MODULE II
CONSTITUTIONAL HISTORY

THE INDIAN COUNCIL ACT, 1861

CIRCUMSTANCES PRIOR TO THE ACT

- The events of the mutiny made Britishers realize the need to adopt the Indians in the legislature of the country so that the voice of the Indians could be heard and the events like that of the mutiny of 1857 could be avoided.

OBJECTIVES OF THE ACT

Expansion of the Gov-Gen’s Legislative council

Restoring legislative powers to the presidencies of Bombay and Madras

Providing for establishment of legislative bodies in other Provinces

PROVISIONS OF THE ACT

- Reconstitution of the council.
- Governor-general’s powers increased.
- Indians were associated with the law making.
- Governor-general’s power to issue ordinances.

Restrictions on the provincial council’s powers

The new legislative council was to consist of the member of the Gov Gen’s council and between 6-12 persons nominated by the gov general for 2 yrs.

This legislative body could pass laws for the whole of India. The legislative power of the Council extended over all pet-sons, whether British or Indians, foreigners or others within the Indian dominions.

Sanction of the Governor-general was made essential for introducing any measures affecting revenue or debt, religion, defense and foreign affairs. He had the right to assent, reserve or refuse assent to any measure passed. The crown through the secy of state had the ultimate power to disallow a law already assented by the Governor-general. the Governor-general was also empowered in cases of emergency to issue personally ordinances for a period of 6
months. The Governor-general thus headed and completely controlled the legislative authority in British India.

The legislative Council was purely legislative in character. It could not inquire into grievances, call for info or examine the conduct of the Executive.

The Provincial Legislative Councils was restored by the Act of 1861, but it was made subordinate to the Governor-general. The Provincial Govt could not introduce any Bill in the Council without having first submitted it first to the Govt of India and having received its approval.

The Act also gave power to the Governor-general to create a Council for any other Province. A legislature was created for Bengal in 1862 and another for United Provinces in 1886.

THE INDIAN COUNCILS ACT OF 1892

INTRODUCTION

- It was an important landmark in the growth of the representative institutions in the constitutional history of the country.

- Social and religious conditions were changing in India and the Indian nationalism was emerging.

- Western style of education was spreading the new political awakening from the universities of Calcutta, Bombay, and madras.

- Apart from this the European merchants wanted to have more representation in the council.

- Hence Lord Dufferin realized the necessity of having the powerful council in India to have greater freedom for the government of India from the India office.

PROVISIONS OF THE ACT

- The number of the additional members of the governor-general’s council will not be less than ten and not more than sixteen nominated members.

- The act increased the powers of the legislative council it was now permitted to discuss the annual financial statements under the certain circumstances but not the right to vote on it or divided the house on any matter related to it.

- On matters of public interest the members were authorized to ask questions for six days’ notice was required for every question.
In the provincial councils of Bombay and Madras the number of additional members was also increased. Their functions were also increased under the act.

**DE-MERITS OF THE ACT**

- The functions of the council and its members were highly restricted.
- The rules of the nomination or election were highly defective.
- Selected persons could not assume office automatically.
- The number of members was small.
- Punjab has no representation.
- Members question could be disallowed without assigning reasons.
- There was no chance to amend the bills prepared by the government.

**ITS MAIN CONTRIBUTION**

- It increased the number of members in central and provincial legislative assembly.
- The principle of election was introduced indirectly through the grab of nomination on the recommendation basis.
- The functions of the legislative councils were greatly increased. Thus it was for the first time that the Indians were associated with the highest legislative functions in the right manner.
- The productive seed of the principle of election of representative which was thus sown in 1892 developed firmly in the direction of the parliamentarian responsible self-government of India.

**INDIAN COUNCILS ACT, 1909**

To pacify the growing unrest of the people, an act was passed in 1909 which is popularly known as the Morley-Minto Reforms after the then Secy of State and the Governor-General respectively. The most important aspect of the measure carried was the increase of the representative element in the Legislative Councils and the extension of their powers.

**PROVISIONS OF THE ACT**

The main changes were
(1) The number of legislative members in the Central Legislature were increased from sixteen to a maximum of sixty. The number of such members in the Legislature of Madras, Bombay, Bengal, U.P., and Eastern Bengal was raised to fifty and in the Punjab and Burma to thirty.

(2) Though the non-elected members continued to be in majority but an elaborate scheme was prepared for indirect election of members for the Provincial Councils. These members represented diverse interest of the society such as universities, tea plantation, traders, municipalities and also Muhammadans. The non-official members in the Provincial Council elected the members for the Central Legislature.

(3) The powers of the Legislature were extended for serious discussion on budget. Any members could move resolutions proposing alteration in the budget though the Government was not bound by such resolution, even if passed. Some matters such as military, political and provincial affairs, relation with foreign countries and Indian States, and matters sub-judice were excluded from the discussion. Questions and supplementary questions could be asked in the Legislatures on matters other than foreign affairs, Indian States and sub-judice matters. The President of the Legislative Council could always disallow a question and also disallow a resolution in the public interest or on the ground that it was a matter to be raised in the Provincial Council.

- The act increased the size of the central as well as the provincial legislative councils
- The legislative councils formed under this act contained three types of members----- members of the executive council of the viceroy, nominated non-official members, elected representative of the people.
- The act recognized the principle of election in explicit and the direct terms.
For elected members it was declared that the territorial representation did not suit India and that the representation by classes and interests is the only practicable method possible.

The function of the legislative councils, both central and provincial was greatly increased. The members were given the rights of discussion and supplementary questions.

The members still were not authorized to discuss the foreign relations, matters under the adjudication of the law court etc.

DEFECTS

Though the Act of 1909 made a considerable improvement in the Legislative business and output, there were still some defects.

- The people were not truly represented in the Legislatures. Only dominant groups, particularly lawyers found entry in them.

- The overriding powers and control over legislation and finance continued to be with the executive.

- No autonomy was given either to the Provincial or Central Govt because the former was subject to the powers of the Secy of State for India.

- The Act did not provide for any kind of responsible Govt which was the main demand of Indians.

These defects magnified by the Indian movement for self-govt led to the govt to consider the question of constitutional reforms which finally resulted in the Govt of India Act 1919.

THE GOVERNMENT OF INDIA ACT, 1919

On August 20, 1917 Montagu, the then Secy of State for India, announced in the House of Commons that "the policy of His Majesty's Govt with which the Govt of India are completely in accord, is that of the increasing association of Indians in every branch of administration and the gradual development of self-governing institutions, with a view to the progressive realization of responsible govt in India as an integral part of the British Empire."
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The Act was the first comprehensive constitutional document of India. Its preamble specifically emphasised maximum autonomy to the provinces as a step towards self-government. The Act initiated a ‘sort of responsible govt’ in the provinces. It made considerable changes in the constitution, powers and position of the Secy of State and his council, the central govt and the provincial govt. Autonomy was granted to the provinces by making provision for the classification of all subjects into central and provincial subjects. The Act also introduced dyarchy in the Provinces. Matters of admin were first divided between the Centre and the Provinces and then the provincial subjects were further bifurcated into the ‘transferred’ and ‘reserved’ subjects. The transferred subjects were to be administered by the governor with the aid of the ministers responsible to the legislative council composed of elected members. The reserved subjects were to remain responsibility of the governor and his executive council.

But no element of responsible govt was introduced at the Centre. The governor-general in council continued to be responsible as before to the British parliament through secy of state for India.

PROVISIONS OF THE ACT

- Introduction of the dyarchy at the provinces --- division of the provincial subjects into reserved subjects and transferred subjects.
- Reserved subjects-----police, jails, irrigation, forests etc were to be administered by the governor and his council.
- Transferred subjects-----education, local-self-government, public health and sanitation, agriculture etc. were to be looked after by the governor and the ministers.
- Relaxation of the central control over the provinces through the “devolution rules” which categorized the subjects of administration into the two groups viz. Central and provincial.

The Effect of Government of India Act 1919

Main effects as regards Legislative Council were

- (1) Making the central legislature bicameral (consisted of the council of states and legislative assembly) and more representation by removing the official majority and increasing the non-official directly elected.
- (2) To increase the size of the provincial legislative council, to increase number of the elected members in each
- (3) To substitute direct for indirect election
- (4) To enlarge the electorate
The salaries of the secretary of state for India and his assistants to be paid out of the British revenues.

Appointment of the high commissioner of India who was responsible to the government of India and paid by it. The duties of the commissioner -----to procure stores for the Indian government, to supply trade information and promote commerce and to look after the education of the Indian students in England.

DEFECTS OF THE REFORMS

1) The Act did not prescribe qualifications of voters, the method of election, the constitution of constituencies. All these matters were to be provided for by rules made under the Act.

2) The principle of communal representation, which was accepted under the Morley-Minto scheme of reform, was not retained, but even extended in its application.

3) Another feature of the new reforms was a very considerable increase in the number of the electors. The scheme of franchise was based generally upon the principle of residence within the constituency and the possession of certain property qualifications as evidenced by the payment of land revenue, rent or local rates in rural areas, municipal rates in urban areas, and income-tax.

- The Executive was not responsible to, or removable by the Legislature, except in the transferred sphere in the provinces;
- Limitation was placed on the power of the Legislature in voting expenditure, there was no real control on the purse;
- Important portfolios, such as those of finance, law and order, were under the sole control of the Executive;
- Extraordinary powers were vested in the Governor-General.

THE GOVERNMENT OF INDIA ACT 1935

After the failing of the Simon Commission of 1927, Gandhi launched the Civil Disobedience Movement which ended with the Gandhi- Irwin Pact of 1931. After this there were three sessions of Round Table Conferences to decide the issue of independence. But these were unsuccessful. Then in 1935 was introduced the Government of India Act which was meant to replace the Government of India Act of 1919. This Act was meant to apply to both the provinces and the princely states. The Act conferred a substantial amount of autonomy on the provinces of British India and established responsible government for the first time.

Government of India Act of 1935 for the first time introduced federalism in India comprising of the provinces and the Indian states. While under all the previous Government of India
Acts, the govt of India was unitary, the act of 1935 prescribed a federal structure for India, distributing legislative and other powers between the Centre and the Provinces.

The composition of the legislatures also underwent a significant change and the principle of bicameralism was introduced at the centre and some of the provinces.

**PROVISIONS OF THE ACT**

- Provision for the establishment of an all India federation to be based on the union of the British India and the princely states (it did not come into existence since the princely states did not give their consent for the union).

- Division of powers into the three lists ----- federal, provincial and concurrent, residuary powers with the governor general..

- Provincial autonomy -The grant of a large measure of autonomy to the provinces of British India (ending the system of dyarchy introduced by the Government of India Act 1919).

- Provincial legislatures were to be made bicameral for the first time in the 6 provinces (Bengal, madras, Bombay, u.p, bihar and assam).

- Extension of the principle of separate electorate to sikhs, Europeans, Indian Christians, anglo-indians.

- Discretionary powers of the governor-general and the governors.

- Establishment of the federal court at Delhi (1n 1937) with a chief justice and not more than the 6 judges.

- The introduction of direct elections, thus increasing the franchise from seven million to thirty-five million people.

**DEFECTS OF THE ACT**

Dyarchy at Centre. - The central legislature was never constituted under the provisions of the Government of India Act 1935. It continued to function under the provisions of the previous act of 1919 because the Indian states showed reluctance to join the federation and then the WW II started.

- Option for states.

- Privileged position of the states.

- Communal award.
- Discretionary powers of the governor-general.
- Mistrust of Indians.

The degree of autonomy introduced at the provincial level was subject to important limitations:

The Provincial Governors retained important reserve powers, and The British authorities also retained a right to suspend responsible government.