

Constitutional Development

The landmarks in the development of the constitution during the British rule (which laid down the legal framework for the organization and functioning of administration in the British India) are explained below in a chronological order.

Regulating Act of 1773

This was the first step taken by the British Government to control and regulate the affairs of the East India Company in India. It laid the foundations of Central Administration in the following three respects.

- (i) It designated the Governor of Bengal as the Governor-General of Bengal. The first such Governor-General was Lord Warren Hastings.
- (ii) It subordinated the Governors of Bombay and Madras to the Governor-General of Bengal.
- (iii) It established Supreme Court at Calcutta as the highest court.

Pitts India Act of 1784

It placed the Indian affairs under direct control of British Government. For that purpose, it established a Board of Control (representing the British Cabinet) over the Court of Directors (the governing body of the East-India Company).

Charter Act of 1833

It made the Governor-General of Bengal as the Governor-General of India. All civil and military powers were vested in him. Also, the Government of Bombay and Madras were deprived of their legislative powers. This was the final step towards centralization in British India. The Act created for the first time, the Government of India having authority over the entire territorial area possessed by the British in India. Moreover, the Act also ended the activities of the East India Company as a commercial body.

Charter Act of 1853

This Act separated, for the first time, the legislative and executive functions of the Governor-General's Council. It also introduced a system of open competition as the basis of recruitment for civil servants of the Company and thus, deprived the Directors of their patronage power.

Government if India Act of 1858

This Act transferred the government territories and revenues of India from the East India Company to the British Crown. In other words, the rule of company was replaced by the rule of Crown of India. The powers of British Crown were to be exercised by the Secretary of State of India. Thus the Board of Control and Court of Directors were replaced by this new office. The Secretary of State was a member of British Cabinet and was assisted by Council of India, having 15 members. He was vested with complete authority and control over Indian administration through Governor General as his agents, and he was responsible ultimately to the British Parliament.

Indian Council Act of 1861

The provision of this Act were:

- (i) It introduced for the first time the representative institution in India. It thus provided that Governor-General's Executive Council should have some Indians as non-officials members while transacting legislative business.
- (ii) It initiated the process of decentralization by restoring the legislative powers to the Bombay and Madras Presidencies.
- (iii) It accorded the statutory recognition to the portfolio system.
- (iv) It empowered the Governor-General to frame rules for more convenient transaction of business in the council.

Indian Council Act of 1892

It introduced the principle of election but in an indirect manner. The Governor-General still had the power of nomination even though the members were indirectly elected. Also, it enlarged the functions of Legislative Councils and gave them the power of discussing the Budget and addressing question to the Executive.

Indian Council Act of 1909

This act is also known as Morely-Minto Reforms (Lord Morely was the then Secretary of State for India and Lord Minto was the then Governor-General of India). It changed the name of Central Legislative Council to Imperial Legislative Council and retained official majority in it. The provincial Legislative Councils, on the other hand, were allowed to have non-official majority. Apart from increasing the size of Legislative Council, the act also enlarged their deliberative functions. The Act also introduced a system of communal representation for Muslims by accepting the concept of 'Separate Electorate.' Thus, this Act 'legalized communalism' and Lord Minto came to be known as the 'Father of Communal Electorate.'

Government of India Act of 1919

This act is also known as Montagu-Chelmsford Reforms (Montagu was the then Secretary of State for India and Lord Chelmsford was the then Governor General of India). It relaxed the Central control over the provinces by demarcating and separating the Central subjects from that of provincial subjects. The Central and provincial legislatures were authorized to make laws on their respective list of subjects.

The Act further divided the provincial subjects into two parts - Transferred and Reserved. The transferred subjects were to be administered by the Governor with the aid of ministers responsible to the Legislative Council. The reserved subjects, on the other hand, were to be administered by the Governor and his Executive Council without being responsible to the Legislative Council. This dual scheme of governance was known as 'Diarchy.' The term

'Diarchy' is derived from the Greek word 'diarcher' which means double-rule. However, this experiment was largely unsuccessful. The Act introduced, for the first time, bicameralism and direct elections in the country. Thus, the Imperial Legislative Council was replaced by a Bicameral Legislature of an Upper House (Council of State) and a Lower House (Legislative Assembly). The majority of members of both the Houses were chosen by direct election.

The Act also required that the three of the six members of the Governor General's Council (other than the Commander-in-Chief) were to be Indian.

Government of India Act of 1935

The Provisions of this Act were:

Federation

The Act provided for establishing an All-India Federation consisting of provinces and princely states as units. Consequently, the Act divided the powers between the center and units in terms of three lists, namely, Federal List (for center, with 59 items), Provincial List (for provinces, with 54 items) and the Concurrent List (for both, with 36 items). The residuary powers were given to the Governor-General. However, the federation never came into being as the princely states did not join it.

Provincial Autonomy

The Act abolished Diarchy in the provinces and introduced 'provincial autonomy' in its place. Thus, the provinces were freed to a large extent from the Central Control. They are allowed to act as autonomous units of administration in their defined sphere. Moreover, the Act introduced responsible governments in provinces, that is, the Governor was required to act with the advice of ministers responsible to the provincial legislatures. This part of the Act came into effect in 1937 and was discontinued in 1939.

Dyarchy at the Centre

The Act provided for the adoption of Dyarchy at the Centre. Consequently, the federal subjects were divided into Reserved Subjects and Transferred Subjects. However, this provision of the Act did not come into operation at all.

Bicameralism in Provision

The Act introduced bicameralism in six out of eleven provinces. Thus, the Legislature of Bombay, Madras, Bengal, Bihar, Assam and the United Provinces were bicameral consisting of a Legislature Council (upper house), a Legislature Assembly (lower house). However, many restrictions were placed on them.

Indian Independence Act of 1947

Till 1947, the Government of India functioned under the provinces of the 1919 Act as the provinces of 1935 Act relating to federation and Dyarchy did not come into operation. Thus, the Executive Council provided by the 1919 Act continued to advise the Governor-General till 1947.

The provisions of the Indian Independence Act were as follows.

- (i) It declared India as an independent and sovereign state and brought to an end the responsibility of the British Parliament for Administration of India.
- (ii) It established responsible government at both the Centre and the provinces. It designated the Governor-General of India and the Provincial Governors as constitutional heads (normal heads). In other words, it made them to act on the advice of the respective council of ministers.
- (iii) It assigned dual functions (i.e. constituent and legislative) to the Constituent Assembly formed in 1946. It declared this dominion legislature as a sovereign body.

