

GOVERNMENT OF INDIA ACTS

India, the land of great civilization, has a history of more than 5000 years with diversity rather than unity in every aspect of human life, strived a lot and attained a proper place among the community of nations. Indian polity started from Manu passed through hundreds of benevolent monarch's and rulers reached the position what we see today. The Arthashastra of Kautilya was the most important political treatise which India has so far produced. It deals comprehensively every aspect of Indian polity as we do not possess any other period before Akbar the Great.

English East India Company constituted to promote trade with India was firmly established its domination in India by 1600 AD when the Mughals were at the height of their power and glory. Within a century the Mughal power became degenerated and disintegrated. The Britishers took advantage of this situation, tightened their grip over India with a series of legislations starting with the Regulation Act of 1773. Followed by the Pitts India Act 1784, the Act of 1786-The Charter Act of 1793, the Charter Act of 1813-the Charter Act of 1833 and the Charter Act of 1853 which passed by the British Parliament.

Followed by the, first War of Indian Independence 1857, the British Parliament adopted the Government of India Act 1858 by which the British Government took over the administration of India. As a continuation, the Indian Council Act of 1861 and Indian Council Act 1892 were passed by the British Parliament for administrative convenience.

A peep into the development of Constitution of India:--The growth of Constitution in India particularly after the Act of 1858 was largely the story of political dissatisfaction and agitation altering with Council reforms. The reforms grudgingly conceded were always found inadequate and dissatisfaction evoked demands for further reforms. It is true of all subsequent Acts passed by the British Parliament relating to India and in each case in its broad outline, practically the same. MINTO MORLEY REFORMS (Indian Council Act 1909 / Government of India Act 1909) The

British Parliament passed the Act of 1909 with much expectation to secure its influence among the various Indian communities. Lord Morley, the Secretary of State for India pointed out that "The Act of 1909 opened a new chapter in Indian Constitutional reforms". The Act of 1909 recommended for

(i) The inclusion of an Indian members in the Executive Council of the Governor.

(ii) An enlarged Central legislative Council

(iii) An enlarged Provincial Legislative Council

(iv) It also enlarged the scope of the subjects to be debated in both Central Legislative Council and Provincial Legislative Council

(v) Communal reservation both for the Hindus and Muslims. However, the British government brought the Act with the intention of rallying to its side the Moderates and the Muslims. But quite contrary to the expectations, the discontentment among the people reached new height and the Government had resorted to repressive measures.

MONTAGUE-CHELMSFORD REFORMS (The Act of 1919)

The Secretary of states for India, Lord Montague visited India on November 1917 and discussed his scheme of reforms, with the Viceroy Lord Minto and Indian leaders. A committee was constituted consisting of Sir William Duke, Earl, B N Basu and Charles Robert together with the Viceroy Lord Montague. The committee prepared a draft which was published in July 1918 and is known as Montagu-Chelmsford Report. On the basis of this report, the Government of India Act 1919 was drafted. The Act of 1919, laid down in its Preamble the principles on which the reforms were to be progressively carried out in India. An analysis of the Preamble brings out that

(1) British India is to remain an integral part of the British Empire.

(2) Responsible government in British India is the objective of the declared policy of Parliament

(3) Responsible government is capable of progressive realization only.

(4) The increasing association of Indians in every branch of administration.

(5) Gradual development of self governing institutions.

(6) It provided independence to Provinces in Provincial matters. The significance of the Preamble was that what was already declared by Montague was now given a definite legal shape.

Provisions for the Changes in the Central Government:-

(1) The number of Indians in the Governor General's Executive Council was raised to 3 in a council of 8

(2) The new scheme envisaged a division of subjects into central list and provincial list

(3) The Act provided a bicameral legislature at the centre. The Council of State (Upper House) and Legislative Assembly (Lower House)

Changes in the Provincial Government:--

(1) The Act introduced Dyarchy or dual government in the Provinces.

(2) It provided for a Provincial Legislature called Provincial Legislative Council

(3) strength of provincial Legislative Council is varied from state to state.

(4) The scope of the functions enlarged.

(5) Franchise was widened

(6) Term of the Provincial Legislative Council is 3 years but the Governor could increase or reduce it.

Criticism

(1) Though a step was taken towards increasing association of Indians by raising their strengths to three, in a council of 8, the departments

assigned to them were comparatively unimportant. There was also much confusion in the division of subjects.

(2) The Act of 1919 introduced only a responsive government, not a responsible government at the Centre. No vote of confidence of the Central legislatures could turn out a member of the Executive Council and the Governor General and as such they were irresponsible.

(3) The Act introduced Dyarchy in the provinces and during its operation, it proved to be failure, because the division of subjects was irrational and illogical. Moreover, the position of the Ministers were weak and they had to serve two masters-the Governor and the Provincial Legislative Council at the same time. The final crunch in the Provinces were also put everything in the dock.

Appraisal

Unfortunately the Government of India Act of 1919 was never given a co-operative trial. Right from the beginning, the Indian National Congress condemned it as disappointing and unsatisfactory and launched non-violent, non-co-operation movement in 1920 for the attainment of Swaraj or Self Rule. However, the first election under Act of 1919 was held in 1920. Dyarchy functioned in all the provinces uninterruptedly from 1921 to 1937 except in Bengal and Central province when it tried to be suspended during 1924-27 and 1924-26 respectively.

GOVERNMENT OF INDIA ACT OF 1935

The Congress considered the Montague -Chelmsford Reforms to be “inadequate, unsatisfactorily and disappointing” and launched non-violent, non-co-operation movement in 1920 for the attainment of full responsible government in India. Besides this the Government of India Act of 1919 provided for a review of the political situation in India every 10 years. Accordingly the process of review was set in motion by the appointment of the Simon Commission which was followed by the Nehru Report (1928) the Round Table Conferences (1930-32) and the white

paper issued by the British government in March 1933 culminated in the passing of the Act of 1935. Because of the multiplicity of the sources, and lengthy provisions the Act of 1935 was an elaborate document.

The main features of the Act were provisions for

- (a) An all India Federation
- (b) Responsible government with safeguards
- (c) Separate representation of communal and other groups.

Provisions:-

The Act provided for the establishment of an all India Federation comprising British Indian provinces and Indian states in case of the Indian states accession to the Federation was voluntary. The terms on which a state joined the Federation were to be laid down in the instrument of Accession.

Though Dyarchy was rejected by the Simon Commission, the Act of 1935 provided Dyarchy at the Centre. Accordingly, Defence, External Affairs, Ecclesiastical Affairs and the Administration of tribal areas were reserved which was to be administered by the Governor General with the assistance of Councilors appointed by him. The other federal subjects would be administered by the Governor General of India with assistance of advice, a Council of Ministers responsible to the Federal legislatures.

The Federal legislature was to have two chambers, the Council of State (Upper House) and the Federal Assembly (Lower House). The Council of states was to be permanent body constituted by 260 members, 1/3 of its members being vacated and renewed biennially. The Federal Assembly whose duration was fixed for 5 years was to consist of 375 representatives indirectly elected by the members of the Provincial Legislative Assembly on the system of proportional representation with single transferable vote system. The powers of the Federal Legislature were very limited and confined.

Responsible Government with Safeguards:-

The second important feature of the Act of 1935 was the provision for a responsible government with safeguards. This provision can be examined under two heads—the Federal Structures and the provinces. The Act made the Governor General the pivot of the entire administration in India. He acted in three different ways—act on the advice of his ministers, act on his individual judgment and act on his discretion. However, “responsible government” was introduced at the central level in a very limited way by the Act of 1935.

Provincial Executive:-

As in the case of the Central Government, the executive authority of the provinces was vested in the Governor. The Administration of the provinces was carried out by the Governor by a Council of Ministers, responsible to the Provincial Legislatures. But the Governor like the Governor General was not only a constitutional authority, but had special responsibilities regarding certain specified subjects. In this case he could act according to his discretion. But in all other matters, he could act to his own judgment, after considering the advice of the Council of Ministers. However, the Governor under the Act had wide powers and if he was not satisfied the government of the provinces could not function normally.

Provincial Legislature:-

The Act provide for Bicameral legislature in 6 provinces (Madras, Bombay, Bengal, United Provinces, Bihar and Assam) which was to consist of two houses, the Provincial Legislative Council and Provincial Legislative Assembly. In the Provincial Legislative Council a few seats were filled by the Governor through nomination. The members of all Provincial Legislative Assembly were elected directly by the people and its strength varied from province to province like the act of 1919. The third prominent feature of Act of 1935 was the separatist system of representation by religious communities and other groups. The electoral provisions of the Act were governed by the communal award of the British government (1932) as modified by the Poona Pact. Under this seats in the legislatures were divided as general constituencies Muslims,

Europeans, Anglo Indians, and Sikh Communities. Some of the general seats were reserved for Scheduled Castes. However this communal division which paved the way for the eventual partition of India.

The Act of 1935 provided for a Federal Court, with original and appellate powers to interpret the Constitution. However, the last word remained with the Privy Council in London. The new Constitution (Act of 1935) was rigid because the sole authority to amend the Act rested with the British Parliament. The Council of the Secretary of State was abolished by the Act of 1935 and incorporated provisions for advisers who may or may not be consulted by him for his actions. The Government of India Act of 1935 received Royal assent in August 1935. The electoral provisions began to operate on July 3, 1936, and the provincial autonomy from April 1, 1937. However, the establishment of an All India Federation as visualized in the Act of 1935 never came into being. The operative part of the Act of 1935 remained in force till August 15, 1947, when it was amended by Indian Independence Act 1947. Even after the inauguration of the Government of India Act of 1935, British imperialism determined to maintain its strong hold over India. According to Nehru, the Act provided 'a machine with strong brake but no engine'. M.A. Jinnah described the scheme as "thoroughly rotten, fundamentally bad and totally unacceptable".

INDIAN INDEPENDENCE ACT OF 1947

The Indian Independence Act was introduced in the British Parliament on July 4, 1947 and was passed within a fortnight on July 18, 1947. This Act did not provide for any new Constitution for India. It was only an Act to enable the representatives of India and Pakistan to frame their own Constitutions and to provide for the exceedingly difficult period of transition. In other words, the Act merely formalized and gave legal effort to the promise made by Lord Mount Batten in his third June Plan.

Provisions:-

(1) The Act of 1947 provided for the partition of India and the establishment of the two Dominions (India and Pakistan) from the appointed day viz August 15, 1947.

(2) The Act provided for the legislative supremacy of the two Dominions and declared that the British governments have no control over the affairs of the Dominions or provinces or any part of the Dominions after 15th August 1947.

(3) Until a new Constitution was framed for each Dominion, the Act made the existing Constituent Assemblies on the Dominion Legislatures for the time being.

(4) Pending the framing of new constitutions, each of the Dominions and all provinces were to be governed in accordance with the Government of India Act of 1935 and each Dominion was authorized to make notifications with this effect.

(5) The Governor General was given the power to modify or adopt the Government of India Act of 1935, as might be considered necessary till 31st March 1948. After that it was open to the Constituent Assembly to modify or amend the Act of 1935.

(6) The rights of the British monarch to veto Bills or reserve Bills for his pleasure were given up. This right was given to the Governor General. He was given the full right to assent in the name of His Majesty to any law of the Dominion Legislature made in the ordinary legislative capacity.

(7) The Act provided for the termination of the sovereignty of the British crown over the Indian states.

(8) Agreements with the tribes of the North West Frontier Province of India were to be negotiated by the successor Dominion.

(9) The office of the Secretary of State for India was to be abolished and his work was to be taken over by the Secretary of State for Commonwealth Affairs.

(10) The title of the 'Emperor of India' was to be dropped from the Royal style as titles of the 'King of England'.

(11) The Act provided both the Dominions-India and Pakistan the full power and rights to go out of the British Commonwealth of Nations if they desire.

(12) In short the Act converted India from a dependency of the British crown into two independent Dominions within the British Commonwealth of Nations. The word Independence emphasized from the control of The British Parliament.

The Indian Independence Act of 1947 was acclaimed as "the noblest and greatest law ever enacted by the British Parliament" It marked the end of the British

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