

## Paper-20

### CONSTITUTIONAL AND ADMINISTRATIVE HISTORY OF MODERN INDIA (1773-1950)

#### BLOCK INTRODUCTION

The history of constitutional development of India can be traced back to 1773, which for the first time made the provision for the post of Governor General in India. Since then, a number of constitutional experiments were introduced aiming at streamlining the British Indian administration. However, the year 1858, serves as watershed in the Indian Administration because the British Parliament took the direct responsibility of administering India. Thus the period of British Constitutional experiment during the British rule can be divided into two phases (1) Constitutional Experiment during the rule of East India Company (1773-1857) and Constitutional experiment under the British Crown (1858-1947). So this paper discusses the constitutional development in India from 1773 to 1947.

Unit -1 traces the Constitutional development from 1773. The amending Act of 1781 and the Pitt's India Act was discussed in the next section. Government of India Act of 1851 and Proclamation of Queen Victoria were analysed in the last section.

Unit-11 delineates the Constitutional development in India from 1861 to 1919. In this section Indian Council Act of 1861, Indian Council Act of 1892 and 1909 were analysed. The Government of India Act 1947 was discussed in the last section.

Unit 111 discusses from Simon Commission Report to the Indian Independence Act of 1947. In the first section Simon Commission Report and table conference was discussed. In the last section Govt of India act of 1935 and Indian Independence Act of 1947 was discussed.

Unit IV discusses the Growth of Central and Provincial Legislature in India. Growth of Public service and Indian Independence Act of 1947 were discussed in the last section.

## UNIT-1

### 1.1 Objectives

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### **-1.1 Objectives**

**After going through the Unit you will be able to know-**

- **1. Regulating Act of 1773**
- **2. Amending Act of 1781**
- **3. Government of India Act of 1858**
- **4. Queen Victoria's Proclamation**

### **1.2 INTRODUCTION:**

After the grant of the Charter in 1765 a great agitation started for parliamentary intervention in the affairs of the company in England. From 1767 onwards, the company was required to pay an annuity of £400,000 as a tribute to the British Exchequer in consideration of their retaining the territorial acquisitions and revenues derived therefrom, which the company continued to pay for some years. Burke called this annual payment by the company to the British Exchequer a "crime tax" because as a result of

this payment the British parliament withheld interference all these years and thus connived at the exploitation and misrule of the company.

### **1.3.1 CAUSES:**

By 1773, the company was not in a position to pay £400,000 a year to the British Exchequer. Its financial condition became so bad that it even approached the British Government for a loan. This provided an excuse and an opportunity for the parliament, to undertake the regulation of the affairs of the company forthwith. Moreover, from all evidence it was clear that the company was mercilessly exploiting the natives and its administration was corrupt to the core. Intervention was considered necessary to save the fair name of England. Furthermore, intervention was justified, because it came to be realized that a commercial corporation as hardly competent to perform the function of a political body. And, finally, it was feared that the officers of the company resident in England, because of their enormous ill-gotten riches, might acquire control over the internet administration of England.

In 1772, a committee was appointed to present a secret report regarding the administration of the company. The committee gave a very adverse report against the company, as a result of which the Act of 1773 was passed.

### **1.3.2 Provisions of the Regulating Act –**

1. The Regulating Act gave the right of vote for the election of Directors of the company to shareholders holding stock worth £1,000 for 12 months preceding the date of election. Formerly, Director was elected for one-year but the Act provided that in future they were to be elected for 4 years. However, one-fourth of them were to retire every year. The Directors were required to submit copies of letters and advices received from the Governor-General in Council. Copies of letters relating to revenue were to be sent to the treasury and those relating to civil and military affairs were to be sent to one of the secretaries of state. The Governor General of Bengal in Council and the Governors of Bombay and Madras were required to pay due obedience to the orders of the Directors and also kept

hem constantly informed of all the matters affecting the interests of the company.

2 provisions were made for a Governor-General of Bengal and his council of 4 members. They were vested with "the whole civic and military Government of the said presidency, and also the ordering management and Government of territorial acquisitions and revenues in the kingdoms of ginner, Bengal and Orissa". Warren Hastings was appointed the first Governor-General of Bengal and slaving, Monson, Philip Francis and Bareli were appointed the members of his council. Members of the council were to hold office for 5 years and they court not be removed except by his Majesty on the representation of the Directors. Governor General of Bengal was required to carry on the work according to the majority opinion of the council. He could not over-rule majority view of ties council. However, he was given a casting vote in the case of a tie. Governor-General was also given the Power of superintending and controlling the presidencies of Madras and Bombay. However, in the case of emergency and direct orders from the Directors in London, presidencies of Madras and Bombay were not to act according to the orders of the Governor-General of Bengal.

3. Governors-in-Council of Bombay and Madras were required to pay due obedience to the orders of Governor -General of Bengal. They were required to submit to the Governor-Generale in Council advice and intelligence on transactions and matters relating to the government revenues and interests of the company. They were required to forward all rules and regulations framed by them to the Governor- General in council. If they failed to carry out the orders of the Governor-General in Council! or did not perform their duties properly, they could be suspended by the Governor-General in council. They were requiring to Fee Governor-General in Council informed of all the rules and regulations which they might make.

4. Governor-Genera in council was given the power to make rules, ordinances and regulations for the good order and civet government of company's settlement at fort William and factories and places subordinate to it. These rules and regulations were not to be against the rawslof England and were required to be registered with the Supreme Court. These could be dissolved by the king-in council within two years.

5. The Regulating Act provided for a supreme court with a Chief Justice and three poise judges. Sir Elijah Impel was appointed the Chief Justice. The Supreme Court was given the power to try civil, criminal, admiralty and ecclesiastical cases. It was to be a court of Record and court of Yore and Termini and goal delivery in and for the town of Calcutta, the factory and Fort William and other factories subordinate to it. The

jurisdiction of the Supreme Court was to extend to all the British Subjects residing in Bengal, Bihar and Orissa. The Court was empowered to try all cases of complaints against any of his Majesty's subjects for crimes or oppressions. The Supreme Court try suits, complaints or actions against any person in the employment of the company or his Majesty's subjects. Let was given both original and appellate jurisdiction. These cases were to be tried by means of a jury.

6. The Regulating Act prohibited the receiving of presents and bribes by the servants of the company. 'No person hording or exercising any civil or military office under the crown, sail accept, receive or take directly or indirectly any present, gift, donation, gratuity or reward, pecuniary or otherwise". Let was made clear that the offenders were to make double payment and was liable to be removed to England.

7. No British subject was to charge interest at a rate higher than 12 per cent. If the Governor-Genera, Governor, member of council, a judge of Supreme Court or any other servant of the company committed any offence, he was liable to be tried and punished by the King's Bench in England. The Act also settled the salaries of the Governor Genera, Governors, chief justice and other judges. Thus, Governor- General was to get £25,000 annular, every member of the council was given £10,000 a year. The salary of the Chief justice was fixed at £8,000 and that of an ordinary judge £6, 00.

### **1.3.3 Importance of the Act**

"The Act of 1773 is of great constitutional importance, because it definitely recognized the political functLns of the company, because it asserted for the first time the right of the parliament to dictate the foam of government what was considered tail then the people possessions of the company (by an important section of the people of England); and because it is the first of a long series of parliamentary statutes that altered the form of government in Lydia". Moreover, it was the first attempt on the part of the British Government to centralize the administrative machinery in India, which was a step in the right direction. Co-ordination and unification of the policies of the three presidencies were essential for efficient administration. A central control was also necessary for consolidating the vast territories recently acquired by the company. The Act made an earnest attempt to purify the administration by forbidding the acceptance of presents or engaging in private trade on the part of the servants of the company. The Act set up a written constitution for the British possessions in India, in place of, more or less, an arbitrary rule of the company. The Act provided the framework for all constitutional enactments that followed. The collegiate system was introduced to prevent the Governor-General from beconring autocratic.

### 1.3.4 Defects of the Regulating Act

As the Regulating Act was the first endeavour on the part of the parliament to regulate the affairs of the company, it had all the defects of an amateurish attempt. The intention of the Parliament was no doubt good but the steps taken was, in part, defective.

It was wrong in principle to setup a collegiate executive. Apart from the Governor-General, there were four councillors. One of them was promoted from the servants of the company in India and the other three were sent to India from the public life of England. These three men came with a good deal of prejudice against Warren Hastings and the administration of the company. They traded in India with a firm determination to assert themselves and to set to the company's administration right. As the decisions of the Governor-General in Council were to be taken by a majority vote, these three members, when combined, were able to get their decisions prevail over those of Warren Hastings and the fourth members. As the total number was five, the casting vote of the Governor-General was hardly of any avail. The result was that Warren Hastings was constantly overruled and had to implement decisions, which he himself did not approve of. This made the position of the Governor-General extremely awkward.

Moreover, because of certain loopholes, the authorities of Madras and Bombay were able to ignore the orders of the Governor-General in Council. The war with the Marathas and the war with Hydar Ali were the result of independent actions of the subordinate presidencies. The government of Bengal was put in an embarrassing position, because they had to pay for these wars and also to share political responsibility for these actions. At times, the presidencies ignored the Bengal Government on the pretext of urgency and, at other times they started action after getting the permission of the Directors direct over the head of the Bengal Government.

Besides, the constitution of the Supreme Court was defective in many ways. Its jurisdiction was vague. It was established, no doubt, with the purpose of improving the administration of justice and to act as a restraint on the arbitrary actions of the executive. But it was not made clear, what law the Supreme Court was to administer. The relations of the Governor-General in council and the supreme court were not laid down precisely. Nothing was mentioned about the relation of the Supreme court with the preexisting courts in these presidencies. The Supreme court applied mostly the English law and English legal principles and paid scant regard to local customs and traditions which meant hardship in many cases. The quarrels and clashes between the

supreme court and the Governor-in-Council became a matter of constant occurrence. As a result, the supreme court which was intended to be a guardian of the rights of the people and dispenser of justice among them became an instrument of oppression.

#### **1.4 Amending Act of 1781-**

It was admitted on all hands that there were many shortcomings in the Regulating Act and consequently an Act was passed in 1781 to remove them. The new Act provided that the public servants of the Company were not to be subject to the jurisdiction of the Supreme Court for things done by them in their official capacity. Revenue collectors and Judicial officers of the Company courts were also exempted from Jurisdiction of the Supreme court. For things done by them in their official capacity. Governor-General and the member of the council were also exempted from the jurisdiction of the Supreme Court both individually and collectively "for anything counseled, ordered or done by them in their public capacity".

1.4.1. Causes of the Enactment As regards the jurisdiction of the Supreme Court, it provided that it was to have jurisdiction over all the inhabitants of Calcutta. It was to administer the personal laws of the defendant. It was stated that "no person was to be subject to the jurisdiction of Supreme Court by reason of his being a landowner or farmer of land or land rent or for raising a payment or pension in lieu of any title to, or ancient possession of land or land rent or any compensation or share of profits for collecting rent"

#### **1.4.2 Provisions –**

Servants of the Company were to be subject to the Jurisdiction of the Supreme court for wrongs done by them or trespass. Cases could be brought before Supreme Court by the agreement of both the parties. In cases relating to inheritance or succession to lands or goods, the jurisdiction of the Supreme Court was excluded. The Supreme Court was required to take into consideration and respect the religious and social custom and usages of the Indian while enforcing the decrees and process. Government was also to keep them in view while making regulations.

Governor-General-in-Council was given the power to make regulations for the provisional courts and Councils. Formerly, the rules and regulations made by the

Governer –General were required to be registred with the Supreme Court. This led to a lot of inconvenience. Consequently, the Act of 1781 provided that no such registration was required. The Act provided that appeals were to be taken from the provincial courts to the Governer –General in Council. The latter was to be the finalm Court of Appeal except in those civil cases which involved & 5,000 or more. In case the amount involved was more than &5,000, an appeal was to be taken to the King-in-Council.

According to Dr Keith, the At of 1781"effeted important changes in the system of 1778. The preambles showed clearly who had won the contest. It asserted the necessity of supporting the Government, the importance of the regular colletions of revenue and maintenance of the people in their ancient laws.

The year 1781 marks the most important era in the history now under consideration. It terminated a period of fierce animosity and struggle between those wished to see English laws and Courts of Justice introduced at once into the country and rendered supream over the Executive, and those who considered that such a policy was wholly impracticably, and that, circumtanced as the English then were, Government must for a long timeto, come control the authority of the Courts.

It commenced the era of independent Indian Legislation.; of the authority of the Supreme Court, as it continued more or less to be exercised for eighty years; of the establishment of Board of Revenue entrusted with the charge and administration of all the public revenue of the province, and invested in the fullest manner with all the powers and authority, under the control of Governer General and Copuncil. The plan of Government, both as regards legislation and Court of Justice, in that year assumed a definite shape and although many changes of course ensured in the long period(1781-1861) which separated the administration of Western Hastings, the first Gocerner General of India, from the close of that Lord Canning, its first viceroy, still they were changes of detail, often of great importance. but leaving unaltered the general character of the system then introduced.

The year 1781 may therefore well be taken as the first dividing point of time at which the character of that history essentially changes, at which boundaries of authority have at last beome strongly defined.

## **1.5 .PITT'S INDIA ACT, 1784**

Pitt's India Act of 1784 brought about two important changes in the constitution of the company, first, it constituted a department of state in England known as Board of Control, whose special function was to control the policy of the Court of Directors. Secondly, the Act reduced the number of members of the Executive Council to three. It also modified the councils of Madras and Bombay on the pattern of Bengal.

In the title of the Act, the Company's territories were called 'the British possessions in India'. This was the first clear assertion of the Crown's claim of ownership over the Indian Territory acquired by the company. Here was an unmistakable expression of the fundamental principle that "the acquisition of sovereignty by subjects of the Crown is on behalf of the crown and not in their own right.

### **1.5.1 Main Provisions-**

In the first instance, a Board of six commissioners was set up, which was popularly known as the Board of control. The Board consisted of the Chancellor of Exchequer, one of the secretaries of state and four privy councillors to be appointed by the crown. The Board was given the power to superintend, direct and control all civil, military and revenue affairs of the company. Thus, the controlling authority of this Board over the Directors was specially laid down. The Act created a separate department of the British Government in England whose only function was to exercise control over the Directors of the company and the Indian administration. As time passed, the Chancellor of Exchequer, the Secretary of State and the three ordinary councillors stopped attending the meeting of the Board altogether and the president of the Board became all in all. He was invariably, a member of the British cabinet. This system of Government introduced by the Pitt's India Act is often described as the system of Double Government in England. Two sets of functionaries were recognized for controlling the Indian administration from England. On the one hand, there was the Board of Directors which

was in immediate charge of the Indian administration. Patronage or appointments as well as the trading activities of the company remained in the hands of the Directors. On the other hand, there were the representatives of the crown i.e., the Board of Control, which was to exercise control on a, matters of policy over the directors and the Indian administration. The Directors, no doubt, retained their previous status but they were now made subject to the indirect control of the Government of Great Britain. The Board of Control was, in a way, an annexed of the Ministry of the day. Its president changed with the change of the cabinet in England.

Secondly, a committee of secrecy of not more than three members was appointed out of the twenty-four directors. All secret orders of the Board were to be transmitted to India through this small body. The other members of the court of Directors could thus be ignored in important matters.

Thirdly, the number of councilors of the Governor-General was reduced to three, including the commander in chief. This was done to increase effectiveness of the casting vote of the Governor-General. In a body of four, the Governor-General could have his way by getting only one member on his side. The difficulties experienced by Warren Hastings in his council were thus sought to be avoided. The councilors, henceforth, were to be appointed from the senior servants of the company.

Fourthly, the presidencies of Madras and Bombay were also given the form of Government prevailing in Bengal. A Governor and three councilors, including a commander-in chief was appointed in each of the two presidencies.

Fifthly, the power of the Bengal Government to "superintend, direct and control" the affairs of the subordinate presidencies was made more definite and real.

Lastly, the court of proprietors were deprived of their control over the Directors who were thus freed from the sinister influence of persons, whose only interest was to get huge dividends.

### **1.5.2 CONCLUSIONS:**

The Pitt's India Act was thus set up, for the first time, a regular instrument of the British parliament to control the affairs of the East India company. By introducing the committee of secrecy, it made the working of the Directors more efficient. It was a step in the right direction to deprive the proprietors of their power of interference in political matters. It was also good to strengthen the position of the Bengal Government i.e., the Governor-General in council over the other two presidencies. The system of Double Government introduced by the Pitt's India Act continued right upto the year 1858, when the dual system was scrapped. The Directors and the company were completely wound up and the entire Indian administration was legally and formally placed under the direct charge of the crown.

## **1.6 GOVERNMENT OF INDIA ACT, 1858**

The Government of India Act 1858, known as the Act for better Government of India was passed in 1858. It marked the end of one chapter and beginning of a new chapter in the constitutional history of India. It took over the administration of the country from the English Company and passed on the same to the crown.

### **1.6.1 INTRODUCTION:**

In February 1858, Lord Palmerstone introduced a bill for liquidating the company and transferring the Government of India to the crown. J.S. Mill, the famous industrialist, who remained life-long in the service of the East India House, drafted the famous petition for the retention of the East India company. Lord Palmerstone delivered a great speech in the House of Commons on February 12, 1858, and very ably refuted

the arguments advanced by the company for its retention. Before however the Bill became an act, Lord Paimerstone had to resign. The passage of the "Act for the better Government of India, 1858" was secured by the succeeding government.

### **1.6.2 Causes of Enactment**

The immediate cause of this enactment was of course, the Mutiny. But there were many defects in the system of Double Government and objections against those who stood in favour of this Act. These were as follows :

Firstly, it was argued that the political system of England was based on the principle that power was never divorced from responsibility-. whenever any organ of the constitution exercised any political power, it was made responsible for its proper use to a body of the elected representatives of the people. But here was a group of traders exercising political power over India without being accountable to any popular body for their actions .

Secondly, in the words of Bright, the system of Double Government was a case "of divided responsibility, of concealed responsibility and of no responsibility" The Board of control, many a time, laid the blame on the shoulders of the court of Directors, while the latter often complained that the Board of control was squandering money on ambitious projects with the help of the revenue collected by the company'

Thirdly, the system of checks and balances, checks and counter checks' made the Government slow and clumsy in its working and a considerable delay was caused in the disposal of its work. A despatch, before it was finally ready in London, had to move to and fro many a time between the Board of control and the court of Directors'

And lastly, the East India company was no longer exercising any trading functions or effective political powers. The last vestige of monopoly in trade was taken away from it in 1833. There was no excuse left retaining this anachronism. A trading corporation had no right to be entrusted with political functions.

### **1.6.3 Provisions of the Act**

1. The Government of India passed from the hands of the English East India company to the crown. The Governor-General came to be known as the viceroy. The Military and Naval forces of the company were transferred to the crown.

2. The Board of control and the court of Directors were abolished and their powers were transferred to the secretary of state for India and his India council.
3. The secretary of state was given the power to superintend, control and direct the Indian affairs. He was to sit in parliament and was to be assisted by a parliamentary under - secretary. He was a cabinet minister of England but his salary and that of his establishment were paid out of the revenues of India from 1856 to 1919.
4. The Act created Indian council of fifteen members. seven of them were to be elected by the court of directors and the remaining eight were to be appointed by the Crown. More than half the members of the Indian council were to be those persons who had lived in India for at least ten years and had not left India for more than ten years preceding the date of appointment. Members of the India council were to be holding office during good behaviour. Each member was to be paid £1200 a year out of Indian revenues.
5. The secretary of state for India was to be the president of the Indian council. He was given a vote and a casting vote in the case of a tie. The council met twice a week.
6. The concurrence of a majority of members present at a meeting was required for. division and distribution of patronage, for making contracts, sales and purchases on behalf of the Indian Government and in all matters connected with the property of the Government of India.
7. Control over civil and Military servants of the crown was given to India council. It was to make appointments to the Council of the Governor - General and the Governors.
8. The Secretary of state was given the power of sending and receiving secret messages and dispatches from the Governor-General without the necessity of communicating them to the Indian Council.
9. The Indian council was a body of permanent civil servants chosen for their knowledge of Indian administration to safeguard the Indian revenues against a British secretary of state for India. The India council was to see that there was not tampering with the Indian civil service for political reasons.
10. The Act of 1858 transferred the Government of India into the hands of parliament and the latter acquired full, formal and legal control over Indian affairs.

11. The Secretary of state in council laid down certain directions for the guidance of Government of India in its dealing with England. All projects of legislation, all measures concerning revenues, construction of public works and railways, certain of new jobs' any question of policy or any problem involving new expenditure on a large scale were rigidly scrutinized and controlled by the secretary of state.

12. The Act declared the secretary of state for India as a corporate body who could sue and be sued in England and in India.

### **1.6.3 Significance of the Act of 1858**

The Act for better Government of India passed in 1858 was an event of great constitutional significance. It closed one great period of Indian history viz., the rule of East India Company and ushered in a new era of direct, rule of the crown. The Act of 1858 merely gave a burial to the corpse of the Company. The act of 1858 drove last nail into the coffin of the much-discredited system of double government. It did away with the diffusion and dissipation of responsibility which resulted as a result of division of power of the government between the court of Directors and the Board of control. The Act introduced major changes only in England and effected only minor changes, in India. But the Act failed to grant political rights to the Indian and did not allow them any share in the administration of their country.

### **1.7 Proclamation of Queen Victoria**

A Durbar was held by Canning at Allahabad on Nov 1, 1858 to declare the assumption of the Government of India by the crown. On that occasion, Lord Canning also read out the Queen's proclamation to the princes and the people of India. We are told that the ministers were directed to frame the draft bearing in mind that it is a female sovereign who speaks to more than a hundred million of European people, on assuming the direct Government over them and after a bloody war, giving them pledges, which her future reign is to redeem and explaining the principles of her government. Such a document should breathe feeling of generosity, benevolence and religious toleration, and point out the privileges which the Indians will receive in being placed on an equality with the subjects of the Crown, and prosperity following in

the train of civilization". It is a matter of fact that the Queen's proclamation was worded in accordance with her sentiments.

#### 1.7.1 Provision of the Acts

The proclamation contained that-

1. The rule of the East India Company ended from India. The ruler of England was also the ruler of India. Following that principle, Queen Victoria became the Empress of India.
2. The treaties signed with the Indian ruler earlier were duly recognized.
3. The Principles of Doctrine of Lapse was withdrawn and it was proclaimed.
4. Complete liberty was given to Indian rulers to adopt their son.
5. The Indians would be appointed in Government service as per their qualification.
6. The religion and culture of Indian would be given due respect.
7. Every caste, religion, creed, rich poor became equal before the laws.
8. At last assuring every good for the Indians Queen Victoria had proclaimed-  
"In their prosperity will be our strength, in our commitment our security, and in their gratitude, best reward".

The proclamation went on to declare unconditional pardon, amnesty and oblivion for past offences and ended by declaring that "When by blessings of Providence internal tranquility will be restored, it is our earnest desire to stimulate the peaceful industry, to promote work of public utility and improvement, and to administer its government for the benefit of all our subjects resident therein.

#### 1.7.2

##### **Significance-**

To put in simple language, the Queen's Proclamation assured the Indian princes that their territories will not be annexed by British Government and they shall be given the right of adoption. The British Government ordered its servants in India

not to interfere in the religious affairs of Indian. In framing and administering law in India, due regard was given to the customs, ancient rites and usages of the Indians. Indian subjects of Her Majesty were declared equal with the British subject in their part of the Empire. Equal rights and opportunity were guaranteed to the Indians along with other British subjects. Pardon and amnesty were offered to all those Indians who were still in arms against the British Government and who were not guilty of murder of British Subjects. Treaties of English East India Company were declared to be in force.

The Queen's Proclamation of 1858 was a great landmark in the constitutional history of India. The declaration of Policy remained the basis of Indian administration up to 1917 when a new declaration was made by the British Government with regard to India. The declaration tried to remove the fears of the Indian princes by guaranteeing to them their position. It also gave an assurance to the Indians that Englishmen will not interfere in the religious affairs.

Further, this proclamation sealed the unity of Indian Government and opened a new era. This memorable proclamation, justly called the Magna Carta of India, was published at every large town throughout the country and translated into the vernacular language.

## UNIT-11

### **INDIAN COUNCIL ACT, 1861**

## **2.1 Objective**

## **2.2 Introduction**

## **2.3 . Indian Council Acts of 1861**

### **2.3.1 Causes of Enactment**

### **2.3.2 Provision of the Acts**

### **2.3.2 Conclusion**

## **2.4 Indian Council Acts of 1892**

### **2.4.1 Causes of Enactment**

### **2.4.2 Provision of the Acts**

### **2.4.3 Appraisal**

## **2.5 Indian Council Acts of 1909**

### **2.5.1 Provision of the Acts**

### **2.5.2 Criticism of the Acts**

## **2.6 Govt of India Acts of 1919**

### **2.6.1 Changes in the Central Govt**

### **2.6.2 Changes in the Provisional Govt**

### **2.6.3 General Review of the Acts**

## **2.1 Objectives**

**The purpose of this Unit is to introduce you the main trends of Constitutional Developments from 1861 to Government of India Act of 1919.**

- **1. Indian Council Act of 1861**
- **Indian Council At of 1892**

- **Indian Council Act of 1909**
- **4. Government of India Act of 1919**

### **Indian Council Acts of 1861 -**

It has been noted that the Charter Act of 1858, which transferred powers from the Company to the Crown, introduced changes in the Home Government only while the administration of India continued to be carried along the old line. The Indian Council Act of 1861 introduced a number of changes, in the administration of India.

## **2.2 INTRODUCTION:**

The Indian Council Act of 1861 is an important landmark in the constitutional history of India. Under this Act Indians were nominated for the first time as members of the Executive Council, while meeting for legislative purposes. This is sometimes described as the Policy of Association i.e. associating Indians with the administration. It is also called the policy of 'benevolent despotism' or 'Despotism', because the Government remained irresponsible as before. 'Benevolent', because Indians were allowed to be associated with the administration of their country.

### **2.3.1 Causes of the Enactment**

The first and the foremost reason, for the initiation of this policy, was the realization on the part of the British Government after the Revolt of 1857 that it was a great mistake on their part not to provide institutions, through which, they should be in apposition to know what the Indians thought about their rule. The first Indian of eminence, who impressed this idea on the Government, was Sir Sirdar Alimad. Sir Bartle Frere, a member of the Executive Council of the Governor-General" wrote in '1861, become necessary, unless one is, "Prepared for the perilous experiment of continuing to legislate for millions of people with few means of knowing." except by rebellion, whether the laws suit them or not". "the terrible events of the Mutiny brought home to Englishmen's mind the dangers arising from the entire exclusion of Indians from association with the legislation of the country".

Moreover, it was becoming difficult even for the Supreme Legislative Council to legislate for all the provinces. The central body was far too ignorant of the local conditions to be able to legislate for them ably and effectively. This defect was partly removed in 1853, when one representative of each provincial government was made a member of the council for legislative purposes. But this step was hardly adequate. The provinces were also not satisfied with the meager share they were given in making laws about their territories. Without the help and advice of Indians it was no easy job to make laws covering diverse Indian conditions, customs and traditions.

### **2.3 .2 Provisions of the Act**

1' As regards the Central Government, a fifth member was added to Executive Council of the Viceroy. He was to be "a gentleman of legal profession, a jurist rather than a technical lawyer "

2' The Act empowered the Governor-General to delegate special business to individual members of the Executive Council and henceforth the various members of the council had their own portfolios and dealt on their own initiative with all but the most important matters. The most important matters were placed before the Governor-General, and if any difference of opinion appeared, were considered by the whole Council. The decentralization of business undoubtedly made for efficiency and was described by J.W. Mill "as one of the most successful instances of the adaptation of means to ends which political history had yet to show".

3' The Governor-General was authorized to nominate a president who was to preside over the meeting of the Executive Council in his absence.

4' The Governor-General was given the power of making rules and regulations for the conduct of the business of the Executive Council.

5' The Executive Council was to be strengthened by the addition of not less than 6 and not more than 12, members nominated by the Governor-General for the purpose of legislation.

6. Not less than half of the additional members were to be non-officials. They were to hold office for two years.

7. The function of the Council was strictly limited to legislation and the Act expressly forbade the transaction of any other business. It was empowered "to make laws and regulations for all persons whether British or native foreigners or others, and for all places and things whatever within the said territories, for all servants of the

Government of India (afterwards extended to all British subjects) within the dominions of princes and states in alliance with Her Majesty"

8. The Governments of Bombay and Madras were given the power of nominating the Advocate-General and not less than 4 and not more than 8 additional members of the Executive Council for purposes of legislation. These additional members were to hold office for two years. The business of the Council was to be strictly legislative. The consent of the Governor and the Governor-General was made necessary for all legislation passed or amended by the Governments of Madras and Bombay.

9. No distinction was made between the central and provincial subject. But measures concerning public debt, finances, currency, post-office, telegraph, religion, patents and copyrights were to be ordinarily considered by the Central Government.

10. The Governor-General was given the power to create new provinces for legislative purposes and to appoint Lieutenant - Governors for them. He was also authorized to divide or alter the limits of any presidency, province or territory.

### **2.3.3 CONCLUSIONS :**

According to G.N. Singh, "The Indian Council Act, 1861, is important in the constitutional history of India for two chief reasons. Firstly, because it enabled the Governor -General to associate the people of the land with work of legislation, and secondly, by vesting legislative powers in the Governments of Bombay and Madras and by making provisions, it laid the foundations of the policy of legislative devolution which resulted in the grant of almost complete internal autonomy to the provinces in

1937."

## **2.4**

### **INDIAN COUNCIL ACT 1892**

The Indian Council Act of 1892 was an advance on the Act 1861. The Act of 1892 widened the function of the legislature. It provided the Indians an opportunity to share counsels at the highest levels and thus laid down the foundations of the representative government' In short, the Act was an important milestone on the road that led to the establishment of parliamentary government at a later stage.

### **INTRODUCTION :**

The Indian Council Act of 1892 marks another step forward in the constitutional advancement of India. The Act was passed in furtherance of the policy of association started under the Act of 1861.

#### **2.4.1 Causes of its enactment**

The Act of 1861 failed to satisfy the progressive opinion in the country which wanted to see these councils as instruments through which Indians could influence the decisions of the Government. In its very first session the Indian National Congress passed the following resolution. "That the Congress considers the reform and expansion of the supreme and existing provincial Legislative Councils by the admission of considerable proportion of elected members into the creation of similar councils for the North Western Provinces and Oudh, and also for Punjab) essential' and holds that all Budgets should be referred to these Councils for consideration' their members being moreover empowered to interpellate the Executive in regard to all branches of the administration". Similar resolutions were adopted in later years.

Moreover' the Government of India, though hostile to the Congress since 1888, yet wanted to appoint more Indians in these Councils to increase its own power. Against the Home Government' the Government of India was sick of the dictatorial manner in which it was being treated by the authorities in London. In 1890: the Duke of Argyre, the Secretary of State for India, declared, "The Government in India had no independent power at all and that the prerogative of the Secretary of State was not limited to a veto of the measures passed in India. The Government of India were merely executive officers of the Home Government, who hold the ultimate power of requiring the Governor-General to introduce a measure and of requiring also all the official members of the Council to vote for it " This is, sometimes, described as the Mandate Theory. The Government of India thought that, with the help of the elected Indian members, they would be in a better position to face the Home Government and bring it to their own point of view.

Furthermore, the European business magnates working in India like the tea planters of Assam' and the big businessmen of Bombay were also in favour of increasing the number of elected members and enlargement of the functions of these

councils in order to get representation for themselves on the law-making bodies of India for furthering their own economic interests.

In 1888 Lord Dufferin, the Governor-General constituted a committee to suggest further reforms in these councils. Lord Dufferin favoured the introduction of the method of election for the Indian members- His proposals were sent to the Home Government and made an effective case for introducing the elective principle' But before anything could be decided, Lord Dufferin had to leave' His successor Lord Lansdowne gave full support to the views of Lord Dufferin.

#### **2.4.2 Provisions of the Act**

Firstly, the Executive council of the Governor-General was expanded further for purpose of legislation with additional members, whose number was not to be less than ten, nor more than sixteen. In Bombay and Madras, these additional members were to be between eight and twenty. For the Punjab the maximum number was also fixed as twenty. For North-western province, and the United Provinces, the maximum number was fixed as fifteen.

Secondly, the Governor-General was authorized to make rules, (subject to the previous approval of the Secretary of State-in-council), for the nomination of these additional members. The rules, which were actually made by the Governor-General under these provisions, introduced a system of indirect election for the non-official members. Nominations were to be made on the recommendations of bodies like the provincial councils, District Boards, chambers of commerce' university senates etc. These recommendations were invariably accepted by the Governor-General. When the Act of 1892 was under consideration, two divergent views were expressed in the British Parliament. Firstly, there was a set of members in the parliament, who were stoutly opposed to the principle of election. On the other hand; there were members, who believed that unless the principle of election was introduced, any further reforms of the councils would be meaningless. As a result of these differences, a compromise formula was evolved, which introduced the indirect system of election, noted above. The clause in the Act, which entitled the Governor-General to "make regulations as to the conditions in which such nominations shall be made" and enabled indirect election to be introduced, is often known as the Kimberley clause.

Thirdly, the functions of these Councils were considerably enlarged. Under the Act of 1861 it had been specifically stated that the functions of these Councils were purely legislative. Under the Act of 1892 some of the functions given to the councils were meant to influence the Executive. These were in the nature of executive functions. The right of putting questions to the Executive Councilors and the right of discussing the Budget were conceded for the first time. Six days previous notice was made necessary for every question. The president was given the power to disallow any question without assigning any reason whatsoever for such disallowance.

Fourthly, official majorities were maintained in the supreme as well as in the provincial councils. "In the supreme council (out of sixteen additional members) ten non-official members were admitted, besides the six official members. Four of these non-official seats were allotted to recommendations by the non-official members of the four provincial councils and one to the Calcutta Chamber of Commerce. Abandoning as hopeless the idea of securing the representatives of vast residuary areas and population of the country by any quasi-elective machinery the Governor-General fell back for the filling of the five remaining non-official seats upon the process of nomination". "The elective element in the provincial councils, for about fifteen years consisted of at the utmost eight members".

### **2.4.3 Appraisal of the Act**

It marked a decisive advance on the councils installed in 1861. The number of Indians were increased. Indirect election was introduced in practice. The right of asking questions and discussing budget was tantamount to the right of the members to influence the working executive. These rights were parliamentary in nature. Because of these advances, it is believed that the policy of associating Indians with the administration effectively started. The foundations of responsible form of Government were really laid in 1892 and not in 1891.

The council however failed to satisfy the progressive element in the country. Because of the growth of the extremist element in the Congress, the national opinion became too radical to be satisfied with this council. The system of indirect election was considered inadequate, because it prevented any direct contact between the public and the representatives. There was no right of asking supplementary questions. There was no power to vote on the budget as a whole or on the various items included in it. The

functions entrusted to the councils were hedged round by many limitations. The non-official members soon realized that they were hardly in a position to make their voice felt in the decisions of the government. The Government usually ignored what they said. The official blocks worked as a compact body and could get passed all legislation, which the Government wanted.

## **2.4 MORLEY-MINTO REFORMS, INDIAN COUNCIL ACT 1909**

### **OBJECTIVES:**

The Indian Council Act 1909 was an event of great constitutional significance. It not only marked an advance over the Indian Council Act of 1892 in several respects but also made a bid to associate the Indians with the work of legislation as well as day-to-day administration.

### **INTRODUCTION :**

The Morley-Minto Reforms of 1909 represent the next constitutional advance after the Council Act of 1892. They are associated with the name of Lord Morley, the Secretary of State and Lord Minto, the Governor-General of India.

#### **2.4.1 Causes -**

Since the enactment of the Council Act, 1892 Indian National Congress had been passing resolutions and agitating for the reform and extension of the councils. Whatever jubilation was felt for the Councils of 1892, at the time of their inauguration, had very soon disappeared. Morley-Minto reforms represented an attempt on the part of the Government to meet the demand of the Moderates, who were in a

majority in the congress. Gokhale visited England in 1907 and probably gave his acceptance to Mr. Morley for the Reforms, which followed.

Secondly, since the beginning of the nineteenth century the ranks of the Extremists were swelling and they were openly denouncing the British rule. Violent political crimes had increased noticeably. It was under the influence of the Extremists that the congress in 1906 had fixed its goal as self-government like that of the United Kingdom' even though it was presided over by so temperate a leader as Dadabhai Naoroji' In 1907, the same objective was incorporated in the constitution of the congress' Hence the most important cause of the reforms appears to be an anxiety on the part of the Government to save the Indian Nation from passing into the hands of the Extremists.

And lastly' India was seething with discontent after the reign of Lord Curzon, who had gravely injured Indian sentiments by his unwise utterances and had followed a high-handed policy throughout his administration. The Bengal partition had caused the greatest wound' The outcome of Russo-Japanese war had encouraged young Indians to the belief that the British Government could also be thrown out of India by violent means. The Reforms were enacted also to remove discontent and to bring about peaceful atmosphere in the country.

#### **2.4.2 Provisions of the Act**

1 The act of 1909 enlarged the size of the Legislative Council. The additional members of the Governor-General's were increased up to a maximum of 60, those of Madras, Bengal, U.P. Bombay, Bihar and Orissa to a maximum of 50 and those of the Punjab, Burma and Assam to 30.

2 Lord Morley insisted on retaining a substantial official majority in the imperial Legislative Council and consequently it was provided that the Imperial Legislative Council shall consist of 37 officials and 32 non-officials. Out of 37 officials, 28 were nominated by the Governor-General and the rest were to be ex-officio. The ex-officio members were to be the Governor-General, 7 ordinary members of the Council, and one extraordinary member. Out of the 32 non-official members, 5 were to be nominated by the Governor-General and the rest were to be elected.

3 The Act did not provide for any official majority on the provincial legislative councils. The majority of the members were to be non-officials. However, this does not

mean that there were to be non-official elected majorities in the provincial councils. Some of the non-officials were to be nominated by the Governor and the Government could always depend upon the unflinching loyalty of the nominated elected members. The Government could manage to have a working majority in the provincial legislative councils with the help of the officials and the nominated non-officials.

4. According to the Government of India, territorial representation was not suited to the people of India. Representation by classes and interests is the only practicable method of embodying the elective principle in the constitution of the Indian legislative council". The Act provided for separate or special electorates for the due representation of the different communities, classes and interest. The remaining seats were allotted to the municipalities and district boards, which were called "general electorates".

5. The functions of the legislative councils were increased. Elaborate rules were made for the discussion of the budget in the imperial legislative council. Every member was given the right to move any resolution relating to any alteration in taxation, any new loan or any addition to local Governments proposed or mentioned in the financial statement of explanatory memorandum. The council was not permitted to discuss expenditure on interest on debt, ecclesiastical expenditure and Railways etc. It is to be noted that the financial statement was first referred to a committee of the council with the finance members as its chairman. Half of its members were to be nominated by the head of the Government and the other half were elected by the non-official members of the council.

6. The members were given the right of asking questions and supplementary questions for the purpose of further elucidating any point. But the member-in-charge of department might refuse to answer the supplementary question off-hand. He may demand some time for the same.

7. The members were given the power to move resolutions in the councils. These resolutions were to be in the form of a definite recommendation to the Government. They must be clearly and precisely expressed and must raise definite issues. The resolutions were not to contain arguments, inferences, ironical expressions etc. The president may disallow any resolution or part of a resolution without giving any reason for the same.

8. Rules were also framed under the Act for the discussion of matters of general public interest in the legislative councils. No discussion was permitted on any subject not within legislative competence of the particular legislature, any matter affecting the

relations of the Government of India with a foreign power or a native state, and any matter under adjudication by a court of law.

9. The act reduced the number of members of the Executive Councils in Bombay, Bengal and Madras to 4. It also empowered the Government to constitute an Executive Council for a Lieutenant Governor's province also.

10. In the provinces, the University Senates, landlords, District Boards and Municipalities and Chamber of Commerce were to elect members. Muslims were given separate representation. Muslim members of the legislatures were elected by the Muslims themselves.

### **2.4.3 Criticism of the Act**

1. The Reforms of 1909 could not come up to the expectations of the Indians. What the people of India demanded was that there should be set up a responsible government in the country. But the sacred heart of the reforms of 1909 was "benevolent despotism". While introducing the Bill in the parliament, Lord Morley had declared that he had no intention to give to India a responsible government. No wonder the people were not satisfied. The reforms introduced a change not of kind but of degree. Minor additions were made in the powers of legislatures and also in their size. But that was hardly substantial. The people were dissatisfied.
2. The Reforms led to a lot of confusion. While parliamentary forms were introduced, no responsibility was given. The result was thoughtless and irresponsible criticism of the Government. Indian leaders made legislature as the platform for denunciation of the Government. The feeling that they will not have to shoulder responsibility made the members critical of the government.
3. The Reforms introduced the system of elections. But the number of voters were very small. In some cases, the number of voters in a constituency did not exceed 9 to 10. Since the number was small, all the votes could be brought. Women were completely excluded.
4. The system of elections was indirect. The people elected members of local bodies. The latter elected members of an Electoral College. The Electoral College elected members of the Provincial Legislature and the members of the Provincial Legislature elected members of the Imperial Legislature. The result

was that there was no connection between the people and the members sitting in the legislature. The members felt no responsibility towards the people.

5. The Act of 1909 introduced separate electorates for Muslims. The evil did not end here. In 1919, the Sikhs also got separate electorates. The Act of 1935 gave separate representation to Indian Christians, Anglo-Indians, Europeans and the Harijans. It cannot be denied that one of the effects of communal representation was the establishment of Pakistan in 1947.
6. The Indian resented the maintenance of an official majority in the Imperial Council. Although the Government of India had expressed their willingness to allow the Indians to have a majority at the center, Lord Morley did not agree to it on the ground that since the Indians were given a non-official majority in the Provincial Council, the Imperial Council should be maintained as their place of refuge in case they were defeated in the provinces.
7. Although non-official majority was given in the Provincial Councils, the practical result was nothing. The non-official majority was nullified by the fact that it included nominated members. There was no real majority of those who represented the People.
8. The principle of responsible government was not allowed to germinate in the system. The responsibility still lay with the government. Parliamentary usages were adopted and generally followed, but the spirit of parliamentary government was absent. The result was friction. Influence without responsibility has always been disastrous in its operation. The debates lacked life because they could not affect the government. Whatever might be the opinion of the non-officials, the government always carried the day with the help of the official bloc.

From the foregoing, we should not conclude that the Reforms were useless. They gave Indians much valuable training without which they would not have been able to make the best use of the legislature as subsequently expanded and reformed under the Act of 1919. From a broad evolutionary point of view, the Reforms were a necessary and useful stage in India's advance towards self-government. The Morley-Minto Reforms brought parliamentary institutions to a point, from where parliamentary responsibility could not be denied. They certainly proved "a decided step forward on a road leading at no distant period to a stage at which the question of responsible government was bound to present itself". The Reforms were a necessary transitional stage, just another

step on the road towards responsible form of government. A jump from 1892 to 1919 would have been radical, if not revolutionary: the one from 1909 to 1919 was natural inevitable.

The Reforms were a decided advance on the Act of 1892. The number of Indians in these councils was increased a good deal. The principle of indirect election was legally introduced. The right of asking supplementary questions was an important advance, because it gave the councils the right of cross-examining the Government. The right of voting on some items in the budget and the rights of moving resolutions on the whole range of the administration were definite gains. All the same, the Reforms implied a change of degree and not of kind. Was merely an extension of the policy of Association, which was introduced in 1861 and extended in 1892. It was rather the continuation of the Policy of Benevolent Despotism in India. It was the 'culmination' because that policy was stretched to its almost limits without conceding responsibility to Indians.

## 2.5 GOVERNMENT OF INDIA ACT 1919

### **OBJECTIVES:**

In 1918, Edwin Montague, the Secretary of State, and Lord Chelmsford, the Viceroy, produced their scheme of constitutional reforms, which led to the enactment of the Government of India Act of 1919. The Reforms of 1919 will remain famous in British Indian History for making a beginning in 'responsible' government, for associating princes with the administration of India especially in matters affecting the states, and for introducing the dyarchical form of government.

### **INTRODUCTION:**

The Government of India Act 1919, also known as Montague – Chelmsford Reform Act was an event of great constitutional significance. However, it did not propose to give India an enduring constitution. The Act contained a provision for the appointment of a commission at the expiration of ten years of passing of

the Act to report as to whether and to what extent; it was desirable to establish the principle of responsible government to extend, modify or restrict the degree of responsible government existing. In short, it merely marked a transitional stage in the development of self-government. It was on the basis of the Montford Report that the Government of India Bill was drafted and introduced in the British parliament. It became an Act in December 1919. The preamble of this Act was based on August 1917 Declaration' World War I quickened the pace of nationalist development in India. The loudly proclaimed Allied powers announced that they were fighting against the Germany to defend democracy and to provide to every nations, big or small, the fight to determine its own form of government. The Indian nationalist took the statements at their face value and demanded that the right of self-determination should be applied to India also.

As a sop to Indian nationalist demands and for world propaganda purposes, Lord Montague, the secretary of state, announcing in the House of commons on 20 August 1917 the goal of constitutional advance in India is to be gradual development of self-governing institutions with a view to the progressive realization of responsible government as an integral part of the British Empire, making it absolutely clear that the British authority would determine the stages and timing of such advance.

## **2.51 CHANGES IN THE CENTRAL GOVERNMENT**

The Chief Executive Authority remained vested in the Governor-General who remained responsible to the British parliament through the Secretary of State and not to the Indian legislature. The constitution of Governor-General's Executive Council was slightly modified while substantial changes were made in the composition of the Indian legislature. But it was made clear that the aim was not to increase its powers but merely to make it more representative and increase opportunities of influencing the government.

To implement the policy of increasing association of Indians in every branch of administration, it was provided that, of the six members of the Executive Council of the Governor-General, three would be Indians. It should however be noted that these members were given portfolios of lesser

significance like Law, Education, Labour, Health or Industry. They were accountable to the Governor-General and through him to the Secretary of State and not to the Legislature.

The Act provided for a bi-cameral legislature at the center. The two Houses were the Council of State and the Legislative Assembly. The Council of State was to consist of 60 members of whom at least 33 were elected members. Not more than 20 nominated members could be officials. The Legislative Assembly was to consist of 145 members of whom 104 were to be elected members. Of these 52 were to be returned by general constituencies, 30 by Muslims, 2 by Sikhs, 7 by landholders, 9 by Europeans and 4 by the Indian commercial community. The communal electorates were extended to include the Sikhs also. It should be noted that these seats were distributed amongst the provinces not on the basis of their population but their so-called importance. The life of the Assembly was to be three years. But it could be extended by the Governor-General.

The powers and functions of this legislature continued more or less as before. The only significant change was that it became necessary to obtain the previous sanction of the Governor-General before introducing any bill relating to matters enumerated in the provincial list. The power of the Governor-General was extended. In addition to the power to veto any bill, the Governor-General was given the power of certification also, i.e. he could secure the enactment of a bill whose passage in the form considered to be necessary was refused by the legislature. He could do so by certifying that the bill was essential for the safety, tranquility or interests of British India or any part thereof. The scope of interrogative functions was enlarged by extending the right to put supplementary questions to all the members.

Under the Montford Scheme partial responsible government was introduced in the provinces. Because of this, demarcation between the spheres of central and provincial governments became necessary. Hence two lists were drawn up. This division was created on the principle that matters concerning the whole of India or more than one province should be placed in the Central List while those concerning the provinces should be placed in the provincial list. The central subjects included foreign and political relations, the public debt, tariff and customs, patents, currency, communications etc. the subjects in the Provincial List were local-self-government, health, sanitation, education, public works,

agriculture, forests, law and order, etc. the residual powers were vested in the Governor-General in Council.

It was felt that even partial transfer of power to Indians could be meaningful only if the provinces were not dependent on the Indian government for the means of provincial development. Hence the Act provided for complete separation of the sources of revenue between the central and provincial governments.

## **2.5.2 CHANGES IN THE PROVINCIAL GOVERNMENT**

Under the Government of India Act 1919 responsibility for certain functions of the Government in the provinces was transferred while control over others was reserved in British hands. Under this division the subjects were divided into two halves called 'Reserved' and 'Transferred'. Accordingly the provincial government was also to consist of two halves. The Governor and the members of this Executive Council were to administer the reserved subjects. The transferred subjects were to be administered by the Governor acting with ministers. This novel distribution of executive powers in the provinces came to be known as 'diarchy'. Each side of the Government was clearly differentiated from the other in its composition and its constitutional relations with the Governor and the Legislative Council.

Broadly speaking four heads i.e. local self-government, health, education and some departments relating to agriculture were included amongst transferred subjects. All other subjects were reserved subjects- These included police, justice, control over printing presses, Irrigations, land revenue, factories etc.

The Governor and the members of the Executive Council were appointed by the British Government and were jointly responsible to the Governor-General and the Secretary of State for India. The number of Executive Councillors was not to exceed four. The Ministers who were entrusted with the Transferred subjects were appointed by the Governor. He generally chose ministers from amongst the leading elected members of the legislature. In practice, there were two or three ministers in each province. According to the letter of the law, the ministers held office during the pleasure of the Governor. But, in practice, they were allowed to continue as long as they retained the confidence of the legislature. The basis of relations between the provincial governors and ministers was laid down in the instrument of instructions which was issued to

governor which stated'. 'In considering a minister's advice and deciding whether or not there is sufficient cause to dissent from his opinion, you shall have due regard to his relations with the legislative council and to the wishes of the people of the province as expressed by their representatives there in'.

This instrument of Instructions also defined special responsibilities of the Governor, which gave him wide powers to override the decisions of his ministers. The idea that the ministers should be jointly responsible for their actions was discussed at that time. But finally the observance of this principle was not made binding.

The Government of India Act was applied originally to eight provinces - Madras, Bombay, Bengal, United provinces, Punjab, Bihar and Orissa, Central provinces and Assam. In 1923 its provisions were extended to Burma and sometime later to North Western Frontier province. In each of these provinces a unicameral legislature, called the Legislative Council, was created. It was to consist of the Governor's Executive Council, elected members and nominated members. It was further provided that at least 70 per cent of the members of a Council should be elected members and not more than 20 per cent could be the official members. The size of these legislative bodies was considerably increased. It varied from province to province. The maximum number was 140 for Bengal and minimum was 53 for Assam.

The elected members were to be elected by direct action, i.e. the primary voters elected the member. Franchise was based primarily on property qualifications. In 1920 out of a total population of 2417 millions, only 5.3 millions got the right to vote which amounts to less than five percent. Women were not given the right to vote or to stand in elections. In Britain women got the right of vote only in 1918.

2.5.3 After examining the question of separate electorates the authors of the Montague-Chelmsford Report concluded that they were "a very serious hindrance to the development of self-governing principle". They also described these as contrary to the teachings of history and added that these perpetuated class divisions and stereotyped existing relations. Still they did not recommend that "the Fe should be given up. They extended these to the Sikhs in Punjab. Later the demands of the justice party for reservation of seats for non-Brahmins was accepted. Separate electorates were also provided for Indian Christians, Anglo-Indians and Europeans.

### **2.5.3 General Review of the Act of 1919**

The Act of 1919 had three major defects from the nationalist point of view, namely (a) absence of partial responsible government at the center, (b) the consolidation of separate electorate. Although the Montford Report had declared that commercial separate electorate was a very serious hindrance to the development of the self-governing principles, yet separate electorate came to be a permanent feature of the Indian political life. The introduction of diarchy in the province was too complicated to be smoothly worked. Nevertheless, something can be said in favour of the Act. The Act undoubtedly made a new departure. For the first time in the history of the British rule it provided for transfer of power, even though the transfer was hating and the power was extremely limited. As Couprand says "The Act crossed the line between Legislative and Executive authority" .

Though diarchy has been condemned out of hands, it would be wrong to say that the diarchy brought no constitutional progress. Diarchy was, probably, the best transitional mechanism that appeared after a prolonged examination of alternatives'

## UNIT-111

### 3.1 Objectives

### 3.2 Introduction

### 3.3 Simon Commission Report

#### 3.3.1 Appointment of Simon Commission Report

#### 3.3.2 Simon Commission in India

#### 3.3.4 Recommendations of Simon Commission

#### 3.3.5 Conclusions

### 3.4 Nehru Report

#### 3.4.1 Causes of Launching of the Commission

#### 3.4.2 Recommendations

- 3.4.3 Reactions to the Nehru Report
- 3.5 Round Table Conference
  - 3.5.1 First Round Table Conference
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- 3.6 Government of India Acts of 1935
  - 3.6.1 Provision of the Act of 1935
  - 3.6.2 An Assessment
- 3.7 Indian Independence Act of 1947
  - 3.7.1 Background
  - 3.7.2 Provision of the Act
- 3.8.3 An Assessment

## 3.1 Objectives

After going through this unit you will be able to know

- Circumstances and formation Simon Commission
- Objectives and provision of Nehru Report
- Provision of Govt of India Act of 1935
- . Indian Independence At of 1947

## **SIMON COMMISSION**

### **3.1 OBJECTIVES:**

In November 1927, the British Government appointed the Indian statutory commission, known popularly after the name of its chairman, as the Simon commission. Its main objective was to go in to further constitutional reforms. All the members of the commission were Englishmen. This was resented by all the Indians. In fact Simon commission united, at least temporarily, different groups and parties in the country.

### **3.2 INTRODUCTION**

The Montague Chelmsford Reforms of 1919 had envisaged the appointment of a commission ten years after the inauguration of the reforms to look into the working of the reform scheme. But the Swarajists successfully impressed on the Government for the need of an early revision of the Act of 1919. It also demanded a Round Table Conference of the representatives including the Indians, to make necessary recommendations about the new constitution. In view of the pressure from the Swarajists the government decided to appoint a commission (Simon commission) two years ahead of the stipulated period. The commission under the chairmanship of Mr. Simon, an eminent lawyer of England, was to have seven members. All these members were to be Englishmen and no Indian was included in the commission. This was greatly resented by the congress and it demanded equal representation in the commission. However, the Secretary of State for India turned down the demand of the Congress on the plea that the report of the commission was to be presented before the British parliament; the number of Indian political parties being very large, their representation on the commission would make it unwieldy body. In view of the conflicting interests of the Indian political parties it would not be fair to give representation to some parties and deny the same to others.

The exclusion of the Indians from the commission was greatly resented by the Indian National Congress. At its annual session held in December 1927, Dr. Ansari in his presidential address observed "No sane or self-respecting Indian can ever admit the claim of Great Britain to be the sole judge of the measure and time of India's political advance. We alone know our needs and requirements best, and ours must be he

decisive voice in the determination of our future". Congress passed a resolution boycotting the Simon Commission. The other political groups also did not approve of the appointment of an all White commission and condemned the action of the British Government. Some of the prominent political groups which expressed views against the composition of the Simon Commission were the liberal party, the Hindu Mahasabha, the Muslim League.

### **3.4 SIMON COMMISSION IN INDIA**

Despite the clear opposition of the various political groups and a threat that they would not co-operate with the commission in its fact-finding business, the Government announced that the Simon Commission would visit India. This was a clear challenge to the people and they acted as one man. As soon as the members of the commission landed at Bombay a complete hartal was observed. Wherever the commission went it was greeted with black flags and slogans of 'Simon, go back'. In retaliation to this policy of boycott, the Government resorted to policy of repression. It was a result of this policy of repression that the demonstrators led by Lala Lajpat Rai at Lahore were mercilessly beaten by the police. In this lathi charge even Lala Lajpat Rai received serious lathi blows which proved fatal. In U.P. leaders like Jawaharlal Nehru and Govind Ballabh Pant were beaten. This was also repeated at so many other places where demonstrations were organized.

#### **3.4.1 Recommendations**

Despite the general boycott by most of the political parties, the commission met important people who were not boycotting the commission, especially representatives of the Muslims and depressed classes. Ultimately it submitted a report about the constitutional reforms on 7 June 1930. The main recommendations of the commission were as follows.

1. It recommended the abolition of Dyarchy as a form of government in the provinces, and favoured grant of full autonomy including the department of law and order. In other words it wanted the Minister to be entrusted with full control of the administration with Governors of provinces enjoying overriding powers in matters like internal security, safeguarding of the interests of all communities etc.

2. It recommended the enlargement of the provincial legislative councils. Some of the important provinces were to have legislative councils consisting of 200 to 250 members. !
3. It recommended the constitution of a provincial fund to ensure adequate resources for the provinces without in anyway infringing on their autonomy.
4. with regard to the central Government, the commission did not suggest any substantial changes. It did not favour the introduction of the responsible government at the center unless a satisfactory solution of the problem of defence of India was found.- It suggested that the Governor - General should have the right to select and appoint the members of the cabinet. He should be actual and active head of the government. It also recommended enlargement of Governor- General powers in some matters .
5. It recommended that the central Legislature should be reconstituted. It favoured a bicameral legislature consisting of the Federal Assembly and the council of state. The Federal Assembly should be enlarged and elected by the provincial councils. However, it did not favour any changes in the composition and the method of formation of the Council of State.
6. The commission considered the unitary form of government as unsuitable for India and proposed the establishment of an Indian Federation. pending the establishment of the Federation the commission proposed a council of Greater India to discuss matters of common interest. The Commission suggested the council should contain representatives of British India as well as the state.
7. The commander-in-chief should not be a member of the Viceroy's Executive Council and should not sit in the Central Legislature .
8. The High Court should be placed under the administrative control of the Government of India .
9. It suggested the separation of Burma from India and Sindh from Bombay.
10. Though the Indianization of army was desirable, but as long as India was not fully equipped the British forces must be retained in India.
11. The commission did not favour the idea of abolishing the India Council, although it favoured the reduction in its membership as well as functions.
12. The commission favoured the extensions of the franchise with a view to develop political consciousness among the Indian masses. It suggested that at least 10 to 15

per cent of the people should be enfranchised. However, it favoured the continuance of the communal electorates as the basis of representation.

In view of the hostile attitude towards the Simon Commission its recommendations could not evoke any favourable response from the Indian public. Sir Sivaswamy Aiyer said that the Report "should be placed on a scarp heap" C.F. Andrews wrote ' "The report dealt more with that old India which I knew, when I first went out there nearly thirty years ago, before the national movement had started; it shows little understanding of the young India, which we see rising today on the tide of national upheaval". On the other hand the British scholars and statesmen greatly lauded the Simon Commission's Report. "For example" P.E. Roberts says "The Report will stand out as one of the greatest of Indian state papers".

### **3.4.2 CONCLUSIONS :**

No doubt that some of the recommendations of the commission were defective. For example the commission recommended the abolition of Dyarchy and its replacement by provincial autonomy. But it favoured grant of over-riding power to the Governors, which would have rendered its smooth and successful working doubtful. The commission also failed to accept the demand of the Indians to grant responsible government at the centre or transfer the defence of India in their hands. The recommendation of indirect method of election to the Central Legislature and the retention of the communal representation were also not appreciated by the Indian leaders. But a dispassionate appraisal of the recommendations of the commission will show that while outrightly rejecting their recommendations of the Commission, the Indian leaders acted somewhat in haste. If they had accepted the recommendations of the commission, the provincial autonomy, what was introduced by the Government of India Act 1935 would have been achieved a little earlier. In fact, most of the recommendations of the commission were in no way inferior to the provisions of the Government of India Act 1935, which was implemented with the consent of the Indian leaders. Prof. A. B. Keith says, "It was probably foolish of Indian opinion to repudiate the report out and out. If it had been accepted the British government could hardly have failed to work on it and responsible government in the provinces would have been achieved much earlier than it could be under any later scheme. R. Coupland pays high complements to the Simon Commission Report when he says, 'the Report provided the

most complete study of the Indian problem. ...And added another work of first rate value to the library of political science".

### **3.5 NEHRU REPORT**

All-important Indian leaders and parties decided to meet the British challenge by drawing up an agreed constitution for India. So an all-party conference held at Delhi and at Poona appointed a sub-committee headed by Motilal Nehru. The sub-committee submitted its report known as Nehru Report in August 1928.

#### **3.5.1 INTRODUCTION:**

While announcing the appointment of the Simon Commission, Lord Birkenhead, the Secretary of State for India had challenged that the Indians could not produce a constitution acceptable to all the parties. He threw this challenge because he was aware of the mutual bickering amongst the Indian leaders belonging to different parties. The Indian National Congress decided to accept this challenge. In December 1926 the Indian National Congress directed its working committee to convene an all India All parties conference for the purpose of drawing up a constitution for India. According to Dr. Rajendra Prasad this move of the Congress was inspired by not only their desire to meet the British challenge but also by their keenness to place their ideas and demands before the Indians through the constitution framed in consultation with other political leaders,

The first meeting of All parties conference was held at Delhi on 12 February 1928 in which representatives of 29 parties and organizations took part. Soon differences cropped among the groups and the meeting was adjourned. The conference again met at Bombay on 19 May, 1928. But soon it was discovered that the differences were irreconcilable. Despite these differences the conference decided to appoint a small committee under the chairmanship of Motilal Nehru "to determine the principles of the new constitution for India and draft a report thereon". The committee had 28 members on its panel which included persons like Subhash Chandra Bose, Sir Tej Bahadur Sapru, Sir Imam Ali, M.S. Aney, M.R. Jaykar, G.R. Pradhan, Shuaib Qureshi, Sardar Mangal

Singh, N.M. joshi, Jawaharlal Nehru etc. This Panel represented the Muslims, Hindu, Vteha Sabha, non-Brahmins, Sikhs, labour etc. The committee submitted its Report in August 1928.

### **3.5.2 Recommendations of Nehru Report**

The main recommendations of the Nehru Report were as follows.

1. India should have the same constitutional status in the British Empire as the Dominions of Canada or Commonwealth of Australia. This dominion status should be the next immediate step and not a remote state in the evolution. It may be noted that the committee accepted dominion status (instead of independence) with a view to obtain a general agreement amongst the various parties.
2. It recommended a Federal polity for India in which the Indian states were welcome to join. The states were to occupy the same position in the new Commonwealth of India as they occupied in the Indian Empire. All the treaties made between the East India Company and the Indian states and such subsequent treaties which were in force, would be binding on the Commonwealth of India. In case of any differences between the Commonwealth and the Indian states, arising out of treaties, engagement etc. the Governor-General-in Council was to refer the matter to the Supreme Court with the consent of the state.
3. It recommended a bicameral parliament consisting of Senate and the House of Representatives. The Senate was to consist of 200 members elected by the provincial councils. It was to have a tenure of seven years. The House of Representatives was to consist of 500 members elected on the basis of adult franchise. The House was to have a tenure of five years.
4. It suggested that the Central Executive of the Commonwealth should consist of the Governor-General, the Prime Minister and six other ministers. The Governor-General was to be appointed by the British Government but to be paid out of Indian revenues. He was to act on the advice of the Executive Council. The Prime Minister was to be appointed by the Governor-General while the other ministers were to be appointed by the Governor-General on the advice of the Prime Minister. The Central Executive was to be collectively responsible to the Parliament.
5. The Governor-General in Council should appoint a Committee on Defence consisting of the Prime Minister, the Minister of Defence, the Minister of Foreign Affairs,

the Commander-in-Chief, the Commanders of Air and Naval forces, the Chief of the General Staff and two experts. The committee on Defence was to render advice on military affairs. The Budget for Defence was to be subject to the vote of the House of Representatives, the popular house of the Central Legislature.

6. At the time of the establishment of the Commonwealth, all the officers should become the officers of the Commonwealth. The Governor-General should have right to appoint a public Service Commission. The officers of the Armed Services should also retain their existing rights regarding salaries, allowances pensions etc. They were to be provided compensation for any loss incurred by them as a result of this change.

7. It recommended a Supreme Court consisting of Lord President and other justices. The justices of the Supreme Court were to be appointed by the Governor-General-in-Council and could be removed from their office only if both the Houses of the parliament prayed for their removal on ground of misbehaviour or incapacity. The supreme court was to have both original as well as appellate jurisdictions. It was to be the court of final appeal in India and the appeals were no longer to be taken to the Privy Council.

8. At the provincial level the Committee recommended Legislative Council to be elected on the basis of adult franchise. The Legislative Councils were to have a life of 1ve years but could be dissolved earlier by the Governor. The Governor was also to be given authority to extend the life of the legislative council under special circumstances.

9. The Executive authority at the provincial level should rest in the Governor and his Executive council, consisting of five ministers. The Governor was to select the chief Minister but the other ministers were to be appointed by the Governor on the advice of the Chief Minister. The Governor was to act on the advice of the Executive Council.

10. The Nehru Report recommended nineteen Fundamental Rights, which were to be embodied in the statute. Some of the important rights recommended by the Report included right to liberty, right to religion, right to free elementary education, right to equality, right to form associations for the improvement of labour and economic conditions, right to keep and bear arms in accordance with the ancient right of a writ of Habeas corpus etc.

11. The Report recommended the discarding of the communal and separate electorates. It declared that "In theory, separate electorates violated the essential principles of responsible government, in practice, they had failed to pave the way to a better understanding between the communities. They should be discarded therefore,

and all elections made by joint or mixed electorates". However, with a view to project the interests of the Muslims the Report recommended reservation of seats. These seats were to be reserved only in provinces where they were in minority and at the Center. But in provinces where the Muslims were in majority the seats were not to be reserved for them. The Report did not suggest any safeguards for any other community except the Muslim constituted almost 90 per cent of the population- The reservation of seats was not to be a permanent feature and was allowed for a period of ten years only. The minorities were also given the right to contest seats other than reserved for them but no weightage was conceded.

### **3.5.3 REACTIONS TO THE NEHRU REPORT**

The Nehru Report was discussed by the all parties conference which met at Lucknow from 28 to 30 August, 1928 and was accepted with eight minor amendments. The majority of the members declared that they stood for Dominion self-Government. But certain members like Subhash Chandra Bose, Jawaharlal Nehru etc. did not vote for the Report because they did not want to commit themselves to the goal of Dominion self-government and stood for complete independence. This stand of Subhash Chandra Bose and Jawaharlal Nehru was also endorsed by the All-India Congress Committee at its meeting on 4-5 November, 1928 which asserted that there could not be any true freedom, till the British connection was cut off. At the annual session of the Congress at Calcutta in December, 1928 a resolution was adopted accepting the recommendations of the Nehru Report on the condition that the Report should be accepted in its entirety by the British parliament on or before the 31<sup>st</sup> December 1929. It was made clear that if the Report was not accepted before 31 December 1929 the Congress would not be bound by it and it would organize non-violent non-cooperation against the Government.

### **CONCLUSIONS:**

The report was too progressive to be accepted by the Government. The Report was admittedly an Act of great constructive statesmanship. The Nehru Report may be described as a Blue Print for our present constitution, which is probably the greatest

compliment that can be paid to it. It was first attempt made by Indians in recent times to devise a constitution for themselves. Whether we took to the provision, concerning minorities, or fundamental right or defence everywhere we find abundance of mature Judgment. From Nehru report it appeared that the Indian leaders were quite clear in their mind even in 1928 as to what type of constitution they wanted for free India.

### **3.6 ROUND TABLE CONFERENCE**

The main objective of convening the Round table conference was to involve the Indians in the constitution making. There were three Round table conferences. The British Government on the basis of the discussions at the three conferences drafted its proposals for the reform of the Indian constitution, which were embodied in the white paper published in March 1933.

#### **3.6.1 First Round Table Conference**

The Report of the Simon Commission was published on May 27, 1930. It was rejected by all political parties in India. The British Government had no option but to convene a Round table conference and thereby admit the right of Indians to participate in constitution making.

The Round table conference was inaugurated on November 12, 1930 by the king who was presided over by Mr. Ramsay MacDonald. It was started at a time, when the Civil Disobedience Movement was at its height in India and the ugliest form of repression was being perpetuated by the British bureaucracy in India. The conference had 89 delegates from India, out of which 57 represented British India and 16 were the representatives of the Indian states. There were 16 members of the British parliament from all the three parties. The representatives from British India were nominated by the viceroy and India 16 princes were also selected by him. The delegates from British India represented the Hindus, Muslims, Christians, Sikhs, Landlords' commercial

Interests, scheduled castes, trade unions, etc. There was no representative of the Congress.

In the opening session of the conference, the prime Minister Ramsay Macdonald suggested some constitutional proposals, on the basis of which discussion was to be the proceedings in the conference. Firstly, a federal form of government was proposed for India. Secondly, provinces were to be given full responsible governments with necessary safeguards. Thirdly, partial responsibility was to be introduced in the Central Government, subject again to certain reservations. On the issue of federation, there was no difference of opinion. All the delegates were in favour of it. Even the Indian princes came out with a statement that they would welcome the formation of an All-India Federation and would be glad to join it. The attitude of the princes was an agreeable surprise for the delegates from the British India, because so far the princes had been objecting to the idea of the states joining the federation along with the British India, which of course was bound to decrease their personal powers and help the growth of progressive movements in the states. It was really the British whip, which made the princes declare themselves in favour of the Federation. The British Government knows that the Indian leaders would not be satisfied without some sort of responsibility at the Center. They persuaded the princes to join the federation to counteract the activities of the progressive leaders from the British India. There could be no objection to the granting of full responsible governments in the provinces, from Indian side. There was, of course, some scope for differences regarding the nature of safeguards which were sought to be introduced to check the powers of the responsible Ministers in the provinces. The idea of responsibility at the Center was also welcomed.

There was, however, no agreement between the Indian delegates, over the communal question. The Muslims as a body stood for separate electorates. Mr. M.A. Jinnah continued to press for his fourteen points, which were presented as the minimum demand of the Muslims. Dr. Ambedkar, on behalf of the Scheduled castes, also insisted on separate electorates. The delegates of the Hindus were clearly in favour of joint electorates but were prepared to concede reservation of seats for the Minorities. Thus, the delegates from the British India presented an interesting spectacle. Representatives of every community vied with one another in pressing for advantages to their own community. Nothing better be expected from the type of motley crowd that was assembled in London, and the way, the delegates were picked up.

The Conference concluded in July, 1931. In winding up the discussion of the conference, the prime Minister summed up the conclusions which were arrived at and on which there was a general measure of agreement between the delegates. The

points agreed upon were the same he had hinted at in the opening session. Namely, an all-India federation, fully responsible government in provinces with necessary safeguards and Diarchy are the Center with reservations. The Prime Minister, once again, expressed the hope that the Congress would be willing to join future deliberations of the conference and invited it to co-operate with the task of Constitution making. There was no escape from it. The Indian delegates were not in a position to speak for the whole of India in the absence of the Congress leaders. They were simply not in a position to assure the British Government that their commitments at the conference would be acceptable or backed by the Indian masses.

In the absence of the representatives of the Congress, there was a fear that the conclusions reached at the Conference might not be accepted by the Indian masses. The conference was adjourned to some future date.

### **Gandhi - Irwin pact**

We have noted above that, for evident reasons, the British Government was keen to arrive at a settlement with the Congress. In pursuance of the policy, the ban on the Congress Working Committee was lifted and its members, along with many other important leaders including Mahatma Gandhi, were released unconditionally on January 26, 1931. Long and protracted negotiations started between Lord Irwin and Mahatma Gandhi on February 17, which resulted in the ill-fated Gandhi - Irwin pact, which was signed on March 5, 1931. Sir Tej Bahadur Sapru, Mr. Jayakar and Rt. Honourable V.S.S. Sastri acted as intermediaries. The pact, which was ratified on March 31, 1931 by the Karachi Congress, showed a spirit of give and take. On behalf of the Government it was agreed : (i) to withdraw all ordinances and pending prosecutions; (ii) to set all political prisoners free, except those who were guilty of violence; (iii) to restore all property confiscated for taking part in the satyagraha; (iv) to permit peaceful picketing of liquor, opium and foreign cloth shops, and (v) to permit the collection or manufacture of salt, free of duty, to persons residing within a specific distance of the seashore. On behalf of the Congress, on the other hand, it was agreed : (i) that Mahatma Gandhi will not press for the investigation of the police excesses; (ii) to suspend the Civil Disobedience Movement (iii) to participate in the Second Round Table Conference on the basis of "responsibility and safeguards in the interests of India". And (iv) to stop all boycott.

Most of the Indians felt happy and relieved over the pact. But the left wing of the Congress was not satisfied with it. Mr. Subash Chandra Bose denounced it. Mr. Jawahar Lal Nehru was shocked to read the reservations or safeguards agreed upon because they meant clearly that our control over Indian affairs would not be full. The youth of

the country were particularly disgusted with it of because Mahatma Gandhi was not able to secure pardon or at least get the death sentences of Sardar Bhagat Singh and his comrades commuted transportation for life. The pact was also not liked by the conservative circles of England and the British bureaucracy in India.

The next session of the Congress was held in March 1931 at Karachi where the pact was to come for ratification before the Congress. Sardar Bhagat Singh and his comrades were hanged on the eve of the Karachi session, which marred all rejoicing in connection with it. Rather, the young men were woefully angry with Mahatma Gandhi. On his way to Karachi, the youth shouted "Down with Gandhi", Gandhi's truce has sent Bhagat Singh to the gallows" It was in this background, that Mahatma Gandhi had to face the Karachi Congress. But he saved the situation by making a great speech at the occasion; and adding pathetically that there was a limit, beyond which suffering of the people in such a struggle could not go. He appeared to the delegates to ratify the pact, which had for the time being, put a stop to their sufferings and was at least, a respite. The pact was eventually ratified paving the way for the participation of the Congress in the second Round Table conference. A curtain was drawn over the Movement of 1930-31. The Congress, no doubt, came out of it with added strength, prestige and confidence.

Lord Willingdon who assumed charge as the viceroy towards the end of April 1934, was a bold and iron man and was not a person to appreciate the spirit of the Gandhi-Irwin pact. The terms of the pact began to be violated by the bureaucracy and the Congress once again, began to show signs of restlessness and resentment.

### **3.6.2 The Second Round Table Conference**

The Second Round Table Conference opened on September 7, 1931. Between the Gandhi - Irwin pact and the second Round Table conference significant changes had taken place. Lord Willingdon had succeeded Lord Irwin. In England the Labour Government was replaced by the National Government, although Mr. MacDonald continued to be its head. The Labour party expelled Mr. MacDonald from forming the National Government and assumed the role of the opposition. Mr. MacDonald, thus for all intents and purposes, became the head of the Conservative or Tory Government. Mr.

wedgwood Benn, the secretary of state for India, was replaced by Sir Samuel Hoare - again a conservative. As a result of general elections which followed, a purely conservative Government was formed in England in November; 1931, while the second Round Table conference was still in session. Thus, when the second Round Table conference met all the good will on the side of the British statesmen have disappeared, they again decided to hold India tightly as ever, to regain the few rights surrendered by the Government in the Gandhi- Irwin pact and relied, once again, on their too familiar and handy Weapon of Divide and Rule.

This was the background in which the second Round Table conference met and carried on its deliberations. Gandhiji attended as the sole representative of the Congress. Pt. Madan Mohan Malviya and Mrs. Sorajini Naidu were nominated by the Government in their individual capacity. A few delegates were added. The conservative Government and Sir Samuel Hoare, as the secretary of the state for India, were the new factors to be reckoned with, to which we have already referred. Mr. Macdonald remained the chairman of the Round Table Conference.

The main work of the second conference was done by two sub-committees on Federal structure and 'Minorities', which re-examined and amplified the reports presented by the corresponding sub-committees of the first session. In the first session Dyarchy during the transitional period of responsibility with safeguards concerning defence, etc., at the center were agreed upon. When these questions came up for discussion, Mahatma Gandhi, naturally, insisted on full responsibility at the center as well as in the provinces. In the Gandhi-Irwin pact, responsibility had been agreed upon. When these questions came up for discussion, Mahatma Gandhi, naturally, insisted on full responsibility at the center as well as in the provinces. In the Gandhi-Irwin pact, responsibility had been agreed upon and safeguards were to be in the interests of India. He was stunned to find that all the suggested safeguards were impediments or obstacles to responsibility and were against the interest of India.

In the Minorities committee, Mahatma Gandhi had horrible experiences and time. Almost all the communal delegates, barring a few, stood for loaves and fishes a few more seats here and there for their respective communities. None of them was prepared to budge an inch from his point of viewpoint; none was keen on a

compromise; none stood for the national interests; very soon Mahatma Gandhi expressed his inability to arrive at an agreement with these communalists.

In his opening speech at the Conference, Mahatma Gandhi delivered an inspired oration, in which he sought to convince his audience about the national character of the Congress and about the justice of the India's demand to be a mistress in her own houses while moving a vote of thanks to the chair at the end of the conference, Mahatma Gandhi frankly said that he and the Prime Minister had probably 'come to the parting of ways'.

### **3.6.3 Third Round Table Conference**

The whole idea of a subject people sitting at a Round Table Conference was distasteful to the mind of Sir Samuel Hoare. Hence, it was with a great reluctance that the Third Round Table Conference was convened. It was held from November 17 to December 24, 1932. Only 46 delegates were invited. The Conservative Government took good care not to extend invitations to those, from whom there was even a chance of opposition, only the friends of the conservatives, i.e., communalists and liberals were invited. The Labor Party did not co-operate with it. The participation of the Congress was out of question. It was engaged in a life and death struggle with the forces of British Imperialism and was being subjected by the Government to the severest form of repression. In the Conference, reports of sub-committees appointed during the Second Round Table Conference were heard and form the basis of discussions. Some more details about the new Constitution were settled. The Indian delegates sought to introduce some progressive provisions, which were all put in cold storage. The question of including a Bill of Rights for the citizen in the new Constitution was raised by the Indian delegates, which was also shelved on flimsy excuses. The Conservative Government had apparently decided to hold India tightly and to ride rough shod over the aspiration of Indians, including the liberals.

## **CONCLUSIONS :**

In March 1933, the Conservative Government issued a White Paper which chiefly consisted of conclusions arrived at by the Three Round Table conferences, unmindful of the opposition of the Indians, the British Government appointed a Joint Selection Committee to examine the White Paper proposal and report on them. The committee submitted a report on 22 November 1934, which formed the basis of the Government of India Act 1935.

#### 3.6.4 **WHITE PAPER**

The British Government on the basis of the discussions at the three conferences drafted its proposals for the Reform of the Indian Constitution. These proposals were embodied in the White Paper published in March 1933.

The White Paper was examined and approved by a Joint Committee of the British Parliament (Act 1934) and a Bill, based on the Report of this Committee, was introduced and passed in the British Parliament as the Government of India Act, 1935. In March, 1933, the British Government published the White Paper containing the proposals of the British Government, indicating the line on which the new constitution of India was to take shape. It was drafted on the basis of the discussions held and conclusions arrived at during the three Round Table Conferences. The White Paper contained some points of departure from what was decided at the Conferences. But all these innovations were retrogressive and were introduced to make it more palatable to the conservative majorities, which were found in both the Houses of the British Parliament. In April, 1933, a Joint parliamentary Select Committee was appointed to discuss in detail the proposals of the Government contained in White Paper. It consisted of 16 members from both the Houses of the British Parliament with a clear majority of the Conservative members, with Lord Linlithgow as its Chairman. The representatives from British India and the Indian States were invited to appear before it as expert witnesses. Sir Samuel Hoare acted as the Chief Spokesman of the Government in his capacity as the Secretary of State for India.

The Report of the Committee was published on November 11, 1934. As was expected the Committee made the White Paper still worse, from the Indian point of view

Constitution of view, and introduced some more reactionary provisions. The White Paper had recommended direct election to the popular House of the Central Legislature. The Joint Select Committee discarded all democratic principles and usages and recommended indirect election for that House. The scope of the separate electorates was extended. The representatives of the States were to be nominated by the princes. The power to abolish the second chambers in the provinces had been given to the Central Legislature of India by the White Paper; the committee kept this power back in the hands of the British parliament. Restrictions on the powers of the Federal Court were increased, so as not to make it the final court of appeal in India on any point and to leave the supremacy of the Privy Council intact, in all cases. A bill was drafted on the basis of the Report of the Committee and became the Government of India Act, 1935, after receiving the Royal assent in August 1935.

### 3.7 THE GOVERNMENT OF INDIA ACT 1935

The clear intention behind the Government of India Act, 1935 was to set India upon the path of responsible government and promote the complete realization of her ambition in this respect. So it was the longest Act ever passed by a parliament in the history of the world.

The enactment of the Government of India Act 1935 largely based on the recommendation of the Joint Parliamentary-select committee which was appointed to examine the white Paper of March 1931. On the basis of these recommendations Sir Samuel Hoare, a conservative secretary of state for India drafted a bill, which was introduced in the House of Commons on 5 February 1935. The bill faced vehement criticism at the hands of the Labour party and was finally passed by the House of Commons on 4 June 1935. House of Lords passed the bill in July 1935. The royal assent was accorded on 2 August 1935.

#### 3.7.1 Provisions of the Government of India Act 1935

The Government of India Act 1935 was a lengthy document consisting of 321 sections and 31 schedules. This enormous length of the Act was due to the fact that it

not only provided for a highly complex type of federal government but also provided detailed legal safeguards to restrict the activities of the Indian minorities as well as the legislators.

### **(a) Provincial Autonomy**

The most remarkable feature of the Act was the celebrated provincial autonomy. With the abolition of Diarchy, the distinction between the reserved and transferred subjects as envisaged under the 1919 Act was removed and the entire provincial administration was entrusted to the responsible ministers who were controlled and removed by the provincial legislatures. The provinces were no more the mere agents of the omnipotent centres. Ordinarily Central intervention was ruled out in provincial administration. Thus the provincial autonomy means two things. First, the Provincial Governments were wholly responsible to the provincial legislatures and secondly, provinces, were free from outside control and interference in a large number of matters. According to Mr. Cripps, it invested the provinces for the first time with a separate legal personality. Thus in the provincial sphere, the Act of 1935 made a fundamental departure from the act of 1919. Of course a large array of powers vested in the Governors in guise of discretionary powers, special responsibilities and safeguards, restricted and actual operation of provincial autonomy to a large extent.

### **(b) All India Federation**

The 1935 Act envisaged, for the first time, to establish an All India Federation. The Federation was to consist of seven Governors provinces, six chief commissioner provinces and such other Indian states which would be willing to accede to it. Accession to the Federation under the 1935 Act was compulsory for Governors provinces but optional for the Indian states. The latter were to sign an instrument of Accession before joining in the proposed All India Federation. A Federal court was to be established in order to decide disputes between the center and the units. According to G.N Joshi, "The Federation in India is the result partly of the political evolution of British India, partly of the desire of the state to play a part in the constitutional progress of the country and to get their rights in relation to the paramount power definitely clarified and defined and mostly of the anxiety of the British Government to secure a moving, establishing and conservative element before granting some responsibility at the center. The Government at the center was to consist of the Federal Executive and the Federal Legislature. The latter was to consist of two Houses known as the Council of State and the Federal Assembly.

### **(c) Diarchy at the center**

Through the 1935 Act abolished Diarchy in the provinces, it introduced the same at the center. The four subjects, viz., Defence Ecclesiastical Affairs, External Affairs and Administration of Tribal Areas were known as the "reserved subjects" which were to be administered by the Governor-General at his discretion. He was authorized to appoint not more than three councillors to assist him in this administration. These councillors were wholly responsible to him. The rest subjects were called as "the transferred subjects" to be administered by Governor-General at his discretion. He was authorized to appoint not more than three councillors to assist him in this administration. These councillors were wholly responsible to him. The rest subjects were called as "the transferred subjects" to be administered by Governor-General and a council of Ministers that was to be appointed by him from

among the members of the Federal Legislature. The Ministers were responsible to the Federal Legislature but the latter suffered from many limitations. The Governor-General was vested with autocratic powers and on the pretext of "special responsibilities or safeguards" he could intervene in the work of Ministers. As Prof. K.T. Shah had said, "the position assigned under the new constitution to the Council of Federal Ministers is ornamental without being useful onerous without ever being helpful to the people. They are supposed to represent responsibility without power: position without authority, name without real influence". Although the Central Executive was divided into two distinct halves, yet the instrument of instructions directed the Governor-General to encourage joint consultation of the councillors and Ministers. Often he administered all subjects at his discretion.

#### **(d) Safeguards and Reservations**

A controversial feature of the Government of India Act, 1935 was the safeguards and reservations provided in the Act, would serve as checks and limitations on such undesirable tendencies which might lead to the failure of the responsible Government in India. A plea was given that those safeguards and reservations were necessary for the interests of the country. They were imposed either on the exercise of powers by the Government of India or of the states. To cite an example, in the Central Government four "Reserved" subjects were there which were entrusted to the Governor-General and irresponsible Councillors. The former had the power to deal with these matters at his discretion. The Governor-General and the Governors were armed with "special responsibilities" with regards to prevention of grave menace to the peace and security of India. Protection of legitimate interests of the minorities, safeguarding the right of the services etc. In financial field, some safeguards were provided to protect the financial stability and credit of India. Critics assailed these safeguards as means to

perpetuate British interests in India. K.V. Punniah has rightly observed, 'A realistic analysis of the nature and content of these safeguards, however, reveals the fact that the British were trying to safeguard their vested interests by forming an alliance with the conservative forces in India. The Muslims and Indian princes were against the rising tide of democratic nationalism. As the Indian princes were opposed to democracy and the Muslims to majority rule, British rulers found it easy and useful to exploit their fears of their own ends". In short, these safeguards were intended to bolster up the British imperialism, which was in tottering condition in the Indian soil.

### **(e) Establishment of Federal Court**

The Government of India Act, 1935 provided for the establishment of Federal Court to interpret the Act and adjudicate disputes relating to the federal matters. It provided that the Federal Courts should consist of one Chief justice and not more than six puisne judges. In fact, the Federal Court, which was established in 1937 had one Chief Justice and two puisne or associated judges. The judges were to be appointed by the British Crown and were to hold office until they attained the age of sixty-five. Like the present Supreme Court of India, the Federal Court had three different kinds of jurisdictions namely the original, appellate and advisory. But the striking dissimilarity was that it was not the final judicial authority in India. Appeals could be made against the decisions of the Federal Court on the Judicial Committee of the Privy Council situated in England. However, this Court continued functioning till the establishment of the present Supreme Court in 1950 and had pronounced many valuable and impartial judicial decisions.

### **(f) Abolition of Indian Council**

The Act made some drastic changes in the Home Government. The Indian Council which was established by the Act of 1858, had been a strong subject of criticism by the Indian nationalists. The 1935 Act abolished the Indian Council and in its place created a Body of Advisors consisting of not less than three and not more than six persons who were to hold office for a period of five years. They were to draw their salary from the British Exchequer. The Secretary of State for India was not bound either individually or collectively by their advice. The Act says, "it shall be in the discretion of the Secretary of State whether or not he consults them individually and whether or not he acts in accordance with any advice given to him by them". In other words the Secretary of State still retained a substantial amount of powers. He was the sole constitutional adviser to the crown and the Governors and the Governor-General were "merely his creatures"

### **(g) Extension of Franchise and Retention of communal Electorates**

The 1919 Act had confined right to vote only on 2½% of the total population. The Act 1935 lowered educational and property qualifications as a result of which franchise was extended to 35 million persons, including to million women' on the whole 27% of adult population of India got the right to vote in 1937. A black feature of the Act was retention of communal electors. It retained the separate electorates for the representative of the communal and special interest in the Federal as well as provincial legislatures. Rather, the vicious principle of communal representation was extended to include Europeans, Anglo-Indians, and Indian Christians. The British Government was even eager to grant separate electorates to Harijans but Gandhiji's fast unto death forced the British Government to give up that nasty design. The Muslims were given 33-1/3 % seats in both houses of Federal legislature. This further, weakened and wrecked the unity and solidarity of our nation.

### **(h) Burma, Aden, Berar, Sind and Orissa**

Act 1935 separated Burma from India; Burma became a separate and new country on the map of the world. Aden was transferred and was placed directly under the colonial office from the 1<sup>st</sup> April, 1937. Berar turned to be a part of Governor's province called the central Province Berar. The Act 1935 created two new provinces of Sind and Orissa. The Government of India order, 1936 says, "his Majesty was pleased by and with the advice of his Privy Council to make orders to constitute the province of Orissa. Orissa became a separate province on the First April 1936.

### **3.7.2 Appraisal of the Act of 1935**

The proposal for setting up of the Federation of India did not materialize and Central Government in India continued to be governed by the provision of the Act of 1919. However, the Federal Bank (The Reserve Bank of India) and the Federal Court were established in 1935 and 1937 respectively. The other parts of the Act, particularly provincial autonomy, came in to force on 1<sup>st</sup> April 1937.

The hotchpotch authoritarian and responsible government, called the Act of 1935, fell far short of Indian national aspirations. British imperialism still determined to maintain its stranglehold over India looked for new safeguards in communal and reactionary elements. The ifs and buts provided in the Act were so numerous as to elicit from Jawaharlal Nehru, the cryptic remark that it provided a machine with strong

broken but no engine. Jinnah described the scheme as thoroughly rotten, fundamentally bad and totally unacceptable. The shock of another world war and another round of non-cooperation movement were necessary to bring about a real change of heart in the imperial ruler of Britain.

### **3.8 INDIAN INDEPENDENCE ACT 1947**

On the basis of Mountbatten Plan, the British Government was anxious to transfer power. The Indian Independence Bill was introduced in British Parliament on July 4 1947. The Act did not provide for any new Constitution of India. The Act provided for partition of India and the establishment of the two Dominions (India and Pakistan).

The formal transfer of power into Indian hands was affected by the Indian Independence Act passed by the British Parliament in July 1 947 - Before the bill was introduced in the British parliament, its Draft was shown to the leaders of congress as well as Muslim League and due consideration was given to their comments. The Bill was introduced on the House of Commons on 4 July, 1947 and within a short span of a fortnight it was passed by both the Houses of the British Parliament. Soon after introducing the Bill in the House of Commons Attlee told the journalists "Never before has such a large portion of the World population achieved complete independence through legislation alone". As Attlee put it the Act did not "lay down a new Constitution for India, providing for every detail. It was far more in the nature of an enabling bill, a bill to enable the representatives of India and Pakistan to draft their own Constitutions".

#### **3.8.1 Provisions of the Act**

The main provisions of the Act were as follows -

- 1 . The act provided for the end of the British Rule in India on 15 August 1947 and the establishment of two Dominions of India and Pakistan. The two Dominions were given the right to secede from the British Commonwealth
2. The Act abolished the office of the secretary of State for India and transferred his functions to the secretary of state for commonwealth Affairs.

3. It provided for the appointment of the Governor-General in each of the Dominions. The Governor-General was to be appointed by the British King on the advice of the cabinet of the concerned Dominion.
4. Governor-General and the Governors of the provinces were expected to Act on the advice of the ministers in all matters, including those matters where they could exercise their special and discretionary powers. Thus they were reduced to the position of constitutional heads.
5. The Act deprived the Monarch of the right to Veto laws or to ask for reservation of certain laws for his approval. However, this right was reserved for the Governor-General.
6. The British king was to drop the title of the Emperor of India.
7. With the creation of the Dominions of India and Pakistan the appointment of civil services and reservations of seats by the secretary of state was discontinued.
8. The British Government was to transfer all the powers to the Constituent Assemblies of the two Dominions. Pending the formation of new constitution for each Dominion, the constituent Assemblies of the two Dominions were to Act as Legislatures. These legislatures were given legislative sovereignty as in other Dominion Legislatures under the state of West Minister. This meant that no law made by the Legislature could be held void inoperative even if it came into conflict with the laws of the British Parliament. No Act of the British Parliament could be extended to any Dominion unless it was adopted by the Legislature of the respective Country as part of its laws.
9. Till a new constitution was framed by each Dominion, all the provinces were to be administered in accordance with the provisions of the Government of India Act 1935. However, the Dominions were given the power to make necessary modifications in the Act.
10. The suzerainty of the crown over the Indian states as well as regard to the tribal areas came to an end with effect from 15 August 1947. Thereafter the states were to be independent in their political relations with the Governments of the Dominions. All the treaties, agreements and functions performed by the British Monarch with regard to the states and their rulers were to lapse and were not to automatically shift to the Government of the Dominions.

### 3.8.2 Significance

The enactment of the Indian independence Act 1947 was indeed an event of great constitutional significance. As Attlee put it was "the fulfillment of the British mission" in India, the "Culminating point in a long course of events". Similarly Lord Samuel described the Act, in the House of Lords, as "a treaty of peace without war". Even the Indian leaders hailed the enactment of this Act. For example Dr. Rajendra Prasad said the period of domination of British over India ends today and our own relationship with Britain is henceforth going to rest on a basis of equality, or mutual good will and mutual profit.

While it cannot be denied that the Act marked the beginning of a new era of free India, it took a heavy price. The partition of the country and the trial of problems, which accompanied it in the shape of barbarism and carnage, were indeed serious blots on the national movement. A sizeable section of people and leaders felt quite unhappy over it. As Maulana Abul Kalam Azad had observed 'the 14<sup>th</sup> August was for the Muslims of Pakistan a day of rejoicing. For the Hindus and Sikhs it was a day of mourning. This was the feeling not only of most people but also of most important leaders.

Again the termination of the British Paramountcy over the Indian States and the conceding of right to accede to their Dominion or remain independent, posed a serious threat to the unity of the Country. But for the firm and diplomatic handling of the problem of Indian states by Sardar Patel, as well as the patriotic feeling of the rulers of most of the states, these states could have posed a serious problem and jeopardized the gains of hard won freedom.

Despite these defects, it cannot be denied that the Indian Independence Act of 1947 closed the chapter of British rule in India and ushered the dawn of a free India .

## UNIT-IV

### 4.0 Objectives

## 4.1 Introduction

## 4.2 Growth of Central Legislature

### 4.2.1 Growth of central Legislature in the 19<sup>th</sup> Century

### 4.2.2 Growth of Provincial Legislature in 20<sup>th</sup> Century

## 4.3 Growth of Provincial Legislature

### 4.3.1 Growth of Provincial Legislature in 19<sup>th</sup> Century

### 4.3.2 Growth of Provincial Legislature in 20<sup>th</sup> century

## 4.4 Public Service in India

### 4.4.1 Organisation of Public service before Govt of India 1919

### 4.4.2 Right and Provision of service Under Act of 1919

### 4.4.3 Mudiman Committees Report

### 4.4.4. Lee Committee Report

### 4.4.5 Service under Govt of India Act 1935

## 4.5 Salient Feature of Indian Constitution

### 4.5.1 Written Constitution

### 4.5.2 Longest Constitution

### 4.5.3 Partly rigid and partly Flexible

### 4.5.4 Parliamentary Democracy

### 4.5.5 Role of Convention

### 4.5.6 Federal Govt with Unitary Bias

4.5.7 Rights

4.5.8 Directive Principles of State policy

4.5.9 An Independent and Integrated Judiciary

4.5.10 Universal Franchise

4.5.11 Secularism

4.5.12 Single Citizenship

4.5.13 Fundamental Duties

4.5.14 Welfare State

4.5.15 Democratic System

Objectives-

After going through this unit, you will be able to know

- Process of growth of Central Legislature in India
- Development of Provincial Legislature in India
- Evolution of Public Service in India
- 4. Main feature of Indian Constitution

**4.0 Growth of Central Legislature in India**

The germ of the Legislative power of the Government of India lies embedded in Elizabeth's Charter of 1600, which authorized the East India Company to make responsible laws, constitution, orders and ordinance not repugnant to English laws for the good government of the Company and its officers. No copies of any law made under the early charters are known to exist. The subsequent Charters changed the powers of the Company according to its needs. The charter of 1726 empowered the government-in-Council and three Presidency to make laws, ordinance and regulations in their jurisdictions.

#### **4.1 Growth of Central Legislature in 19<sup>th</sup> Century**

##### **The regulating Act of 1773-**

It required that the Government of Madras and Bombay must send copies of their laws and orders to the Government of Bengal. It is not clear as to whether the Governor General of Bengal had any right to modify them or not. The Acts of 1807 empowered the Governor General of Madras and Bombay to make regulations. In short the power of legislation was exercised by the Executive Government in three presidencies. Every Presidency had its own system of laws which might be different from those existing in other Presidencies.

##### **Charter Acts of 1833-**

The Charter Acts of 1833 was a great landmark in the field of legislation. It simplified the legislative machinery. It deprived the presidencies of Madras and Bombay of the powers of the powers of Legislation. The Governor-General-Council was given the power to make laws on all subjects for the whole India. The Acts also provided for the appointment of a Law Minister in the Governor General executive Council. His duties were purely legislative.

##### **Charter Acts of 1853-**

The Charter Acts of 1853 made the law member of a full Member the Executive Council of the Governor General. The provinces were allowed to send one representative each to the Government of India. No measure concerning was to be considered unless the representative from that province was present. The Chief Justice of the Supreme Court of Calcutta was made an executive member of the Council and more member was appointed. The Governor General and one more member was appointed. The Governor General the power of appointing two more civil servants as member of the Council. The Council in its legislative capacity consisted of 12 members. Those were the Governor General, Commander in Chief, 4 member of Executive Council and 6 legislative members. Out of 6 members, 4 were were the representative from the province and the other were the Chief Justice and puisne Judge. The representative from the Province was to be given \$5,000 annually. It is clear that there was at least one member present with local knowledge.

Experience showed that the Council as constituted by the Acts of 1853 evinced an inconvenience tendency to interfere with the Executive. Sr Charles Wood complained in the House of Commons that the Council had a sort of debating society of petty Parliament. The Members of the Council asked all kinds of questions from the Government which put the latter in a very awkward position. It was pointed out that the Council had become an Anglo-Indian House of Commons.

Acts of 1861-The Indian Council Acts of 1861 provided Executive Council of the Governor General was to be strengthened by the addition of not less than 6 and not more than 12 members nominated by the Governor General for the purpose of legislation. Not less than half of the additional members were to be non-officials. They to hold office for two years. The function of the Council was strictly limited to legislation and the Acts expressly forbade the transaction of any other business by the Council. It was empowered to make laws and regulation for all persons whether British or native, or foreigner or others and for all places and things whatever within the said territories for all servants of the Government of India within the Dominions of Princes and States in alliances with Her Majesty.

However many restrictions were put on power of the Central Legislature. The previous sanction of the Governor General was made necessary for introducing any legislation

concerning certain specified subjects such as public debt or public revenue, religion, military or naval matters or the relation of the Government with foreign princes or states. So laws could be made which infringed the authority of the Home Government or isolated the provision of certain Acts made by the Parliament. Governor General had given the power to veto. In case of emergency, he was authorized to issue ordinances which had the same force as any other laws. These ordinances were to remain in force for 6 months. However these could be dissolved or repealed earlier. As soon as an ordinance was issued, it had to be intimated to the Secretary of State. The approval of the Governor General was made necessary for every Act passed. The right to disallow Acts was reserved for the Crown and the general authority of Parliament and the crown was expressed. Preserved.

### **The Acts of 1892-**

The Indian Councils Act 1892 also changed the position and powers of the Central or Imperial Legislature. The number of additional members was increased. It was not to be less than 10 and more than 16 in the case of Imperial Legislative Council. Two-fifths of the additional members were to be non-official. The Government agreed to allow election to be held in India under the rules. However, the members so elected were to take their seats after they were nominated by the Governments.

The powers of the Legislative Councils were increased. The members were allowed to discuss the annual financial statements under certain conditions and restrictions. They were given power of asking questions from the Government on matters of Public Interest. The previous notice of 6 days was to be given to the Government for asking a question. The President might disallow any question without giving any reason. Questions on matters of Public Interest could be asked subject to such conditions and restrictions as may be prescribed in rules made by the Governor General or Provincial Government.

### **4.2 Growth of Central Legislature in 20<sup>th</sup> century**

#### **The Act of 1909-**

The Indian Council Acts of 1909 increased the additions of members of the Governor General's Council to a maximum of 60. Out of this 37 were officials and 23 were nominated by the Governor General, and the rest were to be ex-officials. The ex-official members were the Governor General, 6 ordinary members, of the Council and 2 extra ordinary members. As regards the non-official members, 5 members were nominated by the Governor General and the rest were elected.

The function of the legislative council were increased. Elaborate rules were made for the discussion of budget by the council. Every member were given the right to move any resolution relating to any alterations in the taxation, any new loan or any additional grants to Local Governments etc. The council was not allowed to discuss expenditure on interest on debt, ecclesiastical expenditure, expenditure on state Railway etc. The members of Legislative Council were given the the right of asking questions and supplementary questions for the purpose of further elucidating any point. However, the executive council might refuse to answer the supplementary questions off hand. He may demand some time for the same. The members of the were also given the right of moving the resolution. These resolution were to be clearly and precisely expressed in the form of definite issues. These resolution were not to contain arguments, interferences, ironical expressions etc. The president might disallow any resolution or part of the resolution without giving any reason for the same.

Rules were framed under the Acts for the discussion of matters of general public interest. No discussions were permitted on any subject and within the competence of the Legislature. Or any matter affecting the relation of the Government of India with a foreign power or a native State, or any matter under the adjudication under the court of Laws. An indirect system of election to the Imperial Council was introduced. Its members were to be elected by the elected members of the Provincial Legislature.

It is clear that the power enjoyed by the Imperial Legislature Council were not substantial. It is true that all forms of Parliamentary system of Government were introduced, but substance was lacking. The members of the Governor General's Executive Council who were in charge of various departments, were not responsible to the members of the Legislature. They could ignore them with the contempt and they naturally did the same. The discussion in the legislature lacked reality because the members of the Legislature knew that they would never be called upon to shoulder the responsibility of Government whatever their criticisms of the Government might be.

The Acts of 1919- The Government of India Act 1919 set up a bicameral legislature at centre. The names of the two houses were Central Legislative Assembly and Council of States. The Council of States consisted of 59 members out of which 34 were elected and 25 were nominated by Governor General. The Central Legislative Assembly consisted of 143 members, out of which 103 were elected members. 51 were elected by the general constituency, 32 by communal constituency (30 by Muslim and 2 by Sikhs), and 20 by special constituency (7 by land holders, 9 by Europeans and 4 by Indian Communities).

The life of the Central Legislative Assembly was 3 years and the Council of State was 5 years, but same could be extended by Governor General. It must be noted that the last Legislative Assembly sat for 11 years. The first speaker of the Assembly was nominated by the Government, but the subsequent speaker was elected by the members of the Assembly.

The Governor General was given the power to summon, prorogue and dissolve both Houses of Central Legislature. The Central Legislature was given specific powers. It could make laws for the whole British India for the subject of his Majesty and service as of the Crown in other part of India. For other Indian subjects of His Majesty wherever they might happen to be and for all persons employed in His Majesty's Defence forces in India. It could also repeal or amend law for the time being in force in British India. In certain cases, the previous sanction of the Secretary of State Council was required for passing any legislation. Likewise, the previous sanction of the Governor-General was required to introduce certain bills in the legislature.

The members of both houses of Central Legislature were given the right of putting the question and supplementary questions, moving the resolutions and motions of adjournments. The Central Legislature was not given complete control over the budget. There were certain non-votable items in the Budget over which the legislature had no control. As regards the votable items, the Assembly could reject them, but the Governor General was given the power to restore those items if he thought that expenditure on those subjects were necessary for the safety and tranquility of India.

It can safely be stated that Central Legislature under the Acts of 1919 was helpless before Central Executive. Thereafter was only Independent of the Legislature, but also had the power of overriding the Legislature in almost all respects.

### **Acts of 1935-**

Under the Govt of India Acts 1935, provision was made for federal legislature of two houses viz., Federal Assembly and the Council of State. The federal Assembly was to have a life of 5 years from the date of its first meetings. On the expiry of the period, it was automatically dissolved. However, Governor General was given the power to extend the life. The Council of State was to be a permanent body of which one-third members were to retire after every 3 years. The federal Assembly was to consist of 375 members and the Council of State 200 members. The members from the states were to be nominated by the rulers. The representatives from British India were to be elected on communal lines.

The power of the legislature was severely restricted. There were certain subjects on which it could not make any law affecting the sovereign or the royal family or the succession to the crown or the law of the British nationality, or the laws of the prize courts, or the army, the Air Force Acts etc. Then the federal legislature could not make any laws amending any provision of the Government of India Act, 1935, or any order in Council made under it, or any rules made thereunder by the Secretary of State or by Governor General or a Governor. It could not pass any law which discriminated against the British interest in commerce and other spheres. In certain cases, the previous sanction of the Governor General was required for introducing certain bills in the Federal Legislature.

The Federal legislature had no control over non-votable items of the budget. The non-votable items constituted about 80 percent of the Federal budget. If any item of the budget was rejected by the federal Assembly, the same could be put before the Council of State if the Governor General so directed. If the two houses of the Federal Legislature differed with regard to any demand, the Governor General was required to summon a joint sitting for voting on the demand and the decision of the majority was proved.

The Governor General was given the power to summon a joint sittings of the two houses of the Federal legislature when a bill passed by one chamber was rejected by the other or was amended in a form to which the first chamber was not agreeable. After a bill was passed by both the Chambers of Federal Legislature, the Governor General, in his discretion, might assent to it or veto it or send it back for reconsideration or reserve it for His Majesty's consultation. The Acts assented to by the Governor General could be disallowed within a year by the King in Council.

## **Indian Constitution-1950-**

Under the new constitution of India, which came in to force on 26<sup>th</sup> January 1950, the Union Parliament consists of two houses namely, Council of States and House of People. The total strength of Council of States is 250, out of these 12 are nominated by the President for their special knowledge and experience of literature, science, art and social service. The remaining 238 are elected from various states. The House of People consisted of 500 members. All the members are elected by the electors from various states. For purposes of elections to the House of the People; the states are divided into groups or formed into territorial constituencies.

The Council of States is a permanent house. It cannot be dissolved. Its members are elected for 6 years. One third of them retire after every two years. The House of People has a maximum duration of 5 years from the date appointed for its first meetings. After 5 years the House of People is to be dissolved automatically. However, the period of five years may be extended by Parliament for a period not exceeding one year at a time.

The Union Parliament has the power to make laws relating to all subjects on the Union List. Any State may authorize the Government of India to legislate on certain matters and in that case Parliament can pass laws on those subjects although they are given in the State List. In the case of breakdown of constitutional machinery in a State, the Union Parliament has the right to make laws for that state even on subjects that are included in the State List. The Union Parliament has power to make laws on any subjects in the State List if Council of States passes a resolution by two-thirds majority declaring such matters or matter to be of national importance and interest. The Union Parliament can amend the Constitution by a two-thirds majority. The Supreme Court can declare any laws passed by the Union Parliament to be ultra vires if they conflict with the Constitution.

The Parliament controls the national finance. The Government cannot levy taxes, borrow money or spend any money without the permission and authority of Parliament. But this does not apply to those items of expenditure which are a charge on national revenue. The Union ministers are members of the Union Parliament and are not

responsible to it. They must resign if they are not voted in Parliament or a vote of Non – confidence is passed against them.

Laws passed by the parliament are not valid unless they receive the assent of the Parliament. No cabinet can dare to tender advice to the power to impeach the president on the ground that he has violated the constitution. The proposal may be preferred by any house by two third majority and then the other House has to investigate the charge. If it is approved by two thirds majority in that house, then the president can be removed from his office. On the request of the members of Parliament to the President, the Judges of High Court and Supreme Court can be removed from office.

The two houses of Parliament have equal powers except as regards the money bill which can be introduced only in the house of people. Then those money bills can be sent to the Council of State. If amendment by the Council of States are accepted, it is good, otherwise the money bill will be taken to have been passed by the Parliament on the expiry of thirty days. Bill other than money bill, may be introduced in any chamber and in the case of disagreement over a bill, there may be a joint sitting of the two houses. If that bill is passed by a majority at the joint sitting of the two Houses. If that bill is passed by a majority at the sitting, it is to be deemed to have been approved by both Houses.

### **4.3 Growth of Provincial Legislature India-**

The history of growth of Provincial legislature is both interesting and instructive. While tracing the Origin of the Legislative process of the province, we find that in 1797, the Presidency of Bengal was authorized to issue independence regulation within its jurisdiction. Similar power was given in 1807 to the Presidencies of Madras and Bombay. The result of this was each presidencies developed its own systems of laws. It was found that there were conflicting laws in various Presidencies. Such a thing was not considered to be in the interest of the country. Consequently, the

Charter Act of 1833 deprived Presidencies of Madras and Bombay of their power of legislation. All the legislation for the whole of India was to be made by the central government. This resulted over-centralization. The Government of India could not understand and appreciate the needs of the various Presidencies. Companies were made against the abuses of the system.

#### **4.3.1 Growth of Provincial Legislature in 19<sup>th</sup> Century**

Charter Act of 1853-

The Charter Act of 1853 tried to remove the defects of the system. It was provided that each Presidency was to send one representative to the Central Government and no legislative measure for any Presidency was to be considered by the Governor General in Council without the presence of the Member from the Presidency considered. Even the innovation was not merely for evils of existing system. Lord Amherst held the view that partial return to the system which existed before 1833 was advisable.

#### **The Acts of 1861-**

The Indian Council Act of 1861 reserved the process started by the Charter Act of 1853. The Presidencies of Madras and Bombay were given the power of making laws. For legislative process, the Executive process, the executive Council of the Governor was to be expanded by the additions of not less than 2 and not more than 4 additional members. No demarcation was made between jurisdiction of the Central Provincial Legislature. In certain cases, the previous sanction of the Governor General was required for legislation by local councils. All the Acts passed by the Provincial Government required the assent of the Governor and Governor General. In exercise of the power given to the Governor General by the Act of 1861, the Legislative Council were established in Bengal in 1862 in UP in 1866 etc. It is to be noted that the function of these councils was purely legislative and nothing else. Even those laws were in

reality the order of the Government. In spite of these defects of the system, no change was made till 1892.

### **The Act of 1892-**

The Indian Council Act of 1892 enlarged the legislative Councils of various provinces. The number of additional members was fixed at 20 for Bengal and 15 for the North West Provinces and Oudh. In the case of Bombay and Madras it was to be not less than eight and not more than twenty. A system of indirect election was also provided for. Certain corporate bodies were given the power of electing representatives and those persons were to be nominated by Governor. The members of the Council were given the power of asking questions and discussing the financial statement. However no right of asking supplementary questions was given. The members also could not reject Budget. This was no doubt an advance on the Act of 1861, but the advance was not considered to be adequate by the people.

### **4.3.2 Growth of Provincial Legislature in 20<sup>th</sup> Century**

#### **Act of 1909-**

The next step was taken by the Indian Council Act of 1909. The provincial legislature was enlarged up to the limit of 50 additional members in larger provinces and 30 in the smaller provinces. The majority of the members were to be elected. The system of nomination after election was given up. It was provided that corporate bodies were to elect members of an electoral college and the latter were to elect members of a provisional legislature. The Mohammedans were given special representation by this Act. They were to vote in special constituency of the Muslim alone. The members of Provincial Legislature were given the right of asking questions and supplementary questions. But supplementary questions could only be put only by person who put the original question. The members were given the power of discussing the budget and passing resolution on it. It was the duty of the Governor to take those resolutions into consideration. As a matter of fact, Government completely ignored that resolution.

Under the Act of 1909, the provincial legislature were essentially consultative committees attached to the executives. The voting qualifications were so high that number of voters in any constituency was very small. As the system of election was indirect some sense of responsibility was lacking. The legislative council were given no control over the Government or legislation. Their members could merely criticise with the full knowledge that they would never be called upon to shoulder the responsibility. The result was that members were reckless in their criticism of the Government. The Government also regarded these councils with contempt.

### **Act of 1919-**

The Government of India Act of 1919 made great changes in the compositions and functions of the Provincial Legislature. Each Provincial Legislative Council was to consist of the members of the Executive Council of the Governor and the elected and nominated members. The size of the provincial legislature was enlarged. Provision was made for general and special constituency. Representation was given to various communities and interests. The Muslim and Sikh were given separate representations. Provision was also made for representation to the Landholders, Planters, mining, interest, Commerce and industries, Universities etc. The franchise for Provincial Council was lowered. The nominal qualification of voter were passed on community, residence, occupation of a house, assessment of income tax, receipts of income tax, receipt of military pension, holding of a piece of land, Provision was also made for representation of Women also.

The Acts of 1919 provided for dyarchical system of Government in the Province. The Indian Ministers were in charge of the transferred subjects, and reserved subjects remain with the Governor and the members of his executive Council. The Ministers were chosen by the Governors from the members of the legislature. Provision was made for the election of a Speaker of the Legislative Council.

The Acts provided for two lists, viz., Central List and Provincial list. The Provincial Legislature was given the power to make laws on matters given in the Provincial List. Its members were given the power of moving and passing the resolution on different

subjects. They were also given the power of asking questions and supplementary questions. They were also empowered to move votes of censure against Government. They were also allowed to demand the adjournment of House to discuss important matters of recent occurrence. The Legislative Council was given the power to discuss the provisional budget and reject the same. However, it had no control over the non-votable items of the budget. If the budget was rejected, the Governor was authorized to restore the same.

There were certain limitations on the legislative power of the provincial Council. In order to introduce certain bills, the previous sanction of the Govt of India and the Governor was required. Even when a bill was passed by the Provincial Legislature, the Government was empowered to certify, veto or reserve the issue for consideration of Governor General.

### **Act of 1935**

Under Govt of India Act 1935, provision was made for the establishment of two houses of the Provincial Legislature in six provinces and only one House in five Provinces. The upper house was known as the Provincial Legislative Council and Lower House as Provincial Legislative Assembly. The Upper consisted of 21 to 65 members. Some of the members were elected and the others nominated by the Governor. The legislative Council was a permanent body and one third of its members retired after every 3 years. There was no change of the whole House at one time.

The lower house consisted of 60 to 250 members. The life of the Lower House was 5 years but it could be dissolved earlier by the Governor. Its life could be extended beyond 5 years by the Governor. It was provided that money bills were to be introduced only in Lower House, although otherwise the power of the two Houses were made equal. In the case of a conflict between the two Houses, provision was made for joint sitting of two houses.

It is to be noted the power of the Provincial legislature under the Act of 1935 were circumscribed. They were not given complete control over legislation. Even their control over budget was not complete. About 50 percent of the Provincial budget was not non-votable. The provincial Legislature could not accomplish much.

## **New Constitution-**

Under the new constitution of India which came into force on 26th January 1950, no distinction is made between the Indian States and Provinces. They are all States. In certain States, provision was made for two houses of the State Legislature and in certain others; provision is made for a uni-cameral Legislature. Whether there are two houses, their names are Legislative Assembly and Legislative Council. Article 169 of the Constitution provides for the abolition or creation of Legislative Council in the States.

Provision is made for direct election to the State Assembly on the basis of adult suffrage. Approximately, one representative is elected for every 75 of the population. The total membership of a state Assembly is to vary from 60 to 500 according to its population. The life of the Assembly is 5 years, but it can be dissolved earlier by the Governor. Its life is 5 years, but it can be dissolved earlier by Governor. Its life may be extended on the ground of an emergency.

The total number of the members of the Legislative Council is not to exceed one-fourth of the total number in Legislative Assembly of the State. However, its membership is not to fall below 40. All the members of a Legislative Council are not elected. Some of them are nominated by the Governor. Others are elected by Municipalities, District Boards, Graduates, Teachers, and members of the Legislative Assembly. It is a permanent House. One-third of its members retire after every two years.

As regards the power of the State Legislature, they can make laws on the subjects given in the State List and the Concurrent List. However, if the Union Parliament passes laws on a subject included in the Concurrent list, the State Legislature cannot pass a law on

that subject. The Constitution has provided for responsible Government in the States. The Government is in the hands of the Ministers who are not only the members of the legislature but also responsible to it. The State Legislature has the right to pass resolution or adjournment motions against the Government. The Legislature are given autonomy in their own sphere.

#### **4.4 PUBLIC SERVICE IN INDIA**

The success of government very much depends upon the integrity and efficiency of its Public Services. In a parliamentary government, the policy of the Government is laid down by the Cabinet. It is the duty of the services to execute or implement that policy. It is also a function of the services as experts to advise the Ministers at the time of framing the policy, but the responsibility for the rightness or wrongness of the policy is entirely that of the Ministers. The Minister has not only to lay down policy, but he is also to see that the policy is properly executed by the services. For this purpose, the Ministers are placed at the head of the departments and are endowed with the power of taking disciplinary action against the services. As a matter of principle, a Minister should not interfere in the details of the administration, which should be left to be decided by the services.

#### **Special role played by services**

During the British Rule, the Services in India like the Indian Civil Service played a special role in the administration. The ordinary duty of the services is to implement the policy of the Ministers. But the position of the Superior Services in India was somewhat different. Most of them were Europeans and belonged to the ruling class- Some of them were later elevated to the highest posts in India like the membership of the Executive Council of the Governor-General and even Governorships, in which capacity they were called upon to lay down policies for the administration of India. Every European member of the Superior Service often regarded himself as a custodian of the British Imperial interests in India and a co-sharer in the task of Framing policies, which were to govern this country. Thus the Superior Services were accustomed to play the role, not merely of administrators, but also that of the policy makers. This is why the European personnel of the Services found a great difficulty in adjusting themselves to changed circumstances, when responsible government was introduced in the provinces under the Act of 1919 and 1935 and the service men were called upon to work as mere executors of the policy. The Montford Report testifies that the Indian Civil Service "has been in effect much more of a Government Corporation, than of a purely Civil Service in the English Sense. They were once described as the "steel frame" of the British administration in India.

#### **4.4.1 Organization of Service before Government of India Act, 1919**

Before the Act of 1919, the services were divided into All-India Services- Defence central Services, provincial services and subordinate services, these services belonged to almost all-important departments like Public Works, Agriculture, Education and police, etc. The most important of these services was the Indian Civil Service. The members of these Services were appointed and controlled by the Secretary of State-in-Council and were posted to various provinces in key posts and as the Heads of the Government departments. Similarly, the Defence Services were also controlled by the Secretary of State. The Indian Civil Service and Defence services were mostly filled by Europeans, The Central services e.g., the Indian Railway Service, the Indian Customs Service and the Indian Audit and Account Service, were directly under the Government of India. Their incumbents were appointed and controlled by the Governor-General-in-Council. The Provincial services were recruited and regulated by the provincial Governments. Their service rules, though framed by the provincial government,

required approval of the Government of India. Below them were appointed members of the Provincial Services, who were mainly Indians. The subordinate services filled still minor jobs and were mainly Indians and were appointed by the respective heads of the departments, according to rules requiring approval of the Provincial Government. This is in broad outlines, the framework of the services, as it existed before the Act of 1919.

#### **4.4.2 Rights and Privileges of the Services under the Act of 1919**

when the Act of 1919 was being hammered into shape, the European members of the All-India services began to entertain anxiety regarding the security of their tenure and position under responsible Ministers. In order to remove their fears, statutory provisions were made in the Act of 1919 to ensure many rights and privileges for the services, and to strengthen their position against the responsible Ministers. Some of these rights and privileges are stated below :

i. The services were to hold office during His Majesty's pleasure, and no body could be dismissed by an authority, subordinate to the one that appointed him. Every case of punishment was to be preceded by a properly recorded departmental enquiry which was to offer adequate opportunities of self-defense to the man proceeded against. These provisions applied to all the services.

ii. A member of the Imperial Services, in case he felt aggrieved by the orders of a provincial authority, was given the right to approach the Governor, who was required to examine the complaint. Under the instrument of Instructions to the Governors it was the duty of the Governor to protect the legitimate rights of the services. No adverse order against a member of the superior services could be passed, except with the concurrence of the Governor.

iii. The Imperial Services were further given the right to make an appeal to the Secretary of State against all such adverse orders. Such appeals were decided according to the opinion of the majority of the members of the Council of the Secretary of State. Most of these Councillors were ex-service-men from Indian.

Thus the final disposal of such appeal was in the hands of ex- servicemen, from whom sympathetic consideration could naturally be expected by the services.

iv. The salaries and allowances of the imperial services were treated as non-votable items of the Central and Provincial Budgets. Thus the Indian Legislatures had no power to reduce or refuse the expenditure incurred on them.

v. A provision was made for the payment of a proportionate pension to an All-India service officer, in accordance with the length of the service, if he desired to retire before the completion of his normal period of service, on account of his dissatisfaction with the new conditions. This provision was inserted because it was felt that some European officers belonging to the All-India services might not like to serve under the Indian Ministers.

#### **4.4.3 The Muddiman Committee on the working of the services under Dyarchy(1924)**

The majority of the Committee, which consisted of Europeans and Government officials, came to the conclusion that the superior services had loyally co-operated with the popular Ministers in carrying on the administration. The minority of the members who were Indians and included Sir Tej Bahadur Sapru and Mr N.A. Jinnah reported that there were frequent frictions, quarrels and cases of ill-feeling between the popular Ministers and the superior services. They quoted a despatch of the U.p. Government, where in it was stated that the entire outlook of the services had changed after the introduction of the Reforms" They were no longer taking personal interest in the work because they resented taking orders from the Indian Ministers. The minority Report recorded " under the present conditions, the ministers feel that the services can look to higher powers for the enforcement of their views in cases of differences which tends to undermine the Ministers authority." In their opinion the appointment and control by the Secretary of State was inconsistent with the spirit of the Reforms. It made the position of the Minister awkward. He was called upon to get his policies executed by persons over whom he had no disciplinary control. One of the main reasons for the failure of Dyarchy was that the superior services did not give willing co-operation to the popular

Ministers. The Ministers could not extract work from them because they could not take any action against them.

#### **4.4.4. Lee Commission-**

We have already noted that the superior services were anxious about their fate after the Reforms. By 1924 the number of those who sought premature retirement swelled to 345, which became a cause for great anxiety on the part of the Government. On the other hand, Indians were not at all satisfied with the speed Of Indianization of the Superior Services. Keeping both these considerations in view, the Government appointed a Commission in 1923 to report on the conditions of Services in India with Lord Lee as its Chairman. Some of the important recommendations made by the Lee Commission were as follows.

- (i) The commission recommended that All-India services working under the Reserved Departments in the provinces should continue to be recruited and controlled by Secretary of State-in-Council.
- (ii) The commission recommended liberal concessions, allowances and conditions of service for European members of the Superior Services. This was done to stop the European element from leaving the services in India.
- (iii) In order to meet the nationalist viewpoint, the Indianization of the Superior Services was proposed to be accelerated.
- (iv) In the Government of India Act, 1919 a provision was made for the establishment of a Public Service Commission for the purpose of recruitment and control over the Superior Services in India.

#### **4.4.5 Services under the Government of India Act 1935**

The Lee Commission had recommended that when the Reserved Departments in the provinces would become transferred in due course the services working under them

should also be provincialized and brought under the control of popular Ministers. The Indian Statutory Commission, which reported in '1930, did not agree with this view and held that the Indian Civil Service and the Indian Police Service were 'security services, and hence appointment to these must continue to be made on an all –India basis and they should remain under the control of the Secretary of State-in-Council and the others by authorities in India. The Act made only nominal changes in the organization of the Services. The Act of 1935 classified the Services as follows:-

- (1) Superior Services : Indian Civil Service, Indian Police Service and Indian Medical Service (Civil) were treated as Superior Services. Their appointment and conditions of Service were kept in the hands of the Secretary of State-in-Council. The Secretary of State could include any other Service under this category.
- (2) Other Services: The rest of the Services were grouped under the heading of 'other Services'. These were placed under control of the authorities in India and their Conditions of Service were regulated by them, with regard to these Services, the final control was vested in the hands of the Governor-General or such persons as the Governor-General may choose in relation to Services working under the Central Government, and in the hands of the Governor or his nominees in case of persons working in the provinces.

(3) Special rights and privileges of the Services under the Act of 1935- In 1930, the Indian Statutory Commission recommended the continuance of the then existing safeguards and rights enjoyed by the Services. Under the Government of India Act, 1935 the rights and the privileges recommended by the Lee Commission were not only retained for the Services, but a few more safeguards were added for them to strengthen their position still further against the popular Ministers.

The safeguards and privileges granted to the Superior Services under the Government of India Act, 1935, and the working of these Services under the provincial Autonomy have been studied earlier. Under the Act, Public Service Commissions were appointed for the central Government as well as for the Provinces. Other than the superior services, referred to above, come to be appointed by these Commissions and subordinate authorities in India. Indianization of Services was accelerated.

## **CONCLUSIONS:**

From above analysis it was clear that the genesis of bureaucracy is traced back to the British period. The necessity of an efficient Civil Service cannot be denied. In the words of the Joint Select Committee Report, "The system of responsible government, to be successful in practical working, required the existence of a competent and independent Civil Service staffed by persons capable of giving to the successive ministers's advice based on long administrative experience, secure in their position through good behaviour, but required to carry out the policy which the Government and the legislature eventually decide".

## **4.5 SALIENT FEATURES OF INDIAN CONSTITUTION**

The Constitution of India has some outstanding features which distinguish it from other constitutions of the World . The framers of our constitution studied other constitutions, selected their valuable features and put them with necessary modifications in our constitution. Ours is not a borrowed constitution, though it has been influenced by other constitutions.

The framers of the constitution of India did not aim at a completely new or original constitution. They just wanted to produce "a good and workable" constitution. And they succeeded doing this. The fact that the constitution, for last 59 years, has been working satisfactorily is a testimony to its quality and utility. The salient features of the constitution are analysed below.

The Preamble, the preface to the constitution, describes the source nature, ideology, goals and objectives of the constitution. It describes India as a sovereign socialist, secular, democratic republic and underlines the national objective of social justice economic justice and political justice as well as fraternity. It emphasizes the dignity of the individual and the unity and integrity of the nation. It declares that in India the people sovereign.

### **4.5.1.. Written Constitution:**

There are two types of constitutions in the world. Most of the constitutions are written. The first modern written constitution was the American constitution. On the other hand, the British constitution is unwritten. It consists of customs and conventions which have

grown over the years. In India, we have a written constitution. The framers of our constitution tried to put everything in black and white.

#### **4.5.2 Longest Constitution:**

The Constitution of India is the longest one in the world. Originally it had 395 Articles and 8 schedules. During the period since 1950 a few Articles have been deleted, but many more have been added through amendments. Today the constitution has 395 Articles and 12 schedules. However there is a view that the constitution today has 444 Articles. Originally the constitution had 22 parts. Now it has 24 parts.

The constitution became lengthy mainly due to the following factors.

- (a) The constitutional fathers wanted to put everything in great detail.
- (b) In other federations, there are two constitutions: one for the federation and the other for the states. In India, the states do not have separate constitutions. The powers of states along with the powers of the federation have been stated in one constitution.
- (c) The Government of India Act, 1935 was in operation when India got independence. Our leaders were familiar with this Act. They borrowed heavily from this lengthy Act while framing our constitution.
- (d) India is a country of great diversity. It is a country of several minorities; it has many languages, castes, races and religions. The problems and interests of these different groups have found place in the constitution.
- (e) Good features of other constitutions have been included, with necessary modifications, in our constitution. For example, we have brought the 'bill of rights' from the American constitution, parliamentary system of government from the British constitution and Directive Principles of State Policy from the Irish constitution.

While including these elements of other constitutions in our constitution Ambedkar said the framers of our constitution tried to remove their faults and suit them to our conditions.

- (f) Many members of the Constituent Assembly were "lawyer-politicians". They have made the constitution not only long, but also extremely complicated.

Ivora Jennings has described our constitution as a 'lawyer's paradise'.

Jennings says that a constitution should be intelligible to common people, but they fail to clearly understand the Indian constitution which is very complex. Every article of this constitution can be interpreted by the higher judiciary, and lawyers, while interpreting, different articles, further complicate the constitution.

### **4.5.3 .Partly Rigid, Partly Flexible:**

Whether a constitution is rigid or flexible depends on the nature of amendment. If the constitutional laws and ordinary laws are amended separate ways, it is a rigid constitution. On the contrary, in a flexible constitution constitutional laws and ordinary laws are amended in the same way.

Some provisions of the Constitution of India can be amended by the Indian Parliament with simple majority. The amendment of most other provisions of the constitution requires a special majority in both houses of the parliament. There are some other provisions of constitution which cannot be amended by the parliament alone.

In case of such provision the amending bill has first to be approved by both houses of parliament by a special majority (with the support of two-thirds of the members of each house present and voting). Then it has to be ratified by the legislatures of at least half of the states of India.

These different amendment procedures make our constitution partly flexible and rigid. In fact, there is a balance between rigidity and flexibility in our constitution.

Some amount of flexibility was introduced into our constitution in order to encourage its growth. Nehru feared that if a constitution is too rigid, it will be stagnant.

### **4.5.4 .Parliamentary Democracy:**

In India, there is a parliamentary form of govern The majority party in the Lower House (Lok Sabha) forms government. The Council Ministers is responsible to the Lok Sabha. The Cabinet is the real executive head. In Presidential form of government, the President is the executive head. In India, the President is only the nominal head.

In Britain, the monarchy is hereditary. But in India, the post of President is elective our founding fathers adopted the parliamentary model for two reasons. Firstly, they believed that a parliamentary form of government would be more responsible democratic than the presidential form of government.

Secondly, they were, to so extent, familiar with the parliamentary form of government during the British rule particularly after the implementation of the Government of India Act, 1935.

### **4.5.5 Role of Conventions:**

Though India has a very detailed constitution, there is some scope for conventions to influence its functioning. On some vital issues constitution is silent and one has to depend upon well-established parliament conventions on such occasions.

For example, the constitution does not say whether government, defeated on a 'snap vote' in the Lok Sabha, will be required to resign whether the recommendation of a defeated government for the dissolution of the Sabha is to be accepted by the President of India.

#### **4.5.6 Federal Government with Unitary Bias:**

India is a federation, although word 'federation' does not find a place in the whole text of the Indian Constitution. The elements of federation are present in the Indian Constitution. It is a written and rigid constitution.

There is dual polity and there is constitutional division of powers between the centre and the states. There is also an independent judiciary. The Supreme C arbitrates the disputes between the centre and the states.

All these provisions make India a federation. But in Indian Federation, the centre is strong as compared to the slates. The centre has more financial powers and the states largely depend upon it for their economic development. The Planning Commission has emerged as a 'super cabinet' or a 'super state'. The Governor acts as the agent of the centre.

The centre can reorganize a state, but a state cannot reorganize the centre. In other words, the centre is indestructible while the states are destructible. During emergencies, the powers of the centre considerably grow and the states become weak. K. C. Where has described the Indian government as 'quasi-federal'. India has also been characterised as 'a federal state with unitary spirit.'

#### **4.5.7 Rights:**

The Fundamental Rights are guaranteed to the individuals by our constitution. These are enumerated in Pail III of the constitution. These rights are fundamental because they are basic to the moral and spiritual development of the individual and these rights cannot be easily abridged by the parliament.

Now the citizen enjoys six fundamental rights, originally there were seven fundamental rights. One of them was taken away from Part III of the constitution by the Forty-fourth Amendment Act, 1978. As a result, the Right to Property is no longer a fundamental right. Since 1978, it has become a legal right.

An individual can now own property; he can enjoy it or dispose of it. But when the government takes it away, he cannot go for a writ challenging the validity of the government's action.

The six fundamental rights are - (1) Right to Equality, (2) Right to Freedom, (3) Right against Exploitation, (4) Right to Freedom of Religion, (5) Cultural and Educational

Rights and (6) Right to Constitutional Remedies. The Fundamental Rights are subject to some restrictions.

The idea of fundamental rights has been borrowed from the American Constitution.

Any citizen of India can seek the help of High Court or Supreme Court of India if any of his fundamental rights is undermined by the government or any institution or any other government. The fundamental rights, granted to the citizen, cannot be amended in the normal manner. They can be amended with two-third majority in each house of the Parliament.

#### **4.5.8 Directive Principles of State Policy:**

The Directive Principles of State Policy are enumerated in Part IV of the constitution. They are instructions or directives from the constitution to the state and the government. It is the duty of the government to implement them.

Originally there were 20 Directive Principles. Three more were added by the 42nd Amendment Act, 1976. Thus, in total, there are now 23 Directive Principles.

Some of the important Directive Principles are: (1) There should not be concentration of wealth and means of production to the detriment of common man; (2) There should be equal pay for equal work for both men and women; (3) Workers should be paid adequate wage; (4) Weaker sections of the people, Scheduled Caste and Scheduled Tribe people should be given special care; (5) The state should promote respect for international law and international peace.

In general, the Directive Principles aim at building a Welfare State. The Directive Principles are not enforceable in a Court of Law, but they are nevertheless fundamental in the governance of the country. These principles provide the criteria with which we can judge the performance of the government.

#### **4.5.9 An Independent and Integrated Judiciary:**

An independent judiciary is integral part federation. The judiciary in India is independent and impartial. It is an integrated judiciary with the Supreme Court at the apex of the hierarchy. The High Courts stand in its middle, and the lower courts are located at its bottom.

The Judges security of tenure and it is extremely difficult to remove any Judge of the Supreme or of the High Court through impeachment. Recently the Parliament failed to impeach Justice Ramaswamy of the Supreme Court who was charged with corruption. Soft a single Judge in India has been removed from office through impeachment.

The Supreme Court and the High Court have the power of Judicial Review. They have the power to declare acts of legislatures and actions of the Executive ultra vires if such acts or actions are found to be in conflict with the provisions of the constitution.

The Supreme Court of India has the power of Judicial Review. In the United States of America there is judicial dominance. The Supreme Court of America can declare invalid if it violates natural justice. For many years it was maintained that the Supreme Court of India did not have this power. But now it is the view of the Supreme Court of India that it can declare any law ultra vires if it violates natural justice.

#### **4.5.10 Universal Franchise:**

Article 326 of the Constitution of India provides universal adult suffrage. The voting age has now come down from 21 to 18. Anybody who has completed 18 years of age is eligible to vote in general elections. This is one of the most revolutionary aspects of Indian democracy.

#### **4.5.11. Secularism:**

India is a secular state. Although the 42nd Amendment Act, inserted the word 'secular' in the Preamble to the constitution, India has been secularism since independence.

India is a country of several religions and each individual has fundamental freedom to profess any religion he likes. The state cannot force him to accept any specific religion. India is a secular state. In India, there is no State Religion. In matters relating to the state is neutral and non-interfering. It does not patronize any religion. Nor discriminate against any religion.

#### **4.5.12 Single Citizenship:**

In the United States of America, there is double citizenship. An American is a citizen of America and at the same time he is also a citizen of the 50 States of America. In India, there is only single citizenship. An Indian is a citizen of India only. He is not a citizen of any Indian state. Single citizenship is meant to secure national unity and national integration.

#### **4.5.12 Fundamental Duties:**

Fundamental Duties did not form part of the constitution. Ten Fundamental Duties were inserted in Part IV of the constitution 42nd Amendment Act, 1976. Some of the important Fundamental Duties are:

(1) To abide by the constitution and respect the ideals and institutions, the national flag and the national anthem; (2) To uphold and protect the sovereignty, unity and integrity of India; (3) To defend the country and render national service; (4) To protect and improve the natural environment; (5) To safeguard public property and to abjure violence.

A new Article - Article 51-A enumerates ten Fundamental Duties. These duties are assigned only to citizens and not to aliens. These duties are not justifiable, but, in case of conflict, they will prevail over Fundamental Rights.

#### **4.5.13 Welfare State:**

Our constitution aims at building a Welfare State. It provides for development of weaker and depressed sections of the society. It underlines the need of improving the conditions of women, Scheduled Castes and Scheduled Tribes who have remained neglected for long.

Our constitution is opposed to concentration of wealth and means of production. Workers should be involved in management and they should get fair wages. Children should not be exposed to hazards. All these provisions are expected to help in building a Welfare State.

#### **4.5.15. Democratic System:**

Our constitution lays a lot of emphasis on democratic values, and a number of democratic institutions have been established to give shape to these values. The centre, states and local self-governing bodies follow democratic principles, and all elections from gram panchayat to parliament are democratically held.

All persons of 18 years age and more, irrespective of their caste, religion and gender, are eligible to vote in elections, and the constitution has provided for reservations in elections for dalits and tribal's. No democracy can survive if citizens are not allowed fundamental rights. The Indian constitution has granted a number of valuable fundamental rights to the citizens

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