

UNIT - 5

ESTABLISHMENT OF THE INDIAN HIGH COURTS/ INDIAN HIGH COURTS ACT, 1861:

Introduction: In the three Presidency towns of Calcutta, Madras and Bombay there were two existing judicial systems for administering justice i.e. the Supreme Court and the Sadar Diwani and Sadar Nizamat Adalat. This sort of judicial administration was inconvenient for the inhabitants of the Presidencies. In fact, it often clashed and it resulted in conflicting decisions. Ultimately, this problem was resolved by the British Parliament by enacting the Indian High Courts Act, 1861. The Indian High Courts bill was moved by the secretary of State Sir Charles Wood in the House of Commons on 6th June, 1861 and finally the Indian High Courts Act was passed by the British Parliament on 6th August, 1861. It was titled as "An Act for establishing High Courts of Judicature in India". The Act consists of 19 sections only. The Indian High Courts Act, 1861, abolished the Supreme Court and Sadar Adalat's in the Presidencies and the Act also empowered the crown to issue letter's patent under the great seal of the United Kingdom, to erect and establish high court of Judicature at Calcutta, Madras and Bombay. It further provided that the High Courts were to come into existence at such time as her Majesty might deem fit. Thus, on the establishment of the High Court, the Supreme Court, the Sadar Diwani Adalat and Sadar Nizamat Adalat at the concerned presidency were to be abolished and the records and documents of these courts so abolished were to become the records and documents of High Courts concerned.

Constitution High Courts:

The High Court's was to consist of a Chief Justice and other puisne judges not exceeding 15 in number as her Majesty might from time to time think fit to appoint.

Qualification of judges of High Court: A person could be appointed judge of High Court if he was either:

1. A Barrister of not less than five years standing;
2. A member of the Covenanted Civil Service of at least 10 year's standing who had served as Zila judge for at least 3 years in that period;
3. A person having held judicial officer not inferior to that of principal Ameen or judge of a small cause court for at least 5 years;
4. A person who had been a pleader of a Sadar Court or a High Court for at least 10 years.

At least one third of the judges of the High Court, including the Chief justice had to be Barristers and the other one third of the judges had to be members of the covenanted Civil Service. The judges hold their office during the pleasure of her Majesty.

Laws to be applied:

The law which the high court applied was same as applied by the Supreme Court i.e. English law. However, the High court was allowed to use the principles of justice, equity and good conscience on the appellate side. In criminal law, it followed the I.P.C, 1860. So far as procedural laws are concerned the High Court's followed civil and criminal codes.

Jurisdiction of the High Court's:

The jurisdiction of each high court depends on the letters Patent issued by her Majesty. She could give them power to exercise all civil, criminal, intestate, testamentary, admiralty and matrimonial jurisdiction. She could also confer on them original and appellate jurisdiction and all such powers and authority with respect to the administration of justice in the presidency, as she thought fit. Thus High Courts were given the following original and appellate jurisdiction.

1. **Original jurisdiction:** The court had original jurisdiction in the following matters:

(a) Civil Jurisdiction and

(b) Criminal Jurisdiction

(a) **Civil Jurisdiction:** The Original Civil Jurisdiction of the court was of two types:-

i. **Ordinary Civil Jurisdiction:** The Ordinary Civil Jurisdiction extended to the town of Calcutta, Madras and Bombay and such local limit as from time to time could be prescribed by law of a competent legislature in British India. All suits of the value of Rs. 100 or more and which were not cognizable by the small court at Calcutta, Madras and Bombay were cognizable under High Courts. Further, the ordinary civil jurisdiction could be invoked only if:

- The movable property was situated within the town of Calcutta, Madras and Bombay;
- The cause of action wholly or partly arose in Calcutta, Madras and Bombay;
- The defendant was carrying on business or working for gain in Calcutta, Madras and Bombay.

ii. **Extra Ordinary Civil Jurisdiction:** Extra Ordinary Civil Jurisdiction provides that the High Court could call a case pending in any lower court subject to its superintendence and could decide that case itself. This jurisdiction could be exercised in a case where the parties agreed to such exercise or the High Court thought it proper to impart justice.

(b) **Criminal Jurisdiction:** It is of two types also:-

- i. Ordinary Original Criminal Jurisdiction:** In exercise of its Ordinary Original Criminal Jurisdiction the High Court was empowered to try all persons brought before it in due course of law. This jurisdiction was made available over the native criminals and crimes committed within the local limits of the presidency towns and beyond this limit over the Britishers and Europeans as the Supreme Court used to enjoy the jurisdiction over them before the establishment of the High Court.
 - ii. Extra Ordinary Original Criminal Jurisdiction:** The High Courts were to have extra Ordinary Original Criminal Jurisdiction which was not enjoyed by the High Court. Under this jurisdiction the High Court hear any criminal case against any person within the cognizance of any court which was subject to the superintendence of the High Court. If such case was referred to the high court by the advocate general or by any magistrate or any other officer specially empowered for that purpose.
2. **Revenue Jurisdiction:** The High Court was given jurisdiction to hear revenue cases also which were precluded from the jurisdiction of the Supreme Court by the Act of Settlement, 1781.
 3. **Admiralty Jurisdiction:** The admiralty and vice-admiralty jurisdiction was also given to the high court.
 4. **Testamentary and miscellaneous jurisdiction:** The High Courts were given similar testamentary, intestate and probate jurisdiction as was enjoyed by the Supreme Court. It also worked as the court of wards for the administration of the estate and persons (lunatics, idiots and minors).
 5. **Appellate Jurisdiction:** The appellate jurisdiction of the High Court was of two types:-

 - (a) Civil Jurisdiction:** The High Court could hear appeals in all cases authorised by any law or regulation.

(b) Criminal Jurisdiction: The High Court had criminal jurisdiction in all cases decided by the subordinate courts to it. It could also entertain revisions against the decision of the lower court and reference from them.

Appeals from High Court:

An appeal to Privy Council lay from judgement of High Court in civil cases when the amount involved is Rs. 10,000 or more or if the High Court certified that the case is fit one for appeal. And in case of criminal cases from its original jurisdiction or if the High Court certified that the case is fit one for appeal.

PART – II

THE FEDERAL COURT OF INDIA:

Reasons for the Establishment of Federal Court:

High Court was the highest court in India, over it there was Privy Council but to approach the Privy Council required huge expenses and time of the litigants. Hence the establishment of the Federal Court was made necessary. Accordingly, in Nov. 1934, the joint select committee of both the houses of British Parliament in its report recommend for the establishment of one federal court. Thus, the British Parliament passed the Government of India Act, 1935. The said Act provided for the establishment of a Federal Court in India under Section 200. Thus, on 1st October, 1937, the federal court came into being. The seat of the court was the chamber of princes in the Parliament building in Delhi. It was a court of record. Sir Maurice Gwyer was the 1st chief justice and the other two puisne judges were Sir Mohammad Sulaiman and M.R. Jayakar. The Federal Court saved time and expenses of the litigants. It was also a convenience to the Indian's. Therefore, the federal court lessened the work load of the Privy Council.

Appointment of Judges:

1. Chief justice and other judges were to be appointed by his Majesty;
2. They were to hold office till the age of 65 years;
3. His Majesty was empowered to remove any judge from his office on the grounds of misbehaviour or infirmity of mind or body but on the recommendation of the Privy Council.

Qualification:

1. 5 year's experience as a judge of High Court;
2. 10 years standing as an advocate or Barrister;
3. 10 years standing as a pleader in a high court.

Salary:

According to section 201, The judges of the federal court were entitled to such salaries and allowances and to such rights in respect of leave and pension as were laid down by his Majesty from time to time.

Jurisdiction of the Federal Court: Under the Government of India Act, 1935 the Federal Court was given 3 kinds of jurisdiction:-

1. Original;
2. Appellate;
3. Advisory.

1. Original Jurisdiction: Section 204 of the Government of India Act, 1935 provided that, The original jurisdiction of a Federal Court was confined to:

- (a) Disputes between units of the dominion or
- (b) Disputes between the dominion and any of the units where –

- (i) It involved a question of fact or a question of law on which the existence of a legal right depended;
- (ii) It involved interpretation of Government of India Act, 1935 or of any order in council made there under;
- (iii) The extent of legislative or executive authority vested in the federation by virtue of instrument of accession of the State is involved.

But the federal court had no power to entertain suits brought by private individuals against the dominion. The court was not authorised to enforce its own decisions directly but with the aid of civil and judicial authorities throughout the federation. Section 208 provided for a right of appeal to the Privy Council from the judgements of the federal court in the exercise of its original jurisdiction, if such decision involved an interpretation of the Government of India Act, 1935 or any order in council made there under.

2. Appellate Jurisdiction: According to section 205 of the Government of India Act, 1935 " An appeal shall lie to the federal court from any judgement, decree or final order of a high court in British India". Provided:"that the High Court certified that the case involved a substantial question of law as to the interpretation of Government of India Act, 1935 or an order in council of the Governor General in council".

Initially the Federal Court exercised appellate jurisdiction in constitutional cases under the Government of India Act, 1935. Its appellate jurisdiction was extended to civil and criminal cases from 1948. In this regard, Section 3 of the Federal Court (Enlargement of Jurisdiction) Act, 1947 provided that, "from 1 Feb, 1948 an appeal shall lie to the federal court in civil cases where the valuation of a civil case was not less than Rs. 50,000. So far as Criminal Cases are concerned before 1948 there was no appeal in criminal cases. Then, the Federal Court (Enlargement of Jurisdiction) Act, 1947 enlarged the jurisdiction of Federal Court in India

but later in 1949 the system of appeal from India to the Privy Council was totally abolished in criminal cases. The court was also competent to consider the nature question as mentioned in section 205.

3. **Advisory Jurisdiction:** Under Section 213 of the Government of India Act, 1935 if at any time it appeared to the Governor-General that question of law has arisen which was of such a nature and of such public importance that it was expedient to obtain the opinion of Federal Court for its consideration and the federal court was to report to the Governor-General on the same. The question for opinion invariably involved the interpretation of the Constitution Act i.e. the Government of India Act, 1935. The Governor-General was however, not bound by the advice tendered to him by the Federal Court.

4. **Miscellaneous Powers:** The federal court under the Government of India Act, 1935 had the following 4 miscellaneous powers :-

- i. To compel attendance of any person, examine witness or production of any document;
- ii. To frame rules of procedure of Federal Court with approval of Governor-General;
- iii. To exercise supplemental powers if conferred by federal legislature for better administration of justice under the Act.
- iv. It could punish for its own contempt and could make rules for regulating its own procedure and legal practice at bar.

Authority of the Law laid down by Federal Court:

Section 212 of the Government of India Act, 1935 provided that, "the law declared by the Federal Court and any judgement of the Privy Council will be binding on all the courts in British India". Thus, the High Court and

subordinate courts in British India were absolutely bound by the decision of the Privy Council and the Federal Court.

Expansion of Jurisdiction:

In December, 1947 the Federal Court (Enlargement of Jurisdiction) Act 1947 was passed. Its aim was to meet the growing national demand and satisfy public opinion in India. It enlarged the appellate jurisdiction of the federal court so as to hear civil/criminal appeals from the High Courts to the Privy Council.

Abolition of Federal Court:

Federal Court worked for a short period of 12 years. In place of Federal Court the Supreme Court of India was established on 25-1-1950 by the "Abolition of the Privy Council Jurisdiction Act, 1949".