

Development of Legislative Bodies in British-India: A Historical Overview

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Abstract: Democracy is the most popular form of government where parliament plays an important role to articulate and to aggregate the demand of the people. Parliament is a primordial institution of the modern age through which the democratic ethos of a state is manifested. Over the years, it has evolved with its multi-dimensional roles across the world according to the aspirations of the people. The legislative body of former British-India inherits the trend of the Westminster system as a part of its colonial legacy. The Parliamentary traditions and norms have gradually developed for nearly two centuries with several constitutional measures during the British rule in India. This paper aims to explore the historical development of the parliament since its inception from the British Parliament. It includes the Constitutional Development in India during British colonial rule and the development of legislative bodies. This article is primarily qualitative. It is a combination of both Historical and Analytical Approaches. With a Historical approach, the historical origin and development of legislative bodies in former British-India has been analyzed in this study. The relevant data were gathered from Secondary sources. Secondary sources of data include documents on the legal framework concerning the parliament, various Charters/Acts initiated by the British colonial ruler in India, published reports, press reports, related books, journals and monographs.

Keywords: Legislative Bodies, Democracy, Colonial Rule, Constitutional Development, Westminster System

1. Introduction

Democracy is the most popular form of government where parliament plays an important role to articulate and to aggregate the demand of the people. Parliament is an ancient institution of the modern age through which the democratic ethos of a state is manifested. Over the years, it has evolved with its multi-dimensional roles across the world combined with the aspirations of the people. The origin and the development of parliament have a long history. The parliament in India has also a glorious historical background in regards to its growth and development. However, in the past, it was not known as the parliament. In ancient India, the *Vedic* and *Puranic* literature has several references to similar political institutions. The existence of popular Assemblies namely *Sabhas* and *Samitis* were examples of such political institutions. These institutions had their generic practice, procedure, norms and values like the Parliament of the modern age. The Parliament of former India inherits the trend of the Westminster system as a part of its colonial legacy. The Parliamentary traditions and norms have gradually developed for nearly two centuries with several constitutional measures during the British rule in India. This paper aims to explore how the legislative bodies in former British India have evolved as an institution

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since its inception from the British Parliament. It includes the Constitutional Development in India during British colonial rule and the development of legislative bodies.

2. Legislative Bodies in British-India: A Colonial Legacy

The Parliamentary institution in British-India has been developed gradually for near about two centuries. The Royal Charters, Acts of British Parliament and reforms in administration brought about by the colonial rule from time to time had decisively shaped the design of parliamentary institutions in India. Initially, the East India Company used to run its administration based on various Charters issued to this effect until the coming up of the Regulating Act of 1773 through which the authority of the British Parliament imposed on the company. "The historic but failed Indian revolt in 1857, downgraded by the British Raj as little more than the *Sepoy* (soldier) Mutiny save for the Indians who cherished the episode as the 'first war of independence' signified the change in the British Colonial imagination: for effective governance and harmony in India, the imperial government realized that the massive disparity between the ruler and the mass in India needed to be overcome." (Rashiduzzaman, 1965). Several British leaders also realized that an institutionalized process of involving the Indians in the country's law-making process was necessary for the peace and stability of India. Among them, the comments of Sir Bartle Frere, a member of the executive council seems very significant. He mentioned in 1860, 'The perspective of the Indian people has become vital, in my opinion, because we have fewer options to understand what Indians think of our initiatives and how they will be benefited from such initiatives (Rashiduzzaman, 1965).

Subsequently, the British Parliament passed several Acts to maintain the peace and stability in India and introduce the representation of Indians in the law-making process as well as administration. Thus, the representative bodies gradually shaped as a legislative body in India. The provisions of Several Acts through which the legislative bodies were formed in India are analyzed below.

2.1 The Regulating Act of 1773: To Enforce Parliamentary Control over Company

It was an Act to set up certain regulations for the enhanced administration dealings with the East India Company as well in India. This was also the beginning of the process of administrative centralization under which the three presidencies of Bombay, Madras and Calcutta were administratively brought under the central control. Under this Act, the Governor of Bengal was made Governor-General with a Council of four members and they will be nominated by the Board of Directors of the Company. The council was to decide by the majority and the Governor-General had a 'Casting Vote'. The Legislation by the Executive was under the independent check of the Supreme Court which had a 'Veto' Power and was set up under the Act itself (Tripathi, 2002). One significant point that needs to be noted here is that despite the beginning of parliamentary control the major power remained with the Directors of the company.

2.2 Charter Act of 1833: The Beginning of the Central Legislature in India

A major development in the direction of legislative power comes with the passage of the Charter Act of 1833. This Act formally ended the rule of the Company. Now the Governor-General and his councillors were styled as 'Governor-General in Council', and a fourth Member, known as 'Law Member' was added (Shimla, 2015). The law member

according to the Act could sit in the meeting of the Council only when it met for legislative purposes. The adding of the fourth ordinary member in the Council was working as an expert in lawmaking as it was a rudimentary Legislature in India. It was the first faint beginning of the Central Legislature in India (Tripathi, 2002). It is maintained that this had some inherent limitations. One major problem with this arrangement at that time was that it was difficult for the Governor-General in Council sitting in Calcutta to know 'local' problems in other 'Presidencies'.

2.3 The Act of 1853: The Separation between the Executive and Legislative Council

Hence when the Act of 1853 was passed after the expiry of 20 years of the earlier Act, it initiated an attempt to make a separation between the Executive and Legislative Council and provided for the enlargement of the Governor General-in-Council. According to this Act, the composition of the Legislative council was made with twelve members which include; six legislative members, Chief Justice and one Judge from Calcutta High Court and four members as representatives of the Provincial Governments comprised with for legislation. Six members of the legislative body were designated as Legislative Councilors and were prevented from sitting and voting in the Council except at meetings to enact legislation and rules. Legislative meetings were chaired by the Governor-General and in his absence by the Vice-President and in his absence by any senior ordinary member present. The chairperson may exercise his 'Casting Vote' if there raised any situation like equality of Votes. The rules of procedures followed by the Council were indistinguishable from those of the British Parliament. Discussions were oral and the Bills were passed through three stages and were referred to the Select Committees of the Council for scrutiny before final consideration in the House (Kashyap, 1994; Tripathi, 2002). The Council have the jurisdiction to condemn the failure of the executive and to investigate it. But there was very little scope for the Governor-General to be informed about the opinions of Indian people regarding legislative actions except through indirect sources because there was no Indian representative in the Council (Rashiduzzaman, 1967). Therefore, it may mention that it was nothing but an extended hand of the Governor General's Council.

2.4 Government of India Act 1858: Control of British Parliament over the Secretary of State for India

After the Revolt of 1857, the Company rule was ended by the passage of the Government of India Act 1858 which vested all territories of India under the control of Company in her Majesty and thereafter it ruled by and in the name of the Crown acting through the Secretary of state. This act brought the system of Dual Government in India to an end (Shimla, 2015). This Act provides for a Council of India, consisting of fifteen members presided by the Secretary of the State who had overriding powers over the decisions of the Council. Though the number of representatives was increased, its powers were curtailed (Tripathi, 2002). The Revolt of 1857 made the colonial ruler realize that one of the main reasons for the widespread outburst of discontent in India was the absence of a relationship between the 'ruling elites and the people' with no Indian member in the Governor-General's Council (Nag, 1978). On the other hand, the Government of Bombay and Madras were also unhappy at the centralization of legislative machinery and loss of their authority. From this backdrop, the British ruler passed the Indian Council Act 1861 (Kashyap, 1994).

2.5 The Indian Council Act of 1861: The Devolution of Powers of the Legislative Council

The Indian Council Act of 1861 was very significant in the constitutional development of India as it commenced vitaltrans format the central and provincial legislature in regards to the legislative process. It initiated a system of legislative devolution in India (Kashyap, 1989). It extended the composition of the central legislature and the number of members increased from 12 to lower limit15and upper limit21.It is composed of different categories of members: five ordinary members, an extraordinary member and six to twelve additional member. Five members (ordinary) were designated from the Executive Council of Governor-General, the Commander-in-chief was chosen as an extraordinary member and the remaining members were chosen equally from both official and non-official Indian categories. This political incorporation of Indians, reflected in British policy through this Act, made it more rational to appoint Indians to administrative positions as well. (Dutta, 1980).

Though the devolution of powers and the associations of additional members was a positive step from the point of growth of legislature, the Act went backwards in curtailing and restricting the legislative powers of the Council in comparison to the council of Governor-General under the Act of 1853 (Shimla, 2015). The Act ensured that the Council did not assume the role of miniature Parliament. It was not established like a responsible government with a representative character as prevailed in England. The council was forbidden to transit any business other than the bills introduced which required earlier endorsement of the Governor-General. The Council could not ask a question or ask for information nor could it move resolution and discuss the budget. There was no provision to enquire into grievances and examine the conduct of the executive. Moreover, the Governor-General was given the authority to work without consulting his Council in an urgent situation and issue an ordinance that would have the same legal force as a statute for six months (Tripathi, 2002;Kashyap, 1994). This Act was passed to enhance the power of the Government (Berriedale, 1922). As a result, this Act failed to full fill the desire of the Indian people. However, it is needless to mention that the Act established the constitutional framework, which lasted until the passing of the Indian Council Act in 1892.

The Indian Council Act of 1861 made the provision to set up Bengal Legislative Assembly in the Bengal province in 1862 and at that time there were a few instances to set up representative institutions except Europe and North America (Ahmed, 2001).Among the five provincial legislatures in India, the Bengal legislature was very significant to understand the background of the growth of Parliament in Bangladesh. There are some certain factors behind this: Firstly, the penetration of the British colonial ruler started from the Bengal subsequently they set their control all over the Indian sub-continent and the colonial rule was circulated based on Bengal province, Secondly, Bengal was considered as the nucleus of the nationalist movements in India because of the vital role of Bengali leader. Thirdly, Today's Bangladesh was an integral part of Bengal which was known then as East Bengal and the parliament of Bangladesh received the norms and practices from the Bengal Legislature as a part of its colonial legacy (Mohiuddin, 2009).

The Bengal Legislature was a three-year term Legislative Council for Bengal was established with the Lieutenant Governor as its head. It consisted of twelve members nominated by the Governor. The entire members of the assembly were non-Indian as there were no certain rules for the inclusion of Indians. The functional power and jurisdiction of the provisional assembly were limited. It may not amend the Act made by the central legislature and every bill required prior approval of the Governor to turn it into an Act. Moreover, it may not enjoy the voting power on the budget also. So, it was a kind of lame and tame legislature under the Act of 1861.

2.6 Indian Council Act 1892: The Enlargement of the Council with More Rights

Under the Indian Council Act 1892, the composition and workings of Imperial and Provincial Legislatures have been changed. The numbers of additional members of native Indians were enlarged by this Act but it did not secure the official majority in the house. The number of additional members was increased from below 6 to 10 in the lower level and below 12 to 16 at the upper level in the Central Legislative Council (Tripathi, 2002). The Act also introduced a system of indirect elections for some additional members by different classes among local bodies, the institution of higher education and trade and commerce associations etc. The council was authorized to discuss the annual budget but it was not empowered to pass a resolution or divide the house. Members have enjoyed the opportunities to ask questions with certain limitations for the first time on executive policies but they were not allowed to ask auxiliary questions or to move resolutions (Tripathi, 2002). Although the changes were introduced in the Act of 1892, the representative character of the council remained restricted. 'The Viceroy's executive authority over the Assembly remained unchanged, and the Council essentially served as a Viceroy's Durbar' (Sikri, 1964). Therefore, the demand of the Congress for the expansion of the Council remained continued and the Indian people were dissatisfied, frustrated and became agitated against the colonial ruler.

In this regard, Lord Curzon, the then Governor-General of India initiated some reform policy to make the British sun radiant in the Indian sky and to make the British position impregnable on the Indian soil as he remarked that he wanted to build the edifice of British rule on 'the rock of granite' (Patnaik, 1973). As a part of his reform policy, Lord Curzon partitioned the Bengal for ensuring effective and efficient administration in 1905. Curzon said at a farewell function in Simla in September 1905, "If I had to sum up my work in a single word, I would say 'efficiency'. That has been our motto and the guiding principle of our administration" (Patnaik, 1973). Through this partition, the agitation spread out across Bengal which made bound the government to withdraw such a decision in the next 6 years (Chatterji, 1996) and the partition of Bengal was annulled in 1911. The annulments made a no-confidence among Muslims in the colonial ruler and exaggerated the hostility among Hindu-Muslim. In regards to such circumstances, mass excitement becomes more aggravated for the demand for more representation of native Indians in the Provincial Assembly. Meanwhile, the government in England has been changed and liberals formed the government. The newly formed government took the demand of Indians into their cognizance (Sikri, 1964) and following government directions, John Morley, Secretary of State for India, and Lord Minto, Viceroy of India, began reform initiatives and constituted a committee led by Sir Arundell. The Indian Council Act was passed by the House of Lords in British Parliament in February 1909, based on the committee's recommendations.

2.7 This Indian Council's Act 1909: The Changes to the Power, Composition, and Functions of both the Central and Provincial Legislative Councils

The Indian Councils Act of 1909, also known as the Morley-Minto reforms, made significant modifications to the power, composition, and functions of both the Imperial and Provincial Legislative Councils. The composition of the council enlarged from 16 to 60 excluding the executive councillors who were ex-officio members (ex-officio-7, nominated officials-28, nominated non-official-5 and elected 27) and the number of members in Provincial Council was also made double. Members were elected by several electorates such as Muslims, Landlords, Muslim Landlords, Chambers of Commerce, or the business elite, and therefore the provision for indirect election remained unaltered. Though the Governor-General as the President of the Council had the power to disallow any resolution in the public interest, the right to ask supplementary questions and moving of resolution and recording of Votes thereon was also provided for the first time. Besides, the rules of the Council enlarged the scope of discussion on the budget. The heads of expenditure, as well as revenue, has the right to exercise voting. However, some heads of expenditure were treated as non-vote able. The Legislative Council had been working as per its own rules to conduct its business more or less modelled on the British Parliamentary norms and procedure (Kashyap, 1989). It seems that the Act of 1909 brought constitutional changes only in form and not in substance. It has given the right to the representatives to raise additional questions and to forward for motion, yet, it remained inferior to the executive as before (Husain, 1991). The introduction of the indirect method of election was another major backdrop of this Act

2.8 The Government of India Act 1919: The Introduction of Bicameral Legislative Council and the Diarchy in the Provinces

Further changes were brought about by the Government of India Act 1919. The central legislature was reorganized under this new Act and included the Governor-General and two chambers: the Council of State (Upper House) and the Legislative Assembly (Lower House), each with a fixed tenure of five years and three years. The introduction of bicameralism could be considered as one of the most important developments in the history of the growth of parliamentary institutions in India. The central legislature was made representative. It had the power to make legislation for the whole of British India. Though the Act of 1919 was an advancement over the previous constitutional reforms, it did not change the power of the British parliament or the supremacy of the Governor-General or his council. The central legislature remained merely an advisory body or at best a non-sovereign law-making body (Kashyap, 1989).

One of the important changes brought about by the Act of 1919 was the introduction of the Diarchy in eight provinces. The subject of administration was classified into 'Central' and 'Provincial' under 'Devolution Rules. The provinces were given the responsibilities of carrying out the administration of the specified subjects. Giving the nature of reforms and limited power to the legislature under the Act of 1919, the nationalist leaders and the Indian National Congress were not satisfied. The demand for more reform continued. As a response to the demand for reforms the developments that followed after the Act of 1919, further reforms were proposed through the Government of India Act 1935.

2.9 The Government of India Act 1935: The Legislature was Made Representative in Nature, but the Executive was not Made Responsible for It

The Government of India Act, 1935 was a significant proposal of constitutional reform that had a visible impact on the constitutional scheme of India. The Federal legislature was composed of two legislative bodies; the Council of States (upper chamber) and the House of Assembly (lower chamber). The Council of States was composed of 260 members. The break-up was like this: 156 representatives from British India were to be elected by direct election, 6 members were to be nominated by the Governor-General and 104 representatives of Indian states were to be nominated by their rulers. The rest of the 10 seats were reserved for different minorities like Anglo Indians and Indian Christians. Previously, the duration of the Council of States was a fixed term of five years. But under this Act, the Council of States becomes an indissoluble body with the provision of a portion of its members (one third) retiring in each tertiary year.

The Federal Assembly, or lower house, had a total of 375 members, 250 of whom were obliquely elected as delegates of Colonial India by the Provincial Legislative Assemblies, while the remaining 125 members were chosen by the rulers of the respective Indian States. The duration of the Federal Assembly was extended from three years to five years. The Governor-General was empowered to dissolve it sooner under his discretion and also may extend the term of the Assembly (Kashyap, 1989).

According to the India Act of 1935, the Governor-General has the authority to 'summon' and 'prorogue' the legislature, as well as 'dismiss' the assembly at his 'discretion'. If he does not sign the bill, it will not become law. In addition to that, he could remit a bill to the houses for reconsideration. In case of disagreement, he could call the joint meeting of the two Chambers. Besides, he had some special powers to legislate; he could proclaim rule during the vacation of the parliament to meet the immediate requirements even during the session period he could proclaim ordinance to satisfactory discharge the functions which fell under his discretion and personal judgment. He could even enact statutes called the Governor-General's Act for the discharge of his functions required to exercise in his discretion. Moreover, he was also empowered to assume by proclamation all or any power rooted in or exercisable by any institution or authority except the Federal Judiciary (Kashyap, 1989).

Though the Act proposed to introduce many changes, there was hardly anything very substantial to offer to the leaders of the national movement to meet their expectations and demand. One of the bones of contentions has been the enormous power and unaccountable supremacy of the Governor-General. It was hardly curtailed despite the continued demands of the Indian leaders. As such, the Federal Legislature continued to remain under the dominant power of the Governor-General. Both Federal and Provincial legislatures also remained subordinate to the overriding authority of the British Parliament. The Legislative Assembly and the Council of States set up under the Government of India Act 1919 functioned from 1921-1947. The Legislature was to some extent made representative, but the executive was not made responsible for it. The members have the right to ask the question, to criticize and to pass legislation but the administration remained under the Governor-General and through him, it was responsible only to the Secretary of State in England (Kashyap, 1989).

The Provincial Assembly elections in India were scheduled in April 1937 as per the mandate of the Government of India Act 1935. Among eleven provinces, the Congress won with a majority in eight provinces including Bengal. In Bengal province, a coalition government was taking oath led by A.K Fazlul Huq which has not emerged as a stable one. Subsequently, the legislature was not functioning effectively because of an unusual situation for the Second World War. After the War, the elections of Provincial Legislature were conducted in 1946 through which the Muslim League secured the majority of the seats in Muslim majority constituencies and the Indian National Congress secured maximum seats of non-Muslims constituencies (Kashyap, 1989).

The Nationalist Movement was never satisfied with the reforms carried out under the Act of 1919 and that of 1935. There was a constant demand for setting up a Constituent Assembly elected by the people of India to frame their constitution. British Government for the first time considered these demands in what is known as the August offer of 1940. The proposal was not accepted by the Indian leaders.

Finally, Cabinet Mission presented a scheme laying down the principles and procedures for framing the future constitution of India on 16th May 1946. They proposed to consider Provincial Legislative Assemblies as constitution-making body as it was elected before this scheme. The composition of the constituent assembly was 385 members among them 292 members were nominated from eleven Provinces of Governor-General and 93 representatives were from Indian states. One representative from each of the four Commissioners' provinces was to be added.

After the election in August 1946, the constituent Assembly opened on December 9, 1946, in the Central Hall of the Parliament. But later on, other developments took place. When the Indian Independence Act 1947 was passed in the British Parliament, it divided India into two independent dominions known as India and Pakistan respectively. Under the Indian Independence Act, 1947, the legislatures of each of the new dominions were authorized to make their respective laws and constitutions (Khan, 2005).

It is revealed from the political and constitutional development in British India that the legislatures both in Central and Provincial were in an inferior position and dominated by the executive.

As a Head of the executive, Governor-General has jurisdiction to call and to dismiss the assembly at his discretion. The Bill may not turn into law unless it was assented by him and even he could forward a bill to the houses for reconsideration. Besides, he had some special powers to legislate; he could proclaim rule during the vacation of the parliament to meet the immediate requirements even during the session period he could proclaim ordinance to satisfactorily discharge the functions which fell under his discretion and personal judgment. He could even enact statutes called the Governor-General's Act for the discharge of his functions required to exercise in his discretion. Moreover, he was also empowered to assume by proclamation all or any power rooted in or exercisable by any institution or authority except the Federal Judiciary.

Even the legislature was unable to make debate and to conduct voting on several significant issues like the budget. Some significant changes happened in the structure of legislature through some Acts but the overriding power of the Governor-General made it an impotent institution.

2.10 Bengal Legislature in British India

The Indian Council Act of 1861 established the Bengal Legislative Council in the then Bengal province, which was more than a century after British colonial dominance in India. The Bengal Legislature was the ultimate effect of the sequence of constitutional developments from the Indian Council Act, 1861 to the Government of India Act, 1935 through which the Indian states were bestowed with constitutional assemblies. Bengal Legislature was composed with the provision of Government of India Act 1935 as bicameral with two legislative bodies: Bengal Legislative Council (upper house) and Bengal Legislative Assembly (Lower House). The first Bengal Legislature election was held in 1937 through which it achieved full representative character by the mandate of the people of Bengal.

3. Role of Legislative Bodies in British-India

3.1 Representation: The representation of Indians was considered as a significant factor to the colonial ruler to maintain stability and control over the colony as the nationalist movement and anti-colonial reaction were growing among the natives. So, there was very little scope for the Indians to play a meaningful representative role in the legislation. The representatives were not directly elected by the people but were nominated according to the whims and regulations of the Acts. However, the native lawmakers were demanding self-government in the legislative bodies enduring all the barrier of the colonial ruler and it was strengthened the national movement of India

3.2 Committee system: The origin of the committee system in India is generally traced back to the Montague-Chelmsford Reforms. The Standing Order of the Central Legislative Assembly provided for three committees; Committees on Petitions in relations to Bills, Committees on Amendments of Standing Orders and Select Committee on Bill. The committees at that time 'were not free from the governmental control and interference. They had no power and privileges' (Kaul and Sakdher, 2001). However, the PAC was also set up in India in 1921 in context of the Montague-Chelmsford Reforms. The nature and competence of the committees were not the same as it was found in the British Parliament though the Committee System was replicated from the British Parliament.

3.3 Accountability: The legislative bodies have merely a democratic norm and character as it was exercised in the British Parliament. The meaning of democracy and colonial rule is not compatible with each other rather its look like a mockery of democracy. The cardinal feature of the colonial rule is to suppress and exploit the people of the colony.

4. Conclusion

This paper focused on the historical development of legislative bodies in British India. The inception of legislative bodies in former India started along with the Royal Charters, Acts of British Parliament and reforms in administration brought about by the colonial rule from time to time had decisively shaped the design of parliamentary institutions. There was very little scope for the Indians to play a meaningful representative role in the legislation as the representatives were not directly elected by the people. There was a very little effective legislative mechanism to ensure the accountability and transparency

of the executive. The legislative bodies have merely a democratic norm and character as it was exercised in the British Parliament. So, the development and workings of the legislative bodies needed to evaluate only within the colonial framework in India. Besides, its workings and disappointments hardly may compare with the British Parliament and any other sovereign parliament where the executive generally remained accountable to the elected representatives. However, the Indian representatives were demanding autonomy in the legislative bodies having all the limitations and barriers of the colonial ruler. Despite having all the limitations mentioned above, the legislative bodies in British-India especially Central legislature in India (1921-1947) and Bengal Legislature were introduced some legislative tools and mechanism among them committee systems is very significant. Such legislative mechanisms were replicated in the sovereign parliaments of both India, Pakistan and later in the parliament of independent Bangladesh. Last but not the least; it may mention here that the legislative bodies in British India paved the way to install the Westminster type of democracy in India as well as in Bangladesh.

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