CHAPTER II

Historical Overview

The origin of the office of Governor in India is traceable to the advent of East India Company in the early 17th Century. The Royal Charter of 1600 that defined the constitution of the East India Company provided for the office of Governor who was to be elected along with 24 ‘committees’ or directors to look after the Company’s affairs.

The Charter of 1661 provided for the Governors and other officers for the good Government of territories under Company’s control. Between 1709 and 1758, British Crown issued a number of Charters that affected several changes in the Constitution of the Company. However, the position of the Governor remained unchanged¹. In fact, the Charters, and the Acts passed up to 1935 significantly strengthened the administrative position of Governor.

The empowerment of Governor’s office apparently began with Regulating Act of 1773. The Act subordinated the Governors of Bombay and Madras Presidencies to the authority of Governor General of Bengal, thus making him a supreme Commander. Before the passage of this Act, the Governors of Bengal, Bombay and Madras Presidencies worked as independent authorities. The Act gave power to Governor General-in-Council to supervise over the
presidencies of Bombay and Madras. These presidencies now compulsorily required the consent of Governor General in such matters as declaring war against Indian princes, or concluding any treaties of peace with them. If the Governor of the concerned presidency failed to obey the directives of the Governor General, he was liable to be suspended.\(^2\)

Pitts Act of 1784 was passed when the British Government felt that the Regulating Act of 1773 left certain ambiguities unaddressed. One such ambiguity was absence of Veto power to the Governor General. And this was the ground on which Lord Cornwallis refused the offer to be Governor General as he felt he could not function effectively without the enough ‘realistic’ powers. The argument of the Lord Cornwallis impressed the British Government so much that it decided to pass Pitts Act\(^3\). Pitts Act not only retained the powers of the Governor General to superintend the Governors of Bombay and Madras presidencies but also made them more decisive. It also reduced the strength of the members of the Council of Governor General to three from four. Thus, following the passage of Pitts Act, Governor General emerged a shade more powerful.

British Government was so overwhelmed by the character and the integrity of Lord Cornwallis that when he was sent as Governor General of Bengal, Act of 1786 was enacted to give him special powers. The Act authorized Lord Cornwallis to override majority of his council on his own responsibility. It also
gave him the post of Commander-in-chief. Over a period, however, these special powers that were initially meant for a high-profile individual gradually became a part of Governor General’s office in general.

After the Act of 1786, the British Parliament passed four Charter Acts - 1793, 1813, 1833 and 1853 – with a gap of 20 years each. Each Charter reflected the concern of British Government with the changing socio-political conditions both within India as well as in Britain. Accordingly, these Charters brought about considerable changes in the power structure of the Company. While the Charters made position of the Company in terms of its trade monopoly and over-all control considerably weaker, the Governor General came to occupy an increasingly important position under each of them.

The Charter of 1793 ensured that powers given to Lord Cornwallis to override his Council remained firmly in place. Besides, the authority of the Governor General over presidencies was further tightened.

Early 19th Century saw the atmosphere of economic liberalism, influenced by the ideas of Adam Smith, pervading British society. British merchants had already started resenting trade monopoly of East India Company in India and demanding a share in Indian wealth. The Charter Act of 1813 ended Company’s monopoly of trade with India. However, it left the powers of Governor General untouched. The Charter Act of 1833 was in a way a last nail in the commercial character of Company. It took away commercial rights and
the privileges of the Company and ended its monopoly of tea trade in India. On the other hand, it made Governor General of Bengal the Governor General of India. The Governor General-in-Council was authorized to legislate for all British territories in India.

For all practical purposes the East India Company was wound up by 1830s. The Act of 1858 that was passed following revolt of Indians against British rule only served to give the Company a decent burial. Under this Act, the 100 years of Company's monopoly of India following the Battle of Plassey (1757) came to an end. The Crown took over the administration of India. The Governor received the title of Viceroy and he became a direct representative of the British Crown. The Board of Control and Court of Directors were abolished and replaced by the Secretary of the State for India who was to be a Cabinet Minister, responsible directly to the Crown. With each stroke of legislation, the position of Governor General continued to become stronger. Although the Act of 1858 put India under British Crown, in actual practice it was Governor General, now Viceroy, who exercised the real control over the administration.

The Indian Councils Act of 1861, important for initiating the process of legislative devolution in India, further empowered the Governor General. He could now add a few members to his Council for the purpose of legislation. However, the Legislative Council had only advisory role and Governor General could override it if he so felt. The Act empowered the Governor General to
issue ordinances in case of emergencies without concurrence of Legislative Council and such ordinances would remain valid for six months – a practice that has been incorporated in the present day Indian Constitution under the powers of the head of the state. The Governor General could also veto the provincial legislation that was to be compulsorily sent to him for his assent. He was also authorized to create Legislative Councils in Bengal, North West Provinces (U.P.) and Punjab.

The Indian Councils Act of 1892 was passed following the demand for constitutional reforms by the newly-formed Indian National Congress. Lord Dufferin, then Viceroy of India, drew up a comprehensive plan for the enlargement of Legislative Councils and liberalization of their general character, but the Secretary of the state rejected the idea of full-fledged election while accepting the other features of the plan. Nevertheless, the Act did introduce a wafer-thin elective element within Legislative Councils. The elected members could take their seat only after being nominated by the head of the Government. In case of Central Legislature the Chamber of Commerce was required to submit a panel of names having been chosen by election and Governor General approved one name for membership of Central Legislature. Thus the so-called principle of election was nothing more than a principle of nomination by the local bodies. What was more important however was that it was up to the Governor General at Centre or Governors in the Provinces to
accept or reject the names proposed by local bodies. The Act of 1892 thus ended up giving unfettered powers to the Governor General and in this case also to the Provincial Governors to have a person of their liking in the Legislature.

Towards the end of 19th Century, Indian natives were getting vociferous about their discontent with the British rule, especially with the lack of representative element in the Government and denial of opportunities in the Government services. While the moderate leadership of the Congress pressed for more constitutional reforms, the extremist wing within the party was demanding nothing less than self-rule. Act of 1909, also known as Morley-Minto Reforms, was passed largely to placate the natives and create a semblance of accommodating Indians in the administration. The Act enlarged the size and the functions of legislatures both at center and in the provinces. It provided for an increase in the number of elected members thus conceding a demand of locals for a larger share in the administration. But it also retained the powers of Governor General and the Governors at large. The Governor General at center and Governors in the provinces continued to enjoy the power of veto. The Act stipulated that members of legislative councils could discuss administrative matter, move resolutions on them and also vote. However, the President was empowered to disallow such resolutions wholly or in part without assigning any reason.
Indians were largely unhappy with the provisions of the Act of 1909 and they had reasons to be so. On one hand, the Act strengthened the office of Governor-General and those of Governors, thereby creating a sort of ‘constitutional autocracy’. On the other hand, by severely clipping the representative character of the councils, it shied away from establishing a political system that could be treated as parliamentary in any sense. Rather than giving necessary reforms that natives had been so eagerly looking forward to, the Act of 1909, in the words of Dr. Zacharias, ended up giving the people shadow instead of substance. Sweeping powers to the Governor-General, limited powers to the legislative councils coupled with the introduction of communal electorates made the Act unpopular with locals and called into question the very intentions of the British Government.

When the World War I broke out in 1914, British proclaimed that they were joining it to safeguard the democracy. Indians believed them and extended their whole-hearted support that was based on an understanding that British would reward their loyalty with some kind of freedom. As the war came to an end, the British did nothing to show that they were serious about the ‘India’s question’. In the meanwhile, World War I and the situation prevailing in its aftermath tended to awaken the dormant peoples across the world. Indian leadership too had come of age by then. Indian national congress was no more a sinecure of relaxed moderate leadership that was content with demanding a few
constitutional reforms. Pressure from Indian National Congress for comprehensively accommodative governance was mounting with leaders like Tilak and Annie Besant aggressively launching the Home Rule Movement. Besides, historic Lucknow Pact (1916) under which Muslim League sank its differences with the Indian National Congress was also an eye-opener for the British that they could no longer keep the Indians on the hold for long.

Act of 1919 or Montague-Chelmsford Reforms was thus passed “for increasing association of Indians in every branch of administration and the gradual development of self-governing institutions with a view to progressive realization of responsible Government in British India as an integral part of British Empire”\(^{12}\). The Act of 1919 introduced the system of “Dyarchy” in the provinces under which the administrative subjects were divided into Central subjects and Provincial subjects with latter being sub-divided into Reserved and Transferred subjects. Reserved subjects were to be administered by the Governor whereas the transferred subjects were placed in the charge of Indian Ministers. The Act restricted the operation of dyarchy only to the provinces. The center was exempt from it.

The Act of 1919 left the unrestricted powers of Governor General untouched. His discretionary powers remained intact as he was not bound to act on the advice of his Council. The Act created a bicameral legislature at the Centre. It dropped the method of separate electorate but created separate constituencies
for landholders and Indian Commerce. It empowered the Governor-General to nominate the Anglo-Indians and Christians to safeguard their interests. In central Assembly only those who paid income tax, municipal tax or land rent could vote. Voting rights were linked to property with voters’ qualification differing from Province to Province\textsuperscript{13}.

The Central Legislature could legislate for all subjects under Central list and also for those in provincial list with previous sanction of Governor General. No bills could be introduced in the legislature without the previous sanction of Governor-General on matters relating to Defense, Foreign Relations, Ecclesiastical Affairs and Public Debt. The Act of 1919 failed to create the truly representative Government in the provinces under the system of dyarchy. Governor-General had the final authority to decide whether a subject is central or provincial. Besides, there were numerous subjects, which Provincial Legislature could not take up for consideration without the previous sanction of Governor-General\textsuperscript{14}. In respect of Central Legislature, Governor-General continued to enjoy supreme powers, including the power to veto any bill passed by the Indian Legislature, which had been conferred upon his office by the earlier Acts. For all practical purposes, the British parliament managed the Government of India only through the Governor-General-in-Council.

In the provinces, the Governors had overriding powers. Interestingly, finance was the reserved subject and hence was under the control of the member of
Executive Council and not the minister. The Funds-starved ministers could not think of implementing any progressive measure. Besides, they had to implement the policies only through Civil Servants who were recruited by the Secretary of the State and were responsible to him and not to the ministers.\(^\text{15}\)

The Act of 1935 further added to the powers of the Governor-General as well as Governors of the Provinces. The Act did away with the system of Dyarchy at the Provinces but introduced it at the Center. The Center now had ‘Reserved and ‘Transferred’ Departments. Governor-General had total powers over the reserved subject whereas the transferred subjects were supposed to be under the control of ministers. While dealing with transferred subjects the Governor-General was supposed to act according to the advice of ‘council of Ministers. However, he had powers under his so-called ‘Special Responsibilities’ where he could act contrary to the advice of the Council. Besides, he had vast financial powers with nearly 80% of the total budget being under his control.\(^\text{16}\)

Under the Act of 1935 the provincial Governor also had vast powers. For instance, he had discretionary power to summon, prorogue and dissolve the legislative assembly. He could prevent discussion of any bill or clause or amendment that could likely affect his responsibility. A bill passed by provincial legislature required his assent. He could assent it, withhold it or reserve it for the consideration of Governor-General. Besides, the Governor had important legislative powers. He could prepare a bill and send it to legislature for
enactment. If legislature did not pass it within a month he under his special powers could make it an Act all by himself. He only needed to submit it to Governor-General before enforcing it\textsuperscript{17}.

Special powers conferred on the Governor under the Act of 1935 remained a negation of parliamentary democracy and a bone of contention. In fact, by virtue of these powers, he could control all the executive, legislative and financial affairs. For instance, under these powers, the Governor of Sind dismissed Premier Allah Baksh in October 1942 and Governor of Bengal forced Premier A.K. Fazlul Haq to tender his resignation in March 1943\textsuperscript{18}. In N.W.F.P. the Congress demanded with the Governor to summon the Assembly on the ground that the Ministry had lost confidence of the Assembly, but the Governor didn’t care and Ministry continued to function as normal\textsuperscript{19}. There were several such occasions on which the Governors chose to act in their discretion without heeding for the advice of Council of Ministers.

Act of 1947 marked the end of British rule in India. The provisions of the Act of 1935 were still in force, but the Governor General could make amendments in those provisions up to March 1948. After this period, the Constituent Assembly was empowered to make whatever changes it wanted in these provisions. The Constitution of India came into force on 26 January and it retained the office of Governor. However, it was no longer an all-powerful and all-pervading like the one that existed during British times.
Notes & References

2. V.B. Mishra, “Evolution of the Constitutional History of India (1773-1947)”, P-4
3. N. Jayapalan, “Constitutional History of India,” P-41,
4. Ibid, P-44
5. P.N. Chopra, “A Comprehensive History of Modern India”, P-90
8. Ibid, P-125
9. V.B. Mishra, Op. cit., P-33,
15. Ibid, P.8
19. Ibid., P.23