

A Study on the Government of India Act, 1935

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Introduction

The Government of India Act, 1935, is regarded as the second milestone on the highway leading to a completely responsible government. It was a lengthy document, detailed and complicated having 321 Sections and 10 Schedules. The basic features of the Act were, the introduction of partial responsibility at the center, Provincial autonomy and an All India Federation. The federation of British India and the Indian states provided for in the new constitution did not come into being. The Act represented the final attempt of the British Government to maintain an undivided India. The Act provided the basis for the government of Independent India till it was replaced by the Constitution of India. The Act adapted to meet the circumstances of the case forms the Constitution of Pakistan. Many of the provisions of the 1935 Act with only slight alterations were incorporated in the Constitution of India. The Act of 1935 although a good piece of draftsmanship is a very complicated instrument. The three basic purposes of the Act were federation, provincial autonomy and the separation of Burma without the process of federation being completed.

The All India Federation

The British Indian and Indian states federation was unique in two respects. The federation was substituted for a unitary type of government, the

administrative control in which was by law centred in the Secretary of State who in some respects was a statutory corporation and who was vested with powers of superintendence and control. The powers of the provincial governments were derived by a species of delegation from the central authority and were exercisable subject to its control. Special arrangements were necessary to bring the states into the federation as the rulers of the states were not prepared to transfer to the federal government the same range of authority as could be conferred upon it by the provinces. Thus it was necessary so to draft the constitution as not only to provide for representation of the Indian states in the federal legislature but also to create an executive responsible to the legislature with regard to specified functions in relation to British India and also to the powers and functions in relation to the states in the federation which were accepted by them as applicable to their territories.

Distribution of Legislative Power

The Governor-General was empowered to promulgate Ordinances during recesses of the legislature. This power was liable to disallowance by the British Government and it had to be laid before the legislature on its reassembly. The Governor-General was also empowered to promulgate ordinances with respect to certain functions which he

had to discharge in his discretion or in the exercise of his individual judgment. In case of the failure of constitutional machinery, the Governor-General was empowered to issue proclamations declaring that his functions to the extent specified in the proclamation would be exercised by him in his discretion and assuming to himself all or any other powers vested in or exercisable by any federal authority provided that he could not assume any of the powers of the Federal Court. Such proclamation had to be laid before both houses of parliament. Similar powers were conferred on provincial governors such that they could not take part in the ordinary constitutional machinery. The governor was also empowered to make regulations for the peace and good government of such areas. Other safeguards were the Superintendence of the Secretary of State over the Governor-General and of the Governor-General over the provincial governors in matters in which they had to act in their discretion or exercise their individual judgment. Specific provision was also included to safeguard certain types of property. No person could be deprived of his property in British India save by authority of law and no legislature could make any law authorising the compulsory acquisition for public purpose of any land for commercial or industrial undertaking unless the law provided for the payment of compensation.

The constitutional restrictions on the powers of the legislatures in India were similar to those applicable in the case of the self-governing dominions before the Statue of Westminster was enacted. No law could be made affecting the sovereign and succession to the throne, the British nationals and the discipline of the armed forces. No bill could be introduced which repealed any Act relating to any police force or which adversely affected European British subjects. Any bill which would affect the powers of a High Court or alter the character of the permanent settlement had to be reserved by the

Governor-General or governors for consideration by the Secretary of State or the Governor-General as the case might be. All executive power in British India was technically vested in the crown and was exercisable by the Governor-General or the governor as the king's representative. In the execution of their normal constitutional functions the Governor-General and provincial governors were empowered to act in three capacities; first, as Governor-General or governor as the case might be; secondly, as Governor-General or governor acting in his discretion; and thirdly, as Governor-General or governor acting in his individual judgment. The Governor-General or governor acting without qualification implied that he acted on the advice of ministers.

The exercise of these powers was intimately connected with a special class of duties known as special responsibilities. In the case of the Governor-General these special responsibilities were: the prevention of any grave menace to the peace or tranquility of India or any part thereof; the safeguarding of the financial stability and credit of the federal government; the safeguarding of the legitimate interests of minorities; the securing to the dependents of persons who had been members of the public services of any rights provided to them under the Act; the prevention of action which would subject goods of United Kingdom or Burmese origin imported into India to discriminatory or penal treatment; the protection of the rights of Indian states and the rights and dignities of their rulers. The special responsibilities of the provincial governors were similar to those of the Governor-General with the exceptions that no special responsibilities for the financial stability of the provinces was imposed on governors and that governors had a special responsibility for the administration of partially excluded areas. They had also a special responsibility relating to the execution of orders

passed by the Governor-General. While the legislatures were empowered to make rules for the conduct of their business, the heads of the executive were empowered to make rules to regulate the business in regard to any matter which affected their discretion or individual judgment. With regard to the provision of finance the Act provided that the budget be divided into two parts, one expenditure charged on the revenues of the province, which was not subject to the vote of the legislature, and expenditure for others purposes which was submitted as demands to the legislature.

The main financial safeguard in British India was the Reserve Bank established in 1935 under the Act which was enacted by the Indian Legislature. The Reserve Bank controlled currency, credit, the issue of bank notes and reserves.

The Act provided for a federal railway authority, the function of which was to manage the railways on sound business principles.

The Act contained a number of safeguards against commercial discrimination. British subjects domiciled in the United Kingdom were declared to be exempt from any federal or provincial law in so far as it imposed any restriction on their right of entry into British India, etc.

The legislature could regulate conditions of service provided that no Act could deprive any civil servant of the fundamental rights prescribed in the Constitution. Appointments to the Indian Police Service were made by the Secretary of State who was required to make rules specifying the number and character of certain reserved posts. The Governor-General acting in his individual judgment could regulate promotion and suspension.

With regard to judicial officers, it was laid down that a governor exercising his individual judgment should appoint district judges after consultation with the High Court.

The main safeguards of the Services were that the emoluments of the imperial services and posts were borne on the revenues of the federation or provinces, i.e., they were nonvoted. Pensions were also subject to constitutional guarantee. The Governor-General was not only responsible for the payment of pensions but could borrow in the United Kingdom for the purpose on the security of the Indian revenues. Women were declared eligible to hold civil posts.

The Act also set up Public Service Commissions for the federation and provinces. The appointments of the chairman and other members of a Public Service Commission were made by the Governor-General or provincial governor as the case might be.

Excluded and partially excluded areas were defined in the Act as such area as His Majesty may by order-in-council declare to be excluded and partially excluded areas, i.e. areas in which the condition of the people is backward.

The constitution was the outcome of many compromises. The existence of so many safeguards was the chief index of such compromises but the most far-reaching of them lay in the construction of legislatures. In the Constitution of 1935 the previous system of communal representation was not only maintained but extended. Nomination was reduced to a minimum. It was abandoned altogether for lower houses and retained only to a very minor degree in the case of the Council of State and provincial second chambers.

Provincial Legislatures

In the construction of legislatures no single principle was adopted. In the federation the bicameral system of the dyarchy was maintained. In the Indian legislature, the Council of State was to be elected directly and the Federal Assembly indirectly. The bicameral system was prescribed in some provinces-

Madras, Bombay, Bengal, the United Provinces, Bihar and Assam; the unicameral in the rest.

As the 1935 Act was an enactment of the British parliament, no amendment could be made to it except by that authority. The Act however was supplemented by a number of orders-in-council covering a wide range of constitutional subjects. The constitution contained no declaration of fundamental rights. However it did include one or two legal principles of a general nature equivalent to fundamental rights. One such was that no person should be deprived of his property in British India save by authority of law.

Many of the provisions of the Act bearing on the division of subjects between the centre and the provinces, the federal and provincial revenues, the organisation of and procedure in the legislatures, the judiciary and public service commissions have been embodied in the Constitution of India. The federation of India was to consist of Governors' provinces, Chief-commissioners' provinces and the Indian States. So far as the Indian States were concerned the original condition of federation was that the rulers should have acceded to the federation was that the rulers should have acceded to the federation in sufficient numbers to be entitled to choose not less than 52 members of the Council of State and that the population of the acceding states should amount to at least half the total population of the states. Accession to the federation was to be achieved by an Instrument of Accession executed by the rulers of states in which the conditions of accession were specified.

Federal Legislature

The federal legislature was to be bicameral consisting of a Council of State and a Federal Assembly. The Council of State was to be a permanent body not subject to dissolution, with a third of the membership retiring every third year. It

was to be composed of about 260 members, 156 from British India and 104 from the states. With the exception of six members to be nominated by the Governor-General, all the others were to be elected.

The Federal Assembly was to consist of 250 representatives of British India and 125 of the Indian states. The seats were to be distributed between the provinces and among communities and interests in the provinces.

The federal executive was to be dyarchical in character. At its head was to be the Governor-General representing the Crown. The Governor-General was to exercise two distinct functions: those of Governor-General and Crown representative. As Crown representative he was to represent the Crown in relation to the Indian States. In the discharge of his duties he was to be assisted by a Council of Ministers and Counsellors. Acting with his ministry he was to be responsible for all matters except those in respect to which he was required by the Constitution to act in his discretion. In the administration of defence, ecclesiastical affairs, and tribal areas he was to be responsible to the Secretary of State, not to the legislature. Provision was made for the appointment of a Financial Adviser and the Governor-General was also required to appoint an Advocate-general for the federation. Legislative Councils were all much smaller than the lower houses. The composition of legislative assemblies varied from province to province according to population.

The Act abolished the Council of India. In its place was created a body of advisers to the Secretary of State. One half of them had to be persons who had held office for ten years under the Crown in India. Their salaries were met from the British exchequer. The office of High Commissioner was continued.

Conclusion

The Act made a three-fold division of power between the centre and the provinces on the basis of three lists-the Federal List, the provincial List and the Concurrent List. The Federal Legislature had the exclusive power of legislation over the subjects mentioned in the Federal List. It consisted of 59 subjects. These subjects were subjects of national importance and were considered as essential and vital for the existence of the Federation. The most important of them were external affairs, currency and coinage, navy, military and air force, census, etc. The Provincial Legislature had an exclusive jurisdiction to make laws on subjects mentioned in the Provincial List. It consisted of 54 subjects which were considered as the subjects of local importance. Some of the most important ones amongst them were, police, provincial public services, education, etc. The Federal and Provincial legislatures were to have concurrent powers to legislate on the subjects mentioned in the Concurrent List. The subjects in the

Concurrent List were considered as essentially of a provincial and local nature but required a uniform policy throughout India. It contained 26 subjects and criminal law, criminal procedure, civil procedure, marriage and divorce, arbitration, etc., were some of the most important subjects amongst them.

References

1. The Constitution of India was adopted on 26-11-1949 and some its provisions were given immediate effect. The bulk of the Constitution, however, became operative on 26-1-1950, which date is referred to in the Constitution as its 'Date of commencement', and is celebrated in India as the "Republic Day".
2. Report of the Indian Statutory Commission (Simon Report), Vol. I, pp. 112 et seq.
3. SETON, India Office, p.81.
4. PANIKKAR, Asia and Western Dominance, 1953, p. 155.
5. NEHRU, Discovery of India, 1956, p. 385.