

Lecture 14

Pak301

Constitutional Development in British India

Following acts were introduced by the British government in India.

Indian Councils Act, 1861

Indian Councils Act, 1892

Government of India Act, 1909

Government of India Act, 1919

Government of India Act, 1935

End of East India Company's Rule:

On August 2, 1858 British Parliament passed a law for complete takeover of all rights of the East India Company over India. Post of Secretary of State for India was created through the cabinet. The Secretary of State for India was empowered about government and revenues of India.

On November 1, 1858 Queen Victoria issued a proclamation for the assumption of control of India by the British Crown. Lord Canning, Governor General of India was given the title of "Viceroy." He continued in office but not as the Company's representative but direct representative of British Crown. Moreover armies of the Company came under British Control.

Indian Council Act, 1861

This act was the first legislation by the British government in India. Before that laws were promulgated by the East India Company.

According to this act:

Governor General could assign special tasks to any members of the Executive Council.

Important matters were to be discussed with the Governor General. Some important subjects were kept directly under the Viceroy, e. g., Foreign Department.

Membership of the Council was raised: 6 to 12. Half of them were to be non-officials, nominated for two years.

The Council had limited legislative powers.

In Madras and Bombay Councils approval of the Governor General (GG) and Governor was needed. This act provided Indian representation by nomination.

Indian Council Act of 1892

By this act:

Size of Legislative Council increased.

In Central Legislative Council the membership was increased: 10 to 16 members.

At Provincial level representation was increased. In Madras & Bombay 8 to 12, Bengal 12 to 20.

Limited powers were given to the legislatures. Questions could be asked.

Nominal elections through special interests were allowed. GG and the British government made these appointments.

Government of India Act, 1909 (Minto-Morley Reforms)

This act was another step towards giving Indians more representation in the Government.

This act provided

Expansion of Legislative Councils

Central: Additional members up to 60

But official majority remained there.

Provincial: Size varied in different provinces.

Bombay, Madras, Bengal, UP: 50

Non-official majority

Not all the members were elected.

Powers of the Councils were increased. Now

Budget could be discussed. Members were allowed to present Resolutions and put up questions.

Executive Councils were formed for Bombay, Madras and Bengal and Lt. Governor Provinces.

Elections were to be held by University Senate, District Boards, Municipal Committees, Zamindars, and Chambers of Commerce.

Separate Electorate was accepted for minorities.

Government of India Act, 1919 (Montagu-Chelmsford Reforms)

In the background of some significant developments between 1909-1919 like World War I- 1914-1918, political activity during Tehrik-i-Khilaphat, change in Muslim League objectives, Lucknow Pact 1916 etc., the British government announced that gradual induction of Indians in all branches of government would be done. Gradual introduction of responsible government would be done. Commissioned ranks of Army would be given to the Indians.

Mr. Montagu, Secretary of State visited India from November 1917 to April 1918 and discussed the constitutional matters with Viceroy Lord Chelmsford and the Indian political leaders. The outcome was the government of India Act 1919.

Salient Features, Government of India Act 1919

This act provided a bicameral legislature at the Centre, which consisted of two houses.

One was the Council of State with a membership of 60, out of which 34 were to be elected and 26 nominated official & nonofficial members. The Council's tenure was fixed at 5 years.

Legislative Assembly was consisted of 145 members, out of whom 105 were elected and the rest would be nominated.

Direct elections were introduced with limited franchise on the basis of property, tax paying, previous experience of legislative councils, university senate, district councils, etc.

Separate Electorate for minorities.

Limited law making powers were assigned to the Legislature but for certain categories prior permission was required. It had no control over defense, foreign policy, budget etc. Legislature could refuse grants but GG could restore them.

Questions, Resolutions, Adjournment Motions were allowed.

G.G. remained a powerful office with all the executive, legislative powers with a nominated Executive Council.

Two lists of subjects were given in the act, one was Central and the other was Provincial. Centre had overriding powers.

Provincial Legislative Councils

Membership increased. 70 percent were elected. They were having limited powers. They could reject budget but GG could restore it.

Diarchy System in the Provinces

The act introduced DIARCHY system in the provinces. According to the new arrangement subjects were divided into two categories i.e., Reserved subjects and Transferred subjects.

Reserved subjects included judiciary, canal, land revenue, Finance, press, power, etc.

Transferred subjects included Local govt. education, public health. In case of a dispute, if something belonged to reserved or transferred side, the Governor was entitled to make the final decision.

Limited Responsible Government at the provincial level was introduced. The system of Diarchy was complicated.

The continuous tussle between the elected and nominated members created fear of breakdown of administration. GG had Control on key departments. Elective elements became strong in the legislatures.

Government of India Act, 1935

It was the most important and most comprehensive legislation introduced by the British Government in India. It was gradually formulated starting with the Simon Commission, Round Table Conferences, White paper (1933) and J.S.C. it was a lengthy document passed by the parliament in July 1935 and got Royal assent in August 1935.

Salient Features

It provided a Federal System with a centre, 11 Governor Provinces, 6 Chief Commissioner Provinces and the states willing to join it.

Three lists of subjects were given with a powerful centre. Federal list had Defense, Postal services, External affairs, Coinage and Communication. Provincial list included education, police, Local self-government, justice, agriculture, public service, fisheries and forests. The concurrent list included criminal law, civil marriage, divorce, registration, bankruptcy, factories and succession.

Two houses of Central Legislature:

i. Council of State comprised of 260 members, out of which 156 were from British provinces and 104 from Indian States.

Method of election was indirect. Communal representation was also secured.

ii. Federal Assembly was lower house consisted of 375 members. Out of which 250 represented British provinces and 125 from Indian States.

They were elected by provincial legislatures on the principle of separate electorate.

States were to nominate their members.

Limited Powers were given to legislature:

80 percent of budget was above their vote.

They could do law making for two lists but GG could turn down or refuse the bill keeping it for consideration of the British Government.

This constitution provided a Powerful GG: Executive Chief having powers of

- == Act on advice
- == Independent Judgment
- == Discretion
- == Emergency powers
- == Ordinances
- == Power to rule provinces directly

Provincial Governments:

Governors enjoy the powers like the GG in the Centre.

== Diarchy abolished in provinces.

== Responsible government was formed.

== Provincial legislatures not unicameral. Act provided for bicameral legislatures in six provinces and unicameral in five provinces.

== Franchise extended but still restricted on the basis of land revenue Rs. 5, Non-transferable property of Rs. 60, Education: Primary.

11. Federal Court and High Courts were formed under the act.

12. Burma was separated from India.

13. Sindh was separated from Bombay.

Comments:

== Federal part of the act was not introduced.

== Provincial part introduced in 1937.

== Provincial autonomy was provided.

== Elected governments were formed in provinces

== A strong centre was maintained.

== This act expanded electorate.

== Indian government under this act had no control over defense.

== Indian legislature could not amend it.

== Federal legislature elected indirectly