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Privy Council and Federal Court: An Overview

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ABSTRACT

When we glance at the history of the Indian legal system, we can see that it is mainly based on the English legal system. In reality, the British administration was responsible for the systematic creation of Indian judicial institutions, judicial concepts, and legislations. Apart from that, the British government in India established a hierarchical judicial system. As a result, a council of jurists known as the Privy Council was given the ultimate judicial power. It has had a tremendous influence on India's current legal system. The Privy Council has made a significant contribution to the evolution of the Indian legal system and judicial institutions, as seen in the above discussion. Many important legal ideas were incorporated into the Indian legal system as a result of it. In addition, it influenced India's judicial institutions. Overall, it has played a critical part in the development of India's current legal system.

I. INTRODUCTION

The Privy Council, or rather its Judicial Committee, heard appeals from courts in over 150 nations on a wide range of civil and criminal matters, applying English law and diversity of legal systems. The Norman Conquest established the Privy Council's jurisdiction. The Judicial Committee of the Privy Council has been addressed to as the Privy Council since 1833. The Privy Council has been the highest court of appeal for over two centuries. The Privy Council played a vital role in the development of a high degree of justice in India and the construction and interpretation of the law, and so has a unique position in Indian legal history.

The Government of India Act of 1935 modified the Indian government's structure from "unitary" to "federal." To prevent conflicts between the component entities and the Federation, the division of powers between the Centre and the Provinces necessitated a dynamic equilibrium. The Federal system plainly mandated establishing a Federal Court with jurisdiction over both the States and the Provinces. However, the Federal Court only existed for 12 years, and it was India's highest court of Justice once.

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Privy Council oversaw it. However, approaching the Privy Council requires the litigants to incur substantial costs. As a result, the Federal Court was had to be established. On the other hand, it helped the litigants save time and money. For the Indians, it was also a benefit. As a result, the Federal Court reduced the Privy Council's responsibility, eventually taking over the post of Privy Council. Finally, on January 25, 1950, the Supreme Court of India took the role of the Federal Court.

The Federal Court was only in operation for 12 years. However, it has made an everlasting impact on India's legal history. The First Constitutional Court was established in 1789. It was also the world's first all-India court with wide jurisdiction. Between 1937 and 1950, two English and six Indian Justices (Judges) were on the bench. They all have the rare distinction of being India's Federal Court. They kept up with noble privileges. They made a significant contribution to India's development of a strong federal judiciary. They also established strong standards of independence, impartiality, and honesty, which its successor, the Supreme Court of India, maintained.

II. PRIVY COUNCIL

Privy Council during the period from 1726 to 1949, pronounced 2500 judgements during its career.

1. It laid down the essential principles of law clearly and concisely for Indian courts to follow. It was a powerful uniting factor in India's legal system.
2. Except in situations where the supreme court of India has proclaimed law in its decisions, the law announced by the Privy Council is still binding on the high courts in India. It demonstrates the Indian high courts' continued regard for the Privy Council.
3. The privy has made a significant contribution to Hindu and Muslim law, even though some of the legislation is faulty.
4. As the highest judicial institution in India, the Privy Council was highly regarded by attorneys, judges, and the general public.
5. It made a significant contribution to statute law, personal law, business law, and criminal law.
6. The Supreme Court of India continues to adhere to the Privy Council's values of honesty, impartiality, independence, and the rule of law.

(A) Origin and Establishment of Privy Council

Every political system develops its own legislative, administrative, and judicial machinery to ensure its smooth operation and administration, and this is an accepted fact. The Privy Council was established with the same motive in mind. The Privy Council was a judicial body that heard appeals from different British colonies' courts, including India's.

The Privy Council's origins may be traced back to the Norman period of English history. The Normans established a central government in England at the beginning of the 11th century to manage its administrative, legislative, and judicial departments. There was a Norman Supreme Federal Council. It was called Curia, and it served as Norman's rulership agency in England. It was used to govern England's whole administration. On the other hand, Curia is eventually divided into two further parts: Curia Regis³ and Magnum Concilium⁴. Magnum Concilium was the authority to handle executive issues, while Curia Regis was responsible for judicial matters.

The Curia Regis was a minor body made up of high state officials, members of the Royal household, and a few clerks appointed by the Crown. Their job was to provide legal and administrative advice to the King and administer justice. In reality, the Curia Regis served as England's and the English Empire's last appellate court. Subsequently, the Curia Regis came to be regarded as the King's advisory council, fulfilling the majority of the important task in judicial administration. Finally, during Henry II's reign, the Judicial Responsibilities of Curia Regis grew dramatically, creating two distinct Common Law Courts in England. They are:

1. *King-in-Parliament*⁵ i.e. Court of House of Lords
2. *King-in-Counsel*⁶

The former served as the highest Court of Appeal for English courts, while the latter served as the highest Court of Appeal for all British possessions and settlements across the seas. The Privy Council was established in this manner in the middle of the 16th century. As a result, it served as the King's advisory body on matters of state. The Privy Council's headquarters were in London, and its powers were exercised by royal proclamations, commands, and instructions, among other things.

³ Curia regis is a Latin term meaning "royal council" or "king's court."

⁴ In old English law. The great council; the general council of the realm; afterwards called "parliament."

⁵ The collective legal entity composed of the British monarch and the two houses of parliament acting together that constitutes the supreme legislative authority of the United Kingdom—used when the British monarch is a king

⁶ Court of Privy Council.

(B) Formation of Judicial Committee of the Privy Council

The workload on the Privy Council Committee grew as the British Empire expanded in the 18th century. However, the Councillors heading the body were laymen, and the committee only met for 9 days each year. In his famous Law Reforms address in the House of Commons in 1827, Lord Brougham harshly criticised this. The Judicial Committee Act, 1833, was enacted by British Parliament in response to his protests about laymen councillors hearing appeals. The formation of a permanent committee of legal experts to hear the appeals of the colonies under British control was provided for in this legislation. The Judicial Committee of the Privy Council was the name of this committee. On August 14, 1833, the Privy Council was established. It was the Throne's "Last Court of Appeal."

(C) Composition of Privy Council

With the mayor's Court in India in 1726, the Privy Council has served as an appellate authority in India. Previously, the Privy Council functioned through a system of committees and sub-committees. On the other hand, the committees did not have a permanent existence or membership, and the majority of the members lacked judicial expertise. Nevertheless, it had an obvious impact on the administration of justice. Lord Bourgham rejected such a Privy Council constitution in 1828, citing the breadth and significance of the Privy Council's appellate authority. In 1830, he was appointed Lord Chancellor, and it was during his tenure, the British Parliament passed the Judicial Committee Act, 1833, to alter the Privy Council's constitution. The Privy Council was formally established on the 14th of August 1833, by an Act of Parliament. The Privy Council was given the authority to consider appeals from British Colony courts under the Act's provisions. As a result of this Act, the judicial committee of the Privy Council's quorum was set at four. It is made up of the Lord President, the Lord Chancellor, and other Chancellors who hold judicial posts. In 1843, the quorum was decreased to three. The majority of the quorum made the proposals to the Crown. Following that, the Appellate Jurisdiction Act of 1908 expanded the membership of the judicial committee. It also gave His Majesty the ability to select up to two members. The judges of the High Court of British India were present. As a result, several members of the Privy Council were experts in Indian law.

(D) Procedure to be followed

The judicial committee is not a court of law, but rather an advisory group whose job is to report to His Majesty their collective view and respectfully counsel him on handling appeals brought before him.

1. Under a general order established in 1909, every appeal is addressed to the king's most excellent majesty in council and forwarded to the judicial committee for advice.
2. The council is in the form of a judgement, with the words and we sincerely advised etc. at the conclusion.
3. There is just one Privy Council judgement and no dissenting rulings.
4. Every privy counsellor owes it to his majesty not to reveal the advice he has given him.
5. A draught order in council is created based on the advice given, and His Majesty approves it during a meeting of the Privy Council, generally in Buckingham Palace.

III. JURISDICTION & RIGHT TO APPEAL

(A) Jurisdiction

The Privy Council is the last step in all prize matters and controls colonial law in plantation issues. It has broad authority over both property and personal rights. Consequently, it has a considerable impact on the development of political and legal rights and interpretation issues. The Privy Council is solely responsible for the exercise of these rights.

(B) Rights to Appeal

Lord Cave, In the case of *Nadan v. R*⁷, the chancellor of the Privy Council explained the right of appeal in 1926 as follows:

The practice of invoking the exercise of the royal prerogative by way of appeal from any court in his majesty's dominions has long been 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 the law⁸.

IV. PECULIAR NATURE & RULES GUIDING APPEALS TO THE PRIVY COUNCIL

(A) Nature

In the landmark decision of *Hull v Mckenna*⁹, Lord Haldane defined the role of the Privy Council.

1. The report of the judicial committee of Privy Council is taken as a piece of advice by his Majesty.

⁷ *Nadan v. R*, UKPC 13,, AC 482

⁸ ROBERT MACGREGOR DAWSON, *THE DEVELOPMENT OF DOMINION STATUS, 1900-1936*, (Archon Books, 1965).

⁹ *Hull and Co v McKenna* [1926] Ir R 402 (PC)

2. A decision by the majority is announced.
3. Precedents did not bind it.
4. It represents not a single nation but the whole empire.

(B) Rules

1. His Majesty's privilege applies to both criminal and civil matters.
2. Intervention in criminal matters is not possible unless the rule in the Dillet case¹⁰ is met, i.e., until the judicial process is disregarded, or natural justice principles are violated.
3. Unless there has been a miscarriage of justice or a legal principle or process has been violated.

1. Appeals from India to the Privy Council

This can be discussed under the following sub-headings.

- **Charters of 1726 and 1753:**

The Charter of 1726, in Indian legal history, established the power to appeal from Indian courts to the Privy Council. Calcutta, Madras, and Bombay were created as Mayor's Courts under the same Charter. The provision was created that the Mayor's Court judgments may be appealed first to the Governor-in-Council in respective provinces, and then to the Privy Council in England. Whereas the Charter of 1757, which re-established the Mayor's Courts, confirmed the provisions of the Mayor's Courts Appeal to the Privy Council.

- **The Regulating Act, 1773:**

The Crown was given the authority to issue a Charter for the formation of the Supreme Court in Calcutta under this Act. As a result, the Crown issued the Charter of 1774, which established a Supreme Court in Calcutta and abolished the separate Mayor's Court. In addition, section 30 of the Charter guaranteed a right of appeal to the Privy Council in Civil Matters from Supreme Court decisions if the following two requirements adhered.

- i. *Where the amount involved exceeds 1000 pagodas*
- ii. *Where the appeal is filed within six months from the date of the decision.*

Similarly, the Act of 1797 replaced the Mayor's Court in Madras and Bombay with the Recorders Court, allowing direct appeals to the Privy Council from both Courts. As a result,

¹⁰ Dillet v. Kemble, 25 N.J. Eq. 66 (1874)

the power to appeal from the King's Court to the Privy Council was widely acknowledged. There were also Company Courts, such as Sadar Diwani Adalat and Sadar Nizamat Adalat. They also acknowledged the ability to appeal their rulings to the Privy Council. As a result, the Act of Settlements of 1781 established the power to appeal in civil issues from the Sadar Diwani Adalat in Calcutta.

2. Appeals to Privy Council from High Courts:

The Indian High Courts Act of 1861 committed the constitution of high courts in India to the king. This legislation merged the King's Court and the Company's Court into one and replaced both. In all matters except criminal in the final judgement, the charter gave the right to appeal to the parties in the Privy Council. The appeal was granted for any other judgement that the High Court has certified. Sections 109¹¹ and 112¹² of the Civil Procedure Code also provided for appeals from High Courts to the Privy Council.

3. Appeals from Federal Court in India to Privy Council:

A Federal Court was established in India by the Government of India Act of 1935. To resolve conflicts between the Centre and component Units, the Federal Court was given exclusive original jurisdiction. Appeals from High Courts to the Federal Court and from the Federal Court to the Privy Council were made possible. The Federal Court may also issue Special Leave to Appeal, although such appeals required a certificate from the High Court.

(C) Abolition of the jurisdiction of Privy Council:

The British government released a white paper in 1933 proposing the formation of a Supreme Court in India to handle appeals from Indian high courts. It was the first step toward bypassing the Privy Council's authority. The Federal Court Enlargement of Jurisdiction Act, 1948, was passed after India gained independence. The Federal Court's appellate authority was expanded, and the old method of filing direct appeals from the High Court to the Privy Council with or without Special Leave was eliminated. Finally, the Indian government approved the Abolition of Privy Council Jurisdiction Act in 1949. As a result, the Privy Council's jurisdiction to hear fresh appeals and petitions and decide on any ongoing appeals and petitions was abolished by this Act. It further said that all matters filed with the Privy Council would be transferred to the Indian Federal Court. Thus, the Federal Court was given all of the Privy Council's jurisdiction over appeals from the High Court.

Following the adoption of the Indian Constitution in 1950, the Supreme Court was created and

¹¹ The Code Of Criminal Procedure, 1973, § 109, No. 02, Acts of Parliament, 1973 (India).

¹² The Code Of Criminal Procedure, 1973, § 112, No. 02, Acts of Parliament, 1973 (India).

is now the highest court in India for all purposes. All appeals from the High Courts and Subordinate Courts are heard here. The Privy Council's appellate jurisdiction came to an end with this decision.

V. ROLE OF THE PRIVY COUNCIL

The Privy Council has made significant contributions to the evolution of India's legal system. Before independence, it functioned as a source of justice for Indian courts for almost two centuries. In terms of judicial institutions, the Privy Council was unique and unrivalled among all other courts globally. It was tasked with determining the law, developing legal concepts, and amending and structuring India's substantive laws. It also aided in establishing the notion of Rule of Law, on which our whole Democratic Constitution ideology is based. In addition, the Privy Council paved the way for the establishment of Common Law in India, which now serves as the foundation for nearly all Indian legislation.

The Privy Council's contribution to personal laws such as Hindu and Muslim law is equally important. It served as a medium for the assimilation of English legal principles into the body and fabric of Indian law. It has always emphasised the need of upholding the highest standards of justice and judicial procedure, particularly in the criminal justice system. In this sense, the Privy Council's rulings have enhanced Indian jurisprudence in numerous ways. It makes a significant contribution to statute law, personal law, and commercial law. Therefore, the Privy Council has played a wonderful role in creating a distinctive contribution to Indian laws and the Indian legal system from 1726 to 1949, particularly after 1833. The fundamental principles of law established by the Privy Council are being used as a guide by Indian courts today.

The Privy Council is still regarded as the highest judicial institution in India by Indian attorneys, judges, and the general public. The Supreme Court of India still follows some of the principles established by the Privy Council. Until the Supreme Court rules differently, the Privy Council's decision is binding on the Indian High Courts. One such example is the Supreme Court's proclamation of the principle of total responsibility in the landmark oleum gas leak case. As a result, the Privy Council's contribution to developing the Indian legal system and judicial administration is seen as significant. It has played a significant role in bringing India's disparate laws together.

Drawbacks of Privy Council

Despite this contribution, the Privy Council had the following shortcomings:

1. For a long time, it was staffed entirely by Englishmen who were unfamiliar with Indian

rules.

2. Because the Privy Council was located in England, it was inconvenient for the common man in India.
3. Subjecting oneself to the jurisdiction of foreign judicial organisations, such as the Privy Council, was regarded as a sign of slavery.
4. All of this makes it difficult for the poor man in India to seek justice.

VI. FEDERAL COURT OF INDIA

The Federal Court of India was a judicial body with original, appellate, and advisory jurisdiction that was formed in India in 1937 under the provisions of the Government of India Act 1935. It served until 1950 when the Supreme Court of India was constituted. Even though the Federal Court's seat was in Delhi, a separate Federal Court of Pakistan was formed in Karachi after India's partition. The Federal Court of India had the authority to appeal to the Judicial Committee of the Privy Council in London.

The Federal Court, which was formed in Delhi, had exclusive jurisdiction over disputes arising between provinces, between the centre and the provinces, and in cases involving constitutional interpretation. It was given the authority to interpret the Act's controversial clauses. Although the Federal Court was not the last court of appeal, the Privy Council may be appealed to in specific cases.

There was to be only one Chief Justice and a maximum of six judges. Initially, the court had the authority to hear appeals from provincial High Courts in instances involving the interpretation of any section of the Government of India Act, 1935. However, it was also given the authority to consider appeals in matters that did not involve any interpretation of the Government of India Act, 1935, as of 5 January 1948.

(A) Need for Federal Courts 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. To prevent conflicts between the component entities and the Federation, the distribution of powers between the Centre and the Provinces required a delicate balance.

The Federalist system necessitated establishing a Federal Court with jurisdiction over both the

States and the Provinces. But, 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 was had to be established.

It helped the litigants save time and money. For the Indians, it was also a benefit. As a result, the Federal Court reduced the Privy Council's responsibility, eventually taking over the post of Privy Council. Finally, on January 25, 1950, the Supreme Court of India took the role of the Federal Court.

(B) 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.

(C) 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.

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.

(D) 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.

(E) Salary given to the Judges

Judges of the Federal Court are entitled to the salaries and allowances and the rights to leave and pensions that His Majesty has established from time to time. Accordingly, the chief justice's pay was set at Rs 7000 per month, while the salaries of the other judges were set at Rs 5000 per month.

(F) 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.

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).

3. Advisory Jurisdiction

When an issue of law has arisen or is expected to develop that is of such a kind and of such public significance that it is advantageous to get the Federal Court's view on it, the Federal Court was given the authority to offer an advisory opinion to the Governor-General. After such

hearings as it deems necessary, the Court will provide a report to the Governor-General on the matter.

(G) 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 in order for its order to take the place of the high courts.

(H) Authority of Federal Court

The Federal Court was superior to the High Courts. All courts in British India shall be bound by the law announced by the Federal Court and any judgement of the Privy Council. It was the first time in India that the English theory of precedents was adopted.

(I) Expansion of Jurisdiction

The Federal Court only had appeal authority in constitutional issues from 1937 to 15-8-1947. The Federal Court was given appellate authority in civil and criminal cases after the 1947 Independence Act. The federal court had limited authority at first. Still, with the passage of the federal court (enlargement of jurisdiction) act of 1947, the federal court was able to hear appeals from the high courts in civil matters. The previous practice of direct appeals from Indian high courts to the privy council was abolished. The civil appeal from the federal court might still be taken to the Privy Council. In civil matters, the Privy Council might still issue special leave following the federal court's decision.

(J) Abolition of Federal Court

- i. When the Privy Council jurisdiction statute was repealed in 1949, all ties between Indian courts and the Privy Council were broken.
- ii. The Constituent Assembly resolved in 1949 to grant the Indian judiciary complete autonomy.
- iii. The Act abolished section 208 of the Government of India Act 1935, which established the privy council's appellate authority over the federal court. Thus, the “Golden Age of the Federal Court” began with the Act of 1949 and lasted until the Supreme Court of India was established on January 26, 1950.

VII. CONCLUSION

The Privy Council has made a significant contribution to the evolution of the Indian legal system and judicial institutions, as seen in the above discussion. Many important legal ideas

were incorporated into the Indian legal system as a result of it. In addition, it influenced India's judicial institutions. Overall, it has played a critical part in the development of India's current legal system.

The Federal Court of India was established in India in 1937 under the terms of the Government of India Act 1935 as a judicial body having original, appellate, and advisory jurisdiction. It lasted until 1950 when India's Supreme Court was established. Regardless of the fact that the Federal Court's centre was in Delhi, a separate Federal Court of Pakistan was established in Karachi after India's division. The Federal Court of India had the power to appeal to the Privy Council's Judicial Committee in London.

The Central Court had exclusive first jurisdiction over any dispute between the federal government and the provinces. However, it was given the power to hear appeals from provincial High Courts in cases requiring the interpretation of any part of the Government of India Act, 1935. On 5 January 1948, it was also given the ability to hear appeals in issues that did not entail any interpretation of the Government of India Act, 1935.

The Federal Court of India was established in India in 1937 under the Government of India Act 1935 as a judicial body having original, appellate, and advisory jurisdiction. It lasted until 1950 when India's Supreme Court was established. Even though the Federal Court's seat was in Delhi, a separate Federal Court of Pakistan was established in Karachi after India's division. The Federal Court of India had the power to appeal to the Privy Council's Judicial Committee in London.

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