

Chapter - 18

Constitutional Development in India -

Government of India Act of 1935

In relation to the idea of resolving the constitutional problem of India in 1930, 1931 and 1932, in the Round Table Conferences organized by the British Government in March 1933, 'A white paper' was published in relation to the future reform plan; in which the suggestions were made regarding the responsible governance in the provinces and the partial responsible governance in the center, the division of the bicameral establishment at the center, the power division between the union and the provinces, the federal court, the Reserve Bank, the federal railway authority. Based on the suggestions of the white paper, a bill was presented in the British Parliament in February 1935. On the acceptance of the emperor on August 2, 1935, the bill passed by Parliament and it was called the Indian Government Act 1935. Its features are as follows:

1. Detailed Act - This Act contained 451 streams and 15 Schedules. But there was lack of preamble. Before that the Parliament has never made big law.

2. Proposed All India Union Plan - This proposed union will be formed from the 11 British provinces, 6 Chief Commissioner's zones, and the princely states, who would willingly want to join this union. (British provinces were compulsory to join the League, while elective for native princely states). This union will be established only if 50% of the total population princely state princely states of 50 states express the desire to join the union. Interested states in the union had to sign an entry letter. Union units were self-governing in their internal affairs. A 'federal court'

was established to decide the disputes between the union and the units. A 'federal executive' and bicameral council were established at the center. But it could not be established because the condition was not fulfilled.

Evaluation of the federal system - All parties were in favor of the creation of all India Union. But due to the fulfillment of their selfish interests, they were also against each other. For this reason many features of a good federal system were left in it. There were many flaws in this federal plan -

(1) The compulsion of joining the units in the Union was not the same for all - the British province was necessary to merge in the Union, but the princely states were abandoned on their wish. Some of the princely states were willing to join the union, but most of the not.

(2) Lack of uniform level - There was a similarity in the spread of constitutional and executive powers between centers and provinces, while there was no homogeneity in the affairs of the princely states.

(3) Lack of autonomy in union units - In the All India Union, the province and the princely states were autonomous. But there was not a fully responsible government in Central Government. The governor general received major powers and was not liable to anyone.

(4) The Governor General's autocratic powers - Some important functions such as security, foreign affairs and residual powers have been kept with the Governor General. The Legislative Assembly

had neither the right to question the governor general nor there could be debate on his conduct. He used to behave like a dictator.

(5) Unitary element in the federal system -

The Governor General had unlimited powers to intervene in the provincial affairs. For this reason the autonomy of the units was limited. But this does not happen in the union.

(6) Separation of powers is not proper - The powers were distributed between the Central and the provinces according to the federal plan. Centers, provinces and concurrent lists used to divide powers. But the residual powers were with the Governor General in the princely states, the administrators had.

Thus the proposed federal plan was highly defective. The only purpose of this plan was to restrict the political progress of India, but the basis of the federal system adopted in the future independence in India was based on this federal plan. The proposed federal plan contained the basic characteristics of the federal system (1) written, manufactured, harsh and supreme constitution (2) two governments and power division in them (3) fair tribunal (4) Second House of the Central Legislative Assembly, Representation of union units in the state council.

3. Establishment of diarchy government at the center - This Act was implemented by the center by eliminating the diarchy system in the provinces. This system was already faulty. Arrangements of security, foreign affairs, religious and kavalayan areas etc. (central subjects) were kept in the hands of the governor so that they could conduct their administration with their discretion. The administration of these departments could appoint maximum 3 consultants for the administration. A cabinet arrangement was arranged to assist the governor general for the management of other subjects, which would be able to get maximum of 10 Keeping this council responsible for the

administrator, the principle of collective responsibility was to work on the basis.

4. Provincial Autonomy - By ending the diarchy in the provinces, they were given complete independence. All provincial governance was entrusted to popular ministers. The Governor was expected, he would govern the advice of ministers. The governor was told that he would make the cabinet with the advice of the leader of the majority party in the provincial legislature. The minister will be liable to the administrator. He will work on the principle of community responsibility. There were some important powers in the hands of Governors to fulfill the special responsibility.

5. Separation of Powers- Power was divided between Central and Provincial Governments for the purpose of establishing the proposed Union. Three lists were arranged.

(i) Union List - 59 topics of national importance were kept in it, including water, land and air forces, foreign affairs, postal, wire, currency and typing, federal public services, communications, insurance and banks etc. These had the power to make a law of the Central Legislative Assembly.

(ii) State list - There were 54 topics of local importance in which there were peace, justice, courts, provincial public services, local self-government, hospital and public health, agriculture, canals, forests, education, roads etc. The provincial governments were give the right to make laws.

(iii) Concurrent List- 36 topics namely civil and criminal law, marriage, divorce, succession, acceptance of adoption, trust, factory and labor welfare etc were included in it. Both the central and provincial governments could make laws on these issues, but in the event of conflict, the law of the Federal Administrator would be acceptable.

(iv) **Residual powers** - These powers were entrusted to the governor general. He could make law from any legislative body (center or province).

6. Arrangement of protection and reservation - British rule was taking cautious attention in giving responsible governance to Indians. At the same time, the British government wanted to protect the interests of many section of minorities. Therefore, by the Act, the Governor General and the Governors were given extensive powers to intervene in the various governance of responsible states of the Central and Provinces. Their rights were the protection and reservation of the Act. This arrangement was not in line with democracy.

7. Expansion of Organization of Legislative Assembly and franchise - In this Act the nature of the federal legislation has been bicameral. In which one House was the Federal Legislative Assembly and the Second House State Council. The number of members of the Federal Assembly was 375 and the number of the State Council was fixed at 260. Election of the Assembly was to be made indirect and the election of state council was done through direct election process. At the provincial level, 6 out of 11 legislative bodies were made bicameral. The franchise was expanded by the act. More people got franchise than before. But all the people still could not get the franchise. The table number 1 represents the formation of the Assembly and the State Council.

The term of the assembly was fixed for 5 years. The State Council was a permanent house, whose members were elected for 9 years. But 1/3 members were used to retire or leave every third year. The council and the state council's constituencies were still formed, according to different classes.

The Legislature of the Act of 1935 provided more right than before.

Now the Council of the Ministers was held responsible for the Legislative Assembly. The Assembly

received the right to remove the Council of Ministers by the motion of no confidence movement. The Legislative Assembly members could ask questions to the members, get supplementary questions, bring many kinds of proposals to control. In the case of budget, the legislature was controlled for about 80 percent grant demands. Legislative bodies were given more powers even in the field of general law making than before.

8. Federal Court - A federal court was established by the Act of 1935 whose jurisdiction was spread to the provinces and states. There will be a Chief Justice and two other judges in the court. Age of retirement of judges was kept 65 years. The Chief Justice was given Rs. 7000 / - and other judges Rs. 5500 / - as monthly salary. This court had been given original and appellate rights. The federal court was given the right to interpret the constitution, to prevent the central and provincial governments from encroaching on one another's jurisdiction. The last appeal in this area could be made in 'Privy Council' situated in Britain.

9. Supremacy of the British Parliament - This Act was still in the possession of the British paramountcy. The right to amend it was only with the British Parliament. The Legislative Assembly of the Indian Province and the Center could send recommendation for amendment under certain limits.

10. Abolition of the India Council - India Council's perspective was always in opposition to India. For this reason the Indian public was demanding its end for a long time. Thus, the Council of India was abolished by this Act of 1935. Some consultants were appointed to help the Indian minister in their work which was dependent on the desire of the Indian minister to take or not take counsel. But considering the matter of the services, it was mandatory for the Indian minister.

11. Expansion of communal electoral system - This method was unfavorable to Indian interests. Instead of finishing it, it has been expanded. In addition to Muslim

and Sikh (formerly prevalent from the time of Act of 1919) to represent British interests in central and provincial legislatures, this method was extended for Anglo Indians, Indian Christians, Europeans and Depressed Classes. In both the two Houses of Central Legislature, about 1/3 of Muslims were given representation, which was much more than the proportion of their population.

12. Changes in relation to Burma, Barar and Adan - 'Burma' was separated from India by the Act of 1935. Adan was liberated from the control of the Government of India and was placed under the colonial department of England on 1 April 1937. Though the nominal authority of the Nizam of Hyderabad was accepted over 'Barar', but it was also made part of the Central Provinces in terms of practical governance.

State autonomy

There can be two meanings of provincial autonomy. The first meaning is that the states should have the right to work independently in a certain area, i.e. in a certain field they should be independent of central control or external control. Provincial autonomy is in the second sense the establishment of responsible governance in the provinces. That is, in the province,

governance should be in the hands of such popular ministers, who are liable to the public through the Vidhan Mandal and for the Vidhan Mandal.

In the provinces, the formation of the autonomous Political Unit was given to the provinces by abolishing the diarchy established by the Act of 1919. Freedom from central intervention was given. They were given power in legislative, administrative and financial fields on 54 topics of the provincial list. This is called provincial autonomy.

Evaluation of State Autonomy - Provincial autonomy established by the Indian Government Act 1935 was far from reality. External and internal limits were imposed on that states that did not have autonomy left.

External restriction on State autonomy - It should have been exempted from external control, but many central intervention provisions were made in the Act of 1935.

(1) The declaration of Emergency - It was mentioned in section 102 of the Act, that the Governor General would declare emergency in the event of serious internal disorder or unrest and real or potential

Details of the Formation of Central Legislative Assembly under Central Legislative Act, 1935

Table-1

Name of the House	Members of native princely states	Members of British India												Total
		General	Depressed Classes	Muslims	Sikhs	Anglo-Indians	Europeans	Indians	Christians	Commerce and industry	Landlords	Women	Nominated members of governor general	
Legislative	125	96	09	82	06	04	08	08	11	07	10	09	-	250
State Council	104	75	06	49	04	01	07	02	-	-	-	06	06	140

threats of war. After this announcement, the Central Legislature Board will get the right to form the law on the list of provincial lists.

(2) Control of the Center on State - Under section 156 of the Act, the Governor General will get the right to issue instructions to the provincial governments to maintain power and security in India.

According to Section 93 of the Act, the Governor had been given the right to declare the failure of the constitutional mechanism in the province. In this situation, the governing of the provincial governance will be done by the governor himself or in the direction of the governor general.

(3) Control of the governor general in the State legal area - Some special types of legislation or amendment could not be presented in the provincial legislative body without prior permission of the Governor General.

(4) If the Governor passed the bill passed by the State legislatures, the acceptance of the Governor General, and if the Governor General wished he could keep the bill secure for acceptance of the British Emperor through the Indian Minister.

(5) The special responsibility of the Governor General - The Governor general could intervene in the provincial territories to fulfill them. He could give necessary instructions to the provincial ministers.

Internal restriction- Provincial governance was also not free to act in the internal sector. Internally, the following limitations were on provincial autonomy-

(1) The Governor's role in the province should have been more than the constitutional president - the role of governor for provincial autonomy should have been of the constitutional president. But the governor was the real president. The entire province was under it. He had the right to issue

an ordinance, to reject the bill passed by the Legislature, and for the acceptance of the Governor General to keep it safe.

(2) The unlimited power of the governor in the financial sector - The province's budget was made in its monitoring, it was also his responsibility of passing it through the Legislative Assembly. Accepting or denying any amendments suggested by the Legislative Assembly was dependent on the Governor's wish.

(3) The Governor's control over the ministers - The governor was responsible for the appointment of the ministers in the province, the reservation and the distribution of their central departments. The meeting of the Council of Ministers was also called by the Governor. These powers of governor used to paralyze the provincial autonomy.

(4) Non-cooperative behavior of the officers of civil service with the ministers was also fatal for provincial autonomy.

On this basis it has been said that the provincial autonomy is a pretext. So Indians expressed dissatisfaction over this and demanded real autonomy for the provinces.

Implementation of Provincial Autonomy- The British Government tried to implement the provincial autonomy mentioned in the Act of 1935. In 1937, dates for holding elections were announced. Elections ended till 3 April 1937. Congress had a clear majority in 6 of the 11 provinces (United Provinces, Bihar, Orissa, Bombay, Madras and Central Provinces) in the form of a big Congress party in 3 provinces (Assam, Bengal and North-West Frontier Province), in Punjab The Communist Party and in Sindh, Muslim League was in majority. Initially the parties did not show any interest in the formation of the Cabinet. After the assurance of cooperation of governors of British rule, the provincial governments were formed in July 1937. Some states performed well.

The effect of the Act of 1935 on the present constitution of India - The formation of the Constitution is either fundamental or based on practicality in which certain subjects of other constitution and laws are adopted. Although the view of the constitution makers was practical. Therefore, there is the effect of many indigenous and foreign law and constitution. But most of the impact is of the Indian Government Act of 1935.

(1) Federal planning- The scheme of the proposed All India Union in the Federal Plan 1935 Act can be seen in today's Indian Union. The unit of the union, giving more power to the center, the arrangement of power division, etc. are influenced by the Act of 1935.

(2) The idea of the bicameral Legislative Assembly- The present constitution the bicameral legislative has made in the Central and in some States is based of the Act of 1935.

(3) In case of constitutional crisis in the States, its governance management can take the center (through the President) in its own hands, which is based on the system mentioned in the Act of 1935.

(4) The post of the governor - Most of the system in governor's post as described in the Indian Constitution, the provisions of the post of the governor referred to in the Act of 1935 have been adopted in the revised form.

(5) The present constitution of India is a detailed statutory document similar to the Act of 1935. It also mentions the arrangements of the provincial governments, along with the main parts of the Central Government.

(6) In the event of opposition to federal law and state law, it has been said to grant sanction to federal law (Section 251). It is based on the provisions of Section 107 of the Act of 1935.

(7) In relation to the declaration of the emergency by the President in the present constitution, the

provisions of section 352 and 353 are similar to that of section 102 of the Act of 1935.

(8) The executive power of the State will be used as per the directives of the Federal Parliament and the Executive (Section 256 of the present Constitution), It is also in accordance with Section 126 of the Act of 1935.

Evaluation of the Indian Government Act, 1935 - This Act occupies a significant and stable place in the constitutional history of India. Coopland's view is that "the Act of 1935" was a great success of creative political thought. "But there has been considerable criticism of this Act in England and India. According to Madan Mohan Malviya, "This new act has been imposed on us, from outside it look like the democratic governance system, but it is hollow within."

C. Rajagopalachari called it "more worst than diarchy". According to Jawaharlal Nehru, "This Act is a declaration of slavery."

1. Criticism in England - British hardcore moderates believed that the rights and responsibilities given to Indians by the Act of 1935 are not favorable to them.

2. The Act is useless - According to the opinion of Indians, there was no provision of independence in this Act, nor was there a mention of colonial Swarajya. So it was meaningless for the Indians.

3. This act was merely hoax and mask - Indian critics believed that this Act did not delegate any real power in the hands of the Indians. Therefore, this Act was merely a "cheating" and "mask" for the public.

4. No solution to India's problems - The problem of demand for freedom was rising in India. The leaders of British commentators and labor party believed that this Act did not present any solution to the problem of India.

5. There was no hand of the Indian public or its representatives in the framing of this Act. Jawaharlal Nehru called this Act 'mandatory letter of slavery'.

6. Defective federal system- Although in the plan of the All India Union proposed by the Act of 1935 there were many characteristics of the federal system such as power division, written and hard constitution, independent judicial system and two government system. But there were serious blame also in it. Attempts were made to merge unions with unmatched units. This proposed union neither transmitted power to Indians nor there was a provision of self-decision making and general citizenship. The governor-general and governors received authoritarian and authoritarian powers, which would shock the federal system. The power of federal judiciary was not supreme; an appeal could be filed in the Privy council against its decisions.

7. Provincial autonomy was an illusion - This Act provided autonomy in the provinces. The members of the provincial legislature assembly were elected. The executive was liable to the administrator. But the central government had such powers, through which the intervention was made in the provincial area. The Governor General could strangle the provincial autonomy by announcing the emergency. In the provinces governors had many different kinds of rights, which strangled autonomy. The position of the ministers was weak. There was a lack of collective responsibility

8. Faulty Arrangements of Protection and reservation - Through the protection and reservation, the Governor General and the Governors got special rights. He kept holding an autocratic and reactionary look. They were obstacles in the working capacity of Government of India. They were the measures to protect British communalism and its interests.

9. Nonbeneficial Extension of the communal election system - The Indian people considered communal electoral system to be unbeneficial for India.

They used to condemn it. Yet it was implemented for the Anglo Indians, Europeans, Indian Christians and Harijans. This system was about to harm Indian integrity and protect the British interests.

10. No right of self-decision - In this Act, the new Constitution was not automatically developed or the right of Indians to determine their destiny. There was made no shortage of control over the control of the British Parliament and the Indian Minister on India.

In this way, the Act of 1935, itself contained many defects. However, this Act was more important than earlier reforms Acts even if the federal system could not be established. But for future India it became a guide for the federal system. Even if there is a half-order system of provincial autonomy, but the establishment of responsible governance could be initiated. Compared to earlier this act, more people could get franchise opportunities available. It had proved to promote decentralization of powers of governance. The organization of Central and Provisional Legislatures had improved in comparison to earlier. Their powers increased and it could become more democratic than before.

Important points

Indian Government Act 1935

Major provisions: -

1. The detailed Act, which had 451 streams and 15 schedules.
2. The preamble was not there.
3. Plan of the proposed All India Union.

Demerits of Federal plan

1. The compulsion of joining the units in the union was not the same for all.
2. No equal level of the units .
3. Lack of autonomy in union units.

4. The Governor-General's voluntary powers.
5. Unitary element in the federal system.
6. The division of powers was not right.

Establishment of diarchy rule at the center.

'Provincial autonomy.

Power division.

'Protection and reservation system.

'Expansion of Organization of Legislative Assembly and franchise.

'Federal court.

'Supremacy of British Parliament.

Abolition of India Council.

'Expansion of communal electoral system.

'Changes in relation with Burma, Barar and Aden.

'Provincial autonomy..

'The meaning of provincial autonomy.

'Restriction on Provincial Autonomy.

1. External restrictions

'Declaration of Emergency.

Control of the Center on 'Provinces'

'Control of governor general in provincial legal field.

'Keeping the bills passed by the provincial legislatures to be approved by the Governor for the approval of the Governor General.

Special responsibilities of the Governor General

2. Internal Restrictions

Governor's role in the province greater than the constitutional chair

Governor's unlimited powers in the financial sector

Governors' control over ministers.

'Non-cooperation of the officers of civil services with the ministers

Implementation of provincial autonomy

Effect of the Act of 1935 on the present Constitution of India – the following are the impacts

'Federal plan

'The idea of the bicameral legislature.

'Provisions of constitutional crisis'

Governor's post

'Detailed Constitutional Documents.

'In the event of opposition to Federal law and state law, the subject of federal law recognition is in place.

'President's emergency Powers

'The use of the executive power of the state in the direction of the Federal Parliament and Executive.

Evaluation of the Indian Government Act 1935 –

The following criticisms were made

1. Criticism in England.
2. The Act was redundant.
3. This Act was fraud and mask only.
3. India's problem was not resolved.
4. The participation of the Indian public in its framing was not there.
5. The federal system was faulty.
6. Provisional autonomy was an illusion
7. Protection and reservation arrangements were faulty.
7. Expansion of communal electoral system was hazardous
8. No right to self-mad decisions.

Important Questions

Objective Questions:

1. What was the number of members of the Lower house of central Legislative Assembly?

- (A) 260 (B) 375
(C) 250 (D) 545

2. Till what age did the judges of the federal court could hold their office ?

- (A) 65 years (B) 60 years
(C) 55 years (D) lifetime

3. Who was vested with the residual powers by the Indian Government Act, 1935?

- (A) Governor
(B) Central Legislature
(C) Governor General
(D) Secretary of India

4. What was the number of Articles and Annexures in the Indian Government Act, 1935?

- (A) 450 and 11
(B) 460 and 12
(C) 395 and 15
(D) 451 and 15

Very short questions:

1. What was the condition with the formation of the Union under the Act of 1935?

2. What were the names of the two Houses of the Central Legislative Assembly formed under the Indian Government Act, 1935?

3. Describe the Governor General's discretionary powers conferred by the Act of 1935.

4. What do you mean by provincial autonomy?

Short questions:

1. Explain any four characteristics of the Act of 1935.

2. 'The responsible government was incomplete in the province. Explain.

3. Mention the organization of the Federal Court.

4. Enlist four demerits of the Act of 1935.

5. Was the governor-general not a constitutional president? Explain.

Essay type Questions-

1. Critically examine the provisions of the Indian Government Act, 1935.

2. Discuss the organization, power and position of Central Legislature.

3. What was the proposed federal plan in the Act of 1935? Critically discuss.

4. What do you understand by the provincial autonomy mentioned in the Act of 1935? What restrictions had been imposed on it which made it paralyzed?

Answer to objective questions:

1 (B), 2 (A), 3 (C), 4 (D)