

# **FACULTY OF JURIDICAL SCIENCES**

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# Lecture-34



## **Privy Council**

If we overview the history of Indian Legal System, it clearly reveals that the Indian Legal System is more or less based on the English Legal System. In fact, the systematic development of Indian judicial institutions, judicial principles, laws etc. has occurred during British regime itself. 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. The same is discussed as under.

### **Origin and establishment of Privy Council:**

As it is an accepted fact that, every political system develops for itself a certain sort of legislative, executive and the judicial machinery for its smooth working and administration. Establishment of 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 can 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 executive, legislative as well as judicial Departments. There was a Supreme Federal Council of Normans. It was known as 'Curia' and it acted as the agency of Normans to rule England. Through it the whole administration in England was controlled. However, gradually with the passage of time, Curia gets divided into 'Curia Regis' and 'Magnum Concillium'. Out of them, Magnum Concillium was to deal with executive matters whereas Curia Regis performs judicial functions.

The Curia Regis was a small body consisting of high officials of the State, members of the Royal household and certain clerks chosen by the Crown itself. Their duty was to advice the King in matters of legislation and administration and to deliver a justice. In fact, the Curia Regis acted as a final Appellate Court for England and English Empire. Gradually, the Curia Regis came to be considered as the advisory body of the King performing most of the vital functions in the field of

judicial administration. Finally, during the regime of Henry II, there was a tremendous increase in the Judicial Functions of Curia Regis and it led to the formation of two different Common Law Courts in England. They are:

1. King-in-Parliament i.e. Court of House of Lords

2. King-in-Council i.e. Court of Privy Council.

The former became the highest Court of Appeal for the Courts in England while the latter acted as the highest Court of Appeal for all British Possessions and Settlements beyond the seas. In this way, the Privy Council was established during the middle of 16th century. It thus acted as the advisory body of the King with regard to the affairs of the State. Headquarter of the Privy Council was at London and its powers were implemented through the means of royal proclamations, orders, instructions etc.

### **Composition of Privy Council:**

As far as India is considered, the Privy Council acted as an appellate body since 1726 with the establishment of Mayor's Court in India. Earlier, the Privy Council used to do its work by means of a system of committees and sub-committees. However, the committees did not have permanent existence and membership and mostly members were the persons with little judicial experience. Naturally it affected the administration of justice. In 1828, Lord Bourgham criticized such a constitution of Privy Council keeping in view the extent and importance of the appellate jurisdiction of Privy Council. Subsequently, in 1830 he became the Lord Chancellor and during his regime, the British Parliament enacted the Judicial Committee Act, 1833 in order to reform the constitution of Privy Council. In this way, officially the Privy Council was created on 14th Aug. 1833 by the Act of the Parliament. The Act empowered the Privy Council to hear appeals from the courts in British Colonies as per the provisions of the Act. Accordingly under this Act, the quorum of judicial committee of Privy Council was fixed to be four. It composed of Lord President, Lord Chancellor and other Chancellors holding judicial offices. This quorum was reduced to three in 1843. The recommendations to the Crown were given by the majority of quorum. Thereafter, by means of the Appellate Jurisdiction Act, 1908 this membership of the judicial committee was extended. It also empowered His Majesty to appoint certain members not

exceeding two. These were nothing but the judges of High Court in British India. Thus some of the members of the Privy Council were the persons versed in Indian Laws.

### **Appeals from Courts in India to the Privy Council:**

This can be discussed under following sub-headings.

#### **a. Charters of 1726 and 1753:**

In the Indian Legal History, the Charter of 1726 granted the right to appeal from the Courts in India to Privy Council. The said Charter established three Mayor's Courts at Calcutta, Madras and Bombay. The provision was made as to first appeal from the decisions of Mayor's Court to the Governor-in-Council in respective provinces and the second appeal from to the Privy Council in England. Where as the Charter of 1757, which re-established the Mayor's Courts reaffirmed the said provisions of Appeal to Privy Council from Mayor's Courts.

#### **b. The Regulating Act, 1773:**

This Act empowered the Crown to issue a Charter for establishment of Supreme Court at Calcutta. Thus the Charter of 1774 was issued by the Crown to establish a Supreme Court at Calcutta and it abolished the respective Mayor's Court. Section 30 of this Charter granted a right to appeal from the judgments of Supreme Court to Privy Council in Civil matters if following two conditions were followed;

*i) Where the amount involved exceed 1000 pagodas*

*ii) Where the appeal is filled within six month from the date of decision.*

In the same way, the Act of 1797 replaced the Mayor's Court at Madras and Bombay with the Recorders Court and provided for direct appeals from these Courts to the Privy Council. Thus the right to appeal from King's Court to Privy Council was well recognized. Besides this, there were Company's Court i.e. Sadar Diwani Adalat and Sadar Nizamat Adalat. They also recognized the right to appeal to the Privy Council from their decisions. Accordingly the Act of Settlements, 1781 provided for right to appeal from Sadar Diwani Adalat at Calcutta in Civil matters.

#### **c. Appeals to Privy Council from High Courts:**

Under the Indian High Courts Act, 1861 the high Courts were established at three Provinces. It

was the amalgamation of King's Courts and Company's Courts. This Act provided for the right to appeal from High Courts to Privy Council from all of its judgments except in Criminal matters. In addition to this, there was a provision of Special leave to Appeal in certain cases to be so certified by the High Courts.

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

The Government of India Act, 1935 provided for the establishment of Federal Court in India. The Federal Court was given exclusive original jurisdiction to decide disputes between the Center and constituent Units. The provision was made for filing of appeals from High Courts to the Federal Court and from Federal Court to the Privy Council. The Federal Court also had jurisdiction to grant Special Leave to Appeal and for such appeals a certificate of the High Court was essential.

**e. Abolition of jurisdiction of Privy Council:**

In 1933, a white paper was issued by the British Government for establishment of the Supreme Court in India so as to here appeal from Indian high Courts. It was the first step in avoiding the jurisdiction of Privy Council. After Indian independence, the Federal Court Enlargement of Jurisdiction Act, 1948 was passed. This Act enlarged the appellate jurisdiction of Federal Court and also abolished the old system of filing direct appeals from the High Court to the Privy Council with or without Special Leave. Finally in 1949, the Abolition of Privy Council Jurisdiction Act was passed by the Indian Government. This Act accordingly abolished the jurisdiction of Privy Council to entertain new appeals and petitions as well as to dispose of any pending appeals and petitions. It also provided for transfer of all cases filed before Privy Council to the Federal Court in India. All powers of the Privy Council regarding appeals from the High Court were conferred to the Federal Court.

Thereafter with the commencement of the Constitution of India in 1950, the Supreme Court has been established and is serving as the Apex Court for all purposes in India. It hears appeals from all the High Courts and Subordinate Courts. With this the appellate jurisdiction of the Privy Council finally came to an end.

**Role of Privy Council:**

The Privy Council has contributed a lot in development of Indian Legal System. It served a cause of justice for more than two hundred years for Indian Courts before independence. As far as the judicial institution is concerned, the Privy Council was a unique and unparalleled among all the Courts round the world. It set the task of ascertaining the law, formulating legal principles, molding and shaping the substantive laws in India. It also helped in introduction of the concept of '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 almost all present Indian laws.

The contribution of Privy Council in personal laws like Hindu Law and Muslim Law is also noteworthy. It acted as a channel, through which 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 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 statute law, personal laws, and commercial laws is of 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 path finder for the Indian Courts still today.

At present also, the Privy Council command a great respect among Indian lawyers, judges as well as Indian public as the highest judicial institution. Some of the principles laid down by the Privy Council are still followed by the Supreme Court of India. The view taken by the Privy Council is binding on the High Courts in India till the Supreme Court has decided otherwise. One of such instance can be given in the form of 'principle of absolute liability' as propounded by the Supreme Court in the historic olieum gas leak case. Thus as a whole, the contribution of Privy Council is considered as remarkable for the development of Indian Legal System and Indian Judicial Administration. It has played a great unifying role in shaping divergent laws in India.

**Drawbacks of Privy Council:**

*In spite this contribution of Privy Council, it suffered from following drawbacks:*

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 disadvantageous.
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.