

The Government of India Act- 1935: An Overview

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Abstract: *“It is a well known fact that the British Government formed many rules and acts to govern India. But Congress was not satisfied with most of them. When the British Government made Montagu-Chelmsford Reforms (1919, the Congress called them inadequate, unsatisfactory and disappointing in every way and urged to establish a full responsible government in accordance with the principle of self-determination as soon as possible. But all the efforts were failed. Nevertheless, to recognize the failure of the Reforms of 1919, the British Government appointed the Simon Commission in November 1927. It had to enquire into the working of the system of government, growth of education and the development of*

representative institutions in British India. But no Indian was included in it and consequently, the Commission was opposed everywhere. After that the British Viceroy announced to convene Three Round Table Conferences in London. No representative of the Congress reached in First Round Table Conference. But Gandhi ji as the representative of the Congress took part in the Second Round Table Conference from 1st September to 1st December 1931 in London. Next to it, after the Third Round Table Conference (17 Nov. to 24 Dec. 1932) a ‘White Paper’ was issued in March 1933, which gave details of the working basis of the new Constitution of India. In Feb. 1935 a bill was introduced in House of Commons by the Secretary

of the State for India, and it was known as the Government of India Act, 1935.

Keywords: Montagu-Chelmsford Reforms, The Government of India Act-1935, Round Table Conference, Federal Government, Provincial Autonomy, Poona Pact.

Introduction: We know the fact that the Act of 1919 did not satisfy any section of Indian opinion. The political agitation made it clear that the Congress had to be allowed some share of power, without endangering British control over the Central Government. That is why, fresh discussions for reforms started in the late 1920s, with a Parliamentary Commission appointed in 1927 under Lord Simon. But when the Simon Commission visited India, it was boycotted by all the political parties as it was wholly European and did not include any Indian member. In October 1929, Lord Irvin announced that a full dominion status would be granted

to India. Furthermore, the constitutional history of India again took a dramatic turn when Prime Minister Macdonald announced the Communal Award in August 1935. It apportioned representation among communities and extended the provision of separate electorate to the untouchables as well. Gandhi ji saw it as a sinister motive to divide the Hindu society. He decided to fast unto death to reverse the arrangement. But when a two tier election system was recommended to ensure proper representation of depressed classes, Gandhi ji agreed to it. This became the basis of the Poona Pact of September 1932 and consequently the Government of India Act – 1935 did eventuate in 1935 could therefore hardly satisfy anybody and was criticized equally by all political segments of the society.

IMPORTANCE OF THE ACT –

1935: The most important provision of the Act lies in the fact that the Government of India was the Government of the Crown. However, the Crown did not itself retain any executive power which was absent in earlier Acts. It directly abolished the Council of the Secretary of the State. It clothed the Governor General in Council with powers of superintendence, direction and control over the civil and military administration enabled a provincial Government to be invested with functions by devolution rules made by the Governor - General in Council. Actually, it was rested upon a negotiation of the system of devolution. It resolutely turned its back upon the constitution devices of the past. Thus, it was quietly different from earlier Acts up to a great extent. But the proposal for setting up the federation of India did not materialize and the Central Government to be

governed by the provision of the Act of 1919. However, the Federal Bank (The Reserve Bank of India) and the Federal Court were established in 1935 and 1937 respectively. The other part of this Act (Provincial Autonomy) came into existence on 1 April 1937. It felt short Indian National aspirations. It had a lot of shortcomings. That is why, it was criticized later or sooner by intellectual class of the Indian Society.

Provisions of Government of India

Act – 1935: However, this act was made to protect Britain's interests rather than hand over control in vital areas. The provincial part of the Act took effect with the elections of 1937; but a stalemate prevailed at the centre and its federal structure was still very unitary. Some of the basic provisions of the Act were:

- **Provincial Autonomy:** Executive authority of a province was vested in a Governor appointed to represent the

Crown in the province the whole administration was to be by Council of Ministers appointed by the Governor from the elected members of the provincial legislature. The ministers could hold their office during the pleasure of Governor. But, the Governor did not only act as the constitutional head of the province merely acting on the advice of Councils of Ministers. However, there is no doubt that the Governor had enormous power under the Act. Furthermore, there is no gain saying the fact that the provincial ministers were certainly superior in power to their predecessors under the 1919 Act. They were to be appointed on the advice of the Chief Minister. Moreover, the Governor had to see that minorities were duly represented in the ministry and he had also to encourage collective responsibility. But composition of provincial legislature was varying from province to province. In all provincial

legislative assemblies all members were directly elected by the people. There was a bicameral legislature in Madras, UP, Bihar, Assam, Bombay and Bengal. A few of seats were filled through nomination in each of these legislative councils. There were 250 seats in Bengal, 228 in the United Provinces, 215 in Madras, 152 in Bihar, 175 in Punjab and same in Bombay. The electoral provisions of the Act were to be governed by the Communal Award of the British Government as modified by the 'Poona Pact'.

□ **Federal Government:** This Act provided for an All- India Federation. According to the Act of 1935, all the time of joining, the ruler of the state was to execute an Instrument of Accession in favor of the Crown and on acceptance of that instrument, the state was to be came a unit of the Federal structure. The Crown was forbidden to accept an Instrument of Accession, if its terms appeared to be

inconsistent with the scheme of the Federation. While the provinces were to be alike in respect of the position of the quantum of legislative and executive power in the federation. The scope of the federal jurisdiction in the states was to depend solely upon the transfers made by their respective rulers through their Instruments of Accession. This Instrument was to authorize the various federal authorities to exercise their respective functions under the Act in relation to that particular state. It was to be the duty of the ruler to see that due effect was given within the state. The ruler could extend the functions of the federal authority in respect of his state by a subsidiary instrument but no subsequent instrument could decrease the scope of the authority of the federation.

Further it had two chambers, the Council of State and the Federal Assembly. The Council of State was to

be a permanent body consisting 156 elected members of British India and not more than 104 from the Indian States. The Federal Assembly whose duration was fixed for five years was to consist of 250 representatives of British India and not more than 125 members of the Indian States. The princes were to nominate $\frac{1}{3}$ of the representatives in the lower house and $\frac{2}{3}$ in the upper house. The federal legislature was to have power to make laws for the whole or any part of British India. Actually, the powers of the legislature were cribbed, cabined and confined.

Thus, the Indian federation was different from the other federal system. There was no simple division of power between the centre and the states. It provided for three lists: Federal, Provinces and Concurrent. Federal list was under the federal overnment and provincial list was under the control of

provincial legislature. If federal legislature had passed any law on the subject given in concurrent list, the provincial legislature could not make any law on the same subject. Residuary powers were given to the Governor General.

- **Office of the Governor General:** The Governor General was to be the pivot of the entire Constitution of India. He had to give unity and direction to its diverse and often conflicting elements. He had to act in three ways. First, he was normally to act on the advice of his Ministers. Secondly, he had to act in his individual judgment. Thirdly, he had some discretionary powers. He could appoint three councilors, control over non-notable items comprising about 80 percent of the budget, ordinance making, appointment and dismissal of Council of Ministers, issuing of instruction to Governors, to summon a joint sitting of both houses, to sanction certain types of

bills etc. Any Act asserted to by the Governor-General could only be disallowed within a year by the King-in-Council.

- **Amendment in the Constitution:** The new constitution was very rigid. The British Government could only amend it. S.M. Bose writes: “The Indian Legislatures have only been given powers to express by resolution to his Majesty’s government their intention of a constitutional change in respect of the matters specified in this section. But the actual power of modifying the Act has been placed by the Act in the hands of his Majesty’s Government by the Order – in- Council laid in draft before the two houses as provided in Section – 309”.
- **Federal Court:** This Act provided for the establishment of a Federal Court with Jurisdiction over the States and the Provinces. The Court was to consist of a Chief Justice and to puisne judges. It

was given both original and appellate jurisdiction. It had to interpret the constitution.

Conclusion: To conclude we can say that now the Governors of the provinces were given a new legal status and broadly freed from the superintendence, direction and control of the Government of India and the Secretary of the State except for specific purposes. Diarchy in the provinces was replaced by provincial autonomy. Provincial legislatures were further expanded. The governor who was the head of the provisional executive was expected to be guided by the advice of the popular ministers. The Act gave discretionary powers in matters like summoning of legislature, appointment of Ministers etc. It also provided for setting up of the Federation of India comprising British Indian Provinces and States. But when the Act got its final royal consent on 2 August 1935, it could hardly satisfy the majority of the princes

and all segments of the intellectual class in India.

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