CHAPTER – II

OFFICE OF THE GOVERNOR - HISTORICAL PERSPECTIVE

In order to comprehend the exact position of the office of the Governor, it is essential to go into its past and study its gradual development, for every living institution has its roots in the past. Before independence a Governor of British Indian province, far from a mere constitutional head, was in reality a constitutional dictator, an autocrat presiding over provincial despotism.¹ The office of the Governor in British India came into being for safeguarding the commercial interests of the East India Company. The fabulous wealth of India made the Englishmen to establish commercial contact with the East. To facilitate this, a group of enterprising merchants of London formed themselves into a company and secured for it a Charter from Queen Elizabeth-I in December 1600.² The Charter provided for the management of the company a simple constitution. According to this, the top management of the company consisted of a Governor elected by the company in addition to twenty-four committees,³ who were individuals and not bodies and later became Court of Directors. The

Charter authorized the company to organise and send trading expedition, to maintain limited armed naval force to its security, to make law and inflict punishment for the good government for the company and its servants and a complete monopoly of trading with the East.4

According to the Charter of 1600 the executive powers of the company vested in the Governor5 and council. The Charter provided the Governor with the responsibility to ensure the proper management and control of the affairs of the company. He was to promote the trading interests of the company. The Charter granted some legislative, executive and judicial powers to the Governor to safeguard the interests of the company. The Governor was empowered to make the laws, frame constitution, issue orders, decrees and ordinances as they seemed necessary for the good Government of the company subject to the condition that they were not contrary to the laws or customs of the English realm. He was also empowered to impose fines or penalties as were necessary to enforce the laws against offenders. Though the Governor was under the control of General Court, these powers were exercised by him being the central figure in the company.6 He could be removed if he did not behave well.7 The Charter was granted for a

5 Mukherjee, op. cit., p. ixv.
7 Dahiya, M.S., Office of the Governor in India, Sundeep Prakashan, Delhi, 1979, p. 1.
period of fifteen years.\(^8\) and Thomas Smythe, Aldermon of London, was appointed as the first Governor.\(^9\)

With the extension of the powers of the company by Act of 1609, 1615, 1623 and 1657,\(^10\) the Office of the Governor became important. Charles-II’s Charter Act of 1661 recognised the company on the joint stock basis and considerably extended its privileges. It also gave power and command over the fortresses. It was empowered to appointment Governors and other officers for their administration.\(^11\)

The powers exercised by the Governor were not sufficient to protect the commercial and trade interests of the company, especially owing to the gradual disintegration of the Mughal Empire after the death of Aurangzeb and secondly, owing to the rivalry and conflicts of French and Portuguese trading companies in India. These factors diverted the intention of the company from commercial interests to territorial gains for consolidating the position of the company in India. Consequently, the Governor was given the power of civil and military government.\(^12\)


\(^10\) Under the Charter Act of 1615, the Company was empowered to give the right of punishment to its general for non-capital offence. The 1623 Act gave similar power to the President’s (Governor) and other Chief Officers. The Act 1657, Cromwell transferred the Company in the joint stock. And he also reduced the term of the Governor to two years. See Dahiya, M.S., *op. cit.*.


\(^12\) Mukherjee, *op. cit.*, p. XVII.
The Charter of 1669 authorised the Governor to exercise all those powers intended for any captain or General of the Army by virtue of the office.\textsuperscript{13}

The Charter of 1677 and 1683 entrusted the Governor with more powers, especially the power to declare war and conclude peace.\textsuperscript{14} The power and privileges which were granted to the company so far were practically exercised by the Governor alone, though he was to function under the supervision and control of the General Court in London.\textsuperscript{15}

On account of the necessity of time the evolution of the Governor's office continued and after a labourous investigation taken by the Select Committee of the House of Commons, the legal status of the company had been established by the Royal Charter granted in 1698. The Charter gave the Governor and the Council authority to exercise civil and criminal jurisdiction at their settlement, and to maintain troops for their defence.\textsuperscript{16}

Under the Charter Act of 1698 each presidency of the company was brought under the control of the Governor and Council appointed by the Commission of the company. The legislative, executive and

\textsuperscript{13} Banerjee, A.C., \textit{op. cit.}, p. XIV.
\textsuperscript{14} Ibid.
\textsuperscript{16} Dahiya, M.S., \textit{op. cit.}, p. 1.
judicial powers vested in the Governor though every decision was to be taken by majority votes.\textsuperscript{17}

As the main aim of the Directors of the company was to accumulate wealth, it brought into existence the system of appointment of the Governor instead of election. The politics began to spoil its smooth functioning.\textsuperscript{18}

In the beginning of the eighteenth century, the company was no longer merely a trading body. It had become a military and territorial power. But the machinery of the administration in India was unaltered. For instance, nothing was done to place the three presidencies – Calcutta, Madras, and Bombay under one head.\textsuperscript{19} Each presidency was independent of each other and was directly responsible only to the Court of Directors in England. The Charter Act of 1698 regulated by and large the affairs of the company up to the enactment of the Regulating Act of 1773. The powers were vested in the Governor and the Council jointly and could only be exercised through majority of votes. The number of members varied in each presidency but it was normally between twelve to sixteen.\textsuperscript{20}

After the battle of Plassey in 1758 the company became dominant power.\textsuperscript{21} It gradually assumed sovereign authority over vast territories.

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\textsuperscript{17} Gehlot, N.S., \textit{op. cit.}, p. 3.
\textsuperscript{18} Dahiya, M.S., \textit{op. cit.}
\textsuperscript{19} Pylee, M.V., \textit{op. cit.}, p. 5.
\textsuperscript{20} Ibid.
\end{flushleft}
conquered with force of arms. Because of the storm and stress, which the company had to face in their expansionist activities in the economic and political fields, need arose for a co-ordinated and a uniform policy. This was to some extent achieved through the enactment of the Regulating Act 1773.22

The Regulating Act of 1773 is regarded as the basis of all subsequent legislation for determining the form of Indian Government. The first serious attempt made by an European power to organise government in a far-off country.23 And a milestone in the constitutional history of India, with a policy of centralization and co-ordination among the three presidencies.24

The Regulating Act of 1773 made a provision of a Governor-General and four Councillors. The Act, subject to the orders of the Court of Directors, authorised the Governor-General and Councillors to superintend and control presidencies of Bombay and Madras who were so far separate and independent of each other. They acted on its own in matters of declaring war, making peace treaty and had direct dealing with Court of Directors.25 The Regulating Act declared that the Governor of Madras and Bombay would be subordinates to the

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Governor-General of Fort William of Bengal which became the Supreme Presidency.26

According to the Act, the Governor of the presidency was instructed not to declare war and make peace or conclude treaties without the prior sanction of the Governor-General except in the case of imminent necessity. The Governor-General is empowered to suspend the Governor and Council of the presidency. By this Act, the presidency was required to send all needful information with regard to the affairs of the company.

The Act laid the foundation of unitary type of government in British India by making to some extent, the other presidency as an agency of the Governor-General in India.27

Even after the control of the Governor-General of Bengal, the Governors were masters in their respective presidency and enjoyed plenty of powers. They also continued to enjoy the right of correspondence with the Board of Directors in the concerned matters of peace and war, which made the position of the Governor-General ineffective.28

Though the Governor-General and four Councillors were appointed by the Court of Directors,29 they could be removed only by

26 The Regulating Act, 1773, Section 9.
27 Dahiya, M.S., op. cit., p. 3.
28 Sharma, Sri Ram, op. cit., pp. 24-29.
29 Dahiya, M.S., op. cit., p. 3.
British king on the recommendation of the Directors. All important matters were to be decided by the majority opinion of the Council. The Governor-General was bound to accept the majority opinion of the Council. He did not possess any overriding powers. In case of equality of votes in the Council, he exercised his casting vote. The provision of the Act made the position of the Governor-General very deplorable. In most of the cases three of the four Councillors opposed him and voted down his suggestions.

There is no doubt that the Act was intended to establish the supremacy of the Government Fort William at Bengal but at the same gave to the Governor-General so “Shadowy Control” over the subordinate presidencies that he was little more than first among equals.

As the administration of the company was facing development retardness for want of harmony among various organs and as the corruption was rampant, the government in Great Britain proceeded further to enact Pitt’s India Act, 1784. The effect of the Act was twofold. Firstly, it constituted a department of the state in England known as “The Commissioners for the Affairs of India”. Its function was to control the policy of the Court of Directors. Secondly, it reduced the strength of the Council of Bengal from four to three of whom the

30 Agarwal, R.C., op. cit., p. 3.
Commander-in-Chief was one. It also remodeled the Councils of Madras and Bombay on the model of Bengal.\textsuperscript{31}

The Pitt’s India Act of 1784 improved the position of the Governors. By this Act, the Governors of each presidency were appointed by the Court of Directors but liable to be removed by the Crown also.\textsuperscript{32} The Governors were given the right of a casting vote.\textsuperscript{33}

The Governors, under the Act, were required to obey the order and instruction of the Government of Fort William at Bengal, not only in the matter of war and peace but also in the affairs of administration of the presidency. The Governors were also required to send all the copies of regulations made by them to the Governor-General and Council. In case of disobedience, they were liable to be suspended by the order of the Governor-General in Council of Bengal.\textsuperscript{34} The Act established the supremacy of Bengal over the presidency of Madras and Bombay. And also centralized the military power from Governor to Governor-General. Thus, the presidencies were brought completely under the control and supervision of the Governor-General.

The main defect in the Act was that the Governor and Governor-General could be still overridden by their Councils.\textsuperscript{35} The Act of 1793 removed this hurdle by allowing the Governor and Governor-General to

\textsuperscript{31} Dahiya, M.S., \textit{op. cit.}, p. 3.
\textsuperscript{32} Banerjee, A.C., \textit{op. cit.}, pp. 72-73.
\textsuperscript{33} The Pitt’s India Act, 1784, Section 21.
\textsuperscript{34} \textit{Ibid.}, Sections 35 and 36.
\textsuperscript{35} \textit{Ibid.}, Section 34.
overrule the opinions of their respective Council with regard to the matters affecting the safety and tranquility of the territorial acquisition in India.36 The Act of 1793 emphasized the power of control exercised by the Governor-General over subordinate presidencies.37 The presidency was made to obey the orders of the Governor-General in Council, if not repugnant to instruction from England.38 The Court of Director still retained the powers to appoint the Governors and members to the Council from senior merchants who had completed twelve years of service in India at the time of appointment.39

Under the Act of 1793, the Government of each presidency was vested in the Governor and Council.40 The Governors of Madras and Bombay were forbidden to issue orders, declare war, negotiate or conclude treaty or peace or any other treaty with Indian prince or State except in case of emergency. They could do so only after receiving express orders from the Governor-General and Council of Bengal or Court of Directors or Secret Committee of the Company at London.41 Under this Act, the Governor required to obey instructions and send copies of all orders of the administration to the Governor-General and Council. In case of disobedience or negligence, the Governors were liable to be suspended, removed or even dismissed by the Governor-

36 Banerjee, A.C., op. cit., p. 113.
37 The Act of 1793, Section 40.
38 Ibid., Section 41.
39 Ibid., Section 25.
40 Ibid.
41 Banerjee, A.C., op. cit.
General and Council. The Act provided that the Governor-General could visit to any presidency and could override the decision of the Governor.

After the Regulating Act of 1773, a process of unification of the British India and centralization of control over other presidencies from Bengal began gradually. But it was limited due to two factors. Firstly, the distance between Central Government and the Governments of the presidencies was too long and the means of communication were not so rapidly advanced as to check this distance and to take control of each presidency. Secondly, the administration of each provincial Government was so huge that it was practically impossible for the Governor to seek the advice of the central authority which left the Governor to do almost as they pleased, and made the central authority to exercise its power of superintendence, direction and control over other presidencies in the matter of policy rather than of current administration.

This state of affairs persisted for a long time and each time the Charter Acts of the company came up for review before the Parliament, this anomalous situation was sought to be rectified by giving more and more powers to the central authority of the company in India and

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42 Ibid.
43 Gehlot, N. S., op. cit., p. 117.
44 Ibid.
45 Singh, Gurumukh Nihal, op. cit., p. 15.
plugging all the loopholes which could be used by the Governors of the presidencies to have their way and to deliberately defy the central authority. The consolidation of the centralized tendencies was tried to achieve in the Charter Act of 1833. Since then the Governors had remained as the agent of the central government in the presidencies and other provinces, but with very wide powers over the administration coming within their jurisdiction.

The expansionist policy of the company brought difficulties in administration in India and in England, the Parliamentary reforms and theory of liberalism necessitated the passing of the Act 1833. By this time the company had to close their commercial business and seriously took up their political and administrative duties.

The Act of 1833 was a landmark in the history of British India. The Act, as observed “most important Act passed by the Parliament till 1909”, made “significant provision regarding governance of India and marked the beginning of Indian legislature” which has most comprehensive and far-reaching in effect.

Under the Act of 1833 the Governor-General of Bengal became the Governor-General of India and his government for the first time

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47 Singh, Gurumukh, Nihal, op. cit., p. 15.
48 Ibid.
49 Dijit Sing, op. cit., p. 233.
50 Pylee, M.V., op. cit., p. 22.
51 Lord Morley, cited in Agarwal, R.C., op. cit.
52 Iswery Prasad, Ibid.
came to be known as the Government of India.\textsuperscript{54} The reason behind such a change was that the whole of the country came under the head of the company. Need was being felt for a centralized administration in India.\textsuperscript{55} So the Act invested the Governor-General with full powers and authority to control civil and military administration of the governments of the presidency. The Act made it binding on the Governor to obey in all cases the instructions received from the Governor-General. Although the Governors were allowed to propose to Governor-General and Council the drafts or projects or any laws or regulation which they thought expedient for their respective presidency.\textsuperscript{56} However, the power to legislate the laws and regulations was vested in the Governor-General in Council and the previous consent of the Governor-General on provincial legislation was made binding on the Governor in Council. Moreover, the Governors were required regularly to transmit the copies of all orders and Acts of the respective governments to the Governor-General in Council of India.\textsuperscript{57}

The Act established the centralization of legislative powers in India. Prior to his enactment provincial governments enjoyed a large measure of freedom in matters of making the laws for the territories.\textsuperscript{58} The Act confined the power of Governor-General to suspend any member of the presidency governments for disobedience. Even the

\begin{footnotes}
\item[54] Dahlya, M.S., \textit{op. cit.}, p. 4.
\item[55] Agarwal, R. L., \textit{op. cit.}, p. 36.
\item[56] Act of 1833, Clauses 65-67.
\item[57] \textit{Ibid}.
\item[58] Agarwal, R.L., \textit{op. cit.}, p. 36.
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entire provincial government could be suspended by the Governor-General with the consent of his Council, on the charge of failing to carry out his instruction.59

The most important feature of the Act was that it allowed the native of Indians, irrespective of his birth place, descent or colour, to hold any office under company.60 Though no Indian has secured the Governor post till 1909.61

The drawback of the Act of 1833 was that the members of the Governor-General in Council belonged to the Bengal Service and they lacked local knowledge about Madras and Bombay. This was removed by the Act of 1853 by introducing representative elements from the subordinate presidencies by enlarging the Council with the addition of six members known as “legislative members”. The additional members could cast their votes only when the Council was to meet for the purpose of making the laws.62 Out of these six members, two were English judges or the Calcutta Supreme Court, and the other four were officials appointed by the local government.63 Thus, the Council strength was raised from four to ten, which began to reflect the shadow of a mini-parliament.64 Provision was also made to appoint a Lieutenant-Governor for Bengal.

59 Ibid.
60 The Act of 1833, Section 87.
61 Dahiya, M.S., op. cit., p. 5.
62 Ibid.
63 The Act of 1833, Section 21.
64 Dahiya, M.S., op. cit.
On account of the juxtaposition of some internal and external factors, the first war of India's independence broke out in 1857, which culminated in the end of the East India Company, and as such the British government assumed direct control over the Indian affairs under the Act of 1858.

The most important office that came into being with the assumption was that of Secretary of State of India. As a result, all powers came to be centralized in the Secretary of State for India in Council on behalf of the Crown.65

In India, the administration was headed by the Governor-General in Council who exercised a rigid control over the local governments in the provinces headed by Governors. These governments had no independent powers but were agents of the Governor-General in Council.66

The Governor who was previously appointed by the Court of Directors was now to be appointed by His Majesty, the king of England, under Royal Sing Manual.67 Two Executive Councilors were appointed by the Crown to assist the Governor. Thus, the Governors of the provinces came directly under the control of Her Majesty through the Governor in Council in India.

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65 Pylee, M.V., op. cit., p. 35.
66 Ibid.
67 The Government of India Act 1858, Section 24.
Though the Governor was made subordinate to the Governor-General, he had now direct access to the Secretary of State. He could appeal to him against the orders of the Governor-General in Council. He retained the power to overrule the member of his Council. He could be extraordinary member of the Governor-General in Council if meetings of the Council happened to be held within his presidency. He also enjoyed discretionary power in filling up important offices which fall under him. As a matter of fact, the disappearance of the East India Company marked a change rather in the form of government than in the substance of policy.

The Indian Council Act, 1861 sowed the seeds for the growth of "legislative body" and laid the foundation of "representative institution" in India. The Act is important in the constitutional history of India for two reasons. Firstly, it enabled the Governor-General to associate native Indian with the work of legislation. Secondly, it laid the foundation of legislative devolution by resorting the power of making the laws to the government of presidency.

The act, for the purpose of legislation, empowered the Governor to nominate not less than four and not more than eight persons as additional members of the Council. It was also provided that not less than half of the person so nominated shall be a non-official. The

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68 Pylee, M.V., op. cit., pp. 31-32.
69 Ibid.
71 Singh, Gurumukh Nihal, op. cit., p. 71.
additional members were not entitled to sit or vote at any meeting of the Council.\footnote{The Indian Council Act of 1861, Section 29.}

The Act provided the Governor to preside over the Council meetings. In any case of differences of opinion or equality of voices at the Council meeting the Governor shall exercise casting vote.\footnote{Ibid., Section 46.} It is lawful for the Governor to convene or adjourn meetings of Council for the purpose of making laws.\footnote{Ibid., Section 36.} Without the Governor's previous sanction, no member could introduce any measure affecting the public revenues of the presidency.\footnote{Ibid, Section 38.}

No doubt the Act enlarged the Executive Council of the presidency and also resorted to it legislative power. But at the same time, the Act made the Governor the sanctioning authority of the Bills passed by the Council. Besides, Governor-General's assent was also necessary.\footnote{Ibid., Section 47.} The Secretary of State in Council for India could also disallow it with the approval of the Crown.\footnote{Ibid.} By any yardstick the administration under the Act remained centralised.

The Indian Council Act reoriented the powers of the Governor and he was again given the power to run the business of his presidency smoothly. However, he continued to remain under the control and supervision of the Governor-General in Council in India. The laws
passed by him could be superseded by the Governor-General of India. For instance, the power of legislation was given to the Governor but the effective restrictions were imposed on his powers. And also, the Governor's legislative power was to operate at the direction of the Governor-General. Moreover, the Governor had to seek previous sanction of the Governor-General before practically using the powers.\(^78\)

The Indian Council Act of 1871 empowered the Governor-in-Council to propose to the Governor-General in Council drafts of any regulation for the peace and good government of any part.\(^79\) These drafts, after the approval by the Governor-General of India and the Secretary of State for India, become effective similar to law passed by legislature.\(^80\) The Act empowered the local legislation to amend or repeal certain laws.\(^81\)

The Indian Council Act of 1892 did not alter the position of the Governor. However, the Act enlarged the strength of the provincial council by increasing the additional members which should be not less than eight and not more than twenty.\(^82\) The Act empowered the provincial legislature to make new laws or repeal old one with the previous permission of the Governor.\(^83\) The Governor retained the power of nomination and filling the vacancies of officials and non-

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\(^78\) Gehlot, N.S., *op. cit.*, pp. 8-9.
\(^79\) The Indian Council Act of 1871, Section 1.
\(^81\) The Indian Council Act, 1871, Section 3.
\(^82\) The Indian Council Act of 1892, Section 1.
\(^83\) *Ibid.*, Section 5.
officials in the legislative council. A member of the Council could not ask the question and discuss on budget without the sanction of the rules and conditions made by the Governor.

The Indian Council of 1909, which is generally known as "Minto-Morley Reforms", provided for the enlargement of Legislative Councils of both central and provincials. The Legislative Councils of Madras, Bombay and Bengal were increased to fifty members each. The Act also increased the number of members of the Executive Council of Bombay and Madras to four. The significant feature of the Act is, it introduced the principle of election to Legislative Councils. The Act abandoned the official majority in the provincial Legislative Councils, at least in theory. The Indian Council Act of 1909 empowered the Legislative Councils to discuss the budget and also propose resolution on it, but the Governor-in-Council of Bengal and Bombay were empowered to frame such conditions and restrictions on the financial discussions and debates and also on asking the questions on the matter of general public interests. The Act empowered the Governor-in-Councils to stop the proceeding of the Legislative Councils. The Governor is not bound to accept any resolution passed by the

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84 Ibid., Section 4.
85 Ibid., Section 2.
87 Agarwal, R.C., op. cit., p. 150.
88 Ibid.
89 Banerjee, A.C., op. cit., p. 235.
Legislative Councils. It was to be treated as recommendation of the provincial government.90

The Indian Council Act of 1909 empowered the Governor to nominate the additional members to their Legislative Councils. The Governor of each presidency was also empowered to appoint a member of provincial council as Vice-President for the purpose of holding and executing the office of the Governor temporarily or for presiding over the meetings in the absence of the Governor.91

So far as the control of the centre over the provinces was concerned that remained absolute. The Governor-General, subject to the approval of the Secretary of State for India, had the power to make regulations as to the conditions under which manner and in which persons resident in India were to be nominated or elected as member of the Legislative Councils of the Governors.92 The Central government still kept the power of scrutinizing and altering the provincial budget. Besides, the rules made by the Governor in regard to the discussion of the annual financial statement, matter of general public interests, and the asking of questions were binding the Legislative Councils and they cannot alter or amend them.93 However, it is obligatory on Governor to get previous sanction of the Secretary of State for India.94
Undoubtedly, the Act dispensed with the official majority in the provincial legislature. It was certainly a welcome feature. But it should not be assumed that the legislatures began to have the majority of elected elements. The combined strength of officials and nominated non-official members still outnumbered the elected members. They formed a solid bloc to support all the moves of the government. The nominated non-official members always voted in favour of official moves, whereas the elected members who represented different classes, communities and interests could never unite as one.95

Since all the powers remained in the hands of the Governor, subject to the authority of Secretary of State, the non-official majority in the Legislative Council proved quite “illusory”.96 The Legislative Council, whether central or provincial, were nothing but advisory bodies without any powers of effective control over their respective governments.97

As a matter of fact, the Minto-Morley Reforms were not intended to serve as a measure of Self-government. Their only object was to associate Indians with everyday administration.

The Act of 1909 did not generate the principle of responsible government in India. The executive did not surrender or share its arbitrary power with the legislature, which at best were transformed

95 Agarwal, R.C., op. cit., p. 150.
96 Dahlya, M.S., op. cit., p. 8.
into debating club. The government of the whole of British India centralised with its nerve centre at London, the provincial and central governments being knit-together by the autocratic authority of the "Great Mogal at Whitehall". The provincial Governors were cogs in the wheel moved from England. The Minto-Morley Reforms ceased to satisfy the aspirations of the Indians. The ferment of popular movement compelled the British to grant self-government to Indians by degrees. This meant that the remote control of the centre had to be released in order to introduce popular participation. This process of devolution found in the Act of 1919. Montague, the Secretary of State for India, made a declaration of behalf of the British Government in 1917. In his statement before the House of Commons he said that the British policy in India would be henceforth be directed towards securing the association of Indians in every branch of administration and progressive realization of responsible government in India. In pursuance of this policy the Parliament passed an Act in 1919 entitled, "The Government of India Act, 1919". The reforms of the Act remain famous in the history of India for making a beginning in responsible government, for associating the Indians with the administration and for introducing dyarchical form of government.

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Under the system "Dyarchy" the provincial matters were divided into two parts "transferred" and "reserved" subjects. The transferred subjects were to be administered by the Governor with the aid and advice of the ministers, accountable to Legislative Council wherein seventy per cent of members were to be elected. The Governor is expected to play a role of constitutional head. It seems that the foundation of responsible government was laid down partially. On the other hand, the reserved subjects were to be administered by the Governor and his Executive Council without being responsible to Legislative Council.

The Governor was pivot of the new system introduced by the Indian Council Act, 1919. The Governors of British province of Bengal, Madras and Bombay were appointed by His Majesty by warrant under Royal sign manual for five years. But in case of other provinces, the Governors were to be appointed under seal of the Crown after consultation with the Governor-General. The Act provided that the ministers were appointed by the Governor from among non-official members who should either be elected members of local legislatures or should become elected member within six months of their appointment. Any minister so appointed shall hold office during his pleasure, though he was liable to be dismissed by the no-confidence motion of the local legislature. However, the Governor is empowered

100 Dahiya, M.S., op. cit., p. 9.
101 Banerjee, A.C., op. cit., p. 34.
to remove the minister without any reason for his removal being assigned.103

According to the Act, the "reserved" subjects carries by the Governor-in-Council as per the rules made by the Governor. In cases of differences of opinion in the Executive Council matter were to be decided by majority of votes. If the Council was equally divided, the Governor had the right to give second or casting vote.104 However, the Act empowered the Governor to override the decision of the majority of his Council, if he considered it is necessary for the safety or is in the interest of his province.105

Under the Act, the administration of the "transferred" subjects was to be carried on by the Governor on the advice of his ministers. However, the Act empowered the Governor to disregard the advice tendered by the ministers and act as he deemed fit.106 The minister, on the other hand, had the option of resigning. If a minister in-charge of a transferred subject resigns and no suitable successor was available, the Governor was authorised to assume the charges of that department. In case of emergency, the Act authorised the Governor to assume to himself the administration of transferred subjects.107

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103 Mukherjee, op. cit., p. 229.
104 The Indian Council Act of 1919, Section 11 (a).
105 Ibid., Section 72 D(2) (b).
106 Ibid., Section 4(3).
The Act armed the Governor with extensive legislative powers. He was not the member of the Legislative Council, but was given the right to address the Council.\textsuperscript{108} He could stop at any stage the consideration of Bill on the ground that it was injurious to the safety and peace of the province. He was empowered to return any Bill to the House for reconsideration or reserve it for the consideration of the Governor-General. The Governor could also veto any Bill passed by the Legislative Council. He has power to certify a Bill which has been rejected by the Legislative Council.\textsuperscript{109} The Act also empowered the Governor to summon, prorogue and dissolve the Legislative Council. The life of the Legislative Council can also be extended by the Governor under special circumstances up to one year.

The Act vested overriding power in the financial matters also. In the matter of budget, he had the power to authorise such expenditure as might in his opinion be necessary for the safety or tranquility of the province. Further, in case of a grant refused or reduced by the Council, the Governor could restore it by certifying the demand as essential to the discharge of his responsibility for the subjects.\textsuperscript{110} At the time of emergency, the Governor had power to authorise such expenditure as may be in his opinion necessary for the safety of the province or for

\textsuperscript{108} Ibid., p. 285.
\textsuperscript{109} The Government of India Act, 1919, Section 13(1).
\textsuperscript{110} Pytee, M.V., \textit{op. cit.}, p. 57.
carrying on of any department. All proposals for appropriation of revenue shall be made on the recommendation of the Governor alone.\textsuperscript{111}

In regard to the central control over the provincial matters, it is appropriate to note that the limitations and reservations crippled the wings of the legislature to a large extent. In certain matters previous sanction of the Governor-General was necessary for taking into consideration in the Legislative Council.\textsuperscript{112}

Normally, in parliamentary government the head of the State enjoys nominal rights. He has to work according to the advice of his team of ministers. Judged from this point of view, the provinces were far from getting parliamentary or responsible government. The Governor continued to be the real head and not constitutional head.\textsuperscript{113}

The Instrument of Instructions issued to the Governor for governance of good administration, made no provision for the joint or cabinet meetings of ministers. Under the Act, the Governor is empowered to appoint the minister in his discretion, consult them individually, looked upon them as merely advisors and dismiss them as and when he likes. This struck at the very root of ministerial responsibility.\textsuperscript{114} Although the authors of the Act had expected the Governor to encourage the principle of joint responsibility, act as a guide, friend and philosopher to his minister, if require, advise, warn

\textsuperscript{111} Singh, G.N., op. cit., p. 286.
\textsuperscript{112} The Government of India Act 1919, Section 10(3).
\textsuperscript{113} Agarwal, R.C, op. cit., p. 178.
\textsuperscript{114} Pylee, M.V., op. cit., p. 63.
and encourage them.\textsuperscript{115} But no such thing was practised by the Governor.

As a result of several defects in the working of dyarchy and demand by Indians for further reforms led the British government to appoint a statutory Commission in 1927. The Commission was directed to examine the functioning of the system of Government of India which submitted its report in 1930. This resulted in the passing of the Government of India Act, 1935, which was the last phase in the evolution of the Governor’s office in pre-independent India. From 1773 to the passing of the Minto-Morley reforms of 1909, the Governor played dominant role. The Government of India Act, 1935, went a step further in the sense that the position of the Governor became less than a real head, but remained more than a constitutional head by any stretch of imagination.

The Government of India Act, 1935 was the first Act, which may said to have introduced to some extent, parliamentary system and also created an All India Federation comprising of British provinces and the native States.

Under the Government of India Act, 1935, the Governor of a province is appointed by His Majesty by a Commission under the Royal Sign Manual for a period of five years.\textsuperscript{116}

\textsuperscript{115} Singh, G.N., \textit{op. cit.}, p. 279.
\textsuperscript{116} The Government of India Act, 1935, Section 48.
Under the Act of 1919, he was to be appointed by His Majesty after consultation with the Governor-General. This change seems to be made in view of the provincial autonomy introduced under the Act 1935. As a general practice, senior officers of the Indian Civil Service were appointed as Governor, although there was no bar for others. Throughout the British period the office of the Governor was offered to a white man except one case where an Indian held that august office in a permanent vacancy.  

Under the Act of 1935 the whole executive authority was vested in the Governor who has to exercise it on behalf of His Majesty. As a head of Executive, the Governor was empowered to act in three different capacities.

1. In certain cases he was to act on the advice of his ministers.
2. In certain cases he was to act on his individual judgement, in which he might consult the ministers but was not bound by their advice.
3. In certain cases he was to act in his discretion.

The Act provided the Governor a Council of Ministers to aid and advise him in the exercise of his function, except in so far as he was required to act in his discretion.

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117 Agarwal, R.C., op. cit., p. 267.
119 Ibid., Section 50.
120 Ibid.
He was empowered to appoint the Chief Minister and other ministers on the advice of the Chief Minister. The ministers so appointed hold office during his pleasure.\textsuperscript{121} There was an Instrument of Instructions dealing with the manner in which the Governor was to exercise his powers as the head of the executive.\textsuperscript{122} Though the Instrument of Instructions was intended to encourage the working of responsible government in the province, there was no legal curb on the powers of the Governor. Moreover, the powers in which he acts falls under this discretion,\textsuperscript{123} which may be called a clear negation of parliamentary democracy.

Although the provincial scheme aimed at the establishment of a fairly substantial system of cabinet government, as a matter of fact, there were a number of special powers which were vested in the Governor in order to use them as and when it was felt necessary by him. In addition, the Governor was authorised to act in his individual judgement in the discharge of his special responsibilities, which are:

\begin{itemize}
  \item[a.] the prevention of any grave menace to the peace and tranquility of the province or any part thereof;
  \item[b.] safeguarding the legitimate interests of the minorities;
  \item[c.] securing of the legal and equitable rights and safeguarding the legitimate interests of the public services;
  \item[d.] prevention of discrimination against British subjects;
\end{itemize}

\textsuperscript{121} \textit{Ibid.}, Section 51(1).
\textsuperscript{122} \textit{Ibid.}, Section 53.
\textsuperscript{123} The Government of India Act, 1935, Section 51(1)(5).
e. securing of the peace and good government of the partially excluded areas;

f. protection of the rights of any Indian States and the rights and dignity of any Ruler thereof; and

g. securing the execution of orders or directions issued by the Governor-General at his discretion.\footnote{124}

The Act of 1935 made no mention of reserved subject or the Governor's Executive Council. However, the Act armed with the Governor with vast discretionary powers, which makes him the dominating head of the executive. K.T.Shah\footnote{125} has given a long list of occasions on which the Governor could act in his discretion. The most important of them are:

a. to decide whether a subject was or not one in which he was required to act in his discretion.

b. to take steps to prevent any attempt to overthrow the government.

c. to appoint the chairman and the members of the provincial public service commission.

d. to make rules for securing that no member of public force might reveal the unauthorised persons, the source of information relating to terrorists activities, and

e. to appoint and dismiss the Advocate General and also to fix his salaries.

\footnote{124}{The Government of India Act, 1935, Section 52(1).}
\footnote{125}{Cited in Agarwal, R.C., \textit{op. cit.}, p. 262.}
The discretionary powers of the Governor in fact touched every sphere of administration. These were all pervasive.

Under the Act of 1935, there is a Council of Ministers to aid and advise the Governor in the exercise of his functions. But matters on which the Governor was duty-bound to act on the advice of his ministers were very few. After the introduction of the provincial autonomy, it was rightly hoped that the Governor would use his special power to the minimum and not interfere much in the ministerial fields. These hopes, however, did not materialise. Because, the intention of British government was not to weaken the Governor and make him act as only a figurehead, but to arm him with real comprehensive powers. Thus, the Governor’s power as a whole presents a formidable list seldom found in the case of an executive head functioning under a responsible system of government.

The Act of 1935 armed the Governor with vast legislative powers. He as empowered to make rules for the more convenient transaction of the business of the provincial governments. He could call a joint sitting of the Houses to iron out all differences between them. He was empowered to summon, prorogue the legislature. He had power to dissolve the Lower House. All these functions fell under his discretion.

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Though the power to summon and prorogue the legislature does not seem important but the Governor could play quite an important role if he was favourably inclined to support a particular party.\textsuperscript{130} Besides, a Bill passed by the legislature was to be submitted to the Governor and he was authorised either to declare his assent or withhold the same or send back to the legislature for reconsideration in his direction.\textsuperscript{131} He has power to prevent discussion of any Bill or clause or amendment which is likely to affect his responsibility for tranquility.\textsuperscript{132}

Of all the legislative powers of the Governor, the most significant was that of making laws. He was empowered to make Acts for the due discharge of his special responsibilities. He could prepare a Bill and send it to the legislature for enactment. If the legislature did not pass it within a month, the Governor after that period could exercise his special powers and give the Bill the final shape and effectiveness of an Act. Every such Act required to be submitted to the Governor-General who sent the copy of the Secretary of State for presenting before the parliament.\textsuperscript{133} The rejection or approval by the parliament was final and binding on the Governor.

The most obnoxious powers conferred on the Governor was promulgation of ordinance which are of two types:

\textsuperscript{130} Dahiya, M.S., \textit{op. cit.}, p. 11.
\textsuperscript{131} The Government of India Act, 1935, Section 75.
\textsuperscript{132} Keith, A.B., \textit{op. cit.}, p. 354.
\textsuperscript{133} The Government of India Act, 1935, Section 90.
Firstly, when the legislature was not in session and the circumstances required immediate action, the minister could advise the Governor to meet the situation by issuing an ordinance. The Governor issued it by exercising his power of individual judgement. This type of ordinance required subsequent approval of the legislature.\textsuperscript{134}

Secondly, when the legislature is in session, the Governor issues such ordinance when he felt the need of immediate action for the due discharge of his special responsibilities under powers of discretion and individual judgement. This power was not subject to the approval of the legislature.\textsuperscript{135}

Similarly, the Governor had the power to issue proclamation in his discretion if he was satisfied that a situation has arisen in which the government of the provinces could not be carried on in accordance with the provision of the Act of 1935.\textsuperscript{136} Under this Section, he might assume all or any one of the powers vested in any provincial authority except the powers exercised by the High Court. He was required to communicate the copy of the proclamation to the Secretary of State through the Governor-General of India.

The Governor could also reserve for the consideration of the Governor-General a Bill that passed by the provincial legislature and

\textsuperscript{134} Ibid, Section 88.  
\textsuperscript{135} Ibid, Section 29.  
\textsuperscript{136} Ibid, Section 76.
the latter could in turn give his assent or return it or withhold his assent or reserve it for the signification of His Majesty's pleasure.\textsuperscript{137}

As regard to the financial powers of the Governor it was provided that no financial Bill was to be introduced in the Legislative Council except on the prior recommendation of the Governor.\textsuperscript{138} Besides, he was also empowered to restore the budget or any part of it even if the legislature had rejected it, if in his discretion the refusal or rejection would affect the due discharge of any of his special responsibilities.\textsuperscript{139}

Under the Government of India Act, 1935, the position of the Governor was still of the controlling, directing and dominating nature. Though, the spirit of provincial autonomy, introduced by the Act, required the Governor to be a constitutional figurehead, but actually, the vast powers vested in him to be used at his discretion and individual judgement rendered him by and large an irresponsible executive and an absolute constitutional dictator\textsuperscript{140} in his province this made serious in-road on the principle of ministerial responsibility.

\textbf{The Indian Independence Act, 1947}

With the passing of Indian Independence Act, 1947, the British rule in India came to an end, and India became an independent and sovereign country. This also affected a change in the office of the

\textsuperscript{137} Ibid
\textsuperscript{138} Ibid, Section 82.
\textsuperscript{139} Ibid, Section 80.
\textsuperscript{140} Gehlot, N.S., op. cit., p. 15.
Governor. Though India continued to be governed by the provisions of the Act of 1935, the Governor-General was empowered to make amendments in the provisions up to 31 March 1948. Thereafter, the Constituent Assembly, which was not subject to any limitations whatsoever, could modify the same.

The Constituent Assembly of India made tremendous change with regard to position of the Governor and this shall be discussed in the next chapter to follow.