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Constitutional Development: A Retrospective Study In India

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Abstract: The formation of Indian Constitution has a long historical background. There are numerous bills, acts and characters formed by the constitutional committee that are an integral part of the constitution. These were passed by the British Parliament on various occasions. They may be termed as the background of our constitution. The present form of constitution represents hard work and experience of years, instead of being product of undue hurry. The roots of our constitution are co-joined with the roots of our freedom. As a matter of fact, this constitution was formed by the constitutional committee, but several acts that came in to existence during the British regime have also contributed immensely in the constitutional development of our country. The present research paper is an endeavour to throw light on the different acts/bills passed by the British government in this regard.

Keywords: British Regime, Constitutional, Parliament, Magna Carta, Indian Council Act, Govt. of India Act-1935.

Introduction: British government passed many acts to govern India. During her regime some important acts passed by her in India are as under:

A. Constitutional Development under the East India Company (1600-1858):- The East India Company was formed on 31st December, 1600, in London with special approval from the British Queen, Elizabeth. All the acts and regulations passed in this period were singularly aimed at securing commercial ends for the company in India. In order to have a holistic understanding of the Indian constitution, the study of these endeavors of the company is of vital importance.

The Charter Act (1600): The act imparted a monopoly to the company with regard to the trade with the eastern or oriental world. All the powers related to the company's regime in India were handed over to the Governor and his council that had forty members in it. The governor and the council had such right as to pass rules and acts that enabled the smooth running of the management and administration of the company. In order to organize the administration of the company, Bombay, Madras and Calcutta were declared presidency cities.

The Charter Act (1726): This charter further imparted powers pertaining to the formation of laws to the Governor and his council. This power was confined to the company's board of directors in England beforehand.

The Regulatory Act (1773): This act was the first act of the British Parliament which was aimed at exercising indirect control over the affairs of the East India Company's rule in India. Under this act, the first ever written constitution was framed for the administration of the company. Through this act, a well organized administrative system was introduced for the first time in India. The act was approved by the British Prime Minister, Lord North. The act conferred the title of the Governor General on the Governor of Bengal. Thus, Warren Hastings became the first Governor General. The Supreme Court was established in 1974 in Bengal. These states like Bengal, Bihar and Orissa fell under its jurisdiction. The first justice of this court was Sir Ellijay Impey. The process of unification of Indian states was initiated under this act. Besides, the act brought the actions of the East India Company under the British Administration.

Act of Settlement (1781): This act was introduced primarily to remove the drawbacks of the regulating Act, 1773.

Fox India Bill (1783): The bill was prepared by Admund Burke and Philip Francis. The bill could not pass in the House of Lords. And the Government of Lord North had a resign on 18 December, 1783 on account of this failure. It is noteworthy that it was the first and the last occasion when a British Government was dissolved with regard to a matter of India.

The East India Company Act (1784) or Pitts India Act: The act was targeted at strengthening the control of the British Parliament ever the company's administration. The proceedings of the company now stood bifurcated in two divisions – commercial and political. The dual regime started in India. Under this Act, a supervisory commission of six members was formed and it was given a wide range of powers regarding the supervision, control and direction of administration of India. This supervisory commission was headed by a member of the British Cabinet. The Act considerably set-up the Governor General's control over the financial matters of India.

Charter Act (1793): The Act was formed with a view to improve the actions and organizational aspects of the company. Under this act, the Governor General and the Governors were given veto power over the decisions of their respective councils. The Act further established that the members in the supervisory commission should be paid from the revenues of India. The pattern continued upto 1919.

Charter Act (1813): The Act abolished the company's singular right of trade with India. It also threw light on the constitutional status of the British Empire in India for the first time. The Christian missionaries were given permission to spread their religion. At the same time annual provision for an amount worth one lac was made to focus on modern education.

Charter Act (1833): It was a decisive act in the direction of centralization of British India. This Act was introduced in order to put a complete end to the company's trade rights in India, to achieve a greater control over it and to facilitate the Christian missionaries further. The law commission was provisioned for classification of laws in India. The dowry system was declared illegal in India. Under this act, the Governor General of Bengal was made the Governor General of India who held all the civil and army powers. Hence, Ford William Benteng came to be the first Governor General of India.

Charter Act (1853): The Act was the first attempt at segregating the executive and the legislative powers. A separate legislative council with 12

members in it was established for the first time in India. Under this Act, the open competition for the selection of civil servants also started for the Indians. Through this Act, the Parliamentary control ever the Indian Administration and the handling of this administration over the British Empire were facilitated effectively.

B. The Constitutional Development under the British Empire: The British Queen introduced important alterations in the Indian administrative system post 1857. Hence, first of all, the Indian Administration Act, 1858 procured in this regard.

The Govt. of India Act (1858): The first freedom movement, 1857 rocked the company's empire in India. Consequently, the British Parliament had to pass the Govt. of India Act, 1858. This Act resulted into the transition of Indian empire from the company to the Queen of Britain, Victoria. The Governor General of India was now called the Viceroy. Thus Lord Canning came to become the first viceroy of India. The administration of India was handed over to the council of India, comprising of fifteen members it's head was called the secretary to India. This secretary to India was a member of the British Cabinet. He was responsible to the British Parliament. In Britain, he was known as Minister of India. All the rights and duties related to the revenue in India were handed over to the state secretary and his council. The dual administration of the court of Director and the Board of Control was put to an end. The Act is also termed as the Magna Carta of Indian freedom movement.

The Indian Council Act (1861): The act initiated the constitutional development in India. The departmental system came into existence in India. The executive council of Viceroy was now called the imperial Legislative council. For the first time in history the Indians were allowed into the law making process under this act. The Governor General was given the prerogative to issue ordinances. The legislative powers of the council of the Governor General were not only decentralized but also embedded in the governments of Bombay and Madras.

The Act of 1873: This act came up with the provision that the East India

Company may be dissolved at discretion of the British government. It finally had its effect on Jan 1, 1884 when the East India Company became totally defunct.

The Royal Titles Act (1876): Under this act, a sixth member was introduced in the Governor's central executive council and this member was given the responsibility of the public welfare department. On April 28, 1876, Queen Victoria was announced as the empress of India.

Indian Council Act (1892): This act represented an improved form of the 1861 Act. It was passed to enlargen the legislative councils and to lend them greater powers. Through this act, the commencement of the Parliamentary system in India was first observed, and the Indian Members were given the right to discuss and ask questions on annual budget.

Indian Council Act (1909) or Marle-Minto Act: The Indian Council Act 1909 is commonly known as the Marle-Minto's reforms. Lord Minto was the Viceroy of India at the time of this act while Marle was posted as the Secretary to India. This act focused on the enlargement of the central and the state legislative assemblies. A provision for separate electoral system for different cast, classes and religions was introduced. The provision for separate representation of and lords was also made. The Indian members were given the right to ask complementary question to give loans to local institutions, to give extra donation and to pass the resolution regarding new taxes. Under this act, a yet another provision was that the induction of the Indians into the central and the state legislative councils.

The Govt. of India Act (1919): On 20th August 1917, the British government announced that its target was to instill a responsible government in India step-by-step. Therefore, the Government of India Act, 1919 was framed which came into existence in 1921. The British Government had used the words 'responsible government' for the first time. This act is known as Montagu-Chelmsford reforms. Montagu was the Secretary to the State and Chelmsford was the Viceroy of India. The dual administrative system formulated by Leoniskartis was put into action through this act. The dual administrative system or diarchy was

initiated on April 01, 1928 in eight states including Bengal, Bihar, Assam, the Joint State, Middle State, Punjab, Bombay and Madras. The diarchy system continued up to 1937. This act established a double-floored, central organizational body – one being the central assembly and the other, the state assembly with 140 and 60 members respectively. The lower house tenure was fixed for 3 years while the upper house tenure was kept 5 years. Through this act, the right to casting vote was given to those who gave a certain amount of tax to the government. The act further developed the concept of communal electoral system. The act made provision for setting up the public service commission. Therefore, the Union Public Service Commission was established in 1926.

The Govt. of India Act (1935): The last phase of the process of the constitutional development started by the British Rule concluded in the Govt. of India Act, 1935. This act was based on a white paper prepared in 1932. The provisions of this Act had a great impact on the constitution of India. Many important features of the constitution were directly taken from this Act. It is a really a lengthy and detailed document having 321 sections and 10 schedules. It had no preamble. Through this act, the diarchy system in states was put to an end they were set free. On the other hand, the diarchy system was implemented in the centre. All the issues were divided into Union list (59) state List (54) and under concurrent List (36). Under this act, the concept of voting and the concept of communal electoral were further developed. The council of India was de-institutionalized. Burma, Brar and Adan were separated from India. The act also had provision for a federal bank and a federal court for India, resulting into the formation of the reserve bank in 1935 and the Federal Court in 1937.

Indian Independence Act (1947): In accordance with the Lord Mount Batten plan made on 3 June 1947, the British Parliament prepared the format of the Indian Legislature, and put it in the Parliament on 4 July 1947 it got the emperor's approval on July 18, 1947. According to it, two dominion states with the name of India and Pakistan were established. Two commissions

were set-up for demarcation of both the states. Mr. Cyril Radcliffe headed both the commissions. Two Governor General were given the responsibility of each state. In India, Lord Mountbatten was made the Governor and Pt. Nehru, the Prime Minister while Muhammad Ali Jinnah was made the Governor of Pakistan and Liyakat Ali Khan, the Prime Minister. Separate constitutional committee would be formed for both the countries and they would be able to opt out of the commonwealth. At the same time, Bengal and the Punjab were to be divided into two parts each and the different states were given a right to joint either India or Pakistan or still remain independent. No longer the British Emperor was the emperor of India now and the post of Minister of India was also dissolved, and the latter's responsibilities were handed over to the secretary to the commonwealth. It was decided that both the states would follow Indian Administrative Act, 1935 till their constitutions come in force. From 15 August 1947 to 26 January 1950, the status of India was the status of a dominion state of the commonwealth.

Conclusion: The constitution of India, one of the greatest documents ever produced came into force in the year 1950 guarantees justice, liberty and equality to all citizens. It is the Supreme Law of India. It is superior to all Laws of the Country. Every Law enacted by the government has to be in conformity with the constitution. It lays down the framework defining fundamental political principles, establishes the structure, procedures, powers and duties of government institutions and sets out fundamentals rights, directives principles and the duties of citizens. It established the main organs of the government – the executive, the legislature and the judiciary. The constitution not only defines the powers of each orange it demonstrated the responsibilities of each. It regulates the relationship between the different organs and between the government and the people. It is based on the principle of equality and guarantees equal rights and opportunities to its entire citizen. On the one hand, guarantees fundamental rights and freedoms and on the other prohibits discrimination on the basis of religion, caste, sex and

place of birth. The preamble of the constitution of India resolves to secure to all its citizens justice, social economic and political liberty of thought, expression, belief, faith and worship equality of status and opportunity and to promote among them fraternity assuring the dignity of the individual and the unity of nation. To attain this goal, the constitution guarantees fundamental rights. Fundamental rights ensure equality before the law and equal protection of law; prohibits discrimination against any citizen on ground of religion, caste, sex or place of birth race and guarantee equality of opportunity to all citizens. It is living documents, an instrument which makes the government system work. It is longest written constitutions of any sovereign century in the world containing 448 articles in 25 parts, 12 schedules, 5 appendices and 113 amendments.

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