

Constitutional, Administrative and Judicial Developments

The establishment of the East India Company in 1600 and its transformation into a ruling body from a trading one in 1765 had little immediate impact on Indian polity and governance. But the period between 1773 and 1858 under the Company rule, and then under the British Crown till 1947, witnessed a plethora of constitutional and administrative changes. The nature and objective of these changes were to serve the British imperial ideology but unintentionally they introduced elements of the modern State into India's political and administrative system.

Constitutional Development between 1773 and 1858

After the Battle of Buxar (1764), the East India Company got the Diwani (right to collect revenue) of Bengal, Bihar and Orissa. An annual subsidy was to be paid to the Mughal Emperor, Shah Alam II, and an annual pension to the Nawab of Awadh, Shuja-ud-Daula. The Company appointed two Indians as the deputy diwans—Mohammad Reza Khan for Bengal and Raja Shitab Rai for Bihar.

1767 The first intervention in Indian affairs by the British government came in 1767. It demanded 10 per cent share in the plunder amounting to 4 million pounds annually.

1765-72 The dual system of government where the Company had the authority but no responsibility and its Indian representatives had all the responsibility but no authority continued for seven years. This period was characterised by—

- rampant corruption among servants of the Company who made full use of private trading to enrich themselves;
- excessive revenue collection and oppression of peasantry;
- the Company's bankruptcy, while the servants were flourishing.

By now the British government decided to regulate the Company to bring some order into its business. From now, there would be a gradual increase in controlling laws.

■ The Regulating Act of 1773

- The 1773 Regulating Act brought about the British government's involvement in Indian affairs in the effort to control and regulate the functioning of the East India Company. It recognised that the Company's role in India extended beyond mere trade to administrative and political fields, and introduced the element of centralised administration.

- The directors of the Company were required to submit all correspondence regarding revenue affairs and civil and military administration to the government. (Thus for the first time, the British cabinet was given the right to exercise control over Indian affairs.)

- In Bengal, the administration was to be carried out by governor-general and a council consisting of 4 members, representing civil and military government. They were required to function according to the majority rule. Warren Hastings and four others were named in the Act, later ones were to be appointed by the Company.

- A Supreme Court of judicature was to be established in Bengal with original and appellate jurisdictions where all subjects could seek redressal. In practice, however, the

Supreme Court had a debatable jurisdiction *vis-a-vis* the council which created various problems.

- The governor-general could exercise some powers over Bombay and Madras—again, a vague provision which created many problems.

The whole scheme was based on checks and balances.

Amendments (1781) ● The jurisdiction of the Supreme Court was defined—within Calcutta, it was to administer the personal law of the defendant.

- The servants of the government were immune if they did anything while discharging their duties.

- Social and religious usages of the subjects were to be honoured.

■ Pitt's India Act of 1784

- The Pitt's India Act gave the British government a large measure of control over the Company's affairs. In fact, the Company became a subordinate department of the State. The Company's territories in India were termed 'British possessions'.

- The government's control over the Company's affairs was greatly extended. A Board of Control consisting of the chancellor of exchequer, a secretary of state and four members of the Privy Council (to be appointed by the Crown) were to exercise control over the Company's civil, military and revenue affairs. All dispatches were to be approved by the board. Thus a dual system of control was set up.

- In India, the governor-general was to have a council of three (including the commander-in-chief), and the presidencies of Bombay and Madras were made subordinate to the governor-general.

- A general prohibition was placed on aggressive wars and treaties (breached often).

■ The Act of 1786

- Cornwallis wanted to have the powers of both the governor-general and the commander-in-chief. The new Act conceded this demand and also gave him the power.

- Cornwallis was allowed to override the council's decision if he owned the responsibility for the decision. Later, this provision was extended to all the governors-general.

■ The Charter Act of 1793

- The Act renewed the Company's commercial privileges for next 20 years.

- The Company, after paying the necessary expenses, interest, dividends, salaries, etc., from the Indian revenues, was to pay 5 lakh pounds annually to the British government.

- The royal approval was mandated for the appointment of the governor-general, the governors, and the commander-in-chief.

- Senior officials of the Company were debarred from leaving India without permission—doing so was treated as resignation.

- The Company was empowered to give licences to individuals as well as the Company's employees to trade in India. The licences, known as 'privilege' or 'country trade', paved the way for shipments of opium to China.

- The revenue administration was separated from the judiciary functions and this led to disappearing of the *Maal Adalats*.

- The Home Government members were to be paid out of Indian revenues which continued up to 1919.

■ The Charter Act of 1813

In England, the business interests were pressing for an end to the Company's monopoly over trade in India because of a spirit of *laissez-faire* and the continental system by Napoleon by which the European ports were closed for Britain. The 1813 Act sought to redress these grievances—

- The Company's monopoly over trade in India ended, but the Company retained the trade with China and the trade in tea.

- The Company's shareholders were given a 10.5 per cent dividend on the revenue of India.

- The Company was to retain the possession of territories and the revenue for 20 years more, without prejudice to the sovereignty of the Crown. (Thus, the constitutional position of the British territories in India was defined explicitly for the first time.)

- Powers of the Board of Control were further enlarged.

- A sum of one lakh rupees was to be set aside for the revival, promotion and encouragement of literature, learning and science among the natives of India, every year. (This was an important statement from the point of State's responsibility for education.)

- The regulations made by the Councils of Madras, Bombay and Calcutta were now required to be laid before the British Parliament. The constitutional position of the British territories in India was thus explicitly defined for the first time.

- Separate accounts were to be kept regarding commercial transactions and territorial revenues. The power of superintendence and direction of the Board of Control was not only defined but also enlarged considerably.

- Christian missionaries were also permitted to come to India and preach their religion.

■ **The Charter Act of 1833**

- The lease of 20 years to the Company was further extended. Territories of India were to be governed in the name of the Crown.

- The Company's monopoly over trade with China and in tea also ended.

- All restrictions on European immigration and the acquisition of property in India were lifted. Thus, the way was paved for the wholesale European colonisation of India.

- In India, a financial, legislative and administrative centralisation of the government was envisaged:

- The governor-general was given the power to

superintend, control and direct all civil and military affairs of the Company.

— Bengal, Madras, Bombay and all other territories were placed under complete control of the governor-general.

— All revenues were to be raised under the authority of the governor-general who would have complete control over the expenditure too.

— The Governments of Madras and Bombay were drastically deprived of their legislative powers and left with a right of proposing to the governor-general the projects of law which they thought to be expedient.

- A law member was added to the governor-general's council for professional advice on law-making.

- Indian laws were to be codified and consolidated.

- No Indian citizen was to be denied employment under the Company on the basis of religion, colour, birth, descent, etc. (Although the reality was different, this declaration formed the sheet-anchor of political agitation in India.)

- The administration was urged to take steps to ameliorate the conditions of slaves and to ultimately abolish slavery. (Slavery was abolished in 1843.)

■ The Charter Act of 1853

- The Company was to continue possession of territories unless the Parliament provided otherwise.

- The strength of the Court of Directors was reduced to 18.

- The Company's patronage over the services was dissolved—the services were now thrown open to a competitive examination.

- The law member became the full member of the governor-general's executive council.

- The separation of the executive and legislative functions of the Government of British India progressed with the inclusion of six additional members for legislative purposes.

- Local representation was introduced in the Indian legislature. The legislative wing came to be known as the Indian Legislative Council. However, a law to be promulgated needed the assent of the governor-general, and the governor-general could veto any Bill of the legislative council.

■ **The Act for Better Government of India, 1858**

The 1857 revolt had exposed the Company's limitations in administering under a complex situation. Till then, there had not been much accountability. The 1858 Act sought to rectify this anomaly—

- India was to be governed by and in the name of the Crown through a secretary of state and a council of 15. The initiative and the final decision was to be with the secretary of state and the council was to be just advisory in nature. (Thus, the dual system introduced by the Pitt's India Act came to an end.)

- Governor-general became the viceroy (his prestige, if not authority, increased).

The assumption of power by the Crown was one of formality rather than substance. It gave a decent burial to an already dead horse—the Company's administration.

Developments after 1858 till Independence

■ **Indian Councils Act, 1861**

- The 1861 Act marked an advance in that the principle of representatives of non-officials in legislative bodies became accepted; laws were to be made after due deliberation, and as pieces of legislation they could be changed only by the same deliberative process. Law-making was thus no longer seen as the exclusive business of the executive.

- The portfolio system introduced by Lord Canning laid the foundations of cabinet government in India, each branch

of the administration having its official head and spokesman in the government, who was responsible for its administration.

- The Act by vesting legislative powers in the Governments of Bombay and Madras and by making provision for the institution of similar legislative councils in other provinces laid the foundations of legislative devolution.

However, the legislative councils established by the Act of 1861 possessed no real powers and had many weaknesses. The councils could not discuss important matters and no financial matters at all without previous approval of government. They had no control over budget. They could not discuss executive action. Final passing of the bill needed viceroy's approval. Even if approved by the viceroy, the secretary of state could disallow a legislation. Indians associated as non-officials were members of elite sections only.

■ Indian Councils Act, 1892

- In 1885, the Indian National Congress was founded. The Congress saw reform of the councils as the "root of all other reforms". It was in response to the Congress demand that the legislative councils be expanded that the number of non-official members was increased both in the central (Imperial) and provincial legislative councils by the Indian Councils Act, 1892.

- The Legislative Council of the Governor-General (or the Indian Legislative Council, as it came to be known) was enlarged.

- The universities, district boards, municipalities, *zamindars*, trade bodies and chambers of commerce were empowered to recommend members to the provincial councils. Thus was introduced the principle of representation.

- Though the term 'election' was firmly avoided in the Act, an element of indirect election was accepted in the selection of some of the non-official members.

- The members of the legislatures were now entitled to express their views upon financial statements which were henceforth to be made on the floor of the legislatures.

- They could also put questions within certain limits to the executive on matters of public interest after giving six days' notice.

■ Indian Councils Act, 1909

- Popularly known as the *Morley-Minto Reforms*, the Act made the first attempt to bring in a representative and popular element in the governance of the country.

- The strength of the Imperial Legislative Council was increased.

- With regard to the central government, an Indian member was taken for the first time in the Executive Council of the Governor-General (Satyendra Prasad Sinha was the first Indian to join the Governor-General's—or Viceroy's—Executive Council, as law member.)

- The members of the Provincial Executive Council were increased.

- The powers of the legislative councils, both central and provincial, were increased.

Under this Act the real power remained with the government and the councils were left with no functions but criticism.

The introduction of separate electorates for Muslims created new problems.

Besides separate electorates for the Muslims, representation in excess of their population strength was accorded to the Muslims. Also, the income qualification for Muslim voters was kept lower than that for Hindus.

The system of election was very indirect.

Thus, the representation of the people at large remained remote and unreal.

■ Government of India Act, 1919

This Act was based on what are popularly known as the *Montague-Chelmsford Reforms*. In August 1917, the British government for the first time declared that its objective was to gradually introduce responsible government in India, but as an integral part of the British Empire.

The Act of 1919, clarified that there would be only a gradual development of self-governing institutions in India and that the British Parliament—and not self-determination of the people of India—would determine the time and manner of each step along the path of constitutional progress.

- Under the 1919 Act, the Indian Legislative Council at the Centre was replaced by a bicameral system consisting of a Council of State (Upper House) and a Legislative Assembly (Lower House). Each house was to have a majority of members who were directly elected. So, direct election was introduced, though the franchise was much restricted being based on qualifications of property, tax or education.

- The principle of communal representation was extended with separate electorates for Sikhs, Christians and Anglo-Indians, besides Muslims.

- The Act introduced dyarchy in the provinces, which indeed was a substantial step towards transfer of power to the Indian people.

- The provincial legislature was to consist of one house only (legislative council).

- The Act separated for the first time the provincial and central budgets, with provincial legislatures being authorised to make their budgets.

- A High Commissioner for India was appointed, who was to hold his office in London for six years and whose duty was to look after Indian trade in Europe. Some of the functions hitherto performed by the Secretary of State for India were transferred to the high commissioner.

- The Secretary of State for India who used to get his pay from the Indian revenue was now to be paid by the British Exchequer, thus undoing an injustice in the Charter Act of 1793.

- Though Indian leaders for the first time got some administrative experience in a constitutional set-up under this Act, there was no fulfilment of the demand for responsible government. Though a measure of power devolved on the

provinces with demarcation of subjects between centre and provinces, the structure continued to be unitary and centralised. Dyarchy in the provincial sector failed.

The Central Legislature, though more representative than the previous legislative councils and endowed, for the first time, with power to vote supplies, had no power to replace the government and even its powers in the field of legislation and financial control were limited and subject to the overriding powers of the governor-general. Besides his existing power to veto any bill passed by the legislature or to reserve the same for the signification of the British monarch's pleasure, the governor-general was given the power to secure the enactment of laws which he considered essential for the safety, tranquility or interests of British India, or any part of British India.

The Indian legislature under the Act of 1919 was only a non-sovereign law-making body and was powerless before the executive in all spheres of governmental activity, as Subhash Kashyap observes.

■ **Simon Commission**

The 1919 Act had provided that a Royal Commission would be appointed ten years after the Act to report on its working. In November 1927, two years before schedule, the British government announced the appointment of such a commission—the Indian Statutory Commission. The commission submitted its report in 1930. It recommended that dyarchy be abolished, responsible government be extended in the provinces, a federation of British India and the Princely States be established, and that communal electorates be continued.

Three Round Table Conferences were called by the British government to consider the proposals. Subsequently, a **White Paper on Constitutional Reforms** was published by the British government in March 1933 containing provisions for a federal set-up and provincial autonomy. A joint committee

of the Houses of the British Parliament was set up under Lord Linlithgow to further consider the scheme. Its report submitted in 1934 said that a federation would be set up if at least 50 per cent of the princely states were ready to join it. The bill prepared on the basis of this report was passed by the British Parliament to become the Government of India Act of 1935.

■ Government of India Act, 1935

- The Act, with 451 clauses and 15 schedules, contemplated the establishment of an All-India Federation in which Governors' Provinces and the Chief Commissioners' Provinces and those Indian states which might accede to be united were to be included. (The ruler of each Princely State willing to join was to sign an 'instrument of accession' mentioning the extent to which authority was to be surrendered to the federal government.)
- Dyarchy, rejected by the Simon Commission, was provided for in the Federal Executive.
- The Federal Legislature was to have two chambers (bicameral)—the Council of States and the Federal Legislative Assembly. The Council of States (the Upper House) was to be a permanent body.
- There was a provision for joint sitting in cases of deadlock between the houses. There were to be three subject-lists—the *Federal Legislative List*, the *Provincial Legislative List* and the *Concurrent Legislative List*. *Residuary legislative powers* were subject to the discretion of the governor-general. Even if a bill was passed by the federal legislature, the governor-general could veto it, while even Acts assented to by the governor-general could be disallowed by the King-in-Council.
- Dyarchy in the provinces was abolished and provinces were given autonomy, i.e., the distinction between Reserved and Transferred Subjects was abolished and full responsible government was established, subject to certain safeguards.

- Provinces derived their power and authority directly from the British Crown. They were given independent financial powers and resources. Provincial governments could borrow money on their own security.

- Provincial legislatures were further expanded. Bicameral legislatures were provided in the six provinces of Madras, Bombay, Bengal, United Provinces, Bihar and Assam, with other five provinces retaining unicameral legislatures.

- The principles of ‘communal electorates’ and ‘weightage’ were further extended to depressed classes, women and labour.

- Franchise was extended, with about 10 per cent of the total population getting the right to vote.

- The Act also provided for a Federal Court (which was established in 1937), with original and appellate powers, to interpret the 1935 Act and settle inter-state disputes, but the Privy Council in London was to dominate this court.

- The India Council of the Secretary of State was abolished.

- The All-India Federation as visualised in the Act never came into being because of the opposition from different parties of India. The British government decided to introduce the provincial autonomy on April 1, 1937, but the Central government continued to be governed in accordance with the 1919 Act, with minor amendments. The operative part of the Act of 1935 remained in force till August 15, 1947.

The 1935 Act was an endeavour to give India a written constitution, even though Indians were not involved in its creation, and it was a step towards complete responsible government in India. However, the Act provided a rigid constitution with no possibility of internal growth. Right of amendment was reserved for the British Parliament. Extension of the system of communal electorates and representation of various interests promoted separatist tendencies—culminating in partition of India. The 1935 Act was condemned

by nearly all sections and unanimously rejected by the Congress. The Congress demanded, instead, convening of a Constituent Assembly elected on basis of adult franchise to frame a constitution for independent India.

Various other developments took place after the 1935 Act. There was the August Offer of 1940, the Cripps Proposals of 1942, the C.R. Formula of 1944 trying to seek the cooperation of the Muslim League, Wavell Plan of 1945 and the Cabinet Mission. Then came the Mountbatten Plan in 1947 and finally the Indian Independence Act, 1947.

[These developments have been extensively discussed in the earlier chapters. The making of the Constitution of independent India is discussed in a later chapter.]

Evolution of Civil Services in India

The civil service system introduced in India by the East India Company for the benefit of its commercial affairs got transformed into a well structured machinery to look after the administrative affairs of the acquired territories in India. In fact, in the beginning, the term 'civil service' was used to distinguish the servants of the Company engaged in commercial affairs from those people employed in the military and naval services. Gradually, the civil servants were bestowed with other responsibilities and authority.

■ Cornwallis' Role

Cornwallis (governor-general, 1786-93) was the first to bring into existence and organise the civil services. He tried to check corruption through—

- raising the civil servants' salary,
- strict enforcement of rules against private trade,
- debarring civil servants from taking presents, bribes etc.,
- enforcing promotions through seniority.

■ Wellesley's Role

In **1800**, Wellesley (governor-general, 1798-1805) set up the Fort William College for training of new recruits. In **1806** Wellesley's college was disapproved by the Court of Directors and instead the East India College was set up at Haileybury in England to impart two years' training to the recruits.

■ Charter Act of 1853

The 1853 Charter Act ended the Company's patronage, enjoining recruitment to be through an open competition henceforth.

The Indians, however, were barred from high posts from the very beginning. Cornwallis thought, "Every native of Hindustan is corrupt." The Charter Act of 1793 had reserved all posts worth 500 pounds per annum for the covenanted servants of the Company. The reasons for exclusion of Indians were—

- the belief that only the English could establish administrative services serving British interests;
- the belief that the Indians were incapable, untrustworthy and insensitive to the British interests;
- the fact there was high competition among the Europeans themselves for lucrative posts, so why offer them to the Indians.

Although the Charter Act of 1833 theoretically threw open the services to the Indians, the relevant provisions were never really implemented. After 1857, when the Indians claimed a share in higher services, the Proclamation of 1858 declared the British intention of including the Indians, freely and impartially, in offices under the civil service.

■ Indian Civil Service Act, 1861

This Act reserved certain offices for covenanted civil servants but the examination was held in England in English language, based on classical learning of Greek and Latin. The maximum permissible age was gradually reduced from 23 (in 1859) to 22 (in 1860) to 21 (in 1866) and to 19 (1878).

In 1863, Satyendra Nath Tagore became the first Indian to qualify for the Indian Civil Service.

■ Statutory Civil Service

In 1878-79, Lytton introduced the Statutory Civil Service consisting of one-sixth of covenanted posts to be filled by Indians of high families through nominations by local governments subject to approval by the secretary of State and the viceroy. But the system failed and was abolished.

■ Congress Demand and Aitchison Committee

The Indian National Congress raised the demand, after it was set up in 1885, for

- lowering of age limit for recruitment, and
- holding the examination simultaneously in India and Britain.

The Aitchison Committee on Public Services (1886), set up by Dufferin, recommended—

- dropping of the terms ‘covenanted’ and ‘uncovenanted’;
- classification of the civil service into Imperial Indian Civil Service (examination in England), Provincial Civil Service (examination in India) and Subordinate Civil Service (examination in India); and,
- raising the age limit to 23.

In 1893, the House of Commons in England passed a resolution supporting holding of simultaneous examination in India and England; but the resolution was never implemented. Kimberley, the secretary of state, said, “It is indispensable that an adequate number of members of civil service shall always be Europeans.”

■ Montford Reforms (1919)

The Montford reforms—

- stated a realistic policy—“If a responsible government is to be established in India, the more Indians we can employ in public service, the better.”

- recommended holding of simultaneous examination in India and England.
- recommended that one-third of recruitments be made in India itself—to be raised annually by 1.5 per cent.

■ **Lee Commission (1924)**

The Lee Commission recommended that—

- the secretary of state should continue to recruit the ICS, the Irrigation branch of the Service of Engineers, the Indian Forest Service, etc.;
- the recruitments for the transferred fields like education and civil medical service be made by provincial governments;
- direct recruitment to ICS on basis of 50:50 parity between the Europeans and the Indians be reached in 15 years;
- a Public Service Commission be immediately established (as laid down in the Government of India Act, 1919).

Government of India Act, 1935

The 1935 Act recommended the establishment of a Federal Public Service Commission and Provincial Public Service Commission under their spheres.

But the positions of control and authority remained in British hands and the process of Indianisation of the civil service did not put effective political power in Indian hands since the Indian bureaucrats acted as the agents of colonial rule.

■ **Evaluation of Civil Services under British Rule**

Just as Indians were systematically excluded from law and policy-making bodies, they were mostly kept out of the institutions responsible for policy implementation. European supremacy was assured in the civil service as in other spheres of governance. This was done in mainly two ways.

Firstly, although Indians had begun to enter the coveted ranks of the Indian Civil Services (ICS) ever since 1863, entering the civil services was still extremely difficult for the Indians. The entrance examination for the ICS was held in London in English medium only, and the subjects included classical Greek and Latin learning. Moreover, the maximum age for appearing at the examination was reduced from twenty-three in 1859 to nineteen in 1878 under Lytton.

Secondly, all key positions of power and authority and those which were well-paid were occupied by the Europeans.

Though a slow process of Indianisation occurred after 1918 under nationalist pressure, important and senior positions continued to be occupied by Europeans. But gradually, the Indians came to realise that Indianisation of civil service had not, in any way, transferred effective power into Indian hands. The Indian members of the civil service continued to serve the imperialist interests of their British masters.

Evolution of Police System in Modern India

In pre-colonial India, the governments, under the Mughals and other native states, were autocratic in nature, and lacked a separate or formal police system. However, there have been watch guards since time immemorial protecting villages at night. Later, under the Mughal rule there were the *faujdars* who helped in maintaining law and order, and *amils* who were basically revenue collectors but had to contend with rebels, if any. The *kotwal* was responsible for maintenance of law and order in the cities. Even during the dual rule in Bengal, Bihar and Orissa between 1765 and 1772 the zamindars were expected to maintain the staff including *thanedars* for law and order duties and for maintaining peace, as well as dealing with crime and criminals. But very often, the zamindars neglected their duties. They are even said to have colluded with dacoits and shared their loot. In 1770, the institution

of the *faujdar* and *amils* were abolished. However, in 1774, Warren Hastings restored the institution of *faujdar*s and asked the zamindars to assist them in suppression of dacoits, violence and disorder. In 1775, *faujdar thanas* were established in the major towns of large districts and were assisted by several smaller police stations.

An account of steady developments in the police system under the British have been given below.

1791 Cornwallis organised a regular police force to maintain law and order by going back to and modernising the old Indian system of *thanas* (circles) in a district under a *daroga* (an Indian) and a superintendent of police (SP) at the head of a district. He relieved the zamindars of their police duties.

1808 Mayo appointed an SP for each division helped by a number of spies (*goyendas*) but these spies committed depredations on local people.

1814 By an order of the Court of Directors, the appointment of *darogas* and their subordinates was abolished in all possessions of the Company except in Bengal.

Bentinck (governor-general, 1828-35) abolished the office of the SP. The collector/magistrate was now to head the police force in his jurisdiction and the commissioner in each division was to act as the SP. This arrangement resulted in a badly organised police force, putting a heavy burden on the collector/magistrate. Presidency towns were the first to have the duties of collector/magistrate separated.

The recommendations of the **Police Commission (1860)** led to the Indian Police Act, 1861. The commission recommended—

- a system of civil constabulary—maintaining the village set-up in the present form (a village watchman maintained by the village) but in direct relationship with the rest of the constabulary.
- inspector-general as the head in a province, deputy

inspector-general as the head in a range, and SP as the head in a district.

The police gradually succeeded in curbing criminal acts, such as dacoity, *thuggee*, etc. But, while dealing with the public, the attitude of the police was unsympathetic. The police was also used to suppress the national movement.

The British did not create an All-India Police. The Police Act, 1861 presented the guidelines for a police set-up in the provinces. The ranks were uniformly introduced all over the country.

1902 The Police Commission recommended the establishment of CID (Criminal Investigation Department) in the provinces and a Central Intelligence Bureau at the Centre.

Military Under the British

The military was the backbone of the Company's rule in India. Prior to the revolt of 1857, there were two separate sets of military forces under the British control, which operated in India. The first set of units, known as the Queen's army, were the serving troops on duty in India. The other was the Company's troops—a mixture of European regiments of Britons and Native regiments recruited locally from India but with British officers. The Queen's army was part of Crown's military force.

After 1857, there was a systematic reorganisation of the Army since, as Dufferin warned in December 1888, "the British should always remember the lessons which were learnt with such terrible experience 30 years ago."

To prevent the recurrence of another revolt was the main reason behind this reorganisation. Also, the Indian Army was to be used to defend the Indian territory of the empire from other imperialist powers in the region—Russia, Germany, France, etc. The Indian branch of the army was to be used for expansion in Asia and Africa, while the British section was to be used as an army of occupation—the ultimate guarantee of British hold over India.

To begin with, domination of the European branch over the Indian branches was ensured. The commissions of 1859 and 1879 insisted on the principle of a one-third white army (as against 14% before 1857). Finally, the proportion of Europeans to Indians was carefully fixed at one to two in the Bengal Army and two to five in the Madras and Bombay Armies. Strict European monopoly over key geographical locations and departments, such as artillery, tanks and armed corps, was maintained. Even the rifles given to Indians were of an inferior quality till 1900, and Indians were not allowed in these high-tech departments till the Second World War. No Indians were allowed in the officer rank, and the highest rank an Indian could reach till 1914 was that of a subedar (only from 1918 onwards were Indians allowed in the commissioned ranks). As late as 1926, the Indian Sandhurst Committee was visualising a 50% Indianised officer cadre for 1952!

The Indian branch was reorganised on basis of the policy of balance and counterpoise or divide and rule. The 1879 Army Commission had emphasised—“Next to the grand counterpoise of a sufficient European force comes the counterpoise of natives against natives.” An ideology of ‘martial races’ and ‘non-martial races’, which assumed that good soldiers could come only from some specific communities, developed particularly from the late 1880s, under Lord Roberts, the commander-in-chief from 1887 to 1892. It was used to justify a discriminatory recruitment policy directed towards Sikhs, Gurkhas and Pathans who had assisted in the suppression of the revolt and were relatively marginal social groups—therefore less likely to be affected by nationalism. The soldiers from Awadh, Bihar, Central India and South India who had participated in the revolt were declared to be non-martial. Moreover, caste and communal companies were introduced in all the regiments and Indian regiments were made a mixture of various socio-ethnic

groups so as to balance each other. Communal, caste, tribal and regional consciousness was encouraged to check the growth of nationalist feelings among soldiers. Charles Wood, the Secretary of State for India, said, "I wish to have a different and rival spirit in different regiments, so that Sikh might fire into Hindu, Gorkha into either, without any scruple in case of need." Finally, conscious efforts were made to isolate the soldiers from life and thoughts of rest of the population through measures such as preventing newspapers, journals and nationalist publications from reaching them.

On the whole, the British Indian Army remained a costly military machine.

Development of Judiciary in British India

In the India of pre-colonial times—in the Mughal era or even prior to that (including the ancient period)—the judicial system, as a whole, neither adopted proper procedures nor had proper organisation of the law courts—in a regular gradation from the highest to the lowest—nor had any proper distribution of courts in proportion to the area to be served by them. The bulk of the litigation among the Hindus was decided by caste elders or village panchayats or zamindars. For Muslims, the unit of judicial administration was the qazi—an office held by religious persons—located in provincial capitals, towns and *qasbas* (large villages). The *rajas* and *badshahs* were considered as the fountainhead of justice, and the process of dispensing justice could be arbitrary.

The beginning of a common law system, based on recorded judicial precedents, can be traced to the establishment of 'Mayor's Courts' in Madras, Bombay and Calcutta in 1726 by the East India Company. With the Company's transformation from a trading company into a ruling power, new elements of judicial system replaced the existing Mughal

legal system. A brief survey of those changes has been discussed below.

■ Reforms under Warren Hastings (1772-1785)

- District Diwani Adalats were established in districts to try civil disputes. These *adalats* were placed under the collector and had Hindu law applicable for Hindus and the Muslim law for Muslims. The appeal from District Diwani Adalats lay to the Sadar Diwani Adalat which functioned under a president and two members of the Supreme Council.

- District Fauzdari Adalats were set up to try criminal disputes and were placed under an Indian officer assisted by *qazis* and *muftis*. These *adalats* also were under the general supervision of the collector. Muslim law was administered in Fauzdari Adalats. The approval for capital punishment and for acquisition of property lay to the Sadar Nizamat Adalat at Murshidabad which was headed by a deputy nizam (an Indian Muslim) assisted by chief *qazi* and chief *mufti*.

- Under the Regulating Act of 1773, a Supreme Court was established at Calcutta which was competent to try all British subjects within Calcutta and the subordinate factories, including Indians and Europeans. It had original and appellate jurisdictions. Often, the jurisdiction of the Supreme Court clashed with that of other courts.

■ Reforms under Cornwallis (1786-1793)— Separation of Powers

- The District Fauzdari Courts were abolished and, instead, circuit courts were established at Calcutta, Dacca, Murshidabad and Patna. These circuit courts had European judges and were to act as courts of appeal for both civil and criminal cases.

- The Sadar Nizamat Adalat was shifted to Calcutta and was put under the governor-general and members of the Supreme Council assisted by the chief *qazi* and the chief *mufti*.

- The District Diwani Adalat was now designated as the District, City or the Zila Court and placed under a district judge. The collector was now responsible only for the revenue administration with no magisterial functions.

- A gradation of civil courts was established (for both Hindu and Muslim laws)—

- (i) Munsiff's Court under Indian officers,
- (ii) Registrar's Court under a European judge,
- (iii) District Court under the district judge,
- (iv) Four Circuit Courts as provincial courts of appeal,
- (v) Sadar Diwani Adalat at Calcutta, and
- (vi) King-in-Council for appeals of 5000 pounds and above.

- The Cornwallis Code was laid out—

- There was a separation of revenue and justice administration.

- European subjects were also brought under jurisdiction.

- Government officials were answerable to the civil courts for actions done in their official capacity.

- The principle of sovereignty of law was established.

■ Reforms under William Bentinck (1828-1833)

- The four Circuit Courts were abolished and their functions transferred to collectors under the supervision of the commissioner of revenue and circuit.

- Sadar Diwani Adalat and a Sadar Nizamat Adalat were set up at Allahabad for the convenience of the people of Upper Provinces.

- Till now, Persian was the official language in courts. Now, the suitor had the option to use Persian or a vernacular language, while in the Supreme Court, English language replaced Persian.

1833 : A Law Commission was set up under Macaulay for codification of Indian laws. As a result, a Civil Procedure

Code (1859), an Indian Penal Code (1860) and a Criminal Procedure Code (1861) were prepared.

■ **Later Developments**

1860 : It was provided that the Europeans can claim no special privileges except in criminal cases, and no judge of an Indian origin could try them.

1865 : The Supreme Court and the Sadar Adalats were merged into three High Courts at Calcutta, Bombay and Madras.

1935 : The Government of India Act provided for a Federal Court (set up in 1937) which could settle disputes between governments and could hear limited appeals from the High Courts.

■ **Evaluation**

Positive Aspects of Judiciary under the British

- The rule of law was established.
- The codified laws replaced the religious and personal laws of the rulers.
- Even European subjects were brought under the jurisdiction, although in criminal cases, they could be tried by European judges only.
- Government servants were made answerable to the civil courts.

The Negative Aspects

- The judicial system became more and more complicated and expensive. The rich could manipulate the system.
- There was ample scope for false evidence, deceit and chicanery.
- Dragged out litigation meant delayed justice.
- Courts became overburdened as litigation increased.
- Often, the European judges were not familiar with the Indian usage and traditions.

Major Changes in Administrative Structure after 1857

■ Genesis of Administrative Changes: New Stage of Colonialism

The British were quick to learn from their experience of 1857—an organised mass action could pose a serious challenge to the existence of British rule in India. The ruler-subject gap was sought to be narrowed so as to reduce, if not eliminate altogether, the alienation of the masses from the administration. Also, association of natives in administration could give the rulers an opportunity to have a better idea of the customs, traditions and values of the people they were supposed to rule. This could help them handle more tactfully an 1857-like situation.

The second half of the nineteenth century saw further spread and intensification of the industrial revolution. The emergence of new industrial powers—the USA, Japan and European countries—and a cut-throat competition for colonies and sub-colonies for raw materials, markets for manufactured goods and capital investment were the highlights of this new phenomenon. The British supremacy in the world in finance and manufactured goods trade came to an end. At this point, there were large-scale British capital investments in railways and loans to the Government of India, and to a smaller extent in tea plantations, coal-mining, jute mills, shipping, trade and banking.

All these factors combined to inaugurate a new stage of colonialism in India. The prime concern of the colonial authority in India was to consolidate its position here to secure British economic and commercial interests against political dangers and to extend its sphere to other parts of the world, wherever and whenever possible. There was a renewed upsurge of imperial control and imperialist ideology

which was reflected in the reactionary policies during the vice-royalties of Lytton, Dufferin, Lansdowne, Elgin and, above all, Curzon. The changes in the governmental structure and policies in India were to shape the destiny of modern India in many ways.

Administration: Central, Provincial, Local

■ **Central Government**

The **Act for Better Government of India**, 1858 transferred the power to govern from the East India Company to the British Crown. The Company's limitations in administering the country in complex situations had been exposed by the revolt of 1857; besides, there was not much accountability. Now, the power to govern was to be wielded through a secretary of state (earlier this power was exercised by Directors of the Company and the Board of Control). The secretary of state was to be a member of the British cabinet, and was to be assisted by a council of 15. He was answerable to the British Parliament. All initiatives and final decisions rested with the secretary and the council was only advisory in nature. (Thus the dual system introduced by Pitt's India Act, 1784 came to an end.) Also, the ultimate power over India remained with Parliament.

The Government in India was to be carried on, as before, by the governor-general whose prestige, if not authority, increased with the new title of viceroy given to him. The viceroy was to be assisted by an executive council whose members were to act as the heads of various departments, as well as viceroy's official advisors.

The concentration of the main authority in the hands of the secretary of state based in London, on the one hand, gradually reduced the viceroy to a subordinate status and further alienated the Indian public opinion from the government

policy-making. On the other hand, it had the effect of increasing the influence of British industrialists, merchants and bankers over government policy in India. This made the Indian administration even more reactionary than it had been before 1858.

By the **Indian Councils Act, 1861**, a fifth member, who was to be a jurist, was added to viceroy's executive council. For legislative purposes, the viceroy could add six to twelve additional members, of whom at least half had to be non-officials who could be either Indian or English. The legislative council so constituted possessed no real powers and was merely advisory in nature. Its weaknesses were as follows—

- It could not discuss important matters, and no financial matters at all without previous approval of the Government.

- It had no control over the budget.
- It could not discuss executive action.
- Final passing of the bill needed the viceroy's approval.
- Even if approved by the viceroy, the secretary of state could disallow a legislation.

- Indians associated as non-officials were members of elite sections only—princes, landlords, *diwans*, etc.—and were not representative of the Indian opinion.

- The viceroy could issue ordinances (of 6 months validity) in case of emergency.

The only important function of the legislative council was to endorse official measures and give them the appearance of having been passed by a legislative body. The British Government in India remained, as before, an alien despotism.

■ Provincial Government

The Indian Councils Act, 1861 returned the legislative powers to provinces of Madras and Bombay which had been taken away in 1833. Later, legislative councils were established in other provinces. The three presidencies of Bombay, Madras

and Calcutta enjoyed more rights and powers compared to other provinces. The presidencies were administered by a governor and his executive council of three who were appointed by the Crown, while other provinces were administered by lieutenant governors and chief commissioners appointed by the governor-general.

In the following decades, some steps towards financial decentralisation were taken, but these were more in the nature of administrative reorganisation aimed at increasing revenues and reducing expenditure and these did not in any way indicate progress towards provincial autonomy.

The granting of fixed sums out of central revenues for administration of certain services like police, jails, education, medical services and roads to provincial governments signified the first step in the direction towards bifurcating central and provincial finances in 1870 by Lord Mayo. Now, the provincial governments were asked to administer these services as they liked.

Certain other heads of expenditure like land revenue, excise, general administration and law and justice were transferred to provinces in 1877 by Lord Lytton. Besides this, a provincial government was to receive a fixed share of the income realised within that province from sources like stamps, excise and income tax.

In 1882, all sources of revenue were divided into three groups—general (going entirely to centre), provincial (going entirely to the provinces) and those to be divided between the centre and the provinces.

Nevertheless, the central government remained supreme and retained detailed control over provinces. This was inevitable since both the central and provincial governments were completely subordinated to the secretary of state and the British Government.

■ Local Bodies

It was decided to decentralise administration by promoting local government through municipalities and district boards

which would administer local services like education, health, sanitation, water supply, roads and other basic amenities financed through local taxes. There were many factors which made it necessary for the British government in India to work towards establishing local bodies.

(i) Financial difficulties faced by the Government, due to overcentralisation, made decentralisation imperative.

(ii) It became necessary that modern advances in civic amenities in Europe be transplanted in India considering India's increasing economic contacts with Europe.

(iii) The rising tide of nationalism had improvement in basic facilities as a point on its agenda.

(iv) A section of British policy-makers saw association of Indians with the administration in some form or the other, without undermining the British supremacy in India, as an instrument to check the increasing politicisation of Indians.

(v) The utilisation of local taxes for local welfare could be used to counter any public criticism of British reluctance to draw upon an already overburdened treasury or to tax the rich upper classes.

The important stages in the evolution of local government can be identified as follows.

Between 1864 and 1868

Local bodies were first formed in this period but in most cases consisted of nominated members and were headed by district magistrates. Thus, these were seen not more than as instruments of additional tax collection.

Mayo's Resolution of 1870

Financial decentralisation was a legislative devolution inaugurated by the Indian Councils Act of 1861. Apart from the annual grant from imperial Government, the provincial governments were authorised to resort to local taxation to balance their budgets. This was done in context of transfer of certain departments of administration, such as medical services, education and roads, to the control of provincial

governments. This was the beginning of local finance. Mayo's Resolution emphasised, "Local interest, supervision and care are necessary for success in the management of the funds devoted to education, sanitation, medical relief and local public works."

The various provincial governments such as in Bengal, Madras, North-Western Province, Punjab, passed municipal acts to implement the policy outlined.

Ripon's Resolution of 1882

The Government of Ripon desired the provincial governments to apply in case of local bodies the same principle of financial decentralisation which Lord Mayo's Government had begun towards them. For his contributions, Lord Ripon is called **father of local self-government in India**. The main points of the resolution were as follows.

- Development of local bodies advocated to improve the administration and as an instrument of political and popular education;
- Policy of administering local affairs through urban and rural local bodies charged with definite duties and entrusted with suitable sources of revenues;
- Non-officials to be in majority in these bodies, who could be elected if the officials thought that it was possible to introduce elections;
- Non-officials to act as chairpersons to these bodies;
- Official interference to be reduced to the minimum and to be exercised to revise and check the acts of local bodies, but not to dictate policies;
- Official executive sanction required in certain cases, such as raising of loans, alienation of municipal property, imposition of new taxes, undertaking works costing more than a prescribed sum, framing rules and bye-laws, etc.

In pursuance of this resolution many Acts were passed between 1883 and 1885 which greatly altered the constitution, powers and functions of municipal bodies in India. But, an

era of effective local self-governing bodies was still a dream unfulfilled. The existing local bodies had various drawbacks.

- The elected members were in a minority in all district boards and in many of the municipalities;
- The franchise was very limited;
- District boards continued to be headed by district officials, though non-officials gradually came to head the municipalities;
- The Government retained strict control, and it could suspend or supersede these bodies at will.

The bureaucracy, in fact, did not share the liberal views of the viceroy and thought that the Indians were unfit for self-government. The closing decades of the 19th century were a period of imperialism, and the high priest of that creed, Lord Curzon, actually took steps to increase official control over local bodies.

Royal Commission on Decentralisation (1908)

Pointing out the lack of financial resources as the great stumbling block in the effective functioning of local bodies, the commission made the following recommendations.

- (i) It emphasised that village panchayats should be entrusted with more powers like judicial jurisdiction in petty cases, incurring expenditure on minor village works, village schools, small fuel and fodder reserves, etc. The panchayats should be given adequate sources of income.
- (ii) It emphasised the importance of sub-district boards to be established in every *taluka* or *tehsil*, with separate spheres of duties and separate sources of revenue for sub-district boards and the district boards.
- (iii) It urged the withdrawal of existing restrictions on their powers of taxation, and also, the stoppage of regular grants-in-aid from provincial governments except for undertaking large projects.
- (iv) The municipalities might undertake the responsibility for primary education and, if willing, for middle

vernacular schools, otherwise the Government should relieve them of any charges in regard to secondary education, hospitals, relief, police, veterinary works, etc.

The Government of India Resolution of 1915

This resolution contained the official views on the recommendations of the Decentralisation Commission, but most of the recommendations remained on paper and the condition of local bodies continued to be as it was left by Lord Ripon.

The Resolution of May 1918

This resolution reviewed the entire question of local self-government in the light of the announcement of August 20, 1917, which had declared that the future direction of constitutional advance was towards grant of responsible government to the people of India and the first step towards the progressive realisation of that ideal was to be in the sphere of local self-government.

The resolution suggested that the local bodies be made as representative as possible of the people with real and not nominal authority vested in them.

Under Dyarchy

Local self-government was made a 'transferred' subject under popular ministerial control by Government of India Act, 1919, and each province was allowed to develop local self-institutions according to provincial needs and requirements. But, since finance was a 'reserved' subject under the charge of an executive councillor, the Indian ministers could not do much work in the sphere of local self-government for lack of funds.

The Simon Commission (May 1930) pointed out the lack of progress of village panchayats except in UP, Bengal and Madras. The commission suggested the retrograde step of increasing provincial control over local bodies for the sake of efficiency. The commission also adversely commented on

reluctance of elected members to impose local taxes and observed that, generally speaking, the management of finances of local bodies had deteriorated since the introduction of the reforms of 1919.

The Government of India Act, 1935 and After

The provincial autonomy ushered in by the Government of India Act, 1935 gave further impetus to the development of local self-governing institutions in India. Portfolio finance being under the control of popular ministries, now the funds could be made available for development of local bodies. Further, the demarcation of taxation between provincial and local finance which prevailed since the reforms of 1919 was scrapped. New Acts were passed in the provinces giving more authority to local bodies.

However, financial resources and power of taxation of local institutions remained more or less at the same level as in the days of Ripon. Rather, after 1935, certain new restrictions were placed on powers of local bodies to levy or enhance terminal taxes on trades, callings and professions and municipal property. The provincial governments seemed to have ignored the liberal policy of granting wide powers of taxation to local institutions as recommended by the Decentralisation Commission (1908).

[The Constitution of free India directs the state governments to organise village panchayats as effective organs of local self-government (Article 40). The Seventy-third and Seventy-fourth Amendments are aimed at plugging the loopholes in the structure of local self-governing institutions in rural and urban areas.]