

## 23. Constitutional developments during British Rule

### Constitutional development between 1773 and 1858

#### ▪ Regulating act 1773:

- The regulating act was passed in the British parliament in June 1773. It was first parliamentary ratification and authorization defining the power and authority of the East India company (EIC) w.r.t its Indian possessions.

#### Reason for passing the act:

- Financial crisis of EIC.
- Allegation of corruption.
- The dual form of administration by Robert Clive.

#### Provisions of the act:

- It introduced the element of centralized administration; it did not take over the power completely, hence regulated.
- The directors of the Company were directed to make all correspondence on revenue affairs, civil and military matters before British government.
- In Bengal, the administration was to be carried out by governor-general and a council consisting of 4 members, representing civil and military government.
- As per this Warren Hastings appointed as Governor General of the presidency of Fort William.
- Supreme Court was established at Calcutta. Judges were from England. It had civil and criminal jurisdiction over the British subjects and not Indian Natives.
- Governor General Control over council of Bombay and Madras.
- Amendments (1781) - Jurisdiction of SC was confined to Calcutta. Immune to government servants.

#### ▪ Pitt's India act, 1784:

- This act resulted in dual control of British possession in India by British government and company with final authority resting with the government.

- The Company became a subordinate department of the State.
- It introduced Board of control who in charge of civil, military and revenue affairs, Court of directors to trading activity.
- Governor General was given veto, Madras and Bombay presidencies became sub ordinates.

#### ▪ The Charter Act of 1793:

- The act continued company's trade monopoly in India for 20 more years.
- All expenses were charged on company now from the Indian revenues, was to pay 5 lakh pounds annually to the British government.
- Governor General was given more power to override his council decision.
- The Company was empowered to give licenses to individuals as well as the Company's employees to trade in India. The licenses, 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 Munsif Adalats.

#### ▪ The Charter Act of 1813:

- Passed by British parliament renewed the EIC charter for another 20 years.
- Defined for 1st time constitutional position of British Indian territories.
- Company's monopoly with trade ended except for trade in tea and with China.
- The regulations made by the Councils of Madras, Bombay and Calcutta were now required to be laid before the British Parliament.
- Act allowed Christian missionary to preach their religion.

### ▪ **The Charter Act of 1833:**

- Also called GOI act 1833 or Saint Helena act 1833.
- EIC exclusive administrative body
- Trade link with china was also ended.
- The act legalized the British colonization of the country.
- Governor General of Bengal re-designated as governor general of India. Lord William Bentinck the first GGI.
- Bengal, Madras, Bombay and all other territories were placed under complete control of the governor-general.
- Governor General Member's council to have four member and fourth member with limited power.
- Law member was added and Indian law to be codified and consolidated.
- Access to public employment for Indians irrespective of their class, caste, etc.
- Slavery was abolished.

### ▪ **The Charter Act of 1853:**

- The Company was to continue possession of territories unless the Parliament provided otherwise.
- The law member became full time member with right to vote.
- Patronage system to civil service ended.
- COD strength was reduced to 18, 6 people were nominated by British crown.
- Separated governor general of Bengal from GGI.
- The legislative wing came to be known as the Indian Legislative Council.

## **Development after 1858 till Independence**

### ▪ **Government of India act 1858:**

- Shifted from company rule to crown rule.
- Changed designation from Governor general to viceroy
- New secretary of state in British parliament to supported India council.
- Lord canning first viceroy.

### ▪ **Indian Council Act, 1861:**

- This act made significant changes in the Governor General's council.
- Lord canning who was viceroy at the time and nominated Indian's to the council.
- The portfolio system introduced by Lord Canning laid the foundations of cabinet government in India.
- Secretary of state for India in Britain could also dissolve any act passed by governor general council.
- Act restored the legislative powers of governor in council of the presidencies of Madras and Bombay.

### ▪ **Indian Councils Act, 1892:**

- Indian National Congress (INC) was formed in 1885. There was growing feeling of nationalism and this led the INC put fourth demand to British authorities, demand was to reform legislative councils.
- Increased non-official members to the council, in 1894 out of 24 only 5 were Indians.
- Right to ask question on budget with, but could not ask supplementary question.
- Legislative council were empowered to make law and repeal old law with permission of governor general.

### ▪ **Indian Council 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 Legislative Council at Centre and provinces was increased. Central 16 to 60 members and provincial level 50 members.
- The elected member would be elected indirectly.
- The member could discuss budget and move resolution and ask supplementary question.
- Satyendranath P Sinha as the first Indian member to viceroy's executive council.
- Governor General had veto power.
- The introduction of separate electorates for Muslims.

### ▪ **Government of India act 1919:**

- The act is known as Montagu- Chelmsford reforms.
- Increasing Indian in every branch of administration with due progressive devolution of responsible government
- Dyarchy was introduced at provincial level.
- Subjects were divided to reserved and transferred.
- The Indian Legislative Council at the Centre was replaced by a bicameral system.
- The principle of communal representation was extended with separate electorates for Sikhs, Christians and Anglo-Indians, besides Muslims.
- Out of 6 members in viceroy's council 3 to be Indian.
- 25% of the budget was subject to vote, rest was non votable.
- The act provides for the first time, to establish of a public service commission in India.

### ▪ **Simon commission (1927):**

- The British Government announced the appointment of a seven-member statutory commission 2 years before the schedule. Chairman of the committee was Sir John Simon.
- The statutory committee was set up to report on the condition of India under its new.
- Constitution. However, all the members of the commission were British and hence, all the parties boycotted the commission
- The commission submitted its report in 1930

### **Recommendation:**

- Abolish dyarchy
- Extend responsible government in the provinces.
- establishment of a federation of British India and princely states
- Continuation of communal electorate and so on.
- 'White Paper on Constitutional Reforms.

### ▪ **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.

- Creation of all India federation
- Division of powers: - federal list, provincial list and concurrent list.
- The viceroy vested with residual power.
- Provincial autonomy, dyarchy was abolished at the provincial levels, governor head of the executive.
- Dyarchy at the center, federal public service commission, federal court, central bank was some of its other recommendations.

### ▪ **Indian Independence Act, 1947:**

- On July 5, 1947 the British Parliament passed the Indian Independence Act which was based on the Mountbatten Plan.
- The Act was implemented on August 15, 1947.
- The Act provided for the creation of two independent dominions of India and Pakistan with effect from August 15, 1947.
- Each dominion was to have a governor-general to be responsible for the effective operation of the Act.
- The constituent assembly of each new dominion was to exercise the powers of the legislature of that dominion, and the existing Central Legislative Assembly and the Council of States were to be automatically dissolved.
- As per the provisions of the Indian Independence Act, 1947, Pakistan became independent on August 14 while India got its freedom on August 15, 1947.
- M.A. Jinnah became the first Governor-General of Pakistan. India, however, decided to request Lord Mountbatten to continue as the Governor-General of India.