

Government of India Act 1935, An overview

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Overview

- 1933 British Govt issued “White Paper”
- Diarchy at the center and responsible govt at province
- Fundamentals were not changed but many changes were made in draft paper.
- Both houses of parliament of UK passed by July 1935 and Royal Assent in August 1935.
- Was called as Government of India Act 1935
- A Comprehensive Act consisted of 321 sections and 2 schedules.
- Creation of Federation
- Partial responsibility in the form of diarchy at the center
- Autonomy to the provinces with responsible govt

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- Governor-General and Provincial governors were granted extensive powers
- New institutions like Federal court, Federal Railway Authority, the Reserve Bank of India etc were created
- Burma was separated from India
- Method of accession of State was provided
- Division of Subjects into Federal, Provincial and Concurrent list were divided

Federal Executive

- Executive Authority of federation was vested with Governor-General and as representative of the Crown
- Crown issued an instrument of Restrictions explaining directions for exercise of the Authority
- Executive Authority of the Federation included
 - A) matters of federal legislature
 - B) raising in British India on behalf of Crown, Navel, military and Air Forces
 - C) exercise such rights, authority and jurisdiction as were exercisable by the Crown by treaty, grant, usage, sufferance or otherwise in and in relation to the tribal areas.
- Limitations on Federal Authority

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- 1) Federal authority does not extend to any provincial matters
- 2) extended to federated state subject to such limitations as might be specified in the instrument of Accession
 - Governor-General as head had supreme command of the military, navel and air force in India. Subject to his majesty appointment of a commander-in-chief.
 - Government of India Act 1935 created diarchy at the center.
 - Defense, ecclesiastic affairs, foreign affairs, tribal areas were exercised by Governor-General
 - Governor-General was assisted by max of 3 councilors (appointed by Governor-General and responsible to him only)

- Governor-General was assisted by the Council of Ministers
- Max number of Council of Ministers should be 10.
- Ministers were to be chosen from the members of federal legislature.
- Special powers of Governor-General were
 - 1) prevention of grave menace
 - 2) safeguard of financial stability of the federation
 - 3) safeguard the legitimate interests of the minorities
 - 4) protection of rights of the Indian states
- Due discharge of Governor-General duties as specified in the Act

Federal Legislature

- Bicameral legislature, Council of State and House of Assembly
- Council of State, consisted 156 representatives of the British India and not more than 104 from Indian States,
- Out of 156, 150 were allocated to the Governor and Chief Commissioner provinces
- 75 general seats, 6 schedule casts, 4 in Punjab for Sikhs, 49 muslims, 6 women, 7 European, 2 Indian Christians and 1 Anglo-Indian. 6 seats were filled by the persons chosen by the Governor-General
- Council of State was a permanent body and one third of its members were to retire every third year.
- House of Assembly consisted of 250 representatives of the British India and not more than 125 representatives of Indian States. Time limit 5 years

- Council of State and House of Assembly were to choose President and a Speaker from their members
- Bills other than financial bills could originate in either house.
- After passing of bill by both houses, it was presented to the Governor-General.
- Governor General can give his assent, withhold his assent, reserve the bill for King's pleasure, return it the Chambers with details
- Start of every financial year, the Governor-General is required to present annual financial statement
- Federal legislatures didn't have the power to (A) legislate regarding Sovereign or the Royal Family, army act, the air force act. Navel Discipline Act. (B) change any of the provisions of 1935 act unless provided otherwise.(C) do not have the power to make any law derogating from any prerogative right of the King to grant special leave appeal

Governor-General powers to issue Ordinances

- Governor-General Power to Issue Ordinances, G-G have the power to issue Ordinances **whenever required**.
- The max time of Ordinance was 6 months and extendable to total of 12 months.
- In case of extension after 12 months then was required to be communicated to the Secretary of State for India and should be presented before the both houses.
- Ordinance can also be disallowed by the King
- Same limitations of the Act were applicable on the Ordinances.

Governor-General powers to make acts

- G-G empowered to enact in matters of his own discretion or own judgment
- G-G could enact G-G Act after explaining to both chambers about the requirement of the Act.
- Such acts were required to be submitted to the Secretary of State and required to be laid before each house of parliament
- Such acts were subject to disallowance by the Crown

Emergency Provisions

- Federation work could not be carried out in accordance with provisions of this act then G-G could take all powers into his own hands and declare emergency.
- Must be communicated to the Secretary of the State and he was required to present it before both houses of the parliament.
- Maximum period six months or max of 12 months(by resolution of both houses) from the date on which it was ceased to operate.
- If due to any reason proclamation of emergency remained intact for a period of three years, then it will cease to take effect and the act of 1935 provisions will start working again.
- G-G could only take power to legislate for a period of max of two years under proclamation of emergency provisions.

Provincial Government

- Eleven Governors' provinces namely, Madras, Bombay, Bengal, United Provinces, the Punjab, Bihar, The Central Provinces and Berar, Assam, NWFP, Orissa and Sindh
- Governor at the Provincial level.
- Appointed by the King under the Royal Sign Manual and was responsible to G-G
- Powers of the Governors
 - 1) governor required to act on advice of council of ministers
 - 2) required to adopt his individual judgment
 - 3) required to act at his own discretion
- Ministers were chosen by the governor and hold office during his pleasure
- Governors to act on G-G directions

Provincial Legislature

- Madras, Bombay, Bengal, Bihar, Assam and United Provinces had bicameral legislatures
- Other five provinces had unicameral legislatures
- Those legislatures included **Legislative Council** and **Legislative Assembly**
- Unicameral legislatures called as Legislative Assembly
- Legislative council was a permanent body and one third of its members retiring every three years.
- Legislative council had a time limit of 5 years. Membership of both federal and provincial legislatures was not allowed
- Governor can give his assent, withhold assent, reserve it for king consideration,

Federal Court

- Establishment of Federal Court consisted of chief justice and 6 judges.
- Federal court judge, a person should be judge of high court for 5 years or barrister of England for at least 10 years, or a member of faculty of advocates in Scotland for at least 10 years or had been a pleader at high court for 10 years.
- Court jurisdiction three folded,
- original jurisdiction, appellate jurisdiction and advisory jurisdiction
- An appeal could be brought to the Privy council from a decision of the Federal Court.

