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Impact of Government of India Act, 1935 on The Indian Federal Structure

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ABSTRACT

The Government of India Act, 1935, is regarded as one of the most important acts in the series of acts passed before the Independence of India, by the British Government. The need for the act was felt after the failure of the Government of India Act, 1919. The Government of India Act, 1935, compiled with the recommendations from the report of the Simon Commission as well as those of the round table conference held in 1933. The Government of India Act, 1935, had introduced drastic changes to the administrative structure of the India including both positive and negative changes. However, it failed to comply with the promises made and therefore could not deliver majority of the promised changes. Certain changes made by the act had a lasting and positive impact while some failed miserably which led to the criticism of the act among the Indians and eventually resulted in the failure of the Government of India Act, 1935.

This article also throws light on how the Government of India Act, 1935, impacted and simultaneously laid the foundation for the Constitution of India, to be drafted and enacted accordingly.

Keywords: *Federal Structure, Government of India Act 1935, Parliament, British Government, Constitution of India.*

I. INTRODUCTION

The Government of India Act, 1935² had introduced many changes in the working of government. Ranging from the majorly drastic changes to a few moderate changes were also suggested by the act. This act established the federal system/federation in India. Apart from this, the act also introduced the division of subjects in the lists, a bicameral legislature, federal court, and it also initiated the separation of Burma from the Indian Subcontinent. Even though this act faced huge number of criticism from throughout the country, it still managed to secure the topmost position in the list of acts introduced before independence. The Government of India Act, 1935, was slightly biased towards the development of provincial administration more than that at the national level.

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² The Government of India Act, 1935

II. HISTORICAL BACKGROUND OF THE ACT

To study about any event that has taken place one must learn about its past consequences which led to the occurrence of the event. Similarly, to study the Government of India Act, 1935, one needs to know the historical background or past consequences which led to the formation of the Government of India Act, 1935. Few such past events/consequences have been listed below:

- The previously enacted Government of India act, 1919³, failed to comply with the needs of the hour and hence couldn't provide the appropriate structural development for administration.
- Simon Commission under the leadership of Sir John Simon was hired in 1927 to evaluate the working of the Government of India Act, 1919. However, the commission faced a lot of controversy and criticism from the Indian locals as there was not even a single Indian who was a part of that commission.
- The Simon Commission report came out in 1930⁴, but it was not satisfactory to some extent due to which a round table conference was held in London in 1933.
- The then viceroy of India, Lord Linlithgow, set up a committee to evaluate the report submitted by the recommendations of the round table conference. Finally, the report of the committee was published in 1934, which contained recommendations from the reports of Simon Commission as well as the round table conference held in 1933 along with the committee's personal recommendations.
- This report after the Royal Assent became the Government of India Act, 1935.⁵

III. OBJECTIVE OF THE GOVERNMENT OF INDIA ACT, 1935

The Government of India Act, 1935, recommended ending of the system of diarchy which was introduced by the Government of India Act, 1919, and the establishment of federation which would have consisted of the provinces that were under the control of the British along with the Princely States. However, the federation could not be formed as the princely states couldn't match up to the number which was required to form the federation.

IV. KEY PROVISIONS OF THE GOVERNMENT OF INDIA ACT, 1935

(A) All India Federation

³ The Government of India Act, 1919

⁴ Simon Commission, "The Simon Report" (1930)

⁵ Anubhav Pandey, "Government of India Act, 1935" on July 2, 2018 available at <https://blog.ipleaders.in/government-of-india-act-1935/> last visited on 01.05.2023

- The Government of India Act, 1935, recommended the establishment of All-India Federation which would include the provinces that were under the control of the British along with the Princely States.
- It was left voluntary for the princely-states whether they want to join the Federation or not.
- However, the federation could not be formed as the princely states couldn't match up to the number which was required to form the federation.

(B) Provincial Autonomy

- The provinces were given administrative powers in different spheres by establishing responsible governments in the provinces which could establish authorities on their respected governors to act according to or comply with the provincial legislature.
- However, the Government of India Act, 1935, failed to establish a full-fledged responsible government at the provinces as these governments were formed in 1937 and were discontinued in 1939 because Ministers did not have complete control of the working of their departments as the governors retained the majority of powers with themselves.

(C) Division of subjects

- The Government of India Act, 1935, recommended dividing the subjects between the Centre and the Provinces.
- The Government of India Act, 1919 had already proposed this division which was further revised and amended by the Government of India Act, 1935.
- The Government of India Act, 1935, introduced a third list called the 'provincial list'. The subjects as per the Government of India Act, 1935 are mentioned below:
 - a. Union List: 59 Subjects
 - b. Provincial List: 54 Subjects
 - c. Concurrent List: 36 Subjects
- The subjects containing matters related to all-India Interest were put in the federal list as they demanded equal treatment. The federal legislature was the only body allowed to make rules for the subjects falling in this list.

- Subjects that included matters of local interest were placed on the second, i.e. the ‘provincial list’ and were under the absolute control of the provincial government.
- The concurrent list included subjects that were mainly of local-interest but required uniform treatment. There were 36 such subjects.
- The Government of India Act, 1935, enabled both the federal as well as the provincial legislatures both giving them powers of legislation on certain topics.
- It was also stated that at the time of conflict, the decision of federal legislature would prevail.

(D) System of diarchy at the centre

- The Government of India Act, 1935, abolished the system of diarchy at the provincial level but introduced it at the central level.
- The two categories of subjects mentioned under the federal list, often called as federal subjects are mentioned below:
 - a) Reserved Subjects: The subjects falling under this category were to be administered by the Governor-General on the advice of the Executive Councillors. Matters like religious affairs, defence, external affairs etc. were included in this category of federal subjects.
 - b) Transferred Subjects: The subjects falling under this category were to be administered on the advice of ministers. The Governor-General was the overall in charge of both the aforementioned categories. This category included subjects that dealt with education, public health etc.

(E) Bicameral Legislature

- The Government of India Act, 1935, led to the establishment of a bicameral legislature at the centre, consisting of Federal Assembly and Council of States.
- The Council of States was declared as the upper house and was to be a permanent body where one-third of its would retire every 3rd year. The composition of the body was to be 260 members out of which 156 were to be the representatives of the British Government while the leftover 104 were to be the representatives of the Indian States.
- The Federal Assembly was declared as the lower house with tenure of 5 years.

Its composition included 375 members among which 250 were to represent the British India and the other 125 members were from the princely states.

- The election to the Federal Assembly was indirect.
- Bicameralism was also implemented in six provinces out of eleven which included Assam, Bengal, Bihar, Bombay, Madras and the United Seven Provinces.

(F) Communal electorates were retained

- The principle of separate electorates introduced by the Indian Councils Act, 1909⁶, often called as Morley-Minto Reforms, which provided communal representation to the depressed classes, was retained by the Government of India Act, 1935.

(G) Establishment of a federal court

- The establishment of the federal by the Government of India Act, 1935, was meant for adjudicating disputes relating to federal matters, along with the interpretation of the act.
- It was announced that there would be one chief-justice and eighty-six judges to resolve the conflicts that would arise.
- Appeals moved from the high court to the federal court and from the federal court to the Privy Council.

(H) Reorganisation of provinces

- The Government of India Act, 1935, separated a province from Bombay and named it as Sindh.
- Another change was the split of Bihar and Orissa as two separate and individual provinces.
- Therefore, two provinces were formed by the Government of India Act, 1935, namely Sindh and Orissa.

(I) Separation of Burma

- Initially the separation of Burma was proposed by the report of Simon Commission and was accepted as a provision of the Government of India Act,

⁶ The Indian Councils Act, 1909

1935.

- The Burma Act was passed in 1935⁷ in accordance to the separation but the final separation took place two years later, i.e. in 1937.

(J) Other Provisions of The Government of India Act, 1935

- The Government of India Act, 1935, established the supremacy of the parliament by giving the sole right to the British Government to make changes in the act.
- The Government of India Act, 1935, abolished the Council of the Secretary of State which was established in 1858.
- The Government of India Act, 1935, places the handling of railways in the hands of a newly formed body known as the Federal Railway Authority.
- The Government of India Act, 1935, ordered the establishment of a Reserve Bank of India to control the credit and currency of the country.
- The Government of India Act, 1935, also provided the establishment of a Federal Public Service Commission along with a Provincial Public Service Commission and a Joint Public Service Commission.

V. IMPORTANCE OF THE GOVERNMENT OF INDIA ACT, 1935

- This act holds utmost importance as it leads to the relationship building between the centre and provincial levels, which urged the need of Independence along with Democratic Ideals in the minds of Indian locals.
- This act distributed the power to the lower bodies which was earlier focused in the hands of the central government. This had set an example of decentralization or could also be termed as the stepping stone for India on the path of decentralization.
- The Government of India Act, 1935, announced separate electorates for women even though they weren't demanded. This enables women's advancement in the procedure of decision making.
- The Government of India Act, 1935, was first such act which provided the provinces with an autonomous identity.
- The Public Service Commission that is mentioned under *Article 315* of the

⁷ The Government of Burma Act, 1935

Indian Constitution⁸ was adopted from the Government of India Act, 1935.

VI. WHY DID THE GOVERNMENT OF INDIA ACT, 1935, FAIL?

The Government of India Act, 1935, promised much more than it could deliver to the people for their welfare. Certain reasons of its failure are stated below:

- The concept of All-India Federation was fundamentally defective because the admission of provinces to the federation was made compulsory while that of the princely states was left voluntary but it left the fact behind that the representation as well as governing power of the princely states was still in the hands of the British Government.
- The legislation of this act constitutional flexibility to individuals in terms of amending their rights as the sole power to add, alter or amend any right was given to the British Government.
- The Government of India Act, 1935, failed to establish a proper federal structure as majority of power was invested in the hands of the Governor-General who was not responsible for the legislature at the centre.

VII. IMPACT OF GOVERNMENT OF INDIA ACT, 1935, ON THE INDIAN FEDERAL STRUCTURE

As it is famously said, 'every coin has two sides' the Government of India Act, 1935, also has two sides one affecting the administrative structure of India positively while the other one includes all the drawbacks of the act. The Government of India Act, 1935, introduced the federal structure in India by giving the provinces an administrative identity through the process of decentralization and thus establishing a stepping stone for India towards the path of Decentralization. However, its aim to establish an All-India Federation failed miserably due to certain invariable reasons. Neither could it create a proper federal structure as majority of powers had been invested in the hands of the Governor-General.

As per my observation, the Government of India Act, 1935, neither left a lasting impact on the Indian federal structure as it couldn't make the drastic changes it had promised to, nor was it too upsetting for the Indian federal structure as it could make certain positive changes in the structure by giving the provinces and autonomous identity.

⁸ The Constitution of India, art. 315

VIII. CONCLUSION

The Government of India Act, 1935, was a drastic step towards the Independence of India because despite all the shortcomings and drawbacks it left a lasting impact on the administrative structure of India as well as on the minds of the people of India. It set the stepping stone of decentralization, gave the provinces an autonomous status, and many more contributions towards the making of a Federal India. However, it had certain drawbacks too which include the failure of All-India Federation, lack in establishing a proper federal structure etc.

Although the Government of India Act, 1935, could not deliver everything it had promised it still managed to become one of the most important acts passed before the Independence of India, and also played an important role in setting the foundation stones towards the drafting of the Constitution of India, 1950. There are various provisions in the Constitution of India which find their roots back in the Government of India Act, 1935.
