



STUDY MATERIAL FOR B.A HISTORY
CONSTITUTIONAL HISTORY OF INDIA 1773 - 1947 AD
SEMESTER - V, ACADEMIC YEAR 2020-21



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Kamaraj College



UNIT - I
THE REGULATING ACT 1773

Regulating Act, 1773

The territorial acquisitions of the East India Company produced a startling effect in England. The public in General clamored for an immediate Parliamentary intervention. Two parliamentary Committees were appointed to enquire into the affairs of East India Company.

The servants of the Company were concentrating on their private trade. The trade of the Company was being neglected.

The Company has almost forgotten about trade and was progressively thinking in terms of conquering more and more land. This needed large armies. Hence more expenditure.

This greed for land very often brought the Company in armed conflict with native powers. This meant a heavy loss to the Company.

Change in the texture of the Company

The employees of the Company were given low salaries but they were allowed to carry on private trade. The result was that the employees concentrated on their private trade and became rich. The Company's trade started dwindling.

Pitiable condition of the People

The guiding principle for the employees of the Company was to make money. The effect of this anarchical tendency was that people of India suffered the entire suffering. The famine of 1770 further aggravated the situation and the people started groaning aloud.

Defective Dual Government in Bengal

During the famine of 1770 grains were hoarded by the Company's employees and they exploited the situation to the fullest extent and sold them at staggering prices. Obviously the servants of the Company became rich as they wanted but the people were completely broken. Then Clive's experiment of Dual Government in Bengal brought havoc.

PROVISIONS OF THE REGULATING ACT

The Governor of Bengal was made the Governor-General. The entire civil and military administration of Bengal was given to the Governor-General. Provision was made for an executive council of four members to assist and help the Governor-General.

The Act mentioned the names of the First Governor-General and the members of his Executive Council. It said Warren Hastings would be the First Governor-General of Bengal. The four executive councilors mentioned in the Act were Philip Francis, Clavering, Monson and Barwell.

Their term of office was five years but they could be removed from office earlier by the British Monarch, if the Court of Directors recommended such an action.

The Governor-General could not take a decision on any matter independently. He had to act on the advice of the Councilors. Decisions were taken in the Council by majority vote. In



case of a tie the Governor-General was given a casting vote. But he could not overrule his Council.

The Presidencies of Madras and Bombay were made subordinate to Bengal. The Governors-in-Council of Bombay and Madras had to follow the instructions of the Governor-General-in-Council. The Governor-General could direct control and superintend the two Presidencies. These Presidencies could neither declare war nor conclude peace with any power without the sanction of the Governor-General-in-Council.

The employees of the Company were forbidden to accept any bribes or gifts from anybody. If it was a serious matter they could be sent back to England, as a matter of punishment.

The Governor-General-in-Council could make rules and regulations and issue ordinances for the good government of the Company's territories. These rules, regulations and advice were to be registered with the Supreme Court of India, which was created by the Act. Without registration these rules and regulations had no effect or meaning.

Supreme Court

A Supreme Court was established by the Regulating Act, The Supreme Court was given jurisdiction over all the British subjects living in Bengal, Bihar and Orissa. The Supreme Court was empowered to try ecclesiastical, admiralty, civil and criminal cases. The case was decided on the basis of judgment of the Jury. The Supreme Court had original as well as appellate jurisdiction. The Supreme Court was to be a Court of Record. Any contempt or disrespect shown to its orders would be a punishable offence.

The Governor-General, the members of the Executive Council, the Judges, Collectors, and Inspectors, their agents or servants all were forbidden to carry on private trade of any description. No gifts would be accepted by these officers from the Indian Princes or people.

Provisions for Home Authorities

Before the passage of the Regulating Act the Directors of the Company were elected for a short term of one year. Directors of the Company were elected by the Court of Proprietors. This system was extremely defective. The Directors were busy throughout their term of one year either obliging their supporters of the previous election or preparing others for the coming election. The Regulating Act did a good job by making the Court of Directors a permanent body.

The Act required the Governor-General of Bengal and the Governors of the Presidencies of Bombay and Madras to pay due obedience to the orders of the Directors in London. It was the first measure by which a European government assumed the responsibility for governing territories acquired by it outside Europe and inhabited by civilized people. The Act also attempted to eradicate corruption and bribery by making several provisions. One among them was the establishment of the Supreme Court. This Court could punish offenders. Acceptance of gifts and presents etc. was forbidden.

Demerits or Defects of the Act

- The Regulating Act was full of grave defects.
- The jurisdiction and powers of the Supreme Court were not properly defined. The results were very ugly. One often witnessed dirty conflicts of jurisdiction between the



Supreme Court and other Courts of Calcutta.

- The Regulating Act did not specify the jurisdiction and power of the Governor-General-in-Council or the Judges of the Supreme Court.
- The relations between the Supreme Court and other courts of the Company were not specified.
- The Presidencies of Madras and Bombay were subordinated to Bengal and the Governor-General-in-Council was given power to superintend and control the management and government of the two Presidencies.

Defects of Act

No Veto power to the Governor-General

The act granted no veto power to the Governor General. He was to act according to the advice of the majority in the council. Since he could not veto the decision of his councilors, he was thus powerless before his colleagues. We know that till up to 1776 Warren Hastings was invariably out-voted and over-ruled by the majority of the Councilors who were against him. Consequently, Warren Hastings had a difficult time when he came face to face with his councilors.

Appointment of hostile Councilors

Another flaw associated with the above defect was that the Councilors, Francis, Monson and Claving named by the Parliament were entirely unfit for the job. Such a batch of Councilors still weakened the position of the Governor-General who was already suffering from constitutional impotency.

Provisions of Supreme Court Obscure and defective

In the second place, the provisions relating to the jurisdiction of the Supreme Court were "Obscure and defective". They said nothing about the jurisdiction of the Court, the law it had to administer and its relation to the Governor - General - in-Council. The fundamental questions lacked clarity and precision. For instance, the Act did not clearly say as to who were to be the British subject within the meaning of the Charter of the Supreme Court.

The Sphere of law that the Court was to administer was equally undefined

The court did not know whether it was to administer native law or English law. Even the Chief justice was baffled by this anomaly. Similarly, relations between the court and the Council were not clearly defined. It was not clear how far the Supreme Court could question the legality of the orders issued by the Governor-General-in-Council.

No Supreme legislative authority

The act provided no supreme legislative authority nearer than England to mediate in the dispute of these two bodies and to mark the proper sphere of the Executive and Judicial Departments. The vagueness of the clauses was further increased owing to the fact that the regulations of Bengal made by the Council were subject to the court.

Inadequate Control of Governor-General over the presidencies

In the third place, the inadequate control of the Governor-General over the presidencies was glaring defect of the Act. The authority of the Governor-General in Council over the Presidencies was not fully effective due to the exceptions in the Act. The Presidencies acted at their own discretion on the plea of emergency and thus started wars and made alliances without reference to the Governor-General in Council as was done by the Bombay Government



and Madras Council in the case of Marathas and Hider Ali, respectively.

The Parliamentary Control over the Company was also insufficient

The Act no doubt provided that copies of all civil and military dispatches received by the Directors from Governor-in-Council in India were to be forwarded within a fortnight to certain members of the English Ministry, but it set up no effective machinery to study and scrutinize those reports. Thus the Parliamentary control over the Company was ineffective.

The Act of 1781

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 members 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”.

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 companion or share of profits for collecting rent”

Provisions

Servants of the Company were to be subject to the Jurisdiction of the Supreme court for wrongs done by them arm trespass. Cases could be brought before the Supreme Court by the agreement of both the parties. In seas 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 customs 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 Governor – General were required to be registered 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 Governor General in Council. The latter was to be the final 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 “Act of 1781”effected 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 collections of revenue and maintenance of the people in their ancient laws.



The year 1781 marks the most important era in history now under consideration. It terminated a period of fierce animosity and struggle between those who wished to see English laws and Courts of Justice introduced at once into the country and rendered supreme over the Executive, and those who considered that such a policy was wholly impracticable, and that, circumstanced as the English then were, Government must for a long time to 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 Governor General and Council. 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 ensued in the long period (1781-1861) which separated the administration of Warren Hastings, the first Governor 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 become strongly defined.

Pitt's India Act of 1784

In 1784, Pitt the Younger, the Prime Minister of England, soon after the assumption of his introduction introduced a bill for the better control of the Indian administration by England. The Bill was passed and came to be known as the Pitt's India Act.

Causes

There were many causes responsible for the passage of this Act. 1) In the regulating Act to 1773 there were many glaring defects which were necessary to be reformed by the British Parliament if the administration of the company was to run on some sound footing in India. 2) In 1783, the different American colonies became quite independent of the British control and naturally the English were worried that such an example would be followed by India. So it was thought proper to exercise more control over the affairs of the East India Company in India.

Main provisions

The political and commercial activities of the company were now separated. The commercial functions were allowed to be performed by the Board of Directors, but for the supervision, direction and control of the Indian Government a Board of Control was set up in England. Bombay and Madras were now definitely subordinated to the Governor General and his Council. Act provided for the establishment of a special Court for the better trial of the Company's officials in England for offences committed by them in India.

Warren Hastings fought many undesired wars, so in order to prevent the succeeding Governor-General from copying the examples of Warren Hastings the Act laid down that henceforth the Governor-General should take the permission of the Board of Control before making peace or declaring any war. Thus the Pitt's India Act Board of Control before making peace or declaring any war. Thus the Pitts India Act laid emphasis on the policy of non-



intervention.

Importance

Pitt's India Act is quite an important legislation because by it the real power in India passed from the Directors to the British Parliament. The Board of Directors now remained as a mere shadow of its former existence. In actual practice the Board of Control, appointed by the British Parliament came to supersede both the court of proprietors and the Board of Directors. It could inspect the files of the Company and issue instructions accordingly which the Directors of the Company had to carry out. Moreover, the Pitts India Act proved quite permanent and underwent little material changes till 1858. In that year some changes were no doubt made as a result of the great Rising of 1857 but still its fundamental principles remained almost the same.

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UNIT - II
CHARTER ACT

Charter Act of 1793

The English East India Company was given a new charter in 1793. The Act of 1793 is a very long one. It repeated many old laws and consolidated existing one. However, it did not make any alterations.

Provisions of the Charter Act of 1793

- i. The Governor – General and the Governors were given the power to over-ride their councils. The power had been given specially to Corn Wallis in 1786.
- ii. The control of the Governor-General over the presidencies of Madras and Bombay was insisted. It was laid down that when the Governor-General went to a presidency he superseded the Governor.
- iii. Governor General was given the power to appoint vice-president of his executive council from the members of the council. The vice-president was to act in place of Governor General when the latter was absent from Bengal.
- iv. The Commander-in-Chief was not to be a member of the council of the Governor-General unless he was specially appointed to be a member by the court of Directors.
- v. The admiral jurisdiction of Calcutta Supreme Court was extended to the high seas.
- vi. It was provided that the payment of the members and the staff of the Board of Control should be made out of the Indian revenues. This system continued up to 1919.
- vii. It was provided that the two junior members of the Board of control need not be privy councilors.
- viii. The character of the company was renewed for 20 years 3000 tons.

Charter Act of 1813

Since this Act was operative for twenty years i.e., up to 1993. The British Parliament passed the Charter Act 1813 which was an improvement upon the previous charter Act of 1793.

The main provisions of the Character Act of 1893 were as follows.

1. In its essential provisions, the powers of the Board of Control to superintend, control and direct the affairs of India were clearly defined and greatly enlarged.
2. The Company's powers of patronage were reduced.
3. The Court of Directors were to make appointments to the offices of Governor-General, Commander-in-chief, Governor, etc. Subject to the approval of the king of England and their orders to this effect had to be counter signed by the Board of Control.
4. No Changes were made in the Company's constitution and the grant of its territorial acquisition in India with the attended revenues was extended for another twenty years.
5. The British Crown's sovereignty over the Company's territorial acquisitions was explicitly proclaimed.
6. The most important provision was concerned with the trade. The Company's tea trade with China was reserved for it, but trade monopoly with India was completely abolished and the private merchants of England were permitted to



develop free trading contacts with India.

7. The British merchants and missionaries were given full liberty to settle in India after securing licenses for the purpose from the Directors of the Company.
8. The company was required to appoint one Bishop at Calcutta with three Archdeacons to work under him.

Significance of the Charter Act of 1813

They clearly proclaimed the Sovereignty of the Crown over the Company's territories in India. The Powers of the Board of Control being considerably enlarged

The abolition of the Company's trade monopoly was not of less significance. British private merchants were allowed to go settle in India and thus to introduce a severe competition in trade which was, prior to this entirely in the Company's hands.

The Christian Missionaries of England were allowed to come freely and settle in this country. This had wholesome effect, in a sense that a large number of missionary schools and colleges were opened for the education of the Indians.

The Provisions for setting apart one lakh of rupees for the development of education in India was a welcome development. It laid the foundation of the English system of education in India which threw open progressive English literature on liberty and equality for the Indian mind to inculcate.

Circumstance leading to the Charter Act of 1813

The Act of 1813 renewed the Charter of the East India Company for another twenty years. This period expired in 1833 and now the Charter had to be extended. Between 1813 and 1833, there had been a great change. The great Industrial revolution had taken place and it swept the medieval industrial system. The classes of labourers and capitalists emerged. The cheap products of the new machines and their export to foreign lands enable the people to travel widely and broaden their outlook. Money flowed in; prosperity grew, thus giving birth to a new spirit of independence. Workers claimed better working conditions, capitalists tried to suppress them, a new class of intelligentsia developed to help the class of workers. New literature came into being and the cry from liberty and equality chose from every direction. The Tory party had been defeated in the House of Commons in 1830 and King William IV had to accept Grey, the Whig leader, as this new Prime Minister, Macaulay became the secretary of the Board of Control and James Mill influenced the public opinion inside and outside the British parliament.

The triumph of the Whigs in Parliament opened the way for triumph of the liberal principles. It was really the triumph of the rights of man. The parliamentary Reform Act was passed in 1832 which regenerated the spirit of liberalism in its four-fold strength. The dignity of man was recognized and the principle of laissez faire came to the fore.

In short, the old spirit of conservatism and exploitation had weakened and a new spirit of liberalism grew and a compromise between these two was struck. It was in these circumstances that the demand for the renewal of the Charter came before the British Parliament. There were some who attacked bitterly the way the destiny of millions of Indians people was being controlled by a joint stock company.

Charter Act of 1833

All the Acts passed by the British Parliament to regulate the affairs of the East India Company, the Charter Act of 1833 stands out as the most comprehensive and far reaching in effect. There were circumstances both in India and England which necessitated the passing of



the Act. In India, the policy of intervention and territorial aggrandizement pursued by Wellesley and Hastings had added enormously to the territories of the Company and also to the consequent difficulties in administration. In England, Parliamentary reforms had brought into being a reformed House of Commons where liberalism was at the ascendancy. Further, that was a clamor for freedom of trade in India, unrestricted immigration of Europeans into India, reform of Indian laws and also important to mention the influence, among others, of two Liberals who were intimately associated with James Mill. The former, who was then in Parliament, was Secretary to the Board of Control, and the latter was Examiner of Indian Correspondence at India House.

As a result of the Act, the last traces of the commercial monopoly which the Company enjoyed were abolished and all restrictions to European immigration into India were removed. The unhindered flow of Europeans into India made the reform of Indian Law imperative. But the powers exercised by the Governor-General in Council were not sufficient to meet the situation. Such laws were not to be registered with the Supreme Court, but automatically to become Acts of the Governor-General in Council. The three great principles which were to govern such codification, according to where you must Governor-General in Council, a Law Member, an English Barrister, was added -making would override the authority of the Governors of Madras and Bombay who were at the same time deprived of their independent powers of law-making. Macaulay was the first Law Member under the Act and also appointed the President of the Law Commission.

The administration in India, namely, the union of the trader with the sovereign, by ordering the Company to close its commercial business as soon as possible. Another interesting provision of the Act death with education and employment territories, nor any natural born subject of His Majesty resident therein, shall be reason only of his religion, place of birth, descent, colour or any of them, he was this clause which, according to Lord Morley, made the Act of 1833 the most important Indian Act passed by Parliament till 1909. Whether the policy initiated in this provision was given effect in practice or not, it certainly reflects indeed a liberal and humanitarian attitude on the part of the British Parliament.

The Act of power is intended to be reserved to Parliament to control, supersede or prevent-General in Council and he said territories and all the inhabitants thereof in as full and ample a manner as if the Act had not been passed. The Act directed the Governor-General in Council to take steps both for the amelioration of slaves in India and to propose measures for the abolition of slavery throughout India.

While the Regulating Act had initiated a process of centralization by creating the office of the Governor-General, the Act of 1833 marked the culmination of that process by establishing the complete mastery of the Governor-General in Council over the entire British Indian administration. From 1833 to 1861 when the Indian Councils Act was passed, British India was in the grip of this highly centralized system of administration which had its impact on the character of the British Government in India until its disappearance in 1947.

Significance of the Act

The Charter Act of 1833 is deemed to be the most significant measure enacted by the British Parliament during the nineteenth century. Other constitutional measures of the current century pale into insignificance when compared individually with it. Lord Morley truly describes it as "the most extensive measure of the Indian Government between Mr. Pitt's Act of 1784 and



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Queen Victoria's assumption of the powers of government in 1858." Indeed the Act not only affected changes of far-reaching importance in the Government of India, but also made such benign declarations and touched at broad humanitarian principles.

Section 87 of the Act embodied excellent sentiments, of the British politicians of the time, towards Indian masses. Fitness henceforth was to be the only criterion of eligibility in matters of higher services. The natives were not to be debarred from holding any office under the Company, simply on the basis of religion, place of birth, descent or colour. Ramsay Muir eulogized this section of the Act by describing it as "an unparalleled declaration which a ruling class can announce in regard to its recently conquered subjects". Macaulay termed it a wise and benevolent and noble clause of the Act. Explaining the significance of Section 87 of the Act, the Dispatch observed that its object was 'not to ascertain the qualification but to remove disqualification'.

The gracious declaration was laudable indeed but was not of much practical significance, for despite the views of Munro, Malcolm, Elphinstone, Sheman and Bishop Heber, nothing was done to repeal the provision of the Act of 1793, which excluded any but covenanted servants from occupying places worth over £ 500 a year. In the words of Punniah, The declaration remained for long in the tantalizing realm of unfulfilled aspirations." Dr. Ishwari Prasad remarks that the declaration, "was more honoured in the breach than in the observance by those who were entrusted with the governance of India".

Though conflicting opinions have been expressed regarding section 87 of the Act yet the benevolent intentions of its authors cannot be challenged. Moreover, it seemed as an impetus to the leaders of political agitation in the last decades of the 19th century. Inspired by this noble declaration, educated Indians proceeded to England for prosecuting higher studies. They were extremely disappointed when, on their return, they found themselves excluded from all but the subordinate service posts. Thus discontent against the Bruisers got aggravated which ultimately intensified the political agitation.

Alterations of vital importance were made in the legislative system of India. The Act aimed at simplification of law, which it sought to obtain by centralization of legislation. Hence, the Governor-General-in-Council was empowered to make laws extended to all places and all things within the territories of the company. It ushered in an era of 'an enlightened and paternal despotism'.

The Act, by abolishing completely the Company's monopoly of the tea trade and trade with China, removed one of the most glaring defects of the Indian administration, i.e., the union of traders and sovereign. The Company ceased to be a commercial body. It was to act as an administrative body in future. Till its abolition in 1858, the Company was vested with political functions only. In the words of Keith, "Macaulay defended this position and the retention of the Company on the ground that it was not desirable to give so much uncontrolled power to the Crown, for Parliament was incapable of exercising effective supervision over Indian Government."

The Act unsealed for the first time the doors of British India to British subjects of European birth. They were entitled to live in the country and even occupy land. This free ingress of Europeans in India promoted their general improvement and prosperity. A few critics however opine that mass exodus of Europeans to India resulted in the exploitation of Indian people who were the customers for English goods.



The Act constituted a 'Law Commission' with Macaulay as its first President. The Indian Penal Code and the Codes of Civil and Criminal Procedure are the outcome of efforts of this Commission, headed as it was by an embodiment of legal acumen and practical sagacity. The codification of laws which were so imperfect and capricious is a commendable contribution of the Act. As already stated, codification of laws facilitated centralization still further.

In the words of Marshman, "The separation now affected by the functions of the State from all commercial speculations served to give a more elevated tone to the views and policy of the Court of Directors and to impart a more efficient character to their administration." Since the Directors were henceforth not to concern themselves with the management of the huge commercial establishment, they devoted their attention to the amelioration of the lot of the servants of the Company in India, by passing measures moderate and beneficent in nature.

Thus we can safely conclude that the Act of 1833 was a measure of great constitutional significance. It removed some of the potent defects in the system of administration. It introduced uniformity in the laws of government by establishing the legislative supremacy of the Central Government and doing away with diversities in the laws of different Presidencies. It eradicated the anomalies and the conflicts in the jurisdiction of various courts. It affected uniformity in general administration by concentrating the executive and financial administration in the hands of the Governor-General. It succeeded in establishing the supremacy of the Crown and Parliament in the management of the Indian affairs, by clipping the wings of the Court of Directors.

Charter Act of 1853

The provision of the Charter Act of 1853

The British Parliament appointed two committees in 1852 to inquire into the matter and on the basis of their reports; the Charter Act of 1853 was shaped.

1. The Act provided that the salaries of the members of the Board of control, Secretary and the other officers would be fixed by Her Majesty's Government but would be charged on Indian revenues.
2. The Company was granted to hold the revenue and the territories of India in trust for Her Majesty, her heirs and successors not for 20 years this time but until the parliament would otherwise provide.
3. The number of Court of Directors was reduced from 24 to 18 and 6 of these were to be nominated by the Crown.
4. The Court of Directors were dispossessed of their power of patronage.
5. The service was thrown open to competition in which no discrimination of religion, caste or creed was to be made.
6. In India this Charter Act carried the separation of the legislative from the executive functions a step further.
7. The law member was made a full member of the Governor-General's executive council. He was to assist the Governor-General in the enactment of legislation.
8. The Governor-General's consent was necessary for all legislative proposals.
9. The Chief justice of the Supreme Court of Calcutta was to be an unofficial member of this council.

The most significant provision of the Act of 1853 was that it did not renew the Charter



for a specified period. Instead, it said that the Indian territories would remain under the government of the Directors to eighteen from twenty four and provided that six of them should be appointed by the Crown. It authorized the appointment of a Lieutenant Governor for Bengal. It also provided for the enlargement of the Executive Council of the Governor-General to cope with its extended functions in law making. Finally it took away the patronage of appointments from the Court of Directors, and the Civil Service of India was thrown open to competition. A year later by a new enactment, the Act of 1854, Parliament provided for the appointment of Chief Commissioners to head minor provinces in India.

Constitutional Importance of the Act

The Charter Act of 1853 is a measure of constitutional importance. The fact that the Company's Charter was not renewed for any definite period, made it crystal clear that Company's end was fast approaching. The clause, "territories and revenues of India were to be held by the Company in the trust for Her Majesty, her heirs and successors until Parliament shall otherwise provide," clearly indicated that the transfer from the Company to the Crown was apt to take place in the near future. The inevitable happened in 1858.

The Act created a separate Legislative Council. Strictly speaking, it was not a separate Legislative Council. The Executive Council was only enlarged for purposes of legislation yet in the words of the authors of Montfort Report it was in 1853 that "legislation was for the first time treated as a special function of the government requiring special machinery and special process." Indeed, the Act turned the small legislative body in India into an Anglo-Indian House of Commons, questioning the acts of the Executive.

The Act implemented the high sounding noble declaration contained in section 87 of the Charter Act of 1833. Henceforth, the recruitment was to be made on the basis of merit A Committee was appointed in 1854, with Lord Macaulay as the President to frame rules and regulations according to which the covenanted civil service was thrown open to competition. Though, practically speaking, the Indians were not benefited substantially by this gracious concession, yet it was a commendable step providing for a further progress in this direction.

The appointment of English Law Commission, to examine and consider the mass of reports and drafts left by the Indian Law Commission, now a defunct body, was a matter of great significance. Its labours bore fruit. 'Indian Penal Code and Civil and Criminal Procedure Codes' were enacted into law. They can be deemed as important contributions of the Act. The Act effected important changes in the administrative structure of India. It was realized that the interests of Bengal had suffered to a great extent for want of a permanent head of the Government. Relieving the Governor General of a great burden by making a provision for a separate Governor for Bengal was, in fact, a great improvement in the administrative structure of India.

The Act considerably enhanced the prestige of the President of the Board of Control by placing him on par with the Secretary of State as regards his salary and rank. The Act is considered to be a measure of great constitutional significance as it deprived the Directors totally of their cherished privilege of making appointments. Reduction of their number from 24 to 18 and also placing six Directors in the pocket of the Crown further reduced their authority, rather dealt a severe blow to the Court of Directors which was already on its last legs. Punnaiah remarks "Under these circumstances, there would therefore be no obstacle for the transfer of the Indian territories to the Crown when Parliament in the natural course of things would come



to consider the matter in 1873. The mutiny only accelerated this process."

With all its creditable provisions, the Act was not free from flaws. It did not associate any Indian with the legislative body whereas its English members were not aware of the local conditions. The exclusion of Indians aggravated discontent and proved to be one of the most important reasons for the outbreak of the mutiny. Moreover, caste and religious differences, the heavy expenditure entailed in the competitive examinations and the long distance, still stood in the way of natives aspiring to hold important offices under the Company's administration.

The Act ignored the most important demand of Bengal petitioners who had aspired for a sort of Provincial autonomy. Lastly the most glaring defect of administration, viz., the Double Government still persisted. Though the wings of the Directors were clipped yet they still exercised considerable influence.

THE GOVERNMENT OF INDIA ACT, 1858

The Government of India Act 1858 was an Act of the British parliament that transferred the government and territories of the East India Company to the British Crown. The company's rule over British territories in India came to an end and it was passed directly to the British government.

A cursory detail of the act is given in the table below: Government of India Act, 1858

Long Title- An Act for the Better Government of India

Territorial Extent- Territories under direct British control as well as the Princely State who had to accept the suzerainty of the British Crown

Enacted by- Parliament of Great Britain

Royal Assent- 2nd August 1858

Commenced- 1st November 1858

Status- Amended

Government of India Act 1858 Background

- a. The Revolt of 1857 served as a jolt to the British government.
- b. There was widespread resentment against the company in Britain as the policies of the company were blamed for the revolt.
- c. Queen Victoria, who was the monarch of Britain, also became the sovereign of British territories in India, with the title "Empress of India" as a result of this Act.
- d. Features of Government of India Act 1858
- e. Provisions of the Government of India Act 1858
- f. East India Company was liquidated.
- g. Indian territories of Britain were to be governed in the name of the British Queen.
- h. The Court of Directors and the Board of Control were scrapped.
- i. The powers of the Company's Court of Directors were vested with the Secretary of State for India.
- j. This Secretary of State was to be a British MP and a member of the Prime Minister's cabinet. He was to be assisted by a council of 15 members.
- k. He was also the channel of communication between the British government in Britain and the Indian administration. He also had the power to send secret dispatches to India without consulting his council.
- l. Via the Secretary of State, the British parliament could ask questions regarding Indian affairs
- m. The representative of the British government in India was the Governor-General and



- Viceroy (both the same person to avoid conflict).
- n. The Viceroy and the governors of the various presidencies were appointed by the Crown.
 - o. The Viceroy was to be assisted with an Executive Council.
 - p. This act made India a direct British colony.
 - q. This act abolished the dual government of the Pitt's India Act.
 - r. This act also ended the doctrine of lapse.
 - s. The Indian Civil Services was to be instituted for the administration of the country. There was provision for Indians also to be admitted to the service.
 - t. It was decided that the remaining Indian princes and chiefs (more than 560 in number) would have their independent status provided they accept British suzerainty.

Facts – Government of India Act 1858

First Secretary of State for India: Lord Stanley Prime Minister Benjamin Disraeli was opposed to the crown directly ruling India, but his fellow MP's did not agree with his views and the bill passed the House of Commons easily.

First Governor-General and Viceroy of India: Lord Canning

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.

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 Palmerstone had resigned. The passage of the "Act for the better Government of India, 1858" was secured by the succeeding government.

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. Aoe Patch, 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.

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 indian 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 it 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 indian council were to be holding office during good behavior. 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 - Governor 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 3 bodies 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 felt, formal and legal control over Indian affairs.
11. The Secretary of state in council ratio down certain directions for the guidance of the Government of India in its dealing with England. All projects of legislation, all measures concerning revenues, construction of public works and railways, certain 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.

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 the 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 Entrant 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.

Proclamation of Queen Victoria

A Durbar was held by Canning at Allahabad on Nov1, 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 be the feeling of generosity. Benevolence and religious toleration, and point out the privileges which the Indians will receive in being placed on 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.

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 those principles, 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 poo became equal before the laws.
8. At last ensuring 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".
9. 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.

Significance

To put it 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 interrupt the religious



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affairs of Indian. In framing and administering law in India, due regard was given to the customs, ancient rites and usages of India. Indian subjects of Her Majesty were declared equal with the British subjects 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 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 Englishman will not interfere in 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.

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UNIT - III
INDIAN COUNCIL ACTS

Indian Council Acts of 1861

Indian Council Act of 1861 was institutionalized to serve the necessities of cooperation of Indians in the administration of the country. The act restored the power of the Government and the composition of the Governor General's council for executive legislative Purposes. Indian Council Act of 1861 was institutionalized to serve the necessities of cooperation of Indians in the administration of the country. The act restored the power of the Government and the composition of the Governor General's council for executive & legislative Purposes. It was the first instance in which the portfolio of Council of Governor-General was incorporated. Raja Sir Deo Narayan Singh of Banaras (Jan 1862-1866)

Provisions of the Indian Councils Act 1861

For the executive functions of the Council, a fifth member was added. Now, there were five members for home, military, law, revenue and finance. (A sixth member for public works was added in 1874.)

Lord Canning, who was the Governor-General and Viceroy at the time, introduced the portfolio system. In this system, each member was assigned a portfolio of a particular department.

For legislative purposes, the Governor-General's Council was enlarged. Now, there were to be between 6 and 12 additional members (nominated by the Governor-General).

They were appointed for a period of 2 years. Out of these, at least half of the additional members were to be non-official (British or Indian).

Their functions were confined to legislative measures.

Lord Canning nominated three Indians to the Council in 1862 namely, the Raja of Benares, the Maharaja of Patiala and Sir Dinkar Rao.

Any bill related to public revenue or debt, military, religion or foreign affairs could not be passed without the Governor-General's assent. The Viceroy had the power to overrule the council if necessary.

The Governor-General also had the power to promulgate ordinances without the council's concurrence during emergencies.

The Secretary of State for India in Britain could also dissolve any act passed by the Governor-General's Council.

This Act restored the legislative powers of the Governor-in-Councils of the Presidencies of Madras and Bombay (which was taken away by the Charter Act of 1833).

The legislative council of Calcutta had extensive power to pass laws for the whole of British India.

There was provision made for the formation of legislative councils in other provinces. New provinces could also be created for legislative purposes and Lieutenant Governors be appointed for them. Legislative councils were formed in other provinces in Bengal in 1862,



North West Frontier Province in 1886 and Punjab and Burma in 1897.

Assessment of the Indian Councils Act 1861

The legislative council had a limited role. It was chiefly advisory. No discussion on finance was permitted. Even though Indians were nominated, there was no statutory provision for the inclusion of Indians in it.

It allowed for the decentralization of administration with the vesting of legislative power to the presidencies of Bombay and Madras. The power of ordinance given to the governor-general gave him absolute powers.

Conclusion

The Indian Council Act of 1861 fulfilled the aspiration of associating Indians, provided the defective system of law making in India and defined the powers of the legislative councils. Hence, in short the act laid the foundation of the administrative system in India which lasted till the end of British rule India.

Indian councils act of 1892

Indian Council Act 1892 The Indian Council Act of 1892 was an Act of the Parliament of the United Kingdom that empowered legislative councils in British India by increasing their size which laid the foundation of the Parliamentary system in India and considered as the landmark in the constitutional development of India. The Indian Council Act of 1892 was an Act of the Parliament of the United Kingdom that empowered legislative councils in British India by increasing their size which laid the foundation of the Parliamentary system in India. Before this act, the Indian National Congress put forth with some demand during its session of 1885-1889.

Background

The Indian National Congress (INC) was formed in 1885. There was a growing feeling of nationalism and this led the INC to put forth some demands to the British authorities. One of their demands was the reform of the legislative councils.

They also wanted the principle of election instead of nomination.

The INC also wanted the right to hold discussions on financial matters which was hitherto not allowed.

The Viceroy at the time Lord Duffer set up a committee to look into the matter. But the Secretary of State did not agree to the plan of direct elections. He, however, agreed to representation by way of indirect election.

Provisions of the Indian Councils Act 1892

The act increased the number of additional or non-official members in the legislative councils as follows:

- i. Central Legislative Council: 10 – 16 members
- ii. Bengal: 20 members
- iii. Madras: 20 members
- iv. Bombay: 8 members
- v. Oudh: 15 members
- vi. North Western Province: 15

In 1892, out of 24 members, only 5 were Indians.

The members were given the right to ask questions on the budget (which was barred in the Indian Councils Act 1861) or matters of public interest but had to give notice of 6 days for it.

They could not ask supplementary questions.



The principle of representation was initiated through this act. The district boards, universities, municipalities, chambers of commerce and zamindars were authorized to recommend members to the provincial councils.

The legislative councils were empowered to make new laws and repeal old laws with the permission of the Governor-General.

Assessment of the Indian Councils Act 1892

It was the first step towards a representative form of government in modern India although there was nothing in it for the common man.

The number of Indians was increased and this was a positive step.

However, since the British conceded only a little, this act led indirectly to the rise of militant nationalism in India. Many leaders like BalGangadharTilak blamed Congress's moderate policy of petitions and persuasions for a lack of positive developments and called for a more aggressive policy against British rule.

Indian Council Act of 1909 | Morley- Minto Reforms

Main Features

Indian Council Act of 1909 is also known as Morley- Minto Reform. It was instituted to placate the Moderates (Congress) and introduces separate electorates on the basis of religion. Therefore Lord Minto came to be known as Father of Communal Electorate in India.

A Morley-Minto Reform was another name of Indian Council Act of 1909, AD which was named after the secretary of state and the Viceroy. It was instituted to placate the moderates. According to this act, the membership of the central and provincial legislative councils was enlarged. However, the number of elected members in these councils was less than half of their total membership. It may also be remembered that the elected members were not elected by the people but by landlords, organizations or traders and industrialists, universities and local bodies. The British also introduced communal electorates as a part of these reforms. This was meant to create disunity between Hindus and Muslims. Some seats in the councils were reserved for Muslims to be elected by Muslim voters.

British Empire

By this the British hoped to cut off Muslims from the nationalist movement by treating them as apart from the rest of the nation. They told the Muslims that their interests were separate from those of other Indians. To weaken the nationalist movement, the British began to consistently follow a policy of promoting communalism in India. The growth of communalism had serious consequences for the unity of the Indian people and the struggle for freedom. The congress at its 1909 session welcomed the reforms but strongly opposed the reforms and the creation of separate electorates on the basis of religion.

The Morley-Minto reforms did not introduce any significant change in the powers of the councils. They did not mark and advance towards the establishments of a representative government, much less swaraj. In fact, the Secretary of state frankly declared that he had absolutely no intention of introducing a Parliamentary form of Government. The autocratic form of government that had been introduced after the revolt of 1857 remained unchanged even after the Morley-Minto reforms.

The only change was that the government started appointing some Indians of its choice



to certain high positions. Satyendra Prasad Sinha, who later became Lord Sinha, was the first Indian to be made a member of the Governor-General's executive council. Later he was made a governor of a province, the only Indian to occupy such a high office during the entire period of British rule. In 1911, he was presented in an imperial Durbar that was held at Delhi where British king, George V, and his queen were also present. The Durbar was also attended by Indian princes who displayed their loyalty to the British crown. Two important announcements were made on the occasion. One was the annulment of the partition of Bengal which had been affected in 1905. The other was the shifting of the capital of British India from Calcutta to Delhi.

Background

Lord Curzon had carried out the partition of Bengal in 1905. After the Bengal uprising following the partition, the British authorities understood the need for some reforms in the governance of Indians

The Indian National Congress (INC) was also agitating for more reforms and self-governance of Indians. The earlier Congress leaders were moderates but now extremist leaders were on the rise who believed in more aggressive methods. INC demanded home rule for the first time in 1906.

Gopala Krishna Gokhale met Morley in England to emphasize the need for reforms. Simla Deputation: A group of elite Muslims led by the Aga Khan met Lord Minto in 1906 and placed their demand for a separate electorate for the Muslims.

John Morley was a member of the Liberal government and he wanted to make positive changes in India's governance.

Major provisions of the Morley-Minto reforms

The legislative councils at the Centre and the provinces increased in size.

- Central Legislative Council – from 16 to 60 members
- Legislative Councils of Bengal, Madras, Bombay and United Provinces - 50 members each
- Legislative Councils of Punjab, Burma and Assam - 30 members each

The legislative councils at the Centre and the provinces were to have four categories of members as follows:

- Ex officio members: Governor General and members of the executive council.
- Nominated official members: Government officials who were nominated by the Governor-General.
- Nominated non-official members: nominated by the Governor-General but were not government officials.

Elected members: elected by different categories of Indians

The elected members were elected indirectly. The local bodies elected an electoral college who would elect members of the provincial legislative councils. These members would, in turn, elect the members of the Central legislative council.

The elected members were from the local bodies, the chambers of commerce, landlords, universities, traders 'communities and Muslims.

In the provincial councils, non-official members were in a majority. However, since some of the non-official members were nominated, in total, a non-elected majority was there.



Indians were given membership to the Imperial Legislative Council for the first time. It introduced separate electorates for the Muslims. Some constituencies were earmarked for Muslims and only Muslims could vote for their representatives.

The members could discuss the budget and move resolutions. They could also discuss matters of public interest. They could also ask supplementary questions.

No discussions on foreign policy or on relations with the princely states were permitted.

Lord Minto appointed (on much persuasion by Morley) Satyendra P Sinha as the first Indian member of the Viceroy's Executive Council.

Two Indians were nominated to the Council of the Secretary of State for Indian affairs.

Assessment of the Morley-Minto reforms

The Act introduced communal representation in Indian politics. This was intended to stem the growing tide of nationalism in the country by dividing the people on communal lines. The culmination of this step was seen in the partition of the country along religious lines. The effects of differential treatment of different religious groups can be seen to this day.

The act did nothing to grant colonial self-government which was the Congress's demand.

The Act did increase Indian participation in the legislative councils, especially at the provincial levels.

Negative Impacts of Morley-Minto Reform

Separate constituencies were created to widen the ditch between the Muslims and Hindus. This system began an era of gross communalism in Indian polity.

Morley-Minto Reform prevented people from concentrating on political and economic problems that were common to all Indians, irrespective of Hindu or Muslim.

The size of the councils was increased but their functions and powers were not enlarged.

Although a non-official majority was there in the Provincial Councils, the actual result was not much appreciable since the non-official majority was nullified by the election of nominated members.

Under the Act, the position of the Governor-General and his veto power remained unchanged.

The members could discuss the budget but could not make any substantial change in the Budget. The resolutions were like recommendations and were not binding on the government. They could ask questions but could not force the executives to reply.

Positive impacts Morley-Minto Reform

It was a forward step towards the responsible association of elected Indians with the administration.

The members for the first time got an opportunity to criticize the executives and make suggestions for the better administration of the country..



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As the moderate leaders of Congress supported the government. on the matter of implementing the reforms but at the same time they lost their base among the masses. Further Government did nothing substantive for the demand of the SelfGovernment of Congress as Lord Minto himself cleared that Colonial Self Government was not apt for India and he was also not in favor of the introduction of Parliamentary or Responsible Govt.

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UNIT - IV
GOVERNMENT OF INDIA ACT, 1919

Montagu-Chelmsford Reforms

Main Features of the Act Government of India Act, 1919 also known as Montagu-Chelmsford Reforms which came into force in 1921. It was instituted in the British Indian polity to introduce the Diarchy, i.e., rule of two which means executive councilors and popular ministers. During the World War Britain and her allies had said that they were fighting the war for the freedom of nations. Many Indian leaders believed that after the war was over, India would be given Swaraj. The British government however had no intention of conceding the demands of the Indian people. Changes were introduced in the administrative system as a result of the Montagu-Chelmsford Reforms, called the Government of India Act, 1919.

Main provisions of the Government of India Act 1919

Provincial government

Executive:

- Diarchy was introduced, i.e., there were two classes of administrators – Executive councilors and ministers.
- The Governor was the executive head of the province.
- The subjects were divided into two lists – reserved and transferred.
- The governor was in charge of the reserved list along with his executive councilors. The subjects under this list were law and order, irrigation, finance, land revenue, etc.
- The ministers were in charge of subjects under the transferred list. The subjects included were education, local government, health, excise, industry, public works, religious endowments, etc.
- The ministers were responsible to the people who elected them through the legislature.
- These ministers were nominated from among the elected members of the legislative council.
- The executive councilors were not responsible to the legislature unlike the ministers.
- The Secretary of State and the Governor-General could interfere in matters under the reserved list but this interference was restricted for the transferred list.

Legislature:

- The size of the provincial legislative assemblies were increased. Now about 70% of the members were elected.
- There were communal and class electorates.
- Some women could also vote.
- The governor's assent was required to pass any bill. He also had veto power and could issue ordinances also.

Central government Executive:

- The chief executive authority was the Governor-General.
- There were two lists for administration – central and provincial.
- Provincial list was under the provinces while the center took care of the central list.
- Out of the 6 members of the Viceroy's executive council, 3 were to be Indian members.
 - i. The governor-general could issue ordinances.
 - ii. He could also certify bills that were rejected by the central legislature.

Legislature:

- A bicameral legislature was set up with two houses – Legislative Assembly (forerunner



- of the Lok Sabha) and the Council of State (forerunner of the Rajya Sabha).
- Legislative Assembly (Lower House)
 - Members of the Legislative Assembly:
 - The nominated members were nominated by the governor-general from Anglo-Indians and Indian Christians.
 - The members had a tenure of 3 years.
 - Council of State (Upper House)
 - Only male members with tenure of 5 years.
 - Members of the Council of State:
 - The legislators could ask questions and also vote a part of the budget.
 - Only 25% of the budget was subject to vote.
 - Rest was non-notable.
 - A bill had to pass in both houses before it became a law.
 - There were three measures to resolve any deadlock between both the houses – joint committees, joint conferences and joint sittings.
 - The governor-general's assent was required for any bill to become a law even if both houses have passed it.
 - He could also enact a bill without the legislature's consent.
 - He could prevent a bill from becoming law if he deems it as detrimental to the peace of the country.
 - He could disallow any question, adjournment motion or debate in the house.

Who could vote?

- Franchise was restricted and there was no universal adult suffrage.
- Voters should have paid land revenue of Rs.3000 or have property with rental value or have taxable income.
- They should possess previous experience in the legislative council.
- They should be members of a university senate.
- They should hold certain offices in the local bodies.
- They should hold some specific titles.
- All this narrowed the number of people who could vote to an abysmal number.

Indian Council

- There were to be at least 8 and a maximum of 12 members in the council.
- Half of the members should have ten years of experience in public service in India.
- Their tenure was to be 5 years.
- Their salaries were increased from £1000 to £1200.
- There were to be 3 Indian members in the Council.

Other salient features

This act provided for the first time, the establishment of a public service commission in India.

The act also provided that after 10 years, a statutory commission would be set up to study the working of the government. This resulted in the Simon Commission of 1927.

It also created an office of the High Commissioner for India in London.

Merits of the Government of India Act 1919

- Diarchy introduced the concept of responsible government.
- It introduced the concept of federal structure with a unitary bias.



- There was increased participation of Indians in the administration. They held some portfolios like labour, health, etc.
- For the first time, elections were known to the people and it created a political consciousness among the people.
- Some Indian women also had the right to vote for the first time.

Limitations of the Government of India Act 1919

- This act extended consolidated and communal representation.
- Franchise was very limited. It did not extend to the common man.
- The governor-general and the governors had a lot of power to undermine the legislatures at the Centre and the provinces respectively.
- Allocation of the seats for the central legislature was not based on population but the importance of the province in the eyes of the British.
- The Rowlatt Acts were passed in 1919 which severely restricted press and movement. Despite the unanimous opposition of Indian members of the legislative council, those bills were passed. Several Indian members resigned in protest.

Government of India Act 1935

The Government of India Act of 1935 marked the second milestone towards a completely responsible government in India. It ended Diarchy and provided the establishment of the All India Federation. This act served some useful purposes by the experiment of provincial autonomy, thus we can say that the Government of India Act 1935 marks a point of no return in the history of constitutional development in India.

On August 1935, the Government of India passed longest act i.e. Government of India Act 1935 under the British Act of Parliament. This act also included the Government of Burma Act 1935. According to this act, India would become a federation if 50% of Indian states decided to join it. They would then have a large number of representatives in the two houses of the central legislature. However, the provisions with regards to the federation were not implemented. The act made no reference even to granting dominion status, much less independence, to India.

British Rule

With regard to the provinces, the act of 1935 was an improvement on the existing position. It introduced what is known as provincial autonomy. The ministers of the provincial governments, according to it, were to be responsible to the legislature. The powers of the legislature were increased. However, in certain matters like the Police, the government had the authority. The right to vote also remained limited. Only about 14% of the population got the right to vote. The appointment of the governor-general and governors, of course, remained in the hands of the British government and they were not responsible to the legislatures. The act never came near the objective that the nationalist movement had been struggling for.

Background

There was a growing demand for constitutional reforms in India by Indian leaders. India's support to Britain in the First World War also aided in British acknowledgement of the need for the inclusion of more Indians in the administration of their own country.

The Act was based on:

- Simon Commission Report



- The recommendations of the Round Table Conferences
- The White Paper published by the British government in 1933 (based on the Third Round Table Conference)
- Report of the Joint Select Committees

Provisions

- Creation of an All India Federation.
- This federation was to consist of British India and the princely states.
- The provinces in British India would have to join the federation but this was not compulsory for the princely states.
- This federation never materialized because of the lack of support from the required number of princely states.

Division of powers

This Act divided powers between the center and the provinces.

There were three lists which gave the subjects under each government.

- Federal List (Centre)
- Provincial List (Provinces)
- Concurrent List (Both)

The Viceroy was vested with residual powers.

Provincial autonomy

- The Act gave more autonomy to the provinces.
- Diarchy was abolished at the provincial levels.
- The Governor was the head of the executive.
- There was a Council of Ministers to advise him. The ministers were responsible to the provincial legislatures who controlled them. The legislature could also remove the ministers.
- However, the governors still retained special reserve powers.
- The British authorities could still suspend a provincial government.

Diarchy at the Centre

The subjects under the Federal List were divided into two: Reserved and Transferred. The reserved subjects were controlled by the Governor-General who administered them with the help of three counselors appointed by him. They were not responsible to the legislature. These subjects included defence, ecclesiastical affairs (church-related), external affairs, press, police, taxation, justice, power resources and tribal affairs.

The transferred subjects were administered by the Governor-General with his Council of Ministers (not more than 10). The Council had to act in confidence with the legislature. The subjects in this list included local government, forests, education, health, etc.

However, the Governor-General had special powers to interfere in the transferred subjects also.

Bicameral legislature

A bicameral federal legislature would be established. The two houses were the Federal Assembly (lower house) and the Council of States (upper house). Federal assembly had a term of five years.

Both houses had representatives from the princely states also. The representatives of



the princely states were to be nominated by the rulers and not elected. The representatives of British India were to be elected. Some were to be nominated by the Governor-General.

There were to be separate electorates for the minority communities, women and the depressed classes.

Bicameral legislatures were introduced in some provinces also like Bengal, Madras, Bombay, Bihar, Assam and the United Provinces.

Federal court

A federal court was established at Delhi for the resolution of disputes between provinces and also between the Centre and the provinces. It was to have 1 Chief Justice and not more than 6 judges.

Indian Council

- The Indian Council was abolished.
- The Secretary of State for India would instead have a team of advisors.
- Franchise
- This Act introduced direct elections in India for the first time.
- About 10% of the whole population acquired voting rights.

Reorganization

- Sindh was carved out of the Bombay Presidency.
- Bihar and Orissa were split.
- Burma was severed off from India.
- Aden was also separated from India and made into a Crown colony.
- The British Parliament retained its supremacy over the Indian legislatures both provincial and federal.
- A Federal Railway Authority was set up to control Indian railways.
- The Reserve Bank of India was established as per this Act.
- The Act also provided for the establishment of federal, provincial and joint Public Service Commissions.

Assessment

The Act was a milestone in the development of a responsible constitutional government in India.

The Government of India Act 1935 was replaced by the Constitution of India after independence.

The Indian leaders were not enthusiastic about the Act since, despite granting provincial autonomy the governors and the viceroy had considerable special powers.

Separate communal electorates were a measure through which the British wanted to ensure the Congress Party could never rule on its own. It was also a way to keep the people divided.



UNIT - V
CONSTITUTIONAL DEVELOPMENT BETWEEN 1935-1947

THE AUGUST OFFER

On 8 August 1940, early in the Battle of Britain, the Viceroy of India, Lord Linlithgow, made the so-called "August Offer" at Shimla, a fresh proposal promising the expansion of the Executive Council to include more Indians, the establishment of an advisory war council, giving full weight to minority opinion, and the recognition of Indians' right to frame their own constitution (after the end of the war). In return, it was hoped that all parties and communities in India would cooperate in Britain's war effort.

Linlithgow attempted to solve the Congress-Raj stalemate over popular control of India's defense. Linlithgow prefaced his proposal by re-iterating that the differences in ideologies that separated the All India Muslim League and the Indian National Congress must be bridged before any significant constitutional settlement is made. Nevertheless, the Viceroy announced that the British government was now willing to move forward with governmental changes that would "associate Indian public opinion with the conduct of the war."

Linlithgow was authorized to admit a limited number of Indian politicians to his executive council and to establish a war advisory council that included Princes, politicians and other interests in the national life of India. However, Linlithgow warned the politicians that his proposal did not imply that there would be any revision of the 1935 Government of India Act.

The declaration marked an important advance over the existing state of things, as it recognized at least the natural and inherent right of the people of the country to determine the form of their future constitution, and explicitly promised Dominion status.

The following proposals were put in:

After the war a representative Indian body would be set up to frame a constitution for India.

Viceroy's Executive Council would be expanded without delay.

The minorities were assured that the government would not transfer power "to any system of government whose authority is directly denied by large and powerful elements in Indian national life."

Political reception

The Congress did not trust the intentions of the British government. Consequently, Linlithgow recorded that the British government "could not contemplate the transfer of their present responsibilities for the peace and tranquility of India to any system of Government whose authority is directly denied by large and powerful elements in India's national life." Moreover, as the British Empire was pre-engaged in their war against the Germans totalitarianism, the period was unpropitious for addressing congressional issues in India. Therefore, Linlithgow stated that the constitutional future of India could be resolved in the future once the war was over by establishing a constituent assembly that was representative of the principal elements in India's national life.

The Congress Working Committee meeting at Wardha on 21 August 1940 eventually rejected the offer, and asserted its demand for complete freedom from the imperial power. Gandhi viewed it as having widened the gulf between Nationalist India and the British ruler. Having not taken the Pakistan idea seriously, Linlithgow supposed that what Jinnah actually



wanted was a non-federal arrangement without Hindu domination. To allay Muslim fears of Hindu domination the 'August offer' had been accompanied with the promise that a future constitution would take the views of minorities into consideration.

The Muslim League was not satisfied with Linlithgow's offer and rejected it in September.

INDIVIDUAL SATYAGRAHA 1940-41

Launching Individual Satyagraha was the direct result of the August Offer. The August offer was brought during a critical period of war by British in 1940. Both Congress and Muslim League rejected August Offer. Congress wished to launch the Civil disobedience Movement, but Gandhi saw the atmosphere against such a movement, he didn't want to hamper the War efforts. However, Congress Socialist leaders and All India Kisan Sabha were in favour of immediate struggle. Gandhi was convinced that British would not modify their policy towards India. He decided to launch Individual Satyagraha. The Congress was in a confused state again after the August Offer. The radicals and leftists wanted to launch a mass Civil Disobedience Movement, but here Gandhi insisted on Individual Satyagraha. The Individual Satyagraha was not to seek independence but to affirm the right of speech.

The aims of launching individual satyagrahas were:

- a. To show that nationalist patience was not due to weakness.
- b. To express people's feeling that they were not interested in the war and that they made no distinction between Nazism and the double autocracy that ruled India.
- c. To give another opportunity to the Government to accept Congress 'demands peacefully.

The other reason for this Satyagraha was that a mass movement may turn violent and he would not like to see Great Britain embarrassed by such a situation. This view was conveyed to Lord Linlithgow by Gandhi when he met him on 27th September 1940. The non-violence was set as the centerpiece of Individual Satyagraha. This was done by carefully selecting the Satyagrahis. The first Satyagrahi selected was Acharya Vinoba Bhave, who was sent to Jail when he spoke against the war in the village Panaur and he was arrested subsequently. Second Satyagrahi was Jawaharlal Nehru. Third was Brahma Datt, one of the inmates of Gandhi's Ashram.

They all were sent to jails for violating the Defense of India Act. This was followed by a lot of other people. But since it was not a mass movement, it attracted little enthusiasm and in December 1940, Gandhi suspended the movement. The campaign started again in January 1941, this time, thousands of people joined and around 20 thousand people were arrested.

CRIPPS MISSION

The Cripps Mission was sent by the British government to India in March 1942 to obtain Indian cooperation for the British war efforts in the Second World War. It was headed by Sir Richard Stafford Cripps, a labour minister in Winston Churchill's coalition government in Britain.

Cripps Mission – Background

Japan was advancing outside the eastern borders of India and the fall of Burma was a jolt to the British in the war. The threat of a Japanese invasion on India was looming and Indian support was essential for Britain's war efforts.

When the 2nd World War broke out in 1939, the Viceroy Lord Linlithgow declared India a party to the war as part of the British Empire. This was done without consultation with Indians



and this led to massive protests from the Congress Party. The party leaders, who were heading 7 provincial governments resigned from their posts. The Muslim League celebrated it as 'Deliverance Day'.

Britain was facing pressure from the US and other allied leaders over its own imperial policies in India and also to secure Indian cooperation for the Allied war effort. This also led the British government to send Cripps to India.

Members of Cripps Mission

Stafford Cripps	-	Left-wing Labourite, the Leader of the House of Commons And a member of the British War Cabinet
Lord Pethick	-	Lawrence – Secretary of State for India
A. V. Alexander	-	First Lord of the Admiralty

The Purpose of Cripps Mission

Following World War-II, the Cripps Mission had several reasons to come to India. The reasons are given below:

Britain suffered many losses in Southeast Asia and Japan's threat to invade India seemed real for them. Hence, Britain wanted India's support.

Britain was pressurized by the allies (USA, USSR & China) to seek India's cooperation. Indian nationalists had agreed to support the Allied as they hoped for immediate transfer of substantial power and complete independence after the war.

Proposals of Cripps Mission

Setting up of an Indian dominion. This dominion would have the freedom to remain with the British Commonwealth or to secede from it. It would also be at liberty to take part in international organizations.

A Constituent Assembly would be formed to frame a new constitution for the country. This Assembly would have members elected by the provincial assemblies and also nominated by the princes.

Any province unwilling to join the Indian dominion could form a separate union and have a separate constitution.

The transfer of power and the rights of minorities would be safeguarded by negotiations between the Constituent Assembly and the British government.

In the meantime, until this new constitution came into force, India's defence would be controlled by the British and the powers of the Governor-General would remain unaltered.

Significance of Cripps Mission

For the first time, the British government acknowledged India's right to be a dominion. Indians could frame their own Constitution.

The proposal of giving freedom to the provinces to be a separate union turned out to be a model for the country's partition in 1947.

The right to cede from the Commonwealth indicated full sovereignty at a later stage. In the interim period, Indians were guaranteed a good share in the administration.



Why did the Cripps Mission Fail?

The proposals were seen as too radical by the British and as too conservative by the INC who wanted complete independence.

The Mission was rejected by the INC, the Muslim League and other Indian groups.

The Hindu Mahasabha and the Liberals were against the right of states to secede.

The Sikhs objected because they thought any partition would leave Punjab in the hands of Pakistan.

The Depressed Classes objected because they were apprehensive about their status in a country 'dominated by upper-caste Hindus.'

It is also believed that the mission failed because of a clear lack of support for it by the Viceroy Linlithgow, British PM Winston Churchill and the Secretary of State for India, Leo Amery. After the failure of the mission, Cripps returned to England, and the Congress-led by Gandhi started their new campaign, the Quit India Movement in August 1942.

Indian National Congress Rejected the Mission

INC rejected the Cripps Mission for the following reasons:

1. The INC was against the provinces' right to separately form unions as this was damaging to national unity.
2. They were also against the Governor-General's power being retained as against him being only a constitutional head.
3. They also protested the lack of share in defence.
4. There was no concrete plan for the immediate transfer of power.

Muslim League Rejected the Cripps Mission

Muslim League rejected the Cripps Mission for the following reasons:

1. They did not like the idea of a single union of India.
2. They protested against the method for the Constituent Assembly's creation and also against the procedure to decide on the provinces' accession to the Indian union.

The significance of Cripps Mission is important to understand as it was the first time in history when Indian dominion was recognized.

CABINET MISSION PLAN

Impact & Purpose

On 22nd January 1946, the decision to send Cabinet Mission was taken and on 19th February 1946, the British PM C.R Attlee Government announced in the House of Lords about the mission and the plan to quit India.

On 22nd January 1946, the decision to send Cabinet Mission was taken and on 19th February 1946, the British PM C.R Attlee Government announced in the House of Lords about the mission and the plan to quit India. A high-powered mission of three British Cabinet members- Lord Pethick-Lawrence, the Secretary of State for India, Sir Stafford Cripps, President of the Board of Trade, and A. V. Alexander, the First Lord of the Admiralty reached Delhi on 24th March 1946.

Proposals of Mission

The Mission proposed to secure an agreement on the method of framing the Constitution to the discussions with elected representatives of British India and the Indian states on Preceding and preparing. Proposes to set up a constitution body Proposes to set up an Executive Council with the support of the main Indian parties.



Purpose of the Mission

To resolve political deadlock between the Indian National Congress and the All-India Muslim League at their stance to prevent a communal dispute whether British India would be better-off unified or divided.

The Congress party wanted to obtain a strong central government with more powers as compared to state governments.

All India Muslim League under Jinnah wanted to keep India united but with political safeguards provided to Muslims such as 'guarantee' of 'parity' in the legislatures. On 16 May 1946, this plan was announced and preceded by the Simla Conference of 1945.

Recommendations of Mission

The unity of India had to be retained.

It proposed a very loose union of all the Indian territories under a Centre that would control merely defence, the Foreign Affairs and the Communication. The Union would have the powers necessary to raise the finances to manage these subjects.

All subjects other than Union subjects and residuary power would vest in the provinces of British India.

The Princely Legislatures would then elect a Constituent Assembly or a Constitution making body with each province being allotted a specified number of seats proportionate to its population.

The proposed Constituent Assembly was to consist of 292 members from British India and 93 from Indian States.

The Mission proposed an immediate formation of Interim Government at the centre, enjoying the support of major political parties and with the Indians holding all the portfolios.

Why did the Cabinet Mission fail?

The main reasons for the failure of the Cabinet Mission are given below:

The Congress Party wanted a strong Centre with minimum powers for the provinces. The Muslim League wanted strong political safeguards for the Muslims like parity in the legislatures.

Since both parties had many ideological differences and could not find common ground, the mission came up with its own set of proposals in May 1946.

The Dominion of India would be granted independence, without any partition.

The provinces would be divided into three groups/sections:

1. Group A: Madras, Central Provinces, UP, Bihar, Bombay and Orissa
2. Group B: Punjab, Sindh, NWFP and Balochistan
3. Group C: Bengal and Assam

The Muslim-majority provinces were grouped into two groups and the remaining Hindu-majority in one of the groups.

The central government at Delhi would have powers over the defence, foreign affairs, communications and currency. The rest of the powers would be vested with the provinces.

A constituent assembly would be set up for writing a new constitution for the country. An interim government would be established until a new government was formed on the basis



of the constitution written by the constituent assembly.

The Congress was not keen on the idea of the groupings of provinces on the basis of Hindu-Muslim majority and vying for control at the Centre. It was also against the idea of a weak Centre. The Muslim League did not want any changes to the proposals.

Since the plan was not accepted, a new plan was proposed by the mission in June 1946. This plan proposed the division of India into a Hindu-majority India and a Muslim-majority India later to be renamed Pakistan. A list of princely states was also made that could either join the union or remain independent.

The Congress Party under Jawaharlal Nehru did not accept the second plan. Instead, it agreed to be part of the constituent assembly.

The Viceroy invited 14 men to form the interim government. There were 5 from the Congress, 5 from the League, 1 member each representing the Sikh, Parsee, Indian Christian and scheduled caste communities.

Both the League and the Congress were given the right to nominate 5 members to the Viceroy's interim council. The Congress nominated Zakir Hussain as one of the members to which the League objected saying only it represented Indian Muslims and no other party. The Muslim League did not take part in it.

The Congress leaders entered the viceroy's interim council and thus Nehru headed the interim government. The new government began the task of framing a constitution for the country.

Congress-led governments were formed in most provinces including the NWFP. In Bengal and Sind, the League formed the governments.

Jinnah and the League objected to the new central government. He geared to agitate for Pakistan and urged Muslims to demand Pakistan by any means. He called for 'Direct Action Day' on 16 August 1946.

This call led to widespread communal rioting in the country with 5000 people being killed on the first day in Calcutta. Communal riots spread to many other areas notably Noakhali and Bihar.

There was a call for the partitioning of the country on account of the riots. Sardar Vallabhbhai Patel was one of the first Congress leaders to acknowledge the inevitability of the partition as a means to stop the brutal violence.

Conclusion

The main objective of Cabinet Mission was to find out ways and means for the peaceful transfer of power in India, to suggest measures for the formation of a Constitution making machinery and also to set up the Interim Government.

QUIT INDIA MOVEMENT – 1942



Mumbai's Gowalia Tank Maidan also known as August KrantiMaidan is the place where the quit India movement was launched by Mahatma Gandhi. He along with other leaders gathered here on August 8 and 9, 1942.

The outcome of the movement was that Congress was declared an unlawful association and its offices all over the country were raided. The leaders were arrested and there rose a chaotic moment with this incident.

It was officially launched by the Indian National Congress (INC) led by Mahatma Gandhi on 9 August 1942.

The movement gave the slogan 'Quit India' or 'BharatChodo'. Gandhi gave the slogan to the people – 'Do or die'.

In line with the Congress ideology, it was supposed to be a peaceful non-violent movement aimed at urging the British to grant India independence.

The Quit India Resolution was passed by the Congress Working Committee on 8 August 1942 in Bombay. Gandhi was named the movement's leader.

The resolution stated the provisions of the movement as:

- i. An immediate end to British rule over India.
- ii. Declaration of the commitment of free India to defend itself against all kinds of imperialism and fascism.
- iii. Formation of a provisional government of India after British withdrawal.
- iv. Sanctioning a civil disobedience movement against British rule.

Gandhi's instructions to various sections of the public:

- i. **Government servants:** do not resign your job but proclaim loyalty to the INC.
- ii. **Soldiers:** be with the army but refrain from firing on compatriots.
- iii. **Peasants:** pay the agreed-upon rent if the landlords/Zamindars are anti-government; if they are pro-government, do not pay the rent.
- iv. **Students:** can leave studies if they are confident enough.
- v. **Princes:** support the people and accept the sovereignty of them.
- vi. **People of the princely states:** support the ruler only if he is anti-government; declare them as part of the Indian nation.

Causes of the Quit India Movement – Why was it launched?

The Second World War had started in 1939 and Japan, which was part of the Axis Powers that were opposed to the British in the war were gaining onto the north-eastern frontiers of India.

The British had abandoned their territories in South-East Asia and had left their population in the lurch. This act did not garner much faith among the Indian population who had doubts about the British ability to defend India against Axis aggression.

Gandhi also believed that if the British left India, Japan would not have enough reason to invade India.



Apart from hearing news about British setbacks in the war, the war-time difficulties such as high prices of essential commodities fostered resentment against the British government. The failure of the Cripps Mission to guarantee any kind of a constitutional remedy to India's problems also led to the INC calling for a mass civil disobedience movement.

Response to Quit India Movement

The British government responded to the call of Gandhi by arresting all major Congress leaders the very next day. Gandhi, Nehru, Patel, etc. were all arrested. This left the movement in the hands of the younger leaders like Jayaprakash Narayan and Ram Manohar Lohia. New leaders like Aruna Asaf Ali emerged out of the vacuum of leadership.

Over 100000 people were arrested in connection with this movement. The government resorted to violence in order to quell the agitation. They were mass floggings and lathi charges. Even women and children were not spared. About 10000 people died in police firing in total. There was no communal violence.

The INC was banned. Its leaders were jailed for almost the whole of the war. Gandhi was released on health grounds in 1944.

The people responded to Gandhi's call in a major way. However, in the absence of leadership, there were stray incidences of violence and damage to government property. Many buildings were set on fire, electricity lines were cut and communication and transport lines were broken.

Some parties did not support the movement. There was opposition from the Muslim League, the Communist Party of India (the government revoked the ban on the party then) and the Hindu Mahasabha.

The League was not in favour of the British leaving India without partitioning the country first. In fact, Jinnah asked more Muslims to enlist in the army to fight the war. The Communist party supported the war waged by the British since they were allied with the Soviet Union.

Subhas Chandra Bose, was by this time, organizing the Indian National Army and the Azad Hind government from outside the country.

Rajagopalachari resigned from the INC since he was not in favour of complete independence.

In general, the Indian bureaucracy did not support the Quit India Movement. There were strikes and demonstrations all over the country. Despite the communist group's lack of support to the movement, workers provided support by not working in the factories.

In some places, parallel governments were also set up. Example: Ballia, Tamluk, Satara. The chief areas of the movement were UP, Bihar, Maharashtra, Midnapore, and Karnataka. The movement lasted till 1944.

Importance of Quit India Movement – Significance/What it achieved?

Despite heavy-handed suppression by the government, the people were unfazed and continued their struggle.



Even though the government said that independence could be granted only after the end of the war, the movement drove home the point that India could not be governed without the support of the Indians.

The movement placed the demand for complete independence at the top agenda of the freedom movement.

Public morale and anti-British sentiment were enhanced.

FORMATION OF CONSTITUENT ASSEMBLY

The Constituent Assembly of India was elected to write the Constitution of India. Following India's independence from British Government in 1947, its members served as the nation's first Parliament.

An idea for a Constituent Assembly was proposed in 1934 by M. N. Roy, a pioneer of the Communist movement in India and an advocate of radical democracy. It became an official demand of the Indian National Congress in 1935, C. Rajagopalachari voiced the demand for a Constituent Assembly on 15th November 1939 based on adult franchise, and was accepted by the British in August 1940.

On 8 August 1940, a statement was made by Viceroy Lord Linlithgow about the expansion of the Governor-General's Executive Council and the establishment of a War Advisory Council. This offer, known as the August Offer, included giving full weight to minority opinions and allowing Indians to draft their own constitution. Under the Cabinet Mission Plan of 1946, elections were held for the first time for the Constituent Assembly. The Constitution of India was drafted by the Constituent Assembly, and it was implemented under the Cabinet Mission Plan on 16 May 1946. The members of the Constituent Assembly were elected by the provincial assemblies by a single, transferable-vote system of proportional representation.

The total membership of the Constituent Assembly was 389 of which 292 were representatives of the states, 93 represented the princely states and four were from the chief commissioner provinces of Delhi, Ajmer-Marwar, Coorg and British Baluchistan. Coorg was then a separate state. It was absorbed into the erstwhile Mysore state, now renamed as Karnataka state after the reorganization of linguistic states in India. The erstwhile Coorg state forms the Kodagu district in Karnataka and has its headquarters in Madikeri.

The elections for the 296 seats assigned to the British Indian provinces were completed by August 1946. Congress won 208 seats, and the Muslim League 73. After this election, the Muslim League refused to cooperate with the Congress, [citation needed] and the political situation deteriorated. Hindu-Muslim riots began, and the Muslim League demanded a separate constituent assembly for Muslims in India. On 3rd June 1947 Lord Mountbatten, the last British Governor-General of India, announced his intention to scrap the Cabinet Mission Plan; this culminated in the Indian Independence Act 1947 and the separate nations of India and Pakistan.

The Indian Independence Act was passed on 18 July 1947 and, although it was earlier declared that India would become independent in June 1948, this event led to independence on 15 August 1947. The Constituent Assembly met for the first time on 9 December 1946, reassembling on 14 August 1947 as a sovereign body and successor to the British parliament's authority in India. As a result of the partition, under the Mountbatten plan, a separate Constituent Assembly of Pakistan was established on 3 June 1947.



The representatives of the areas incorporated into Pakistan ceased to be members of the Constituent Assembly of India. New elections were held for the West Punjab and East Bengal (which became part of Pakistan, although East Bengal later seceded to become Bangladesh); the membership of the Constituent Assembly was 299 after the reorganization, and it met on 31 December 1947.

The constitution was drafted by 299 delegates from different caste, religion, gender etc. These delegates sat over 114 days spread over 3 years (2 years 11 months and 17 days to be precise) and discussed what the constitution should contain and what laws should be included. The constitution assembly was chaired by Dr. B.R Ambedkar. The constitution of India is the biggest constitution in the entire world as its constitution comprises laws from other countries' constitution also.

Description of the constituent assembly

The Constituent Assembly of India, consisting of indirectly elected representatives, was established to draft a constitution for India (including the now-separate countries of Pakistan and Bangladesh). It existed for approximately three years, the first parliament of India after independence in 1947.

The Assembly was not elected on the basis of universal adult suffrage, and Muslims and Sikhs received special representation as minorities. The Muslim League boycotted the Assembly after failing to prevent its creation. Although a large part of the Constituent Assembly was drawn from the Congress Party in a one-party environment, the Congress Party included a wide diversity of opinions—from conservative industrialists to radical Marxists, to Hindu revivalists.

The Assembly met for the first time in New Delhi on 9 December 1946, and its last session was held on 24 January 1950. The hope of the Assembly was expressed by Jawaharlal Nehru:

The first task of this Assembly is to free India through a new constitution, to feed the starving people, and to clothe the naked masses, and to give every Indian the fullest opportunity to develop himself according to his capacity. This is certainly a great task. Look at India today. We are sitting here and there in despair in many places, and unrest in many cities.

The atmosphere is surcharged with these quarrels and feuds which are called communal disturbances, and unfortunately we sometimes cannot avoid them. But at present the greatest and most important question in India is how to solve the problem of the poor and the starving. Wherever we turn, we are confronted with this problem. If we cannot solve this problem soon, all our paper constitutions will become useless and purposeless. Keeping this aspect in view, who could suggest to us to postpone and wait?

Background and election

India was still under British rule when the Constituent Assembly was established following negotiations between Indian leaders and members of the 1946 Cabinet Mission to India from the United Kingdom. Provincial assembly elections were held in mid-1946. Constituent Assembly members were elected indirectly by members of the newly elected provincial assemblies, and initially included representatives for those provinces that formed part of Pakistan (some of which are now in Bangladesh). The Constituent Assembly had 299 representatives, including fifteen women.



STUDY MATERIAL FOR B.A HISTORY
CONSTITUTIONAL HISTORY OF INDIA 1773 - 1947 AD
SEMESTER - V, ACADEMIC YEAR 2020-21



The Interim Government of India was formed on 2nd September 1946 from the newly elected Constituent Assembly. The Congress Party held a large majority in the Assembly (69 percent of the seats), and the Muslim League held nearly all the seats reserved in the Assembly for Muslims. There were also members of smaller parties, such as the Scheduled Caste Federation, the Communist Party of India and the Unionist Party.

In June 1947 delegations from Sindh, East Bengal, Balochistan, West Punjab and the North West Frontier Province withdrew to form the Constituent Assembly of Pakistan, meeting in Karachi. On 15th August 1947 the Dominion of India and Dominion of Pakistan became independent nations, and members of the Constituent Assembly who had not withdrawn to Karachi became India's Parliament. Twenty-eight members of the Muslim League joined the Indian Assembly, and 93 members were later nominated from the princely states; the Congress Party secured a majority of 82 percent.

Constitution and elections

At 11 am on 9th December 1946 the Assembly began its first session, with 207 members attending. By early 1947, representatives of the Muslim League and princely states joined, and the Assembly approved the draft constitution on 26 November 1949. On 26 January 1950 the constitution took effect (commemorated as Republic Day), and the Constituent Assembly became the Provisional Parliament of India (continuing until after the first elections under the new constitution in 1952).

Organization

Dr. Sachchidananda Sinha was the first chairman (temporary) of the Constituent Assembly. Later Dr. Rajendra Prasad was elected as the president and its vice-president was HarendraCoomarMookerjee, a Christian from Bengal and former vice-chancellor of Calcutta University. Also chairing the assembly's Minorities Committee, Mukherjee was appointed governor of West Bengal after India became a republic. Jurist B. N. Rau was appointed constitutional adviser to the assembly; Rau prepared the original draft of the constitution, and was later appointed a judge in the Permanent Court of International Justice in The Hague.

The assembly's work had five stages:

- i. Committees presented reports on issues.
- ii. B.N. Rau prepared an initial draft based on the reports and his research into the constitutions of other nations.
- iii. The drafting committee, chaired by B. R. Ambedkar, presented a detailed draft constitution which was published for public discussion.
- iv. The draft constitution was discussed, and amendments proposed and enacted.
- v. The constitution was adopted, with a committee of experts led by the Congress Party (known as the Congress Assembly Party) played a pivotal role.

TimeLine of Formation of "The Constitution of India"

1. 6 December 1946: Formation of the Constitution Assembly. (In accordance with French practice.)
2. 9 December 1946: The first meeting was held in the constitution hall (now the Central Hall of Parliament House). 1st person to address - J. B. Kripalani. Temporary president Appointed - Sachchidananda Sinha. (Demanding a separate state, the Muslim League boycotted the meeting.)



3. 11 December 1946: President Appointed - Rajendra Prasad, vice-Chairman HarendraCoomarMookerjee and constitutional legal adviser B. N. Rau (initially 389 members in total, which declined to 299 after partition. out of 389 - 292 were from govt. province, 4 from chief commissioner province and 93 from princely states)
4. 13 December 1946: An 'Objective Resolution' was presented by Jawaharlal Nehru, laying down the underlying principles of the constitution. This later became the Preamble of the constitution.
5. 22 January 1947: Objective resolution unanimously adopted.
6. 22 July 1947: National flag adopted.
7. 15 August 1947: Achieved independence. India Split into Dominion of India and Dominion of Pakistan.
8. 29 August 1947: Drafting Committee appointed with Dr. B. R. Ambedkar as the Chairman. Other 6 members of the committeewere : K.M.Munshi, MuhammadSaadulah, AlladiKrishnaswamyIyer, Gopala Swami Ayyangar, N. Madhava Rao(He replaced B.L. Mitter who resigned due to ill-health), T. T. Krishnamachari(He replaced D.P. Khaitan who died in 1948),
9. 16 July 1948: Along with HarendraCoomarMookerjee V. T. Krishnamachari was also elected as second vice-president of the Constituent Assembly.
10. 26 November 1949: 'Constitution of India' passed and adopted by the assembly.
11. 24 January 1950: Last meeting of Constituent Assembly. 'Constitution of India' all signed and accepted. (With 395 Articles, 8 Schedules, and 22 Parts)
12. 26 January 1950: 'Constitution of India' came into force. (It Took 2 Years, 11 Months, 18 Days - at a total expenditure of 6.4 million to finish)
13. Ganesh VasudevMavalankar was the first speaker when meeting the assembly of LokSabha, after turning republic.

Committees of the Constituent Assembly

The Constituent Assembly appointed a total of 22 committees to deal with different tasks of constitution-making. Out of these, eight were major committees and the others were minor committees.

Major Committees

- i. Drafting Committee – B. R. Ambedkar
- ii. Union Power Committee – Jawaharlal Nehru
- iii. Union Constitution Committee – Jawaharlal Nehru
- iv. Provincial Constitution Committee – Vallabhbbhai Patel
- v. Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas – Vallabhbbhai Patel.

This committee had the following subcommittees:

- i. Fundamental Rights Sub-Committee – J. B. Kripalani
- ii. Minorities Sub-Committee – HarendraCoomarMookerjee,
- iii. North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee – GopinathBordoloi
- iv. Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee – A V Thakkar
 - a. Rules of Procedure Committee – Rajendra Prasad
 - b. States Committee (Committee for Negotiating with States) – Jawaharlal Nehru



- c. Steering Committee – Rajendra Prasad
- d. National flag ad hoc committee – Rajendra Prasad
- e. Committee for the function of the constitution assembly - G V Mavlankar
- f. House committee - B PattabhiSitaramayya
- g. Language committee – MoturiSatyanarayana
- h. Order of business committee - K M Munshi

THE INDIAN INDEPENDENCE ACT OF 1947

The 1947 Indian Independence Act (1947 c. 30 (10 & 11 Geo.6.) Is an Act of the Parliament of the United Kingdom that partitioned British India into the two new independent dominions of India and Pakistan? The Act received the royal assent on July 18, 1947, and thus India and Pakistan, comprising West (modern day Pakistan) and East (modern day Bangladesh) regions, came into being on August 15. The legislature representatives of the Indian National Congress, the Muslim League, and the Sikh community came to an agreement with Lord Mountbatten on what has come to be known as the 3 June Plan or Mountbatten Plan. This plan was the last plan for independence. Background Attlee's announcement The Prime Minister of the United Kingdom announced on February 20th , 1947, that: The British Government would grant full self-government to British India by June 3rd , 1948, at the latest, The future of the Princely States would be decided after the date of final transfer is decided.

Future of the Princely States Attlee wrote to Mountbatten on March 18, 1947: "It is, of course, important that the Indian States should adjust their relations with the authorities to whom it is intended to hand over power in British India; but as was explicitly stated by the Cabinet Mission His Majesty's Government do not intend to hand over their powers and obligations under paramount to any successor Government. It is not intended to bring paramount as a system to a conclusion earlier than the date of the final transfer of power, but you are authorized, at such time as you think appropriate, to enter into negotiations with individual States for adjusting their relations with the Crown. The princely states would be free from orders and treaties of British Rule in India. They can either join the two dominions or stay separate Provisions The Act's most important provisions were:

Division of British India into the two new dominions of India and Pakistan, with effect from August 15, 1947

- i. Partition of the provinces of Bengal and Punjab between the two new countries.
- ii. Establishment of the office of Governor-General in each of the two new countries, as representatives of the Crown.
- iii. Conferral of complete legislative authority upon the respective Constituent Assemblies of the two new countries.
- iv. Termination of British suzerainty over the princely states, with effect from 15 August 1947, and recognized the right of states to remain independent or accede to either dominion.
- v. Abolition of the use of the title "Emperor of India" by the British monarch (this was subsequently executed by King George VI by royal proclamation on 22 June 1948).
- vi. The Act also made provision for the division of joint property, etc. between the two new countries, including in particular the division of the armed forces.

Background

1. The Indian Independence Act 1947 was an act of the British Parliament that partitioned India into two independent dominions of India and Pakistan.



2. The legislation was drafted by the Labour government of Clement Attlee. It was based on the Mountbatten Plan or the 3 June Plan which was formulated after the leaders of the Indian National Congress and the Muslim League agreed to the recommendations of the Viceroy Lord Mountbatten.
3. Lord Mountbatten came to India with the specific task of seeing over the handing over of the authority to Indians. But the INC and the League could not agree on the question on partition.
4. An initial plan proposed by Mountbatten known as the Dickie Bird Plan was opposed by Nehru. According to this plan, the provinces were to be declared independent and then allowed to join or not join the Constituent Assembly. Nehru opposed this as it would, in his opinion, would lead to the country's balkanization.
5. Then, Mountbatten came up with the last plan known as the 3 June Plan which was accepted by all parties. The INC, which was opposed to any partition of the country, finally accepted it as an inevitable process.
6. As per this plan, India would be partitioned into India and Pakistan. The constitution framed by the Constituent Assembly would not be applicable to the areas which would go into Pakistan. These provinces would then decide on a separate constituent assembly.
7. The Legislative Assemblies of Punjab and Bengal voted for the partition according to which these provinces were to be divided between the two dominions along religious lines.
8. The assembly of Sind was given the choice to join the Indian Constituent Assembly or not. It decided to join Pakistan. In the North Western Frontier Province (NWFP) and Sylhet, a referendum was to be held which would decide the country they were to join.
9. The complete legislative authority would be given to the Constituent Assemblies of the new countries.
10. The Act decided to grant independence to India and Pakistan with effect from 15th August 1947.
11. The new boundaries of the dominions would be demarcated by the Boundary Commission.
12. British suzerainty over the princely states was to end. These states could decide to join either India or Pakistan or remain independent. Over 560 states decided to merge with India.
13. The British emperor would cease to use the title 'Emperor of India'.
14. Until the new dominions 'constitutions would become effective, the heads of state would be the respective Governor-Generals who would continue to assent laws passed by the Constituent Assemblies in the name of the king.
15. This Act received the royal assent on 18th July 1947 and entered into force.
16. Pakistan became independent on 14th August and India on 15th August 1947. Muhammad Ali Jinnah was appointed Pakistan's Governor-General and Lord Mountbatten became India's.