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EVOLUTION OF THE INDIAN CONSTITUTION

BEING

A STUDY OF POLITICAL GROWTH IN INDIA
FROM THE EARLIEST DAYS, THROUGH
STAGES MARKED BY ACTS OF THE BRITISH
PARLIAMENT UP TO THE GOVERNMENT
OF INDIA ACT OF 1935

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EVOLUTION OF THE INDIAN CONSTITUTION

Pre-British and Early British Days

The evolution of the Indian constitution began in the earliest days of British rule in this country. It is, however, worth while to point out that the germ of constitutional government already existed here. Both the Hindu and the Muslim States of pre-British India were constitutional States. The government was founded on an elaborate system of codified law. Democratic government, however, as it is understood in Western countries, was not to be found in pre-British India, so far as the Central Government was concerned. Though here, as in all countries, kings and emperors ruled by the implicit consent of the people, they had no representative institutions by which the people could express their will. At the same time it would be a mistake to think that the administration was entirely bureaucratic or autocratic. The State was concerned

chiefly with problems of defence, and with the levying and collection of taxes. So far as the local administration was concerned, it was left very largely in the hands of local chiefs, and in the villages and townships in the hands of local democratic bodies called Panchayats. These administered justice, undertook police duties and also acted in the capacity in which municipalities do to-day. This machinery of local self-government continued to function effectively under Hindu and Muslim kings, and when the British came to India they left it untouched.

First British Possessions

The British came to India originally as traders, and with no idea of conquest. The condition of trading in a foreign country in those days made it necessary for them to establish trading stations. These they later turned into fortresses, from which to attack. Around these fort-factories sprang up towns the inhabitants of which had been attracted partly by the trade and partly by the protection afforded by the fort. These were the first British possessions in India.

To these first British settlements, the British merchants and their assistants brought their democratic ideas and methods; and the factories were governed democratically enough by a president and council, whence the name "Presidency" for the areas around Madras, Bombay and Calcutta. In the townships attached to the factories there soon arose mayors and aldermen and also the machinery of civic government, confined of course in those days to Englishmen.

Emergence of British Political Power in India

The British, who had come to India as traders, soon developed themselves into an organised community, and from this circumstance arose their emergence into a military and political power. Around their factories in Madras, Bombay and Calcutta and other less important trading settlements on the coast, arose towns which became British territory. These towns were defended by forts and by military forces, partly composed of regular soldiers and partly of volunteers from the civil employees of the British East

India Company. Gradually the British in these settlements intervened in disputes between the neighbouring Indian States, and this process was accelerated by the attempt of the French East India Company to establish itself as a territorial power. The French were finally driven out, and left the English in a position of political advantage. It is noteworthy that many of their most notable territorial gains came, not by force of arms, but by adjustment. The British obtained possession of Bengal, first of all, as tax-farmers for the Mughal Empire. Most of their territorial acquisitions in the South were concessions made by the Nizams of Hyderabad or the Nawabs of the Carnatic, in return for military services at critical junctures. On this basis arose a considerable territorial jurisdiction by the Company which was incompatible with its position as a trading concern. The inconsistency of this position was recognised by the English Government. It began, therefore, in the Eighteenth century to take over control more and more of the Company and its Indian territories.

Regulating Act, 1773

The first notable step in this direction was the Regulating Act of 1773, which gave the Governor of Calcutta the position of Governor-General, with supervising powers over the Governments of Madras, Bombay and territories in the Malay Archipelago. In future the Governor-General was to be appointed by the Company, but only with the approval of the British Government. He was to be assisted by an Executive Council. A Supreme Court was to be established at Calcutta with jurisdiction over all British subjects, whether Indian or British, and with a Chief Justice and Judges appointed from England. The chief officials of the Company were given higher salaries and were no longer to be permitted to trade. The Regulating Act marked the beginning of British territorial jurisdiction in India. Although it gave no specific political rights to the people of India, it recognised common legal rights for all subjects of the Crown.

Progress of the Experiment

The first Governor-General appointed

under the new regime was Warren Hastings, and under him the policy of territorial aggrandisement proceeded apace. It extended in various forms to Northern India, where hitherto the British East India Company had had no foothold. This expansion in the territorial jurisdiction of the Company made it still more important, from the British point of view, that it should be controlled by the Government and in 1784 a measure was passed by the British Parliament called the India Act (1784). This measure sought to leave the Company free as to its trading activities, but to bring its political activities under the control of Parliament. With this object in view a Board of Control was set up, under a President, who must be a Minister of the Crown. The Directors of the Company had to submit to this Board all despatches received from India. Their despatches to India were also subjected to the approval of the Board. This made the Company, politically, merely a machine through which Britain controlled the government in India. In this Board we may see the parent of the department of the Secretary of State for India, generally known as the India Office.

Pitt's India Act

About this time, the number of members of Council of the Governor-General was reduced from four to three, similar Councils were set up in the Presidencies, and the Governor-General and Provincial Governors were empowered to act contrary to the wishes of their Councils, provided they submitted to the Home Government a memorandum, stating their reasons for so doing. An important feature of Pitt's India Act of 1784 was a section in which further extension of British power or treaties to afford assistance to Indian Princes was forbidden, because "to pursue schemes of conquest and extension of dominion in India are repugnant to the wish, honour and policy of this nation."

As a matter of fact this policy of non-intervention was for some time theoretically accepted in England. It was, however, never actually carried out. British territorial jurisdiction in India steadily grew, territories being annexed or States being brought into alliance which implied subjection. During the period that followed the passage of Pitt's India Act, the British in India steadily

increased their territory and consolidated their gains. So far as the control of the occupied Indian Provinces was concerned, the Company became merely the agent of the Government of Britain. The Government of India became a regular civil government with its courts of law, and all the machinery of a modern State. No progress was, however, made towards democracy during this period.

First Step Towards Democracy

The establishment of British rule in India and permeation of Western ideas of government soon forced the issue as to what were to be the relations between the English administration of the country and the Indian population; and the more intelligent and liberal-minded among the Company's servants began to turn their minds towards this important problem.

As early as in 1824, a very able Englishman, Sir Thomas Munro, recorded his view as follows:—

“We should look upon India, not as temporary possession, but as one which is

maintained permanently, until the natives shall become sufficiently enlightened to frame a regular government for themselves and to conduct and preserve it." A noble idea; and though unfortunately it was not always followed by Sir Thomas Munro's successors, there have always been enlightened Englishmen in high places who have upheld it at least as an ideal.

Education

Even before the time of Sir Thomas Munro, it was being felt by liberal-minded Englishmen in England that the British Government and people had other duties with Indian people than to exploit them. Thus in 1831, the Company was authorised to make provision for the education of the people of India out of its surplus funds, and a beginning was made in this direction. There was, however, considerable delay in carrying out this policy, due to the controversy among educationists and administrators as to whether the education to be given be on Oriental or Western lines. There were those who held that education should be on Oriental Classical lines, based on Sanskrit, Persian and Arabic.

There were others who insisted that English should be the medium of instruction. Eventually the latter view prevailed, and the Company was definitely committed to the policy of imparting Western education through the medium of the English language.

English as Medium of Instruction

This was the policy embodied in Macaulay's famous Minute of 1835. There can be no doubt that the new change in educational policy was to have a very great effect on the future of India. While it did inconceivable damage to the culture of this country and was completely divorced from the life of the people, it accelerated the demand for self-government and equality.

The first and second quarters of the Nineteenth century marked an intellectual renaissance and a new orientation of Indian thought which were to have a great effect on the future of India.

Further Steps Forward

An important and influential lawyer class was now created. They were very soon to

become the predominant influence among middle class urban Indians, as the new English education gave an orientation to the patriotic ideals of the rising generation towards representative institutions on the British model. It was from these elements that the Congress, which was to arise in the last quarter of the Nineteenth century, was to be compounded.

Government schools and colleges, along with those founded by missionary enterprise, soon spread over the country. The tendency of all these institutions was to create a new class, a middle-class intelligentsia, with Western political ideals. One of the first fruits of the new developments was the Indian press. Conducted in the vernacular first but very soon in English, it was to become a great force in Indian politics.

Government of India Act, 1833

Meantime, the positions of the Government and the Company were undergoing still further changes. The Government of India Act of 1833 abolished the Company's trading powers altogether; it made new provisions for the selection and training of the Company's servants. It also defined the relations

of Indians to the machinery of the Government. A section of the Act stated the principle that no Indian shall "by reason of his religion, place of birth, descent, colour, or any of them, be disabled from holding any place, office or employment under the said Company."

In the same year a statement was made by the Parliamentary Committee on India, to the effect that it was an undisputed principle that the interests of native subjects are to be consulted in preference to those of Europeans, whenever the two came in competition. Actually it was many years before either of these principles was to any great extent acted upon in India; but as a considered declaration of British policy in India they are of great importance.

Queen Victoria's Proclamation

The next important stage in the history of British Rule in India is the landmark of 1857-58 and the subsequent complete transfer of authority in India from the East India Company directly to the Crown. It was followed by the Government of India Act of 1858 which dissolved the East India Company, and

set up in its place government by the Crown, through a Secretary of State for India, who took the place of the old President of the Board of Control.

Almost simultaneously with this was published Queen Victoria's Proclamation of 1858, which pledged the Government to neutrality in religion and assured Indians of equal treatment in respect of employment in the services.

After 1857

The events of 1858 marked very definitely the end of one epoch in Indian history and the beginning of another. For half a century before this the Crown had gradually been taking over control of the political activities of the East India Company and assuming jurisdiction over its Indian territories. With the Government of India Act of 1858, the fiction of rule through the Company disappeared, and the Crown took over directly as ruler. The old arrangement into provinces and presidencies remained. Above these provincial Governorships was the Viceroy and the Governor-General with his Council and headquarters at Calcutta and Şimla.

Indian States

The Viceroy exercised control not only over the provinces of British India, but over the Indian States in subsidiary alliance. In the Indian States Agents to the Governor-General, who came to be known as Residents, were nominated. They exercised considerable authority. In theory the Indian States were internally independent, their relation with the British Government being defined by treaties and Sanads which excluded them from making treaties with other powers. In practice, the Viceroy through Residents and other political officers exercised considerable authority, which though statutorily undefined was nonetheless real. From this undefined authority has arisen the political doctrine of paramountcy. This power resides in the Crown, and in practice permits of the deposition of Princes, the regulation of the succession and the establishment, temporarily or permanently, of British authority within the borders of an Indian State. Though the procedure of annexation is no longer adopted, the Paramount Power exercises great authority and can in fact exile a Prince and set his son on the throne, or take over the administration for a period of years.

Local Self-Government

Under the new regime, education made considerable progress and an educated middle-class of politically-minded Indians arose. They began to demand political privileges in public speeches and through the English and vernacular press which had now established itself in the principal towns. The demand for a share in the government of the country was made constitutionally and moderately, by some of India's leading men. In the face of proclamations and declarations of public policy made by British statesmen and Monarchs from time to time, this demand could not very well be ignored. The first Viceroy in the new era to give material recognition to these claims was Lord Ripon, an English Liberal statesman who held the Viceroyalty from 1880 to 1884. Lord Ripon thought that the way to satisfy the demand for an increasing share in the government of the country was to develop local self-governing institutions. Accordingly he set up district and municipal boards, whose function was the organisation of local affairs. In towns municipalities took some time before they began to function properly, but these institu-

tions marked a notable step in India's constitutional progress.

Legislative Councils

Although the Government of India up to this time had been autocratic or bureaucratic in character, it had in it the germs of constitutionalism. In the year immediately following the passing of the Regulating Act, the Governor-General in Council possessed the power of legislating by ordinance. This was found to be an unsatisfactory arrangement. During the Viceroyalty of Lord Dalhousie, an All-India Legislative Council was created. It consisted of the Governor-General's Executive Council, with the addition of official members from other Presidencies. In 1861 an Act of Parliament was passed which set up not only a Central Legislative Council, but Legislative Councils for the Provinces, and a few Indians were included as members of these bodies. The functions of the Legislative Councils however were purely legislative and deliberative. The only matters they could deal with were Bills laid before them by the executive.

Notable Advance

A further step forward was made in the Act of 1892, which provided for the selection by municipalities and district boards of a certain number of members of the Legislative Councils. The powers of these Councils further were enlarged, and they were allowed to discuss matters of public policy, and to ask questions. The Government, however, retained an official majority and was thus in a position to control the proceedings. This, however, marked a very notable change in the Indian constitutional position, since in these new legislative assemblies, with their partially elective element, there lay the germs of an Indian Parliament. It was in fact from these small and extremely niggardly beginnings that the series of reforms which led up to the Government of India Act of 1935 started. We may well regard the Act of 1892 as the beginning of a new epoch in Indian constitutional history.

National Congress

Meantime public opinion in India was rapidly developing and organising itself. In

1885 there was founded by a body of Indian leaders, of the new politically-minded intelligentsia, an organisation known as the Indian National Congress. This organisation was destined to play a great part in India's political renaissance. The founders of the Congress were helped and advised by a very able and liberal-minded ex-member of the Indian Civil Service, the late Allan Octavian Hume, to whose organising powers the new body owed much. It was Hume too who represented the new movement to the then Viceroy, Lord Dufferin, in such a light that he gave it discreet encouragement. He regarded it in some degree as a sort of safety valve for the new forces of Indian Nationalism.

The early Congress was very different in spirit from its later developments. The Congress steadfastly presented the demand for a greater share in the administration of the country. Gradually, however, the radical element in the Congress grew stronger until in 1907 it definitely obtained control of the Congress and formulated its demands for Self-Government.

Muslim League

It was not till the beginning of the Twentieth century that Muslims began as an organised body to take part in Indian politics. Distinguished Muslims, however, had been from the beginning prominent members of the Indian National Congress. The development of Congress into a body mainly Hindu, however, forced the Muslims to organise themselves in the All-India Muslim League, which became a factor in Indian politics, no less progressive and independent than the Congress.

The Constitutional Demand

Though the new Legislative Council and the grant of a measure of local self-government appeased in some degree the demand of Indians, yet this was obviously not enough. An increasing number of Indians were acquiring Western education. They were not unnaturally eager to reproduce in India those conditions of liberty and democracy of which some of them had read in the classic works of Mill and Burke and Spencer, and others had actually seen in operation in England. Here

was a demand made in the beginning moderately later, when it was long disregarded, vehemently. It had to be met. Unfortunately, however, other counsels prevailed for a while in Britain, and the early years of the Twentieth century were a period of ferment and unrest.

Minto-Morley Reforms

The end of the first decade of the Twentieth century, however, saw a considerable change in British policy. With Lord Morley, an English Liberal statesman as Secretary of State for India, and Lord Minto, a liberal-minded English statesman as Viceroy, the scheme of constitutional reforms known as the Minto-Morley Reforms was brought into being. Under this scheme, the size of the Legislative Councils was enlarged, and in the provinces the official majority was abolished. Indians were appointed to the Central and Provincial Executive Councils, and to the Council of the Secretary of State for India. The constitution was thus generally liberalised. An important feature of this new constitution was that it recognised the right of minorities to

communal representation through the method of separate electorates to seemly adequate representation for the most important minorities in India.

Although the Minto-Morley Reforms constituted a great advance on the position created by the Act of 1892, they did not set up representative government, or anything like it. The government was still carried on by an irresponsible and irremovable executive. Moreover the system of nomination was still retained in regard to the appointment of members of the Legislative Council. This secured a majority to the Government whenever it desired to do so.

Just Before Great War

Not unnaturally this incomplete reform failed to satisfy the Congress or for that matter any considerable section of Indians. They continued to press for full self-government and Dominion status or Purna Swaraj. Amongst liberal-minded English statesmen too it was realised that this government without responsibility must necessarily lead to irresponsible criticism, both in the legislature and in the country. The need for a further step in

constitutional reform soon became evident. The Congress devoted all the ability of its members, and all the advantages derived from its organisation to preaching for self-government; and the other political bodies were not far behind in urging this demand. The Muslim League was no less insistent in its demand for full internal self-government; and so were the Liberals, those Indian politicians who had seceded from the Congress, when that body was captured by the Extremists in 1907. This was the political and constitutional position in India, when the Great War broke out in 1914

Diarchy

The Great War, which repainted the map of Europe, had a considerable political effect in India. India's co-operation with Britain, both in men and money, made Indians feel that they were entitled to some recognition of their services.

The spectacle of thrones and empires falling stirred Indian imagination. It was also natural that popular rule and the recognition of the principle of democracy should give an impetus to the Indian Nationalist movement

towards self-government. This was in some measure realised by British statesmen, and it was in response to this legitimate demand that the Montagu-Chelmsford scheme of reforms came into operation. Lord Chelmsford was Viceroy during this period, and Mr. E. S. Montagu, a member of one of the great Whig Jewish families, Secretary of State for India. Mr. Montagu visited India in 1917, when he discussed his scheme of liberalising the Government of India with officials and non-officials. It was then that the scheme began to take definite shape.

The constitutional device which formed the basis of the Montagu-Chelmsford Constitution, divided the administration into two compartments. Certain departments of administrative activity were to be separated from the others and transferred to Ministers, theoretically at least responsible to an elected legislature, in the Provinces. This scheme had this much to recommend it, that it introduced the principle of responsibility into the Indian Government for the first time. It transferred some of the departments of Provincial Government, local self-government,

education, agriculture and allied departments, to Ministers, who had to be elected members of the Legislative Council. These Ministers, theoretically at any rate, held office subject to their having the confidence of a majority in the Legislative Council.

Government of India Act, 1919

The Act of 1919 was in effect a promise of further and autonomous constitutional progress. Its Preamble stated that, "it is the declared policy of Parliament to provide for the increasing association of Indians in every branch of the Indian administration, with a view to the progressive realisation of responsible government in every branch of the Indian administration, and the gradual development of self-governing institutions in British India as an integral part of the British Empire."

Non-Co-operation Movement

Unfortunately the local background of the Act was not such as to make it popular. There had been the martial law days in the Punjab, with their bitter memories. There were the Rowlatt Act and other repressive laws, the first non-co-operation movement. These and a variety of similar circumstances disturbed that calm

atmosphere which is necessary for the favourable consideration of political changes. In the result, the Indian National Congress decided to boycott the new Councils, and for a while it looked as if other parties might take a similar attitude. The Muslims, however, and a large and influential section of the Hindus not only decided to work the new constitution: but worked it to such good purposes as to make it a base for further political progress.

Simon Commission

It became obvious at a very early stage that the scheme of diarchy or divided responsibility under the Montagu-Chelmsford Constitution was a defective one. It was not contemplated that the Montford Scheme should be anything but an experiment in constitutional government. The Act of 1919 had provided for a survey of the whole position ten years after the constitution had been set up. The British Government decided to appoint a Commission earlier. In 1927-28 a Royal Commission, presided over by Sir John Simon, visited India and held its enquiry at various centres. The Commission eventually issued a

lengthy report. The Commission was unpopular from the beginning chiefly because it included no Indian member and its report failed to carry any weight in India. The Commission's report condemned the principle of diarchy and recommended the establishment of complete self-government in all the provincial services (the police included) by Ministers responsible to the legislature. The enlargement of the franchise was also recommended, and the retention of the principle of communal electorates. Regarding the centre, the Commission conceived that the future of India must be as a Federal rather than a Unitary State. But it regarded the achievement of a Federation of Indian States and provinces rather as an ideal than as something within the realm of practical politics. It recommended the immediate establishment of Provincial Autonomy and the separation of Burma.

These proposals, which as we now know, are not far different in principle from those incorporated as provisions in the Government of India Act of 1935, were treated by most Indian political parties as unacceptable and inadequate.

Round Table Conferences

It became, therefore, evident that if a constitution was to be worked out which would be at once workable and acceptable to Indian opinion, it would be necessary to adopt that method of consultation with representative Indians which was adopted in the three successive Round Table Conferences. To these conferences, the first of which met in London in 1930, leading Indians belonging to the main political parties and to the various communities were summoned, on the selection of the local Governments and the Government of India. In the beginning the Congress boycotted these conferences, but after the famous Gandhi-Irwin Pact, Congressmen also participated. The sum-total of their deliberations may in some degree be regarded as representative of all shades of Indian opinion, not of course that the Act embodies these opinions.

The third Round Table Conference having met and concluded its deliberations, the next step was to appoint a Joint Committee of both Houses of Parliament to draft a Government of India Bill. Remembering the rock on which the Simon Commission had been wrecked, the British Government decided to appoint

an Indian Committee to assist and advise the Joint Committee in the deliberations. But hardly a single important proposal contained in the Joint Indian Memorandum was incorporated in the report of the Joint Committee. The Bill drafted by this body was subsequently submitted to Parliament, and as amended thereby, constitutes the Government of India Act of 1935.

The New Constitution

The result of the three Round Table Conferences and the deliberations of the Joint Select Committee was the Government of India Act. The Bill, as it emerged eventually from Parliament in Statute form, was not essentially different from the constitution proposed by the Simon Commission, save in this respect that it contemplated the immediate establishment of a Federation of States and Provinces. We say contemplated advisedly, for while the Act provided for the immediate setting up of full responsible Government in the provinces, and certain changes in the Central Government, it did no more than state the federal principle, which would be effectuated when a sufficient number of States acceded

to the Federation.

In the Provinces, the Act proposed legislatures, entirely elective, with Ministers responsible to the legislatures. These legislatures were to be based on a considerably extended franchise, including the method of communal representation by separate electorates. At the centre, there was to be in practice a continuation of the unsatisfactory and patently defective Diarchic method. Foreign Affairs and the Army were portfolios reserved to the Governor-General and to be administered by officers responsible only to him, though he was to consult his Ministers as far as might be.

Governors' Powers

The "responsible government" given to the Provinces, however, was considerably curtailed by special powers and responsibilities vested in the Governor. These enabled him to legislate by ordinance, to veto measures passed by the Provincial Legislature, and even in certain circumstances to suspend the constitution and assume sole control. Similar and even more extended powers were conferred on the Governor-General. The Governor

General and Governors were, however, to be controlled by Instruments of Instructions, which would in effect advise the minimum of interference. A provision was made explicitly and implicitly that the administrators appointed would work the constitution sympathetically, the whole structure in fact being really based on the idea of responsible government by convention.

This constitution, of course, though representing a measure of advance on the old diarchic system, fell far short of popular aspirations; and it was condemned by all political parties. Bad as it was however, it constituted a basis for constitutional progress, and most of the Indian political parties decided to work it on this basis. While declaring to work the Constitution with a view to obtaining whatever benefit it offered, the people of India pledged themselves to continue to demand full self-government.

The Indian States were lukewarm to the federal idea, but there are indications that they will accept the inevitable and accede to the Federation to make it a reality in the near future.

