



Peer Reviewed Referred and
UGC Listed Journal
(Journal No. 40776)



Volume-VII,
Issue-I
January - March
2018

IMPACT FACTOR
/ INDEXING
2017 - 5.2
www.sjifactor.com

AN INTERNATIONAL MULTIDISCIPLINARY
QUARTERLY RESEARCH JOURNAL
ISSN 2277-5730

AJANTA

Ajanta Prakashan



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The Government of India Act 1935 and Federal Government in India

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Introduction

The British came to India as traders and founded an empire in 1757 which ended in 1947. The period passed through two phases—first under the East India Company from 1757 to 1858 and for the remaining period under the direct control of the British Parliament or Home Government which took interest in Indian affairs.¹ The remarkable growth of nationalism in India under British rule would not have been possible if her people had not long been united by ties of culture and religion which endured in spite of the numerous political turmoil with which the country was afflicted.²

The Indian national movement was undoubtedly one of the biggest mass movements modern society has ever seen. It was a movement which galvanized millions of people of all classes and ideologies into political action and brought to its knees a mighty colonial empire.³

The British conquest of India was different in character from all the previous conquests of the country. In the past the change of rulers implied merely a change of the dynasty that exercised political authority over the people, but it did not affect the social fabric, the productive organization, the property relations or the system of administration. Under the British rule all this was altered, and a socio-economic revolution was started which culminated in the destruction of the old institutions and in the emergence of new social classes and forces.⁴ The Regulating Act 1773 was the first major intervention of the British Parliament in the Indian Affairs of company for the first time introduced the idea of the federal system of Government in India.

¹Rajiva Mohan, Indian National Movement and the British Raj, Chughpublications, Allahabad, 1988, pp.1-2.

²V.B. Kulkarni, British Dominion in India and after, Bharatiya Vidya Bhavan Bombay, 1964, p.102.

³Bipan Chandra, India's struggle for Independence (1857-1947), Penguin books, New Delhi, pp13-14.

⁴Tara Chand, History of Freedom Movement in India, Ministry of Information and Broadcasting Government of India, Patiala House, New Delhi, reprinted 1990. (Vol.1), pp.290-291.

Background of Act 1935

The National Movement: Indian political leaders expressed their appreciation, by issuing a manifesto, of the sincerity underlying the declaration and the desire of the his majesty's Government to pacify Indian opinion.

During the period of 1930 and 1935, the 'National movement' was gaining strength. It is also clear from the events and conferences which followed Lord Irwin's proclamation. The First Round Table Conference, 1930, Civil disobedience Movement, Gandhi-Irwin Pact 1931, the second Round Table Conference 1931, announcement of Communal Award by Ramsay Macdonald 1931, Local disobedience, Mahatmaji's fast, the Poona Pact 1932, the Third Round Table Conference 1932, all these gradual historical steps and events prove that the British government followed a dual policy in India.⁵

Communal Award and Poona Pact

The communal award announced by Ramsay MacDonald on December 1, 1931, provided for special reservation or special electorates for depressed classes as distinct from the rest of the Hindus. This was resented by the National Congress and Gandhiji announced to resist it with his life. The cunning policy of the Britishers desired to isolate the depressed classes from the Hindus. However, Gandhiji's indeterminate fast in Yeravada Prison from September 20, 1932 made the British government to reconsider and as result Poona pact was signed whereby Dr. B.R. Ambedkar⁶ agreed to give up separate electorates. This was accepted by the British Government and Communal Award was accordingly modified. Thus on one side it took the severest measures against the Congress and to suppress the Indian political movements, and on the other hand when it realized that suppression by force was not possible, it pursued on with the work of making a new Constitution which ultimately resulted in the Government of India Act, 1935.

The Government of India Act, 1935

After the act of 1919, the Government of India Act, 1935⁷ was the second important milestone on the road to a fully responsible Government in India. It played a very important role in shaping and moulding the new Constitution of India of 1950. Lord Linlithgow was played an

⁵ See for detail William Wilson, A History of British India, Indian Reprints publishing, Delhi, 1972, p273-280.

⁶ For more detail, Thomas Mathew, Ambedkar reform or Revolution, Segment Books, New Delhi, 1991, pp.101-110. And Ambedkar B.R., : Pakistan or the partition of India, pp.462-63.

⁷ Royal assent was given on August 2, 1935.

important part in drafting of the Government of India Act 1935. He was , therefore , sent to India to implement the provisions of the Act of 1935.⁸

The act of 1935 is said to be the product of four diverse forces, namely Indian Nationalism, British Imperialism, Indian communalism and Indian Princes. The Act kept intact the supremacy of the British Parliament. Though the enactment of the Act disappointed ambitious Indian leaders and was forced upon the Indian by the British Parliament, it was definitely an advancement towards the constitutional development of India. The Act marked a radical change of policy in two respects: first , it introduced a federal form of Government in place of unitary form which was the British policy since long; and secondly, the provisions of the Act envisaged a federation to which the native states of India were to accede. The Act introduced Partial responsibility at the centre, established provincial autonomy and was aimed at forming an All India Federation but all of them were accepted in the Act subject to certain qualifications. Some of the important provisions of the Act may be briefly stated as below⁹:

Main Provisions

- a) **Opinion for States to join:** The Act provided for the formation of an All-India Federation. All the provinces were to join the Federation automatically but a peculiar problem arose in the case of native Indian States. It was purely on voluntary basis for the Indian States to join the Federation by an Instrument of Accession. The Indian States and the Provinces were separately allotted seats in the Federal Assembly and the Council of States. The Viceroy was the representative of the Crown to perform all his functions in India.
- b) **Division of Power:** The Act provided for the division of power between the Centre and the units under three lists, namely, Federal list, Provincial list and Concurrent list. As regards the Concurrent List, both the Federal legislature and the Provincial Legislatures were given the power to pass laws on subjects as stated in the list, but the Federal Legislature was in a superior position.
- c) **Dyarchy at the Centre:** It established diarchy at the Centre and the diarchy which was established in Provinces, under the Act of 1919, was abolished. At the Centre , a part of

⁸R.S.Chaurasi, History of Modern India (1707 to upto 2000 A.D.), Atlantic publishers and Distributers, New Delhi, 2002, p.281.

⁹V.D.Kulshreshtha's Landmarks in Indian Legal and Constitutional History, Eastern Book Company, Lucknow, Reprinted, 1997, pp.330-333.

the Federal Executive was declared Reserved while another part was Transferred. The reserved part consisted of the important subjects of Defense, External Affairs, etc. In the administration of the other federal subjects, the Governor-General was to be aided and advised by a Council of maximum ten ministers.

- d) **Bicameral Federal Legislature:** The Federal Legislature was to be bicameral, consisting of the Federal Assembly and the Council of States. Life of the Federal Assembly was fixed for five years. The Council of States was to be a permanent body of which one-third members were to retire after every three years. The members from States were to be nominated by the rulers. The representatives from British India were to be elected. Communal representation in elections was retained.
- e) **Legislatures' power restricted:** The powers of the Indian Legislatures were severally restricted. There were certain subjects on which neither the Federal nor the Provincial legislatures were authorized to legislate, e.g. affecting the Sovereign or the Royal Family, etc. There were many non-votable items in the budget over which the Federal was given absolutely no control. The Governor-General was empowered to summon a joint sitting of the two Houses of the Federal Legislature when a Bill passed by one Chamber was rejected by the other, or was amended in a form to which the first Chamber was not agreeable. The Governor-General was required to assent the Bills but he had also the right to veto it or send it back for reconsideration to the Chambers.
- f) **Autonomy in name only:** Another most important provision of the Act of 1935 was relating to the establishment of autonomy in the provinces. This was in accordance with the August Declaration of 1917. The old dyarchical system in the Provinces was dropped and the distinction between the Transferred and the reserved subjects was abolished. The Governors were empowered to take away the whole business of the popular Ministers at any time and establish their administrative control. This was the greatest defect of the constitutional system provided under the Act.
- g) **Indian Council of Secretary of State:** The Act abolished the Indian Council of Secretary of State.¹⁰

¹⁰ For detail V.D. Mahajan, A History of India part-III (Modern India), S.Chand & Company, New Delhi, 1990, pp.191-200.

- h) **Establishment of Federal Court-** The Act established a Federal Court with original and appellate jurisdiction to decide disputes between the federation units, between the Federal Government and a unit or units and with regard to the interpretation of the constitution. However, the Privy Council remained the final Court of appeal.
- i) **Governor –General all-in-all:** The Governor-General had vast administrative, legislative and financial powers under the Act of 1935. He was not merely a constitutional head even in regard to the administration of the Transferred subjects. He was given very wide discretionary powers not only of legislation but also powers over the legislatures. He was empowered to enact the Governor-General's Act and promulgate Ordinances over the head of the legislature.

Defects: The Act was criticized by Pandit Jawaharlal Nehru as a “ Machine with strong brakes and no engine”. Pandit Madan Mohan Malaviya described it as Showy and hollow. Some important defects of the Act of 1935 were as follows:

1. **Dyarchy at Centre:** Dyarchy which was introduced in 1919 in the provinces was introduced at the Centre with all its evil effects all over India.
2. **Option for States-**The Act also gave the Indian States the choice to join or not join the Federation.
3. **Privileged position of States-**The Indian States were given a privileged position. The nominated members of the Indian States remained loyal to the British.
4. **Communal Award-**Communalism influenced the Constitution in India and it was a hard blow to Indian nationalism.
5. **Discretionary powers-**The discretionary powers of the Governor-General and the Governors were also criticized.
6. **Mistrust of Indians-**The Act of 1935 was based on the mistrust of Indians in their British master.

Conclusion

After the failure of the Third Round Table Conference, the British Government gave the joint Selection Committee the task of formulating a new Act for India. The Simon Commission Report submitted in 1930, formed the basis for the Government of India Act , 1935. The act continued and extended all the existing features of the Indian Constitution. Popular representation; provincial autonomy; communal representation and the safeguards devised in

1919, were all continued and in most cases extended. In addition, there were certain new principal introduced. It provided for a federal type of government.

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