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HISTORICAL BACKGROUND TO THE CONSTITUTION



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HISTORICAL BACKGROUND TO THE CONSTITUTION

It was under the British rule that the idea of modern constitutional form of government developed. The development of Indian Constitution can be divided into two parts:

1. Development under the rule of the East India Company (1765-1858); and
2. Development under the rule of the British Crown (1858-1947).

The rule of East India Company began in 1765 when it received the Diwani of Bengal, Bihar and Orissa from the Mughal Emperor. It continued to rule India till 1858. The Revolt of 1857, convinced the British government of the necessity of taking over the administration of India directly in its own hands. Therefore, by the Government of India Act of 1858, the administration of India was transferred from the hands of the Company to the British Crown. The period between 1858 and 1947, thus, constituted the second part of the constitutional development in India. The Indian Independence Act, 1947 finished the rule of the British Crown in India, dividing it into two independent states namely Pakistan and Indian Union, and the power to rule was handed over to their respective governments.

REGULATING ACT, 1773

The 1773 Act was the beginning of the efforts at British Parliamentary control over the Company administration in India. This Act for the first time presented a written constitution for Company rule in India and acknowledged the political and Administrative responsibilities of the Company. This Act was also perhaps the first step in the direction of the consolidation of British rule and centralisation of administration in India.

Provisions: The main provisions of this Act were as follows:

- (a) The Governor of Bengal was made the

Governor-General of the Company in India and the Governors of Madras and Bombay were subordinated to him.

- (b) A council of four members was constituted for the assistance of the Governor-General. The council took its decision by the majority vote. The Governor-General, who was its President, had a casting vote only in the case of a tie.
- (c) A Supreme Court, independent of the Governor-General and the council, was created at Calcutta.
- (d) The qualification for a vote in the Board of Proprietor was raised from five hundred pounds to one thousand pounds and that too was limited only to those who kept their share with the Company for at least a year.
- (e) The Directors of the Company were to be elected for four years. One-fourth of them were to retire every year and had to remain aloof from the post for at least a year. The Directors had to submit the yearly financial report of the Company to the Chancellor of Exchequer and report concerning the military and political affairs of the Company to the Secretary.

Defects: The Act failed in its objective. Instead of improving, it mismanaged the affairs of India because of its inherent defects.

- (a) It gave no power to the Governor-General against his council. It led to constant friction between him and his council.
- (b) It did not clarify the nature of subordination of the Governors of Madras and Bombay to the Governor-General. It led to disloyalty of the Governors to the Governor-General and personal and contradictory policies

particularly in their dealings with the native rulers.

- (c) The jurisdiction of the Supreme Court and the laws which it had to enforce were not clarified. Therefore, the new judicial system created certain anomalies as Warren Hastings, the then Governor-General had already set up a judicial system in Bengal.

In practice, the administration of India was carried on, only for two years, i.e., 1774 to 1776 though legally, its framework continued till 1784.

AMENDING ACT OF 1781

The Amending Act of 1781 tried to remedy the defects and shortcomings of the Regulating Act of 1773, as follows:

- (a) The actions of the Public Servants of the company in their official capacity were exempted from the jurisdiction of the Supreme Court.
- (b) The Supreme Court was to have jurisdiction over all the inhabitants of Calcutta and was to administer the personal law of the dependent.
- (c) This Court was to consider and respect the religious and social customs of Indians while enforcing its decrees and processes. The Government was also to keep these in mind while making rules and regulations.
- (d) Appeal could be taken from the Provincial courts to the Governor-General in Council that was to be the final court of appeal.
- (e) The rules and regulations made by the Governor-General in Council were not to be registered with the Supreme Court.

PITT'S INDIA ACT, 1784

The Amending Act of 1781 also failed in its mission to bring a provision for associating Indians with the work of legislation. The major Act was the Pitt's India Act of 1784. The Company was obliged to seek loan from the British Government again which provided it an another opportunity to interfere in the administration of the Company.

The provisions of Pitt's India Act were as follows:

- (a) The commercial and political activities of the Company were now separated.
- (b) For the supervision of civil, military and revenue matters, a Board of Control consisting of six members was set up in England. The Chancellor of Exchequer and the Secretary of State who were the members of the British Cabinet were ex-officio members of this Board. The members were to be appointed and dismissed by the British Crown. Members of the Board had access to and were to be furnished with all the papers of the Company.
- (c) A secret committee of three Directors was to transmit the orders of the Board to India. The Board of Proprietors lost the right to rescind, suspend or revoke any resolution of the Directors approved by the Board.
- (d) The members of the Governor-General's Council were to be three instead of four. The Governors of Bombay and Madras were completely subordinated to the Governor-General.
- (e) The Company was asked to follow the policy of non-intervention.
- (f) Only covenant servants were in future to be appointed members of the Council of Governor-General. This Act gave the British Government a measure of control over the Company's affairs. In fact, the Company became a subordinate department of the state.

In 1786, some fresh regulations were framed. One of them empowered the Governor-General to act even against the wishes of his Council. Another regulation made him the Commander-in-Chief of the army of the Company as well.

The Act removed the defects of the Regulating Act which was its primary purpose. The power was centralized in the hands of the Governor-General. It brought unity and stability in administration. The formation of the Board of Control and the inclusion of the two British Cabinet Ministers in it reduced the power of the Directors and the Proprietors and instead, increased the rights of British Government in the administration of India.

CHARTER ACT, 1793

By this Act, the Governors were also empowered to act against the wishes of their councils in certain special circumstances. The monopoly of the Company to trade in the East was also secured for the next 20 years.

- (a) The salaries of the members of the Board of Control and other functionaries of the Company were to be drawn from the Indian exchequer.
- (b) The Governor-General and the Governors could now override the decision of their respective councils.
- (c) The Company got monopoly of trade with India for another twenty years.
- (d) The Governor-General was given greater control over the presidencies of Bombay and Madras.
- (e) The Commander-in Chief was not to be a members of the Governor-General's Council.

CHARTER ACT, 1813

The 1813 Act, however, deprived the Company of the monopoly of trade in India. While the powers of the three councils of Madras, Bombay and Calcutta were enlarged, they were also subjected to greater control of the British Parliament. All regulations made by the three councils were thereafter required to be laid before the Parliament.

- (a) It was specifically cleared that the sovereignty of the British Empire in India was in the hands of the British Crown.
- (b) The monopoly of the Company to trade with India was abolished and all British traders were allowed to trade with India.
- (c) The monopoly of the Company to trade with China in opium and tea, however, remained secured.
- (d) The Christian Missionaries were allowed to come to India after seeking permission of the government.
- (e) The Company was required to spend rupees one lakh annually out of the revenues of India on the education of Indians.

Thus, by this Act, the right of the British Crown over the possessions and administration of India was asserted, the principle of state

responsibility for educating the subjects was accepted and the missionaries were provided the facility of propagating Christianity in India. But the worst clause of this Act concerned with trade. Britain had started producing machine-made goods. It required raw materials from India and a good market for finished goods. This facility was provided to all British traders by abolishing the monopoly of the Company to trade with India. It resulted in enhanced economic exploitation of India by Britain.

CHARTER ACT, 1833

By this Act the Governor-General of Bengal was designated as the Governor-General of India. This also provided fair and impartial treatment of Indians in the matter of selection for state services. According to Lord Morley, the Act of 1833 was the most important Act passed by the Parliament till 1909.

- (a) The Company was allowed another twenty years to administer Indian territories "in trust of His Majesty, His heirs and successors."
- (b) The Company lost its monopoly of China trade and was asked to close its commercial business as early as possible.
- (c) All restrictions on European immigration into India and acquisition by them on land and property in India were removed, legalising European Colonization of India.
- (d) The Governor-General of Bengal became the Governor-General of British India; all powers, administrative and financial, were centralised in the hands of the Governor-General in Council.
- (e) The Governors of Madras and Bombay were drastically deprived of their powers of legislation and left only with the right of proposing to the Governor-General in Council projects of the laws, which they thought expedient.
- (f) The Executive Council of the Governor-General was enlarged by the addition of the fourth member (Law member) for legislative purposes. With it began the Indian legislature.
- (g) A law commission was constituted for consolidating, codifying and improving Indian laws.

- (h) The Act threw open to all, irrespective of religion, place of birth, descent, colour, etc., services under the Company.
- (i) A new province, North Western Province was created which included the District of Agra and Western Awadh.

Macaulay, who was the first law member in the Council of the Governor-General, did a useful work by codifying the laws in India. But the opening of the services to all persons on merit remained only an ideal.

CHARTER ACT, 1853

This was the last of the Charter Acts. The Indian Civil Service was opened for all. For the first time, the legislature was given the right to frame its own rules and procedure.

- (a) The British Parliament was empowered to give the administration of India to the British Crown at any time of its choice.
- (b) The number of the directors of the Company was reduced from twenty four to eighteen. Six among them were to be appointed by the British Crown. Henceforth, the members of the Council of the Governor-General and the Governors were to be appointed with the consent of the Crown.
- (c) The system of competitive examination was introduced for the civil services.
- (d) The Board of Directors was dispossessed of its power of patronage as services thrown open to competitive examinations.
- (e) The Board of Directors was empowered to constitute a new presidency or to alter the boundaries of the existing ones to incorporate the newly acquired territories.
- (f) A separate Lieutenant-Governor was appointed for the administration of Bengal.
- (g) Six additional members were appointed to the Executive Council of the Governor-General to help him in framing laws. The Governor-General however, possessed the right to refuse their advice.

- (h) The salaries of the members of the Board of Control, its Secretary and other officers were to be fixed by the British Government but were to be paid by the Company.
- (i) Questions could be asked and the policy of the Executive Council could be discussed though the Executive Council could veto a bill of the Legislative Council. Discussion in Council became oral instead of in writing, bills were referred to select committees instead of a single member, and the legislative business was conducted in public instead of in private.

This Act was important only in two respects, one, the Crown could take up the governance of India in its own hand at any time. Second, a miniature though ineffective legislative council was at least established at the centre. Contrary to the intention of the framers of the Act, it became 'An Anglo-Indian House of Commons' which started questioning the Executive Council and refused to submit to the wishes of the Governor-General concerning legislation.

GOVERNMENT OF INDIA ACT, 1858

While assuming direct responsibility for the governance of India, the Queen issued a Proclamation on November 1, 1858, which contained the principles which were to form the basis of the future government of India. It assured the Indian princes that all treaties and engagements made by the Company would be scrupulously observed by the Crown. It disclaimed for further territorial possessions; promised to respect right, dignity and honour of the princes; assured its determination to faithfully and conscientiously fulfil its obligations towards the Indian people and to consider them at par with other British subjects; promised to stimulate industry, to promote works of public utility and to govern the country for the benefit of all subjects. The Proclamation assured complete freedom of religious belief and worship to the people and promised that no discrimination shall be made on the basis of race or creed in matters of appointments to offices under the Crown. The Proclamation is often described as the Magna Carta and continued to be the basis of the government's policy till 1917. Subsequently, the Government of India Act was passed in 1858.

- (a) The administration of India was handed over to the British Crown.
- (b) The Board of Directors and Board of Control were abolished. All their rights were handed over to the Secretary of State for India who was a member of the British Parliament and the Cabinet.
- (c) The Secretary of State for India was to be assisted by a council called the India Council. It consisted of 15 members. At the first instance, 8 of them were appointed by the Crown and 7 among them by the Directors. This part of administration was called the Home Government.
- (d) The Secretary of State was bound to act according to the wishes of the India Council concerning the services and economic affairs. In rest of the matters, he could refuse to accept its advice. He had to submit an annual report to the British Parliament concerning the affairs of India.
- (e) The Governor-General, being the nominee of the Crown in India, was called the Viceroy as well. He was bound to obey the instructions of the Secretary of State.

Administration became highly centralised. All power-civil, military, executive and legislative -came to be vested in the Governor-General in Council who in turn was responsible to the Secretary of State. The authority of the Secretary of State over Indian administration was absolute; administration was bureaucratic with little concerns for public opinion in India. Yet, the Act marked an important step in the constitutional history of India. It is said that it removed some of the contradictions, fictions and myths created by the Pitt's India Act.

INDIAN COUNCILS ACT, 1861

Soon after, it was deemed necessary by the Government to initiate a policy reform of the Indian administration and to consider ways and means of establishing closer contacts with the public opinion in the country and taking non-official member both European and Indian into the Council of the Government. This Act marked the beginning of that policy of the British which has been called 'the policy of association' or 'the policy of benevolent despotism', because for the

first time, an attempt was made to include the Indians in the administration of the country.

- (a) A fifth member was added to the Executive Council of the Governor-General as the finance member (a gentleman of legal profession). The Governor-General was empowered to frame rules for the convenient transaction of business by the Council. This power was used by Lord Canning to introduce the portfolio system in the Government of India.
- (b) For the purpose of legislation, the Viceroy's Executive Council was expanded by the addition of not less than six and not more than twelve additional members, not less than half of whom were to be non-officials. Some of the non-official seats were offered to natives of high rank. Thus, a minute element of 'popular' participation was introduced in the legislative process.
- (c) The function of the Legislative Council so created was trickily limited to legislation; it could have no control over administration or finance or right of interpellation.
- (d) The legislative powers were restored to the Presidencies of Madras and Bombay. But no laws passed by the provincial councils were to be valid until they received the assent of the Governor-General.
- (e) The Governor-General was empowered, in case of emergency, to issue, without the concurrence of the Legislative Council, ordinances which were not to remain in force for more than six months.
- (f) The Governor-General was empowered to create Legislative Councils in the provinces of North West and Punjab. These were created in 1886 and 1897 respectively.
- (g) The Governor-General in Council was empowered to create new provinces, appoint Lieutenant Governors and demarcate the boundaries of the provinces.

This Act made a beginning of the legislatures in India both at the centre and the provinces.

Defects: However, the Act failed to serve the purpose for which it was made.

- (a) Its primary purpose was to introduce measures of knowing the wishes of the Indians. The provision of nominating non-official members in legislature was made for the same purpose. But, the provision remained a failure because mostly princes or big landlords, who, in no way represented the Indian public were nominated as members. The councils, in fact, were there simply to stamp the wishes of the executive councils. Thus, in a way, the Act was a reactionary step in comparison with the Act of 1853.
- (b) Besides, the Legislative Council, in fact, had no power either concerning legislation or controlling the executives. The power to frame Ordinance to the Governor-General was an additional power to him. Therefore, the Act failed to serve any useful purpose.

The only thing in its favour was that, by creating Legislative Council, it laid down the foundation of that system of administration which lasted till the end of the British rule in India.

INDIAN COUNCILS ACT, 1892

In 1891, the Indian National Congress reiterated its conviction that India could not be governed well until her people were allowed, through their elected representatives, a potential voice in the legislatures. The passage of the Indian Councils Act, 1892 was mainly influenced by the resolutions of the Indian National Congress adopted in its sessions in 1889 to 1891.

- (a) The number of the additional members in the Legislature at the centre was increased. The minimum number was fixed at ten and maximum twenty. Among them at least ten were to be non-officials.
- (b) The number of additional members in Provincial Legislatures was also increased. The minimum number was fixed at eight and the maximum twenty. The number of non-official members among them was also increased. The

number of total members varied from province to province. In Uttar Pradesh it was kept at fifteen while in Madras and Bombay it was twenty.

- (c) The members of the Legislative Councils continued to be nominated by the Governor-General and Governors. But, provision was made in this Act to nominate them on the basis of recommendation by certain organized associations like 'Calcutta Chamber of Commerce, Zamindars' Association, University Senates. District Boards of the Provincial Legislature were also empowered to send their recommendations. Thus, the Act made provision for indirect election for the members of the Legislative Councils.
- (d) The powers of the Legislative Councils were enhanced a little. They were allowed to discuss the annual budgets though they could not vote on them. The members had the right to ask questions to the executive councillors. But a prior notice of six days was to be given in such cases. Besides, the members could not ask supplementary questions and the President of Council could refuse permission for asking any question.

It was certainly a step ahead from the Act of 1861. The increase in the number of Indian members in the Legislative Councils, provision of their indirect election and enhancement of their powers were all in the direction of gradual establishment of Parliamentary government.

Defects: This Act also failed to satisfy the Indian Public opinion for the following reasons:

- (a) The non-official members were in no position to influence the decisions of the government.
- (b) The powers of the councils both at the centre and the provinces were much limited.

Besides, when the partition of Bengal enraged the Indian public opinion, the rise of Extremism within the All India Congress led Indians towards the path of struggle against the British. Therefore, the demand of further constitutional reforms came to the fore front very soon.

INDIAN COUNCILS ACT, 1909

At its session in 1906, the Congress declared its goal of "Swaraj" which to the moderates meant Parliamentary self-government within the British Empire and to the extremists independence. It also demanded the immediate expansion of the Legislative Councils to secure a large and truly effective representation of the people and large control over the financial and executive administration of the country.

The establishment of Muslim League in 1906 also gave the Government a chance to support Muslim communalism against Indian nationalism. A new scheme of reforms could certainly be utilized to inflame Muslim communalism. Thus, the necessity of further reforms arose to check the rise of extremism in Indian politics, to win over the moderates in Congress to the side of the government and to buttress Muslim communalism. The then Secretary of State for India, Lord Morley, and the then Viceroy, Lord Minto, jointly worked out certain constitutional reform proposals during the years 1906-1908. Therefore, a committee was appointed by the Government of India to propose a scheme of reforms. The committee submitted its report and when finally everything was settled between the Governor-General and the Secretary of States for India, the Act of 1909 was passed by the British Parliament.

- (a) The number of members of the Legislative Council at the centre was increased from sixteen to sixty.
- (b) The number of members of the Provincial Legislatures was also increased. It was fixed at fifty in the provinces of Bengal, Madras and Bombay and for the rest of the provinces it was thirty.
- (c) The members of the Legislative Councils, both at the centre and in the provinces, were to be of four categories:
 - (i) **Ex-officio Members:** The Governor-General and the members of the Executive Council at the centre and the Governors and the members of their Executive Councils in their respective provinces were such members.
 - (ii) **Nominated Official Members:** The members nominated by the Governor-General at the Centre and

by the Governors in their respective provinces from among the government officials.

(iii) Nominated Non-Official Members:

The members nominated by the Governor-General at the centre and by the Governors in their respective provinces but who were not officials of the government.

(iv) Elected Members: The members elected by the Indian people of different categories.

- (d) The Act did not produce territorial representative system in India. It introduced professional and communal representative system which has been described as the separate or communal electorate system in India. The constituencies for the purpose of elections were, therefore, framed on professional and communal basis. For example, at the centre, from among the 27 elected members five were to be elected by the Muslims, six by the Zamindars, one by the Muslim landlords, one by the Chamber of Commerce of Bombay, one by the Chamber of Commerce of Calcutta and 13 by the non-official members of all provincial legislative councils. The same procedure was adopted for the elections of the members of the provincial Legislative Councils.
- (e) At the centre, the majority was of the official members but in provinces, the non-official members were kept in the majority. However, the majority was not those of the elected members because the non-official members included non-official nominated members as well among them.
- (f) The powers of the Legislative Councils were also enhanced. The members were permitted to discuss the budgets, suggest amendments and even to vote on them except in case of those items which were included in them as the non-votable items. They could initiate legislation concerning public welfare, could vote on the bills presented by the government and could ask questions

from the members of the Executive Council. Supplementary questions could also be asked by the members who had put up the original question. But the Governor-General and Governors were empowered to refuse the advice of the concerned Legislative Council.

- (g) The Secretary of State for India was empowered to increase the number of the Executive Council of Madras and Bombay from two to four. The Governor-General was also given this power in concern with the rest of the provinces but with the prior permission of the Secretary of State.
- (h) Two Indians were already nominated to the Council of the Secretary of State for India in 1907. In 1909, the Governor-General was also empowered to nominate one Indian member to his Executive Council. The first person who was nominated to this post was Mr. S.P. Sinha, who, later on, was given the title of Lord.

It was believed that the Government had consulted the moderate leaders, Gopal Krishna Gokhale before introducing these reforms. Therefore, the All India Congress expressed its satisfaction over them in 1908. The Act certainly marked the zenith of the 'policy of association' or the 'policy of the benevolent despotism,' pursued by the English in India. With this reform Act the Indians experienced the parliamentary system of government.

Defects: But the Act suffered from certain serious defects. The All India Congress very soon realized it and started criticizing it.

- (a) The framers of the Act had no intention to establish a responsible government in India even in the remote future. Morley had said: "Colonial government was a mere moon-shine". While Englishman remarked, "These reforms were only half-way house."
- (b) The Act provided indirect elections. Therefore, the electorates received no political education and no understanding was possible between them and the elected representatives.
- (c) The members of the Legislative Councils represented different communal and

class interests and therefore, were not in a position to work unitedly.

- (d) The official majority was kept at the Centre while in the provinces, the nominated non-officials mostly favoured the government. Therefore, the elected members were in no position to assert themselves. It was one cause of their frustration because of which they pursued no constructive purpose but simply engaged in criticizing the policies of the government.
- (e) The qualifications of the voters and the members of the councils were kept very high so that no ordinary man could become the party to any of them. The rules of disqualifications for them were also so framed that no extremist could become a member of a Council.
- (f) The powers of the Legislative Councils were also very limited and the Governor-General and Governors also possessed the right to vote their advice. It was no way a parliamentary government. Therefore, it has been remarked that "Parliamentary usage was adapted without parliamentary government and the result was fiction."
- (g) But the worst feature of the Act was the introduction of separate or Communal Electorate system in India. It divided the Indian people into different groups and classes. Particularly, it inflamed in the partition of the country. The Act, therefore, was denied gradually by all sections of the educated Indians.

The reforms introduced by the Act afforded no answer, and could afford no answer, to the demand for responsible government, since the councils set up therefore lacked responsibility which was the soul of popular government.

GOVERNMENT OF INDIA ACT, 1919

Subsequent to the Minto-Morley Reform Act, the Government of India Act, 1915 was passed merely to consolidate all the preceding Government of India Acts so that the existing provisions relating to the government of India in its executive, legislative and judicial branches could be had from one enactment.

The Act of 1909 failed to satisfy even the Moderates in India. The Indian nationalism became more aggressive and gradually the Congress came under the influence of the Extremists. The First World War started in 1914 and the British declared that they were fighting the war for the safety of democracy in the world. The Indians, therefore, helped the Government. They felt that, after the war, probably some sorts of self-government might be granted to them.

The Home Rule League was established during this period which demanded complete independence in internal affairs. The All India Congress and the Muslim League made the Lucknow Pact with each other and put a joint demand before the government. All these circumstances necessitated further constitutional reform in India.

On 20 August 1917, Montague, the then Secretary of State for India, made a historic statement in the House of Commons. The statement for the first time in India's chequered history under British rule, promised the establishment of "responsible government" in India.

The report on Indian constitutional reforms known as Montague-Chelmsford (or Montford Report) prepared jointly by Montague, secretary of State for India and Lord Chelmsford, the Viceroy of India, was published in July 1918.

Without paying any heed to the demand for the status of self-governing dominions, the report had most mischievously made the concessions conceded by the Congress to the League on Separate Communal Electorates under the Lucknow Pact of 1916 between the Congress and the League as the basis for Montague-Chelmsford Reforms.

The Government of India Act, 1919 based on the Montague-Chelmsford Report, sought to make it abundantly clear that the British were prepared to concede only "the gradual development of self-governing institutions, with a view to progressive realisation of responsible government." The time, manner and space of each advance of constitutional progress was to be determined only by the British Parliament and not based on any self-determination by the people of India.

- (a) The number of the members of the Council of the Secretary of State (India

Council) was fixed to be minimum eight and maximum twelve. Three among them were to be necessarily Indians. They were appointed for five years. The Secretary of State was bound to follow the advice of the Council in matters relating to finances and the services in India.

- (b) A high commissioner for India was appointed to purchase articles in foreign countries for the Indian government, to look after the Indian students studying abroad, safeguard the pension, etc. of the retired British officials in Britain and the rest. He was paid by the Indian government and was responsible to the Governor-General in Council for his actions.
- (c) The Secretary of State, in practice, lost a part of his powers. It was expected from him that he would not interfere in the administration of the provinces concerning the 'Transferred Subjects' and in matters on which the Governor-General and his Legislative Council were in agreement.
- (d) The Governor-General was given freedom to nominate as many members to his Executive Council as he desired. The councillors were nominated for five years and could be re-nominated. It was necessary for them that they must have served in India for at least ten years prior to their appointment as councillors. Among them at least two were to be Indians.
- (e) The Central Legislature consisted of the following two houses:

The Council of the State: It was the upper house and consisted of 60 members. Among them 33 were elected and 27 were nominated by the Governor-General. The members were elected directly but the qualifications of the voters were kept high. Each province was allotted a fixed number of representatives in it, in proportion to its population. Its duration was five years.

The Legislative Assembly: It was the lower house and consisted of 144 members. Among them 103 were elected and 41 were to be nominated by the Governor-General. Each

province sent a fixed number of representatives to it. The number was fixed on the basis of its population. They were elected directly but the qualifications of the voters kept so high that only 12% Indians were entitled to vote for it. Its duration was three years.

Both Houses enjoyed equal powers in matters of legislation, in case of a tie, the Governor-General was to call a joint meeting where the matter was decided by the majority vote. Each of them elected its own president. The Executive Council was not responsible to the legislature and the Governor-General was not responsible to the Legislature and the Governor-General had the right to refuse its advice. But its power of asking questions from the councillors, initiate legislation, etc. enhanced.

- (f) The provincial Legislature consisted only of one house, which was called the Legislative Council. The 70% members were elected directly by the people and rest 30% were nominated by the Governors of their respective provinces. The powers of the councils were also enhanced a little more but the Governors had the right to refuse their advice and frame ordinances according to their wishes.
- (g) The Governors were given 'Instrument of instructions' which guided them in carrying their administration in practice.
- (h) The communal electorate system was advanced further. The Act provided separate electorates to the Sikhs, the Anglo-Indians, the Indian Christians and the Europeans.
- (i) But the primary novelty of Act of 1919 was the establishment of Dyarchy in the provinces. For this purpose, first, the rights of the central and provincial governments were divided. Two lists were prepared:
 - (1) The Central List which included all Indian affairs like, defence, foreign affairs, railway, telegraphs, foreign trade, currency, etc. and
 - (2) The Provincial List, which included affairs like, health, sanitation, education, public works, irrigation, prison, police, justice, famines, etc. The residuary powers viz. the power

which were left out of these lists were given to the Centre. Next, the provincial subjects were divided into two heads: (1) The Reserved i.e. finance, police, maintenance of peace and order, revenue, publication of books and newspapers, famines, etc. and (2) The Transferred i.e. health, sanitation, local self-government, public works, agriculture, cooperative societies, etc.

The administration of the Reserved subjects was carried on by the Governor with the help of his Executive Councillors while he administered the transferred subjects with the help of his Indian Ministers who were chosen by him from among the members of Legislative Council and were supposed to be responsible to it, though their dismissal depended on the Governor. By this arrangement, the executive of the province was divided into two parts, the Governor-in-Council and the Governor-in-Ministers.

The first one was the irresponsible part of the Executive as its members were in no way responsible to the Legislative Council. The second one was the responsible part of the executive because the Indian ministers were chosen by the Governor from among the members of the Legislative Council and were supposed to be responsible to it. This system of administration which was carried on in the provinces by the Act of 1919, has been called the Dyarchy.

The Dyarchy was introduced in Bengal, Madras, Bombay, Uttar Pradesh, Punjab, Bihar, Orissa, Madhya Pradesh, and Assam in 1921 and, much later in 1932, in North-West Frontier province. With breaks here and there sometimes the system was continued in the provinces till April, 1937.

Shortcomings of the 1919 Act: The Act of 1919 had many shortcomings. It did not fulfil the demand for responsible government. Also the provincial Legislatures could not discuss bills on a number of subjects without the clearance of the Governor-General. Even though theoretically, the Central Legislature remained supreme and competent to legislate over the whole field, and notwithstanding any allocation of powers between the centre and the provinces, "the previously highly centralized government" was not intended to be converted into a federal one and the constitution of British India continued

to be that of a unitary state.

Above all, the system of dyarchy in the provinces was a dismal failure. The Governor dominated. In the absence of power of the purse, the ministers could not effectively implement their policies. Also, the Ministers were not collectively responsible to the Legislature and were only individually appointed advisors to the Governor.

The Congress and Indian opinion remained unreconciled and pressed for further reforms to make the administration more representative, responsible and responsive. World War-I was over and there was an air of general expectation. But what came were the special legislative proposals for repressive measure known as the Rowlatt Bills. These were passed despite widespread opposition, Satyagraha, Non-cooperation and Khilafat movement for Swaraj under Gandhiji's leadership.

Yet, the Act of 1919 brought certain advantages also. It was certainly a step ahead towards responsible government. It marked the end of the policy of benevolent despotism and the beginning of the responsible government. The elections to the legislatures created political consciousness among the people. The Indians came in direct contact with the administration for the first time which provided them useful experience. The number of the Indians increased in the Civil Services. The Indian women got the right of franchise for the first time. Many useful measures were taken by Indian Ministers in different provinces, i.e. 'The Bombay Primary Education Act'; 'The Bombay Local Boards Act, 1923'; 'The Calcutta Municipal Act, 1926, etc.

GOVERNMENT OF INDIA ACT, 1935

Under the 1919 Act, a commission was scheduled to be appointed in 1929 to inquire into and report on the working of the Act and make further recommendations for reforms. In view of the discontents, the Indian Statutory Commission—the Simon Commission—was appointed in 1927 i.e. two years before schedule, its all-white composition hurt Indian sentiment further.

The Congress was gradually veering round accepting complete independence as its goal. At the Calcutta Session, however, it was decided to give one last opportunity to the British to

concede Dominion status, the 1929 Lahore Session of the Congress adopted a resolution on Purna Swaraj or complete independence. A Civil Disobedience Movement began with a call to break the Salt Tax law and Gandhiji's Dandi March to reach the sea.

Finally, the Government decided to hold a Round Table Conference in London on November 1930 to consider constitutional reforms. It was followed by two more such conferences.

After the Third Round Table Conference, the British Government published a white paper in March 1933 containing an outline of a new constitution. The scheme contained provisions for a federal set up and provincial autonomy. It proposed Dyarchy at the centre and responsible governments in the provinces.

The British Parliament constituted a Joint Committee of the two houses to further consider the Government's scheme formulated in the white paper. The Joint Committee with Lord Linlithgow as its Chairman had conservative members in majority. Representatives of British India and of the Princely States were invited to give evidence before the committee as witnesses. The Joint Committee submitted its report in November 1934 which reiterated that federation would be established only when at least 50% of the Princely States were prepared to join it.

On the basis of the Report, a Bill was prepared which was introduced in the British Parliament on 19th December, 1934. After its having been passed by the two Houses and Royal assent being given to it on 4th August, 1935, it became the Government of India Act, 1935.

The Act, besides proposing changes in the Home Government, suggested following changes in the administration of India:

- (a) A federal government would be established in India which would include the native states as well.
- (b) Dyarchy, the type of government which was established in the provinces by the Act of 1919, would be established at the Centre.
- (c) The provinces would be given complete autonomy to govern themselves. The administrative subjects were divided into following three heads for this purpose:

- (1) The Federal List which included the subjects assigned to the Central Government.
- (2) The Provincial List which included the subjects assigned to the provinces.
- (3) The Concurrent List which included the subjects assigned both to the centre and the provinces for the purpose of legislation and execution. However, it was made clear that an Act of a province would not be implemented to the extent it would contradict any act of the Central Government on the same subject.

The provinces were given autonomy to legislate and govern matters concerning subjects given in the provincial list. The Central Government wasn't expected to interfere in the affairs of the provinces in normal circumstances. Besides, there remain no councillors in the provinces. The Governors were expected to rule with the help and advice of Indian ministers chosen from among the members of the provincial legislatures. The Act, thus, established the system of administration which has been called the provincial autonomy.

- (d) A federal court was established at the centre.
- (e) The Reserve Bank of India was established.
- (f) Burma and Aden were separated from India.
- (g) Two new provinces, Sindh and Orissa were created and a full governor was nominated for the province of North-West Frontier Province.
- (i) The separate or communal electorate system was continued as before. But the qualifications for the voters and members were reduced both at the centre and the provinces. It increased the number of voters. There were only 5% of people as voters by the Act 1919. By the Act of 1935 their number became 13% of the population.

These principles formed the general framework of the Act of 1935. The Broad details of it were as follows:

Home Governments: The Act of 1935 also proposed changes in the structure of the Home

Government in the following way:

- (1) The Indian Council was abolished. In its place a few advisers were nominated to help the Secretary of State for India. Their minimum number was 3 and the maximum could be 6. At least half of them were to be from among those who should have served in India for at least ten years and should not have remained outside it for more than two years prior to their nomination as advisors. Their period of tenure was kept five years. In certain matters such as the services, their advice was binding on the Secretary of State.
- (2) The Secretary of State was not expected to interfere in those matters which the Governor dealt with the help of the Indian Ministers.
- (3) The High Commissioner for India was to be appointed by the Governor-General for a period of five years.

The Federal Government: Changes made through the Act of 1935 in the federal structure of the government were the following:

- (1) The Governor-General remained the head of the central administration, legislation and financial bill could be placed in the central legislature without his consent. He had extensive powers concerning his special responsibilities. He had the power to frame ordinances and, in certain matters, he could act on his own discretion. The Act of 1935 divided the federal subjects into two parts, the Reserved and the Transferred. He administered the Reserved subjects with the help of the Union Ministers chosen from the legislature. Thus, the executive at the centre was divided into two parts-the Governor-General in Council and the Governor-General and his Indian Ministers. This meant the establishment of Dyarchy at the Centre.
- (2) The Federal Legislature was to consist of two Houses: the Council of States and the Federal Assembly. The upper house, the Council of State was to consist of 260 member while the Federal Assembly was to consist of 375 members from the legislatures of the British provinces

while 125 were to be nominated by the rulers of their respective states. The Council of State was a permanent body. However, one third of its members retired triennially. The tenure of the Federal Assembly was five years. Legally, the Central Legislature could frame any law for India but, in fact, its powers were limited. The Governor-General could refuse its advices, could frame ordinances and the Legislature had no power over three fourth part of the Budget.

Provincial Government: Efforts were also made to bring changes in the nature of the provincial structure of India.

- (1) The head of the administration of the province was the Governor. He was assisted in his task by a Council of Ministers who were to be chosen by him from among the members of the provincial legislature and were responsible to it. Legally, it meant that the Act of 1935 established responsible government in the British provinces. As the Central Government and the Home Government were not expected to interfere with provincial affairs, particularly when the Governor and his Ministers were in agreement with each other, the newly established system was called the provincial autonomy. But, in fact, it was not so. The Governor enjoyed extensive powers concerning his special responsibilities. He was empowered to frame ordinances and could act on his own discretion. In emergencies, the Governor could take the entire administration of the province in his own hands.
- (2) The composition of provincial legislatures varied from province to province. The legislatures of Madras, Bombay, Bengal, Uttra Pradesh, Bihar and Assam consisted of two houses-the Legislative Council and the Legislative Assembly. In rest of the provinces there was only one house called the Legislative Assembly. The members of the Legislative Assembly were all elected, but a few of them were nominated by the Governor to the upper house, the Legislative Council wherever it existed. It was empowered to frame laws on all

subjects included in the provincial list, question the Ministers concerning their acts and could force them to resign by passing a vote of no-confidence against them. In practice its rights, however, were limited by the rights of the Governor to frame ordinances, to act on his own discretion and to act for the fulfillment of his special responsibilities.

Defects: The Act could not solve the problems of India. It was full of many shortcomings, and only major defects are being given here:

- (1) All India federation as visualised in the Act never came into being because of the opposition from different parties of India. The Simon Commission had promised 'Dominion Status' in 1929, but the Act of 1935 did not confer it. The Act provided separate representation not only for the Muslims, but also for Sikhs, the Europeans, Indian Christian and Anglo-Indians. It, thus, placed severe obstructions in the way of developing national unity in the country. The hotch-potch of authoritarian and responsible government as envisaged by the Act of 1935 fell far short of Indian national aspiration.
- (2) The power of the Legislature and Ministers were limited by the powers of the Governor-General and the Governors. In the provinces, though all affairs were handed over to the Indian Ministers, yet they had no means to force the Governor to act according to their desires in case their view differed from that of the Governor. Thus, the provincial autonomy was only in name. Infact, the Indians were not given independent powers even in a limited field.
- (3) The Communal Electorate System existed as before much against the wishes of the majority of the Indian people.
- (4) The provision of the nomination of the members as representatives of the states in both the houses of the Central Legislature by their respective rulers was most undemocratic procedure and was condemned by all political parties in India.

The formation of Indian Ministries proved useful for experience of administration and working of the parliamentary government. It also made them self confident about themselves and inspired them further to gain independence. Thus, the experiment of provincial autonomy under the Act of 1935 definitely served some useful purposes.

INDIAN INDEPENDENCE ACT, 1947

The beginning of Second World War brought its doom. India was made a party to the War by the Governor-General without consulting the Indian Ministers. The Congress Ministries, therefore, resigned in protest. In other provinces, the ministries mostly worked as the tool of the Government. Thus, within two years, the working of the provincial autonomy virtually came to an end.

At the Bombay Session, the Indian National Congress decided to launch a mass struggle in non-violent line to free India from the British yoke. This movement came to be known as Quit India Movement. However, before the Congress could actually launch the movement, the Government acted with great speed and arrested most of the leaders and declared Congress as an illegal body. This led to a spontaneous popular revolt and there were numerous instances of open clashes between the people and the police as well as army. The British adopted various brutal measures to suppress the revolt. Through this unprecedented repression the British succeeded in keeping the nationalists under control for the remaining period of the War. Meanwhile, efforts were made by C. Rajagopalachari and Lord Wavell to resolve the constitutional tangle but without any success.

The British Government proposed several plans in succession to find some solution of Indian problem. Lord Wavell, the Governor-General proposed one scheme and another scheme was put up by the Cabinet Mission. After that elections were held for an Indian Constituent Assembly and an Interim Government was formed in 1946. The Muslim League, however, refused to be party to it and took recourse to 'Direct Action' in order to get fulfilled its demand for Pakistan. It resulted in serious communal riots in different parts of India. On February 20, 1947, Mr. Attlee, the Prime Minister, declared that the British would leave India by June, 1948 in every

case. Lord Mountbatten was sent to India as the Governor-General who talked to all shades of Indian public and then proposed his plan suggesting the partition of India. It was agreed by both the All India Congress and the Muslim League. On the basis of the Mountbatten Plan, the British Parliament passed the Indian Independence Act, 1947 through which power would be transferred from the British Government to Indians.

Provisions: The details of the provisions of the Act of 1947 are as follows:

- (1) Two dominions namely, India and Pakistan would be established on August 15, 1947.
- (2) It was left to the choice of these newly independent states that they would like to be members of British Commonwealth of Nations or not.
- (3) By the time, new Constituent Assemblies were already founded in these states, they were empowered to frame laws concerning their respective states.
- (4) The British Crown would appoint separate viceroys for each of them. However, both the states could opt to have a single Viceroy.
- (5) The British paramountcy over the native states would lapse and they would be allowed to join any of these newly independent states.
- (6) The Government was to run on the basis of the Government of India Act, 1935 till the framing of the new constitutions. But the Governor-General and the Governors would act only as nominal heads. The Ministers would be responsible to their respective legislatures.
- (7) The offices of the Secretary of State for India and his advisors were abolished. The Commonwealth Secretary was assigned the responsibility of maintaining relations with Pakistan and the Indian Union.
- (8) The title of 'Emperor of India' assumed by the British Kings, was abolished.

This marked the end of the British rule in India and the close of the constitutional development under the British rule and India became independent

