

Constitutional Reforms in the Pre-Mutiny Period in India

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Abstract: - Study of the rise and growth of parliamentary institutions ever since the establishment of the British rule in India is beset with a strange spectacle of two divergent currents, each pushing things in its own direction, but both ultimately witnessing their confluence into a single channel as a result of which the present bicameral model of the Parliament came into being. The classical argument of the colonial statesmen based on their conviction that English parliamentary institutions could not be transplanted in a country ridden with social antagonism, economic stagnation and political backwardness assumed a 'modified character' for the better at the hands of enlightened liberal statesmen in the period following the first World War, no matter the dichotomy continued to prevail till the last constitutional dispensation in the form of the Indian nationalists. So, this paper will disclose all secret facts in this context.

Keywords: - Constitution, Company, Empire, Government, Parliament.

The obdurate view of the classic English Statesmen that India was not suited to the rise and growth of their parliamentary institutions stood defeated in the face of this residential fact that the British domination "led to the imposition of British ideas on Indian legislation and legislative machinery"¹. The new industrial class in power in the latter half of the eighteenth century could not remain oblivious to the fact that the system of empire-keeping required some more restrictions on the working of the East India Company. Thus, the Regulating Act of 1773 came into being that made drastic changes in the rules relating to the organization and working of the East India Company. It is not only elevated the office of the Governor-General but also made him the supreme legislative authority in this country "By this Act, the legislative power of the Governor-General independently of the Supreme Court, was recognized and confirmed"²

The new arrangement failed to be satisfactory from every point of view the most important question that engaged the attention of the Government at that time related to the organizations and powers of the legislative Council, Thus, in the letter of July 14, 1829 addressed to the judges of the Supreme Court, the government proposed for the reconsideration that the members of the Supreme Government and the

judges of the Supreme Court of Calcutta should be constituted into a legislative Council³. A successful accomplishment this move appeared in the Charter Act of 1833 when a Law Member was added to the Governor-General's Council at Calcutta with a specific duty to advice in legislative matters. So far, the Governor-general-in-Council combined in itself executive, legislative and judicial functions. But this Act brought about legislative centralization by establishing only one Legislative Council for all British territories in India. It effected these important changes in the legislative system of India.

1. The entire legislative power for all the British territories was exclusively vested in the Governor-General-in-Council.
2. The laws passed by the Governor-General-in-Council came to be called 'Acts' and not Regulations as before.
3. The law member was added to sit and vote at the meetings of the Council convened for law making purposes.

The importance of this arrangement lay in the fact that it centralized the law-making function in the Governor-General and his Council and introduced "The first element of institutional specialization."⁴

The introduction of the Law Member is regarded as the first move towards an Indian legislature.⁵ Moreover, the convenient of this distinguished office of Lord T.B. Macaulay made it all the more significant. However, it should be taken note of that this move was dictated neither by any human nor by any political consideration. Nothing but the need for having a technical expert in India to deal with legislative matters was the main consideration that haunted the minds of the English rulers. The powers of the purse did not belong to the people or their nominees when the seedling of future legislatures took root on the implementation of this Act. An improvement upon this took place when the Charter Act of 1853 came into being. It further distinguished the executive and the legislative aspects of the Governor-General's Council. The size of the Council as a legislative body was further increased by the addition of a representative of each Presidency along with two judges. The Law Member was made a full member of the Council. The Legislative Council became a body of 12 members in all by virtue of having 4 official member representing four provinces pointed by the Governors from amongst persons having been in the service of the Company for at least 10 years and additional members or 'Legislative Councillors' Another important development was that sittings of the legislative Council were made public and the proceedings published officially.

As a result of this improved system, the Legislative Council was said to have assumed the airs of an empty parliament⁶. The members brought forward motions that had no reference to the measures before them. Sometimes, they even criticized the Executive Council and thereby assumed powers of interpretation. But so far as the question of privileges was concerned this body behaved like a moderate sovereign legislature. It had framed its own rules of procedure, amended them whenever thought necessary by them called for information from different Governmental organizations, protested against any proposal to restrict its privileges of entertaining petitions and strongly resented the casting of any as person on it or attribution of any motive to it in its works.⁷

The role of the Legislative Council as a miniature House of Commons' became source of anxiety to the authorities sitting in England Sri Charles Wood, the then President of the Board of Control for the East India Company, wrote to Sir Bartle Frere that nobody at the time of the introduction of the Charter Act of 1853 "even dreamt of a debating body with open doors and even of quasi-independence" and in very frank terms, confessed that there was always a sympathy in England for an independent deliberation. His biting indictment may be noticed in his statement. "My intention was to give to the Council the assistance of local knowledge and legal experience in framing laws. The Council however, has become a sort of debating society for petty parliament"⁸.

Reforms under the policy of Association

A definite change in the English colonial policy took place after the enforcement of the Government of India Act, 1858, that terminated the era of the Company rule and instead inaugurated the era of India under the Crown. Aware of the horrors of the 'Mutiny' of 1857, the British statesmen supplemented the implementation of the natives with their system of administration, In pursuance of the policy of association they thought in terms of granting constitutional reforms that would involve participation of the native elements in different branches of administration. Taking note of this fact, Sri Bartle Frere observed : "The addition of the native element (to the Legislative Councils) has become necessary owing to our diminished opportunities of learning through indirect channels what the natives think of our measures and how the native community will be affected by them"⁹.

This was the spirit behind the Indian Councils Act of 1861. By the admirers it was lauded as the prime charter of the Indian legislature' Now the Governor-General's Legislative Council was reinforced by additional members, not less than 6 and not more than 12, nominated by him for two years. Of these, not less than half were to be non-officials i.e., not being in the civil or military services of the Crown. The Governor of the Presidency or the Lt-Governor of a Province also acted as an additional member in case the Council had a sitting within his territorial jurisdiction. Since this was the Supreme law making

body of the Country, the Governor General was authorized to appoint a fifth member to his Executive Council who was to be a gentleman of legal profession, a jurist rather than a technical lawyer,. It gave to the Governor-General the great power to promulgate an ordinance for the peace and good government of British India or any part thereof that could remain in force for a period of 6 months unless repealed earlier or converted into a law.

The merit of the Act 1861 lay in inaugurating the system of legislative devolution in India.' Though in a halting manner, the start of a representative system may also be discovered herein. It was appreciated for setting a new ideal for the educated Indians to make the British Government responsive to public opinion without in any way affecting its supremacy and authority."10 However, this act "reached nowhere near the people's aspirations for a more representative legislative body."11 Interested in nothing else than the preservation of their favorites being in the communities of the princes, landlords. Dewans and the like, most of whom were ignorant of the English language in which the proceedings were conducted.12 Thus, most of them played the role of magnificent non entities.

A noticeable change in the evolution of parliamentary system took place after the establishment of the Indian National Congress in 1885. The early liberals like W.C. Bonnerjee, Dadabhai Naoroji, Pherozechah Mehta, Surendanath Banerjee and Gopal Krishna Gokhae admired the British system of government and desired its transplantation in this country. At its first session held in the city of Bombay under the president ship of W.C. Bonnerjee, it registered its faith in presence of the elected members of the legislative councils having right to ask questions and discuss budgetary proposals. It shows that from its very start the object of the congress "was to ensure a parliamentary safeguard against bureaucratic action, such as have lately been witnessed in profusion in the Assembly in respect of the rejection or vetoing of popular demands accepted by a majority and the certification of government demands rejected by people's representatives."13

Thus came the Indian Councils Act of 1892 as a marked improvement upon the Act of 1861. It

enlarged the size and functions of the supreme as well as local legislative councils. The members were given the right to ask questions on matters of public interest. For this a notice of 6 days in advance was to be given to the Government. The members were also authorized to discuss budget under certain conditions. The strength of the additional members was also increased. Now it was to be of not less than 10 and not more than 16 members in the supreme legislative council. It was also laid down that two-fifths of the additional members were to be non-officials. A clause, (known as the Kimberley clause) was added whereby the Governor-General was empowered to make regulations concerning the nomination of additional members subject to the approval of the secretary of State-in-Councils.14

It may, however, be repeated at this stage that, like other constitutional experiments, the Act of 1892 also failed to meet the expectations of the great Indian Liberal leaders. Even under the new set up, the members felt deprived of the status of belonging to a separate and distinct organization available to a legislative body. Still the members lacked essential freedom that is the very life-breath of a parliamentary body. On the contrary, the members of the new Legislative councils ever remained conscious of the fact that they "were nothing more than an appendage to an organ whose main function was not to legislate but to govern."15 The reason for all this lay in the fact that a government "Run by a foreign power cannot afforded to arm a subordinate legislature with a complete code of parliamentary privileges as they are possessed by the sovereign parliament unless, of course, the foreign power is prepared to dig its own grave."16

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