envisaged by the Government of India Act of 1935. During the transitional period in Indian history, when there was no written Constitution, in a sense it was the product of a constitutional curiosity. It functioned successfully and effectively in the absence of essential federal agencies such as the Federal Executive and Federal Legislature.

The Federation itself was incomplete. Never the Federation of as many as eleven Indian Provinces into an organic whole was by no means negligible, and the situation enhances the importance of the role which the court played in somewhat difficult and depressing circumstances. Despite its limitations and short life, it made a noteworthy contribution to the functioning of an all-India court such as the Supreme Court.

During the period 1937-50, two English Chief Justices and six Indian Justices sat on the Federal Bench. *Sir Shah Sulaiman, Dr. M.R. Jayakar, S. Varadachariar, Sir Mohammad Zafrullah Khan, Sir Harilal J. Kania and Sir Fazal Ali* were the six Indians who got the rare distinction of being Judges of the Federal Court of India.

They maintained the noble traditions of the great Judges of Britain. They contributed a great deal to the establishment of a sound federal judiciary in India. The Federal Court built up great traditions of independence, impartiality and integrity which were inherited by its successor, the Supreme Court of India.<sup>12</sup>

## **CHAPTER-4**

### **4.1 CONCLUSION: -**

The Government of India Act which came into action in 1935 is the ultimate fulfilment of all three round table conferences. Ultimately the British Parliament agreed to also Indian political leaders in the administrative functions of their nation. This was a hard-earned result for the countrymen who were unhappy with the framework of the previous legislature. The diarchy system could ultimately be ruled out. India stepped closer to becoming one of the successful republican countries.<sup>13</sup>

Federal Court worked for a short period of 12 years. But it left a permanent work and mark on

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<sup>12</sup> V.D.Kulshreshtra's Landmarks in Indian Legal and Constitutional History by B.M.Gandhi, EASTERNBOOK COMPANY, 2004, 7<sup>th</sup> Edition , p.g-198

<sup>13</sup> Supra Note 5

the legal history of India. We any say that it was the First Constitutional Court. It was also the First All-India Court of extensive Jurisdiction.

*From 1937 to 1950, two English and 6 Indian Justices performed their services. All of them got the rare distinction of being the Federal Court of India. They maintained noble traditions also.*

They contributed a great deal to the establishment of a sound federal judiciary in India. They also built-up great traditions of independence, impartiality and integrity which were inherited by its successor the Supreme Court of India.<sup>14</sup>



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<sup>14</sup> ibid