

PRIVY COUNCIL IN INDIA

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ABSTRACT

The Privy Council and Federal Court in India were considered as the unique institutions of the judicial system which were established by the British. The Privy Council was established in 11th century in London and its jurisdiction expanded over India after the passing of the Judicial Committee Act, 1833 and Charter of 1833. It is a judicial body which consists of the members appointed by Crown and its basic objective is to help and advise the Government internal affairs of the colonies which were under British rule.

The Federal court was established in 1937 by the passing and enactment of the Government of India Act, 1935 as the Supreme Court in India and the main objective of the established of the overburden of the appeals and the high expenses of the litigants to appeal in the Privy Council. The establishment of the Federal court in India limited the exercise of the power of the Privy Council in India. Both institutions were abolished after the Independence of India in 1947.

Although, abolished after the Independence of India, the precedents of the judgements given by these institutions were still considered in present cases that are filed in courts. Moreover, the procedure, types of jurisdictions, form of judgements given, qualification of judges etc. of these institutions were adopted in the present judicial system in India. Many statues and laws which were enacted or amended after the Independence of India, the judgements of these institutions were considered as basis for these.

INTRODUCTION:

If we outline the history of the Indian legal history, it clearly reveals that the Indian legal system is more or less based on the English legal system. In fact, the improvement of Indian judicial institutions, judicial principles, laws etc. has occurred during the British regime. Besides this, the British regime in India has also developed a hierarchical judicial system in India.

Accordingly, the highest judicial authority was conferred on a body of jurists, popularly

called as 'Privy Council'. It has played a significant role in shaping the present legal system in India. In the course of the British empire, the Privy Council or rather its Judicial committee, heard appeals from the courts of 150 countries as they were under British empire rule known as colonies in manner of cases both civil and criminal and applied not merely English law but a wider system of law.

ESTABLISHMENT AND COMPOSITION OF PRIVY COUNCIL IN INDIA:

As it is an accepted fact that, every political system develops for itself certain sort of legislative, executive and judicial machinery for its smooth working and administration. The establishment of the Privy Council was with the same objective. The Privy Council was nothing but the judicial body, which heard appeals from various courts of the British colonies including India. The origin of Privy Council could be traced back to the Norman Period of English. At the beginning of 11th century, the Normans introduced a central government in England for controlling their controlling executive, legislative as well as judicial departments.

Lord Brougham protest against the laymen hearing the appeals led to the passing of the Judicial Committee Act, 1833 by the British Parliament and the Charter of 1833 led expansion of jurisdiction of Privy Council in India.

The statute of 1833 established a statutory permanent committee of legal experts to hear appeals from the British colonies and to dispose of other matters as referred to them by his majesty according to the provisions of the Act. The statutory committee was known as the "Judicial Committee of the Privy Council". The judicial committee of the Privy Council whose constitution has been modified by the Acts of 1844, 1908, 1929 etc. is composed of the Lord Chancellor, the existing and former lords, presidents, privy councillors, the lords of appeal. Ordinarily, the quorum of the judicial committee is of three members but in important cases generally five members preside over the committees meeting to hear appeals.

PROCEDURE:

The judicial committee is not a court of law but its only an advisory board whose duty is to report to his majesty their opinion, as a body and humbly advise him as to the action he should take on appeals to be submitted to him. Every appeal was addressed to 'The king's most excellent majesty in council' and is sent to the judicial committee for their advice under a general order passed in 1909. The advice so submitted is in the form of a judgement which

ends with the words ‘and we humbly advised etc.’

There is only one judgement of the Privy Council and no dissenting judgements. It is only the duty of every privy councillor not to disclose the advice he has given to his majesty. On the advice tendered, a draft order in council was prepared and at the meeting of the council it receives His Majesty’s approval.

JURISDICTION AND RIGHT TO APPEAL:

The members not only determine upon the question of colonial law in plantation case but also the judges in the last resort of all prizes cases. This entire immense jurisdiction over the rights of the property and persons, over rights political and legal and over all questions growing out of so vast an area is exercised by the Privy Council unaided and alone.

The practice of invoking the exercise of the royal prerogative by way of appeal from any from any court in His Majesty’s dominions has long obtained throughout the British empire in its origin such an application may have been no more than a petition appeal to the sovereign, as the fountain of justice for protection against this unjust administration of law.

NATURE AND RULES GUIDING APPEALS TO PRIVY COUNCIL:

NATURE:

1. The Privy Council report was in the form of an advice.
2. Only one opinion (without dissent) was pronounced.
3. It was not bound by the precedents.

RULES:

1. His Majesty’s prerogative extends to criminal as well as civil cases.
2. Interference with criminal cases would not be done unless it satisfies the rule in dillett case, that is, unless the forms of the legal process are disregarded or there is violation of the principles of natural justice.
3. Unless there is miscarriage of justice or the violation of some of the legal principles or procedures.

APPEALS FROM INDIA TO THE PRIVY COUNCIL:

There were various appeals made to the Privy Council by British India but the two most important appeals that made were as follow as:

1. Charter of 1726:

For the first time in the legal history of India, George I, the King of England by the charter of 1726 provided for the appeals to the Privy Council from India. The charter established the mayor's court were Calcutta, Madras and Bombay respectively. It also provided that from the decisions of the mayor's court first appeal from order of the Governor-in-Council would now lie to the Privy Council in England.

2. Charter of 1753:

The charter of 1753 re-established the mayor's court At three presidencies towns of Calcutta, Madras and Bombay as regards to the provisions of the appeals, the charter of 1753 followed the charter of 1726.

3. Regulating Act of 1773:

The Regulating Act of 1773 empowered the Crown to issue a charter establishing Supreme court at Calcutta. The charter of 1774 was accordingly issued by the Crown which established the Supreme Court at Fort William, Calcutta and the mayor's court was abolished.

APPEALS TO PRIVY COUNCIL FROM HIGH COURTS:

The Indian High Court Act, 1861 recognized the rights of the parties to file an appeal to the Privy Council in all matters except criminals cases from the final judgements of the High courts. The Civil Procedure Code also provided that for appeals from the High courts to Privy Council under section 109 and 112. An appeal was also allowed where the High courts were certified that the case involved an important question of law and that is was a fit case for appeal.

DRAWBACKS OF THE PRIVY COUNCIL:

In spite this contribution Privy Council it suffered from the following drawbacks which were as follows:

1. For long, it was staffed by Englishmen only having no knowledge of Indian laws.

2. The location of the Privy Council was in England far away for common man in India making it difficult.
3. The subjection to the jurisdiction to foreign judicial institution i.e. the Privy Council was considered as a symbol of slavery.
4. All this put the poor man in India in difficult situations for seeking justice.

ABOLITION OF JURISDICTION OF PRIVY COUNCIL:

In 1935, a white paper was issued by the British Government for establishing of the Supreme Court in India so as to hear appeal from the Indian High courts. It was the first step in avoiding the jurisdiction of the Privy Council. After the Independence of India, the Federal Court Enlargement of Jurisdiction Act, 1948 was passed.

This act enlarged the appellate jurisdiction of appellate jurisdiction of Federal court and also abolished the old system of the filing of the direct appeals from High courts to the Privy Council with or without special value. Finally in 1949, the Abolition of the Privy Council Jurisdiction Act was passed by the Indian Government. This act accordingly abolished the jurisdiction of the Privy Council to entertain new appeals and petitions as well as dispose of any pending appeals and petitions.

It also provided the transfer of all the cases filed before the Privy Council to the Federal court of India. All powers of the Privy Council regarding the appeals from the High courts were conferred to the Federal court.

Thereafter with the commencement of the Constitution of India in 1950, the Supreme Court in India was established and is serving as the Apex court for all purposes in India. It hears appeals from all the High courts and Subordinate or Lower courts of India. With this appellate jurisdiction of the Privy Council finally come to an end.

PRIVY COUNCIL A UNIQUE INSTITUTION:

The Privy Council has contributed a lot in the development of the Indian legal system. It served as a cause of justice for more than two hundred years for the Indian Courts before Independence. As far as the judicial institution is concerned, the Privy Council was unique and unparalleled among all the Courts around the world. It set the task of ascertaining the law, formulating legal principles, moulding and shaping the substantive laws of India.

It helped in introduction of the concept of the 'Rule of Law', on which we have setup the whole philosophy of our 'Democratic Constitution'. Besides the Privy Council also lead to the introduction of Common Law in India, which forms the basis of almost all present Indian laws.

The contribution of Privy Council in personal laws like Hindu and Muslim law is also not worthy. It acted as a channel, through which the English legal concepts came to be assimilated with the body and fabric of the Indian law. It always insisted on the maintenance of the highest standards of the of just and judicial procedure, especially in the field if criminal justice.

In this way, the decisions of Privy Council have enriched the Indian jurisprudence in many respects. Its contribution to the statue laws, personal laws and commercial laws is of such great importance. Thus during the period of 1726-1949 and specifically after 1833 and onwards, the Privy Council has played a magnificent role in making a unique contribution to Indian laws and the Indian legal system. The fundamental principles of laws as laid down by the Privy Council are considered as the path finder for the Indian Courts still today.

FEDERAL COURT IN INDIA

INTRODUCTION:

During 15th century, the advent of the Europeans began in India when Vasco Da Gama found a new sea route and reached India in 1498. When British arrived in India, they came as traders and established a trading body known as East India Company on 31st December, 1600. They set up their first factory in Surat in 1608, after passing of Charter of 1661 and Portuguese gifted Bombay as dower for the marriage of Charles I with their Princess, British started their expansion policy to rule over India.

After the Charter of 1726 was passed, the governors of the three presidencies respectively i.e. Madras, Calcutta and Bombay have supreme jurisdiction over the territories of the presidencies such as appointment of the officers and judges for judicial and various administrative systems, supreme commander of the army of their presidency etc. and Mayor courts were established for the judicial administration.

Later, the Regulating Act of 1773 and 1789 was passed and enacted by which Supreme court

was established in Calcutta and High courts were established in the presidencies with the subordinate courts and governor of Bengal was made supreme ruler over the other two presidencies under British . As the expansion of the rule the British extended, the expansion of the judicial administration also took place and changes were made in structure and functioning of the judicial system.

GOVERNMENT OF INDIA ACT, 1935:

The Parliament of Britain passed the Government of India Act 1935 in August 1935. It contains 321 sections and 10 schedules, which was the longest act passed by British Parliament so far and was later split into two parts:

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- i) Government of India Act 1935
 - ii) Government of Burma Act 1935.

The Government of India Act 1935 included three key sources and was drafted under the chairmanship of Lord Phillimore Appointed by House Of Commons. The four key sources of this act were:

- (i). Report of the Simon Commission Discussions at the Third Round Table Conference
- (ii). The Government Of India Act 1919
- (iii). The White Paper of 1933 and the reports of the Joint select committees. This act ended the system of diarchy introduced by GOI Act 1919 and provided for establishment of a **Federation of India** to be made up of provinces of British India and some or all of the Princely states. However, the federation never came into being as the required number of princely states did not join it.

The salient features of the Act were as follows:

1. Abolition of provincial diarchy and introduction of diarchy at centre.
2. Abolition of Indian Council and introduction of an advisory body in its place.
3. Provision for an All India Federation with British India territories and princely states.
4. Elaborate safeguards and protective instruments for minorities.
5. Supremacy of British Parliament.
6. Increase in size of legislatures, extension of franchise, division of subjects into three

lists and retention of communal electorate.

7. Separation of Burma from India

FEDERAL COURT IN INDIA:

The Federal Court was established in India In 1937 under provisions stated in Government Of India Act 1935 during British Raj having original , advisory and appellatant jurisdiction over High court and Lower court.

The reason behind establishing Federal court in India because of the growing trend of the Indian public opinion in favour of stopping appeals to the Privy Council from the Indian High courts and also due to the emerging federal structure of the British Empire in India , a need was felt so as to have a federal court in India.

Another reason was high expenses to the litigants. Federal court was established as the highest court in British India and over it was the Privy Council but to approach Privy Council required a huge amount of money to the litigants. Federal court saved the expenses and time of the litigants.

ESTABLISHMENT:

Sec 200 of the Government Of India Act, 1935 laid the foundation of Federal court in India in 1937. The Federal court was established and inaugurated in Delhi and Sir Maurice Gwyer was the first Chief Justice of Federal court in India. It was Court of Record. It sat in Delhi and such other places as chief justice of India may declare, with the approval of the Governor-General of India from time to time.

QUALIFICATION AND APPOINTMENT OF JUDGES:

Judges and the Chief Justice were to be appointed by the His Majesty. They were to hold office till the age of 65 years. His Majesty was empowered to remove any judge from his office on the grounds of misbehaviour or infirmity of mind or body, on the recommendation of the judicial committee of the Privy Council.

The Federal court consists of the Chief Justice and not more than six judges who were appointed by the King and King could increase the number of the judges as he think reasonable.

The qualifications that were required for a person to be a judge of the Federal court were:

1. He should have 5 years of experience in a High court.
2. He should be a barrister or an advocate for at least 10 years standing.
3. He should be pleader in a High court for at least 10 years standing.
4. As regards to the appointment of the Chief Justice, a person should be a barrister, pleader, advocate or judge in a High court with 15 years of experience.

SALARY:

The salary of judges and Chief Justice of the Federal court were entitled to such salaries and allowances and to such rights in respect of leave and pensions, as were laid down by His Majesty according to time to time. The salary of the Chief Justice of the Federal court was Rs 7000 per month and for judges of the Federal court it was Rs 5000 per month.

JURISDICTION OF THE FEDERAL COURT :

The Federal court in India had three kinds of jurisdictions which were as follows:

1. Original jurisdiction:

The original jurisdiction was confined to the disputes between Units of the Dominion or between the Dominion and any part of the units. The private individuals had no rights to sue any Dominion before the Federal Court.

2. Appellate Jurisdiction:

The Federal court exercised appellate jurisdiction in constitutional cases under the Government of India Act, 1935. This type jurisdiction extends to the civil and criminal cases over High courts all over in India. In constitutional cases. Section 205 of the Government of India Act, 1935 said that an appeal from any judgement, decree or final order of a High court would be entertained by the Federal court if the High court certified that the case involved a substantial question of law as to the interpretation of the Act of 1935 or any other Act and law. The certificate was a condition precedent to every appeal.

In civil cases, since 1948 the civil appeals which formerly went to Privy Council were heard by the Federal court of India under the Federal Court Act, 1947. Section 3 of this Act stated that from 1st Feb 1948, an appeal shall be lie to the Federal court, civil

cases, with or without the special leave of the Federal court as provided.

In criminal cases, the Federal court Act 1947, enlarged the jurisdiction of the Federal court in India and in 1949 the systems of the appeals from India to the Privy Council was totally abolished. The Federal court of India as such followed the same principles after 1948 as were followed by the Privy Council in the exercise of the appellate jurisdiction in criminal matters.

3. Advisory Jurisdiction :

The Federal court was empowered to give advisory opinion to the Governor-General, Whenever a question of law had arisen or likely to arise which is of such a nature and of such public importance that it was expedient to obtain the opinion of the Federal court upon it. The court after such hearing as it thinks fit report to the Governor-General thereon.

FORM OF JUDGEMENT:

The Federal court of India as provided by the section 209 of the Government Of India Act. 1935 it had no machinery of its own to execute the judgements. It was sending back the case with its decision to the respective high courts so that order could be substituted for the order of the High court.

AUTHORITY AND EXPANSION OF JURISDICTION OF FEDERAL COURT:

The High court were subordinate to the Federal court. The law declared by the Federal court and any judgement of the Privy Council will be binding on all the courts in British India. It introduced the English Doctrine of Precedents in India.

From the period of 1937 to 1947, the Federal court entertained only the appellate jurisdiction in constitutional cases. After the Independence Act 1947, the Federal court was empowered to have the appellate jurisdiction in civil and criminal matters too. The Federal court initially has limited jurisdiction but with the passing of the Federal (Enlargement of Jurisdiction) Act, 1947, the Federal court could hear the appellate jurisdiction in courts civil cases from the High courts.

It stopped the very old system of direct appeals from the Indian High courts to the Privy Council it was still possible to take the civil appeal from Federal court to the Privy Council.

In civil cases, the Privy Council was still allowed to grant the leave after the judgement of the Federal court.

ABOLITION OF FEDERAL COURT IN INDIA:

The abolition of Privy Council Jurisdiction Act in 1949 severed all connections of the Indian courts with the Privy Council. In 1949 the constituent assembly decided to give full autonomy to the Indian judiciary.

The Act repealed the section 208 of the Government Of India Act 1935 which was the basis of the appellate jurisdiction of Privy council over the Federal court. By the Act of 1949, "Period of Golden Age of Federal Court" began which lasted till the establishment of the Supreme court of India on 26th January, 1950.

CONTRIBUTION OF FEDERAL COURT IN INDIAN JUDICIARY:

Federal court worked for a short period of 12 years but left a permanent work and mark on the legal history of India. It was the First Constitutional Court.

It was also the First All-India Court of extensive jurisdiction. During the period of 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 the noble traditions. They contributed a great deal to the establishment of 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.