MODULE II

TOPICS:

PRIVY COUNCIL

FEDERAL COURT

PRIVY COUNCIL: APPEAL, WORKING, APPRAISAL

THE PRIVY COUNCIL

- IT’S ESTABLISHMENT.
- COMPOSITION.
- PROCEDURE
- JURISDICTION.
- RIGHT TO APPEAL.
- PECULIAR NATURE.
- THREE RULES GUIDING APPEALS TO THE PRIVY COUNCIL.

In the hey-day of the British Empire, the Privy Council, or rather its Judicial Committee, heard appeals from the courts of some 150 countries, in all manner of cases, civil and criminal, and applied not merely English law but diverse systems of law. The jurisdiction of the Privy Council originated at the Norman Conquest. From 1833 the Privy Council was officially known as or called as the Judicial Committee of the Privy Council.

The Privy Council acted as the highest court of appeal for over two centuries. It made a great contribution towards establishing a high standard of justice in the country and creation and ascertainment of law and therefore, the Privy Council occupies a very unique place in the Indian Legal History.
ESTABLISHMENTS & COMPOSITION

- Lord Brougham’s strong protest against the laymen hearing appeals led to the passing of judicial committee act 1833, by the British Parliament. 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 and other acts is now composed of the Lord chancellor, the existing and former lords, presidents of the council, privy councilors, 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 committee meeting to hear appeals.

PROCEDURE……..

- The judicial committee is not a court of law but it is 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 submitted to him.

- A) Every appeal is 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.

- B) The advice so submitted is in the form of a judgment which ends with the words “and we humbly advised etc.”

- C) There is only one judgment of the Privy Council and no dissenting judgments.

- D) It is the duty of every privy councilor not to disclose the advice he has given to his majesty.

- E) On the advice tendered, a draft order in council is prepared and at a meeting of the Privy Council itself, usually in Buckingham palace, it receives his majesty’s approval.

JURISDICTION & RIGHT TO APPEAL

- Jurisdiction

  They determine not only upon the questions of colonial law in plantation cases but also sit as judges in the last resort of all prize cases. This entire immense jurisdiction over the rights of property and person, over rights political and legal and over all questions growing out of so vast an area is exercised by Privy Council unaided and alone.

- Rights to appeal
The practice of invoking the exercise of the royal prerogative by way of appeal 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 petitionary appeal to the sovereign, as the fountain of justice for protection against the unjust administration of law.

NATURE & 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 announced.
  3. It was not bound by precedents.

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

APPEALS FROM INDIA TO THE PRIVY COUNCIL

- CHARTER ACT OF 1723 AND 1753.
- THE REGULATING ACT AND THE SUBSEQUENT CHARTERS.
- APPEALS TO THE PRIVY COUNCIL FROM THE HIGH COURTS.
- THE FEDERAL COURT UNDER THE GOVERNMENT OF INDIA ACT 1935.

CHARTER OF 1726 AND 1753

- For the first time in the legal history of India George I by the charter of 1726 provided for appeals to the Privy Council from India.
  - The charter of 1726 established three mayor’s court at Calcutta, Madras and Bombay respectively.
  - It 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.
The charter of 1753 re-established the mayor’s court at the 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 A.D.

**REGULATING ACT AND SUBSEQUENT CHARTERS**

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

- Section 30 of the charter granted the right to appeal from the judgment of the Supreme Court to the king-in-council in civil cases where the amount involved exceeded 1000 pagodas. Such an appeal was allowed within six-month period after the date of the Supreme Court’s decision. Thus appeals directly fled before the judicial committee from the Calcutta Supreme Court.

- The act of settlement, 1781 A.D. provided that an appeal will lie from sadar diwani adalat at Calcutta to his majesty, in suits valuing 5000 pounds (equivalent to Rs 50,000) or more.

- In 1818 A.D. it was found that during the last sixty years only fifty appeals were filed to the privy council. It was found that the appeals were not filed due to the fixed limit on the valuation of the suit. In the year 1818 A.D. it was decided to cancel the fixed limit.

**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 criminal cases from the final judgments of the high courts.

- The Civil Procedure Code also provided for appeals from the high courts to Privy Council under sections 109 and 112.

- An appeal was also allowed where the high courts certified that the case involved an important question of law and that it was a fit case for appeal.

**FEDERAL COURT UNDER THE GoI ACT, 1935**

- Section 308 of the act of 1935 made provision of appeal to the Privy Council from the federal court. It is therefore clear that in the constitutional matters the federal court shared with the Privy Council in deciding cases.
• After 1937 A.D. it was only in civil cases exceeding Rs 10,000 that the appeals were allowed to the Privy Council.

PRIVY COUNCIL: A UNIQUE INSTITUTION

• During the period from 1726 to 1949 it pronounced 2500 judgments during its career.

• It laid down the fundamental principles of law in a lucid manner for the guidance of the Indian courts. It was a great unifying force in the judicial administration of India.

• The law declared by the privy council is still binding on the high courts in India except in those cases where the supreme court of India has declared law in its judgements. It shows the amount of respect which the Indian high courts still have for the privy council.

• In the field of Hindu law and the Muslim law, though at times defective law was laid down, the contribution of the privy is remarkable.

• The Privy Council commanded the great respect among the lawyers, judges and the Indian public as the highest judicial institution.

• Its contribution to the statute law, personal law, commercial law and the criminal law was of great importance.

• The principles of integrity, impartiality, independence and the rule of law which were laid down by the Privy Council are still followed by the supreme court of India.

PRECEDENTIAL VALUE OF PRIVY COUNCIL DECISIONS

• After the establishment of the supreme court in India in 26-01-1950. The decisions of the Privy Council have no compelling force on the supreme court but are entitled to great respect.

• Hence the Supreme Court can decide independently.

• The high courts are bound unless they can point out a decision of the Supreme Court to the contrary.
Federal Court of India

NEED

Due to 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.

The Government of India Act, 1935 changed the structure of the Indian Government from “Unitary” to that of “Federal”. The Distribution of powers between the Centre and the Provinces required the balance to avoid the disputes which would have arisen between the constituent units and the Federation.

The system of Federation clearly demanded the creation of a Federal Court which would have jurisdiction over the States as well as the Provinces. Federal Court functioned only for 12 years.

It was the highest Court in India. Over it, there was Privy Council. But to approach the Privy Council required huge expenses to the litigants’ Hence the establishment of the Federal Court was made necessary.

It saved the time, expenses to the litigants. It was also a convenience to the Indians. Therefore, the Federal Court lessened the work load of the Privy Council, and gradually it occupied the position of Privy Council. Lastly, in the place of Federal Court, the Supreme Court of India has been established on 25-1-1950.

Establishment:

- Section 200 of the Government of India Act, 1935 provided for the establishment of Federal Court in India. On 1-10-1937, the Federal Court was inaugurated at Delhi. Sir Maurice Gwyer was the First Chief Justice of the Federal Court. It was a Court of Record. It sat at Delhi and at such other places as the chief justice of India may declare, with the approval of the governor-general of India from time to time.

Appointment of Judges:

Judges and the Chief Justice were to be appointed by 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 was to consist of the chief justice and not more than six puisne judges, who were to be appointed by the king.

The king could increase the number the judges.

**Qualifications:**
Qualifications required for a judge are-

1. 5 years’ experience as the judge of the high court or
2. a barrister or an advocate of 10 years standing or
3. a pleader in a high court of 10 years standing.
4. As regards to the appointment of the chief justice, it was provided that a person should have experience of 15 years of standing in a high court as a barrister, advocate or pleader or have been one when first appointed as a judge.

**Salary:**
The Judges of the Federal Court were entitled such salaries and allowances and to such rights in respect of leave and pensions, as were laid down by His Majesty from time to time. The salary of the chief justice was fixed as the Rs 7000 a month and of the other judges at Rs 5000 a month.

**Jurisdiction of the Federal Court:**
The Federal Court got three kinds of jurisdictions

i. Original;

ii. Appellate; and

iii. Advisory.

**i. Original Jurisdiction:**
The Original Jurisdiction was confined to disputes between Units of the Dominion or between the Dominion and any of the units. The private individuals had no right to sue any Dominion before the Federal Court.

**ii. Appellate jurisdiction:**
The Federal Court exercised appellate jurisdiction in constitutional cases under the Act of 1935. Its appellate jurisdiction extended to civil and criminal cases. On the same principles and jurisdiction the Supreme Court of India was established.
1) In the constitutional cases: section 205 of the government of India act 1935 made provision that an appeal from any judgment, 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.

2) In civil cases: since 1948 civil appeals, which formerly went to the Privy Council, were heard by the federal court of India under the federal court act, 1947. Section 3 of the Act of 1947 provided that from 1st Feb. 1948 an appeal shall lie to the federal court, civil cases, with or without the special leave of the federal court as provided.

3) In criminal cases: the federal court act 1947, enlarged the jurisdiction of the federal court in India and in 1949 the systems of 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.

iii. Advisory Jurisdiction:
The Federal Court was empowered to give advisory opinion to the Governor-General, whenever a question of law had arisen or is 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 section 209 of the act of 1935, 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 its order could be substituted for the order of the high court.

Authority of Federal Court:
- The High Courts were subordinate to Federal Court. The law declared by the Federal Court and any judgment of the Privy Council will be binding on all the courts in British India. It introduced the English doctrine of precedents in India.

Expansion of Jurisdiction:
From 1937 to 15-8-1947, the Federal Court entertained only the appellate jurisdiction in constitutional cases. After Independence Act, 1947, the Federal Court was empowered to have the appellate jurisdiction in civil and criminal matters also.
The federal court initially has limited jurisdiction but with the passing of the federal court (enlargement of jurisdiction) act, 1947 the federal court could hear the appellate jurisdiction in courts civil cases from the high courts.

It stopped the old system of direct appeals from the Indian high courts to the privy council. It was still possible to take the civil appeal from the federal court to the Privy Council.

In civil cases the Privy Council was still allowed to grant special leave after the judgment of the federal court.

**Abolition of Federal Court:**
- The abolition of the 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 the privy council over the federal court. By the Act of 1949, “Period of golden Age of Federal Court” began when lasted till the establishment of the Supreme Court of India on 26-1-1950.

**Conclusion:**
Federal Court worked for a short period of 12 years. But it 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.