

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

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Abstract

The Government of India Act, 1935 provides for the establishment of federation of India for establishing a constitutional government in India. It laid the foundation of the Indian federal structure. It is considered as the milestone in the development of a responsible constitutional government in India. In the Constitution of India, many provisions from this Act are adopted. The Constitution of India has both unitary & federal features. In India, a federal system of government has been adopted because a federal system is more effective as compared to a unitary one when the size of the territory of the country is as large as India & when diverse groups of the population of the country reside in a discrete territorial concentration as in India. This paper deals with the impact of Government of India Act, 1935 on the Indian federal structure. The Indian federal structure is based on the Government of India Act, 1935. Most of the provisions of this Act are adopted in the Indian Federal Structure because they are suitable for India. They are adopted after modifying them according to the requirements of India.

Introduction

With the achievement of Independence, there emerged the need of a Constitution. The Constitution of India is the fundamental & supreme law of India. All the laws in India must be consistent with the provisions of the Indian Constitution. If any law is against the provisions of the Indian Constitution, then it can be declared as void. In the Indian Constitution, different provisions has been adopted from the Constitutions of different countries according to the needs of India. The framers of the Indian Constitution adopted the best features of the different Constitutions of the world.

Before India achieved independence on 15th August, 1947, it was being ruled by the Britishers. The British rule was a foreign rule & it failed to meet the aspirations & just demands of the Indians. Thus, national movements were started by the Indians to end Britishers' exploitation & attain independence. The British Parliament passed many acts from time to time such as Government of India Acts 1919 & 1935. It enacted the Indian Independence Act, 1947 to enable India to attain independence & to make certain temporary provisions. The lengthiest Act passed by the British Parliament was the Government of India Act, 1935 which provided for the distribution of powers, Indian federal structure, responsible form of government, provincial autonomy, bicameral system at the Centre and in some states, discretionary & emergency powers of the governors and governor-general. In the Indian Constitution, these provisions were adopted after modifying them according to the needs of India.



Thus, the Government of India Act, 1935 also influenced the Indian Constitution. The Indian federal structure is based on the Government of India Act, 1935. Most of the provisions of this Act were adopted in the Indian Federal Structure.

Government of India Act, 1935

The Government of India Act, 1935 was enacted by the British Parliament in August, 1935. It was the longest act passed by the British Parliament at that time. The main objective of this Act was to bring good governance in India & to ensure participation of Indians in governance of British ruled India. The Government of India Act, 1935 is considered as the milestone in the development of a responsible constitutional government in India. It was a lengthy document having 321 sections with 10 Schedules. The basic features of the Act are as follows:

1. The All India Federation.

The Government of India Act, 1935 made a provision for the establishment of an All India Federation consisting of the British India Provinces & such Indian State who would desire to come into the Federation. Under all the previous Government of India Acts, the Government of India was unitary, but the Government of India Act, 1935 envisaged a Federation taking the Provinces & the Indian States as one unit. However, the accession of the States to the Federation was optional. It could not be created until the States had provided their consent to join the Federation. At the time of joining it, each ruler of the State was required to sign an Instrument of Accession stating therein

the extent to which it assented to surrender its authority to the Federal Government. The Rulers of Indian States never provided their assent & therefore, the Federation proposed by the Government of India Act, 1935 never came into existence.

2. Dyarchy at the Centre.

The Government of India Act, 1935 abolished Dyarchy at the Provincial level & introduced it at the Centre. The Executive power of the Centre was vested in the Governor-General. The Federal subjects were divided into two categories- the reserved & the transferred. The reserved subjects like external affairs, defence, ecclesiastic affairs & tribal areas, were to be administered by the Governor-General in his discretion with the help of Councillors appointed by him who were not responsible to the Federal Legislature whereas the administration of transferred subjects was to be done by the Governor-General who was required to act on the advice of the Council of Ministers who were responsible to the Federal Legislature. However, even in regard to this later sphere he could act against the advice provided by the ministers, if any of his special responsibilities were involved. As regards the special responsibilities, he was required to act under the control & direction of the Secretary of State for the Crown.

3. Provincial Autonomy.

The significant feature of the Act of 1935 was that it marked the beginning of Provincial Autonomy. The Act of 1935 distributed Legislative power between the Central & Provincial Legislatures & within



their defined sphere, the Provinces were not delegates of the Central Government but were independent units of administration. To this extent, the Government of India assumed the role of a Federal Government in relation to the Provincial Governments, though the Indian States did not join the complete scheme of Federation. The executive power of a Province was also exercised by a Governor on behalf of the Crown & not as subordinate of the Governor-General. The Governor was to act on the advice of ministers who were responsible to the Legislature.

But in spite of the Provincial Autonomy, the Government of India Act, 1935 retained the control of the Central Government over the Provinces in certain matters in which the Governor was required to act in his discretion or in the exercise of his individual judgement in certain spheres. In such matters, the Governor was required to act without the advice of ministers & under the control & directions of the Governor-General & through him of the Secretary of State.

4. Federal Legislature.

The Federal Legislature was to comprise of two Houses, the Legislative Assembly & the Council of States. The Council of States (Upper House) was to comprise of 260 members, out of which 104 members nominated by the rulers were to represent the Indian States, 6 members to be nominated by the Governor-General & 150 members elected directly (Out of 260 members, 156 members were to represent the British Indian Provinces & 104 members were to represent the native Indian States.).

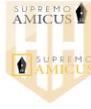
The Legislative Assembly (Lower House) was to comprise of 375 members, 250 of British Indian Provinces & 125 representing the Indian States. Its term was, unless dissolved earlier, 5 years. The powers of the Federal Legislature were extremely limited. They had in general equal powers but demands of supply of votes & financial Bills were to originate in the Legislative Assembly. If there was any difference between the two Houses, the Act of 1935 made a provision for a joint session of the two Houses for solving the deadlock.

5. Provincial Government.

The Provincial Executive was to comprise of the Governor & a Council of Ministers to advise him. The Governor was the head of the Executive. Three types of powers were provided to the Governor: (i) Discretionary; (ii) Powers exercised in his individual judgement; (iii) Powers to be exercised on the advice of the ministers. However, in regard to matters involving his special responsibility he could act against the advice provided by the ministers.

6. Provincial Legislatures.

After this Act, the Legislatures of Bombay, Bengal, Madras, Bihar, Assam and the United Provinces were made bicameral (i.e., two houses) and in other five Provinces unicameral. The composition of the Provincial Assembly varied from Province to Province. The voting qualifications for the membership of the Council were not the same in all Provinces. The principle of communal electorate was preserved in the election of the members of the Assembly. The normal duration of the Assembly was of



five years.¹ The Provincial Legislature could make laws on the subjects provided in the Provincial List. They also had power to make laws on the subjects provided in the Concurrent List. They also had power to make laws on those residuary subjects which were assigned to them by the Governor-General. The previous sanction of the Governor & Governor-General for introducing almost all the Bills was obligatory. Financial Bills could only be introduced on the recommendation of the Governor. Bill passed by the Legislature could not become an Act without the assent of the Governor. The Governor could return Bills for reconsideration. The discretionary powers & the responsibilities of the Governor made him to act as a dictator in the Provinces.

7. Distribution of Legislative power between the Centre & the Provinces.

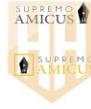
The Act provided for a three-fold distribution of power between the Centre & the Provinces- Federal List, Provincial List & Concurrent List. The Federal Legislature had exclusive power to make laws over the subjects enumerated in the Federal List. The Federal List comprised of 59 subjects. These subjects were subjects of national importance & essential & vital for the existence of the Federation. The most significant of them were currency & coinage, census, external affairs, military, naval & air force, etc. The Provincial Legislature had exclusive power of legislation over the subjects enumerated in the Provincial List. It comprised of 54 subjects which were subjects of local importance. The main amongst them were, provincial public services, education, police,

etc. The Federal & Provincial Legislatures were to have concurrent powers to make laws over the subjects enumerated in the Concurrent List. The subjects in the Concurrent List were of a provincial & local nature but needed a uniform policy throughout India. It comprised of 26 subjects. Criminal law, civil procedure, criminal procedure, arbitration, marriage & divorce, etc. were most important subjects amongst them.

The Federal Legislature could make laws with respect to the subjects mentioned in the Provincial List, if a proclamation of emergency was made by the Governor-General. The Federal Legislature also had the power to make laws with respect to a Provincial subject, if the Legislatures of 2 or more Provinces desired this in their common interest. If there was repugnancy in the concurrent field, a Federal law prevailed over a Provincial law to the extent of the repugnancy. However, if the provincial law received the assent of the Governor-General or of his Majesty, having been reserved for the consideration of this purpose, the provincial law was to prevail. The residuary power of legislation in the Act was not vested in either of the Legislatures, Federal or Provincial. However, the Governor-General had power to authorise, either the Federal or the Provincial Legislature to make a law with respect to any matter which was not mentioned in any of 3 Legislative Lists.

8. The Federal Court.

The Government of India Act, 1935 made a provision for the establishment of a Federal Court. The Federal Court consisted of 1



Chief Justice & not more than 6 other Judges. The retiring age of these Judges was 65 years. The Act also provided the necessary qualifications for the Judges. The Judges were appointed by the Crown. The Federal Court had 3 kinds of jurisdiction that is original, appellate & advisory.

It had exclusive original jurisdiction in any dispute between the Federation & its units or the units *inter se*. The appellate jurisdiction of the Federal Court extended to appeals from the judgement of any High Court in India to the Federal Court, if the High Court certified that the case involved a substantial question of law regarding the interpretation of the Government of India Act, 1935 or any Order in Council made thereunder. An appeal could be filed before the Privy Council from the decisions of the Federal Court. The Federal Court had also advisory jurisdiction. The Governor could refer any question of law to the Federal Court to obtain its opinion whenever he liked to seek its advice.

The Government of India Act, 1935 came into force with regard to the Provinces on 1 April, 1937. However, the Central Government continued to be governed according to the provisions of the Government of India Act, 1919, with minor amendments. The election took place & popular ministries came into office in the Provinces. However, they lasted only for 2 years.

Indian Federal Structure

Constitution of a country is either unitary or federal. In India, a federal system of government has been adopted because a

federal system is more effective as compared to a unitary one when the size of the territory of the country is as large as India & when diverse groups of the population of the country reside in a discrete territorial concentration as in India. The federal system can ensure unity of the country while assuring autonomy in matters of local importance.

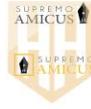
For understanding the true nature of the Indian federal system, it is necessary to understand as to what is implied by a federal system & what its essential characteristics are.

A federal constitution is a constitution in which the powers are divided between the Federal & the State Governments & both are autonomous in their allotted sphere & not subordinate to one another. Such type of constitution prevails in the USA, Mexico, Brazil & many more larger countries.

K.C. Wheare says, “In a federal Constitution the powers of government are divided between government for the whole country & governments for parts of the country in such a way that each government is largely independent within its own sphere.”¹

A unitary constitution is a constitution in which the powers of the Government are centralised in one government namely, the Central Government. The provinces are subordinate to the Centre. Such type of constitution prevails in the UK, France, China, Japan & a good number of other countries.

Essential characteristics of a federal Constitution



1. Distribution of Powers.

It is an essential characteristics of federalism. Federalism can be defined as the distribution of the powers of the country between the Federal (Central) & the State Governments. Both are autonomous in their allotted sphere & not subordinate to one another. The basis of such division of powers is that in matters of national importance such as currency, external affairs, defence, etc., in which a uniform policy is required in the interest of the States, authority is entrusted to the Union & matters of local importance such as police, education, health, etc. remain with the States. The basic principle of federalism is that the legislative, executive (administrative) & financial powers are divided between the Centre & the States not by any law enacted by the Centre but by Constitution itself.

2. Supremacy of Constitution.

A federal country derives its existence from the Constitution. Thus, every power, legislative, executive or judicial whether it belongs to the nation or to the individual State is subordinate to & controlled by the Constitution. In a federal country, the Constitution is the supreme law of the country. It has higher status than the ordinary laws of the country. All the laws enacted by the legislature must be consistent with the provisions of the Constitution. If Government is to be federal, the supremacy of Constitution is essential.

3. A Written Constitution.

A federal constitution must necessarily be a written Constitution. The supremacy of the Constitution can only be maintained if the provisions of the Constitution have been reduced to writing in a document or collection of documents.

4. Rigidity.

A federal constitution must also be rigid. Rigid Constitution is that which cannot be amended in the same manner as the ordinary laws. It means a special procedure is required for its amendments & the procedure of amendment is very difficult & complicated. It will be practically impossible to maintain the supremacy of the Constitution unless the method of amendment is rigid.

5. Independent Judiciary.

In a federal country, the supremacy of the Constitution is necessary for the existence of the federal system. Federal Constitution involves a distribution of powers between the Central & State Governments. Such distribution is made by a written Constitution which is the Supreme Law of the country. It is possible that the disputes might arise between the Centre & the States regarding their respective powers. Thus, it is necessary to maintain this distribution of powers between the two levels of Governments. Thus, for maintaining the supremacy of the Constitution, there must be an independent & impartial judiciary to decide disputes between the Centre & the States or the States *inter se*. In a federal country, the judiciary has the final power to interpret the Constitution & guard the provisions of the Constitution. The judiciary



has the power to declare any law unconstitutional, if it contravenes any provision of the Constitution.

6. Bicameral Legislature.

A federal constitution makes provision for bicameral legislature. The Upper House of Legislature provides representation to the States & the Lower House of Legislature provides representation to the people.

The Constitution of India has all the essential characteristics of a federal Constitution mentioned above.

It establishes a system of double Government with the Central Government at one level & the State Government at the other. There is a distribution of powers between the Central & the State Governments. Each level of Government is independent in its own sphere. There are three lists mentioned in the Seventh Schedule of the Constitution of India, i.e., the Union List, the State List & the Concurrent List. The Union List contains subjects of national importance such as defence, foreign affairs, banking, currency, etc. which are entrusted to the Union. The State List contains subjects of local importance such as police, agriculture, forest, etc. which are entrusted to the States. The Concurrent List contains subjects of common interest to both the Union & the States, such as marriage, divorce, adoption, succession, etc. which are entrusted to both the Union & the States.

The Indian Constitution is written. It is also supreme. The Constitution of India makes provision that some amendments require a

special majority. Such an amendment has to be passed in each House of Parliament by a majority of the total membership of each House & by a majority of not less than two-thirds of the members of that House present & voting. But, in addition to this process, some amendments must be ratified by the Legislatures of not less than one-half of the States by resolutions to that effect passed by those Legislatures before the Bill making provision for such amendment is presented to the President of India for assent. Since in the Indian Constitution, important amendments can be made through this procedure, it can be called rigid.

The Indian Constitution establishes a Supreme Court to decide disputes between the Centre & the States or the States *inter se* & to interpret finally the provisions of the Indian Constitution.

It also makes provision for bicameral legislature at the Centre which consists of the House of the People (Lok Sabha) & the Council of States (Rajya Sabha). The House of the People mainly consists of the elected representatives of people & the Council of States mainly consists of the representatives elected by the State Legislative Assemblies.

The above characteristics of the Indian Constitution indicate that it is federal in form. However, in certain circumstances the Indian Constitution empowers the Centre to interfere in the matters of State & therefore, places the States in a subordinate position which violates the principle of federalism. The Constitution of India makes provision for a federal system of government. However, the word 'federation' has nowhere been used in the Indian Constitution. Article



1 of the Constitution of India describes India that is Bharat as a 'Union of States'. This expression implies two things: (i) the Indian federation is not the outcome of an agreement among the States. (ii) the States cannot secede from the federation. In fact, the States of India do not have any independent existence of their own.

In the following matters, the Constitution of India contains the modification of the principle of federalism:

1) Appointment of Governors.

The President appoints the Governors of the States who are answerable to him. They hold office during the pleasure of the President. The Governor is the constitutional head of the State who normally acts on the advice of his Ministers. The executive power of the State is vested in the Governor. The Governor is the agent of the Centre in the States. Under Article 200 of the Indian Constitution, the Governor has the right to withhold his assent to a bill passed by the concerned State Legislature & he can also reserve the bill for the assent of the President. This enables the Centre to exercise control over the States.

2) Parliament's power to legislate in the national interest.

Under Article 249 of the Indian Constitution, Parliament has power to make laws with respect to any matter mentioned in the State List, if the Council of States (Rajya Sabha) passes a resolution by two-third majority that it is necessary in the national interest.

3) Parliament's power to form new States & alter boundaries of existing States.

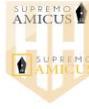
Under Article 3 of the Indian Constitution, Parliament may form new States. It may increase or diminish the area of any State & it may alter the boundaries or name of any State. Thus, the very existence of the State depends upon the Centre.

4) Single Citizenship

The Indian Constitution provides for only a single citizenship for the whole of India, i.e., the citizenship of India. There is no State citizenship. However, usually the federal constitutions make provisions for dual citizenship, i.e., national & State citizenships.

5) Emergency provisions.

The Indian Constitution provides for 3 types of emergencies: (i) emergency caused by war or external aggression or armed rebellion (Article 352); (ii) emergency caused by failure of constitutional machinery in States (Article 356); & (iii) financial emergency (Article 360). When the proclamation of emergency is made under Article 352, the normal distribution of powers between the Centre & the States undergo a vital change. Parliament is authorised to enact laws with respect to any matter mentioned in the State List. The Centre is authorised to give directions to any State as to manner in which the executive power of the State is to be exercised. Also, the President may by order direct that all or any of the provisions of Article 278 to 279



relating to distribution of revenue between the Centre & the State shall take effect with such modifications or exception, as he thinks fit. Under Article 356, if the President is satisfied that Government of a State cannot be carried on in accordance with the provisions of the Constitution, he has the right to dismiss the State ministry & dissolve the Legislature & assume all the functions of the State. Hence, the normal distribution of powers between the Centre & the States, which is the fundamental element of a federal constitution, is completely suspended. These provisions enable the Centre to convert India into a unitary State which vitally affects the federal nature of the Constitution of India.

6) Single Constitution for Centre & States.

In India, there is a single constitution for the Centre & the States. Usually, in federations, the States have their own constitution, separate from that of the Centre. However, the States of India have not been allowed to frame their own constitutions. Also, they have no power to initiate an amendment to the Indian Constitution. Such power vests entirely in the Indian Parliament.

Thus, the Indian Constitution is neither purely federal nor purely unitary but is a combination of both. It incorporates the principle that in spite of federalism, the national interest should be paramount. Therefore, the Constitution of India is mainly federal with unique safeguards for enforcing national unity & growth. It can be called as federal in form but unitary in spirit. Thus, the Indian Constitution is described as quasi-federal. India can be called as a

unitary State with subsidiary federal features rather than a federal State with subsidiary unitary features.

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

The impact of Government of India Act, 1935 on the Indian Federal Structure can be studied under the following heads:

1. Unification of India.

The Government of India Act, 1935 provided for a Federation taking the Provinces & the Indian States as one unit. This provision has been adopted in the Indian Constitution with a modification. In the Indian Constitution, it has been provided that India consists of States & Union territories. Unlike the Government of India Act, 1935, the word 'Federation' is not used in the Indian Constitution. Instead, it is provided that India shall be a Union of States.

2. Union Executive.

Under the Government of India Act, 1935, the Executive power of the Centre was vested in the Governor-General. The transferred subjects were to be administered by the Governor-General who was required to act on the advice of the Council of Ministers who were to be chosen from the federal legislature & were responsible to it. This provision also has been adopted in the Indian Constitution with a modification. Under the Indian Constitution, the executive power of the Centre (Union) is vested in the President of India. He exercises, either directly or through officers subordinate to



him, all the executive powers of the Union of India. He always acts in accordance with the advice of the Council of Ministers with the Prime Minister at the head, who are to be chosen from the Union Legislature (Parliament) & are responsible to the House of the People (Lower House of Parliament).

3. State Autonomy.

The Act of 1935 distributed Legislative power between the Federal & Provincial Legislatures & within their defined sphere, the Provinces were not delegates of the Federal Government but were independent units of administration. Under the Indian Constitution also, there is a distribution of Legislative power between the Central & State Legislatures & within their defined sphere, the States are not delegates of the Central Government but are independent units of administration.

4. Union Legislature.

Under the Government of India Act, 1935, the Federal Legislature was to comprise of two Houses, the Legislative Assembly (Lower House) & the Council of States (Upper House). Under the Indian Constitution, it is provided that Parliament (Union Legislature) consists of two Houses, the House of the People & the Council of States. Under the Act & the Indian Constitution, the term of the Lower House is, unless dissolved earlier, 5 years & the Council of States is not subject to dissolution.

5. State Executive.

Under the Government of India Act, 1935, the Provincial Executive was to comprise of the Governor & a Council of Ministers to advise him. The executive power of the Province was vested in the Governor. Three types of powers were provided to the Governor: (i) Discretionary; (ii) Powers exercised in his individual judgement; (iii) Powers to be exercised on the advice of the ministers. Under the Indian Constitution, the executive power of the State is vested in the Governor. He exercises, either directly or through officers subordinate to him, all the executive powers of the State. He acts in accordance with the advice of the Council of Ministers with the Chief Minister at the head, except in so far as he is by or under the Indian Constitution required to exercise his functions or any of them in his discretion.

6. State Legislature.

Under the Government of India Act, 1935, the Legislatures of Bengal, Bombay, Bihar, Madras, Assam & the United Provinces were made bicameral (i.e., 2 houses) & in other 5 Provinces unicameral. The term of the Provincial Assembly was, unless dissolved earlier, 5 years. Under the Indian Constitution also, there is a provision for a Legislature for every State in the Union. The Legislature in the State is either unicameral (comprising of one House) or bicameral (comprising of two Houses). The Legislature in Tamil Nadu, Andhra Pradesh, Telangana, Maharashtra, Bihar, Uttar Pradesh & Karnataka, is bicameral. In the remaining



States, the Legislature is unicameral comprising of only one House, that is, the Legislative Assembly. Every Legislative Assembly of every State, unless sooner dissolved, continues for 5 years.

7. Supreme Court of India.

The Government of India Act, 1935 provided for the establishment of a Federal Court. The Federal Court consisted of 1 Chief Justice & not more than 6 other Judges. The Act also provided the necessary qualifications for the Judges. The Federal Court had 3 kinds of jurisdiction that is original, appellate & advisory. The Indian Constitution also provides for the establishment of the Supreme Court of India. The Supreme Court has similar powers & functions as of Federal Court. The Indian Constitution provides that the Supreme Court consists of a Chief Justice & 30 other Judges. The Indian Constitution also provides the necessary qualifications, for the Judges. The Supreme Court also has 3 kinds of jurisdiction, that is, original, appellate & advisory. It is an independent & impartial judicial body which maintains the supremacy of the Indian Constitution.

8. Distribution of Legislative power between the Centre & the States.

The Government of India Act, 1935 provided for a three-fold distribution of power between the Centre & the Provinces- Federal List, Provincial List & Concurrent List. The Federal Legislature had exclusive power to make laws over the subjects enumerated in the Federal List. The Provincial Legislature had exclusive power of legislation over the subjects enumerated

in the Provincial List. The Federal & Provincial Legislatures were to have concurrent powers to make laws over the subjects enumerated in the Concurrent List.

The Indian Constitution also provided for a three-fold distribution of power between the Centre & the States- Union List, State List & Concurrent List. Parliament has exclusive power to make laws over the subjects enumerated in the Union List. The Legislature of a State has exclusive power of legislation over the subjects enumerated in the State List. Parliament & the Legislature of a State have concurrent powers to make laws over the subjects enumerated in the Concurrent List.

Conclusion

The Government of India Act, 1935 has a great impact on the Indian Federal Structure. Most of the provisions of this Act are adopted with modifications or without modifications in the Indian Federal Structure according to the needs of India. Thus, this Act has played a vital role in the constitutional development of India.
