



## THE DOMINION STATUS OF INDIA

Dr. Pradeepta Kishore Sahoo<sup>1</sup>

### ABSTRACT:-

*An attempt is made in this article about the dominion status of India in pre- independence era. The insecurity and lack of status have a disastrous effect on the whole system of the country. It was no wonder that it has been the root of all social, political and economic problems in past and present times. The primary purpose of dominion status is to develop the social, political and economic growth of the citizens within the territory of India.*

*The dominion status of India relating to the constitution needs more viable to establish a responsible Government and vigilant society. At present we need to have a fresh look towards the dominion status of pre- independence India and to transform India into a harmonious, developed and federal nation. This is nothing wrong if we make a new constituent assembly to decide the present and future fate of India from its dominion status. Any changes made in past will not be destructive but constructive so far as our national unity is concerned. This article is useful for academicians, research scholars and general public.*

### INTRODUCTION:-

The first attempt was made by introducing a representative and popular element by the Morley Minto Reforms, known by the names of the then Secretary of State of India Lord Morley and the Viceroy Lord Minto, which were implemented by the Indian Council Act 1909. The changes relating to the provincial legislative council were more advanced. The size of the Council was enlarged by including elected non-official members so that the official majority was gone. An element of election was also introduced in the legislative council at the centre, but the official majority was maintained. The deliberative function of the legislative councils was also increased by this Act by giving them the opportunity of influencing the policy of the administration by moving resolutions on the budget. On any matter of public interest save certain specified subject such as the

---

<sup>1</sup> Associate Professor (Law), LL.M. (Commercial Law), Ph.D.(Law), BSA Institute of Law, Alampur, Faridabad, Haryana, India



# Legal Research Development

An International Refereed e-Journal

(Peer Reviewed, Refereed & Open Access, Index, Journal of Law)

Web: [www.lrdjournal.com](http://www.lrdjournal.com), Email: [journal1257@gmail.com](mailto:journal1257@gmail.com)

Impact Factor : 2.010

ISSN: 2456-3870

Vol. 1, Issue-III  
March 2017

e-ISJN: A4372-3116

armed forces, foreign affairs in the Indian States. On the other hand the positive system of election introduced by the Act of 1909 was that it provides for the first time for separate representation of the Muslim community and thus sowed the seeds of separatism that eventually led to the lamentable partition of the Country. It can hardly be overlooked that this idea of separate electorates for the Muslims was synchronous with the formation of the Muslim League as a political party. Subsequent to these, the Government of India Act, 1915 was passed merely to consolidate all the preceding Government of India Acts so that the existing provisions relating to the Government of India in its executive, legislative and judicial branches.

## **The Government of India Act, 1919:-**

On August 20, 1917, an important announcement defining Government Policy was made by the Secretary of State for India in the house of Commons. The Montagu-Chelmsford Report which was the proposals put forward by Mr. Montagu the then Secretary of State and Lord Chelmsford report which led to the enactment of the Government of India Act, 1919. The Preamble to the Act adopted Montagu's declaration of August 1917. This is the next landmark in the constitutional development of India. The Morley-Minto Reforms failed to satisfy the aspirations of the Indians as they did not established Parliamentary system of Government in the country. The Indian National Congress which was established in 1885 became very active during the time of the First World War and pressed for reforms. In response to this popular demand the British Government made a declaration on August 20, 1917 that the future policy of His Majesty's Government was that of increasing association of Indian in every branch of the administration and the gradual development of the self government institution with a view to progressive realization of responsible government in British India as a integral part of the British Empire. No doubt this was the step which paved the path for independence of India<sup>2</sup>.

## **Main features of the system introduced by the Act of 1919:-**

The main features of the system introduced by the Government of India Act, 1919 were as follows –

---

1.V.N.Shukla: Constitution of India.



- (i) **The Declaration:** - It promised a responsible government of the Indians.
- (ii) **Diarchy in the provinces:** - The Act introduced a system of Diarchy in the provinces. Diarchy has been derived from the Greek word “di-arche” means double rule or dual Government. The object of the Diarchy was to trend the native in the act of self government. The subject of administration was divided into two categories – Central and Provincial. The central subjects were those which were exclusively kept under the control of the Central Government. The provincial subjects were sub-divided into reserved and transferred subjects. Jail, police, justice, finance and irrigation comparatively more important subjects were the reserved subjects and they were to be governed by the Governor and his Executive Council without any responsibility of the legislator. Education, agriculture, local self government etc. subjects of lesser important were transferred to the Indian Ministers and the Governor. The Governor could override both the Ministers and the Executive Council. The Provincial Legislative was empowered to legislate in respect of provincial matter only. But there was much restriction on their powers of legislation. In several cases, the previous sanction of the Governor-General was necessary. He had the power to stop the consideration of a Bill or a part of it. He could secure legislation on reserved subject not withstanding that the Council had not consented to it. He had also the power to veto Bills.<sup>3</sup>

The proportion of the elected members was increased up to 70% in the provincial legislative councils, but the separate electorate for Muslims was continued.

- (iii) **Central Government:** - The principle of responsible government was not introduced in the Centre. The Central Government remained responsible to the British Parliament through the Secretary of State. The Central Legislature was to have a bicameral legislature. It was a more representative body. The Council of State (Upper House) was composed of sixty members of whom thirty four were elected and the Legislative Assembly (Lower House) was composed of 144 members of whom 104 were elected

<sup>3</sup>.Dr J.N. Pandey: Constitutional law of India.



and the rest nominated. Among the nominated members about 26 were officials. The power of both the Houses except that the power to veto a bill was given exclusively to the Lower House in respect of financial bills both the Houses had equal powers. The Central Legislature retained the power to legislate for the whole of India relating to any subject.

The Governor General had overriding power in respect of the Legislature. First, his prior sanction was required to introduce Bills relating to certain matters. Secondly, he had the power to veto or reserve for consideration of the Crown, any Bill passed by the Indian Legislature. Thirdly, He had the power of certifying any Bill and signs it as a permanent law despite of legislature's opposition to it, in which case it would have the same effect as if it was passed by the legislatures. Fourthly, he could make ordinances having the force of law for a temporary period in case of emergency.<sup>4</sup>

- (iv) **Structure of Government to remain unitary:-**The Central Legislature had power to legislate on any matter. So, it was not possible to challenge the validity of the Central Law. In case of any controversy it was the Governor-General and not the Courts who had the authority to decide whether a particular subject was a central or provincial subject. Thus, the Government of India remained a Unitary and a centralized Government with the Governor General in Council as the key stone of the whole Constitutional edifice.

### **Shortcoming of Act of 1919:-**

The Reforms of 1919, failed to fulfill the aspiration of the people in India and led to an agitation by the Congress (under the leadership of Mahatma Gandhi) for "Swaraj" or "Self-government", Independent of the British Empire, to be attained through "Non-Cooperation" its reasons were –

- (i) **Non-fulfillment of the demand for responsible Government:-** Though the Act gave a substantial measure of power to the provinces, yet the structure of the Central Government remained unitary and centralized, with the Governor-General-in-Council

<sup>4</sup> Dr. J.N. Pandey: Constitutional law of India.



# Legal Research Development

An International Refereed e-Journal

(Peer Reviewed, Refereed & Open Access, Index, Journal of Law)

Web: [www.lrdjournal.com](http://www.lrdjournal.com), Email: [journal1257@gmail.com](mailto:journal1257@gmail.com)

Impact Factor : 2.010

ISSN: 2456-3870

Vol. 1, Issue-III  
March 2017

e-ISJN: A4372-3116

as the key stone of the whole Constitutional edifice and it was through the Governor-General-in-Council that the secretary of State and ultimately the parliament discharged their responsibility for the peace, order and good Government of India. It was the Governor General and not the courts that had the authority to decide whether particular subject was central or provincial. The Provincial Legislature could not without the previous sanction of the Governor-General, take up for consideration any relating to a number of subjects<sup>5</sup>.

- (ii) **The failure of Diarchy:** - The greatest dissatisfaction came from the working of Diarchy in the provincial sphere. In a large measure the Governor came to dominate ministerial policy by means of his overriding financial powers and control over the official block in the Legislature. In practice, scarcely and question of importance could arise without affecting one or more of the reserved departments. The impracticability of a division of the administration into two water tight compartments was manifested beyond doubt. The main defect of the system from the Indian stand point was the control of the purse. Finance being a reserved subject, was placed in charge of a member of the Executive Council and not a Minister. It was impossible for any Minister to implement any progressive measure for want of funds and together with this was the further fact that the members of the Indian Civil Service, through whom the Ministers were to implement their policies, were recruited by the secretary of state and were responsible to him and the ministers. Above all was the overriding power of the Governor who did not act as a constitutional head even with respect to the transferred subjects. There was no provision for collective responsibility of the ministers to the provincial legislature. The ministers were appointed individually, acted as advisers of the Governor, and differed from members of the executive council only in the fact that they were non-officials. The Governor had the discretion to act otherwise than in accordance with the advice of his ministers; he could certify a grant

---

<sup>5</sup> .idbi



# Legal Research Development

An International Refereed e-Journal

(Peer Reviewed, Refereed & Open Access, Index, Journal of Law)

Web: [www.lrdjournal.com](http://www.lrdjournal.com), Email: [journal1257@gmail.com](mailto:journal1257@gmail.com)

Impact Factor : 2.010

ISSN: 2456-3870

Vol. 1, Issue-III  
March 2017

e-ISJN: A4372-3116

refused by the legislature of a bill rejected by it if it was regarded by him as essential for the due discharge of his responsibilities relating to a reserved subject.<sup>6</sup>

Therefore, it is no wonder that the introduction of Ministerial Government over a part of the Provincial sphere proved ineffective and failed to satisfy Indian aspirations.

## **The Statutory Commission (Simon Commission):-**

The system of Provincial Diarchy embodied in the reforms of 1919 failed to fulfill the hopes built upon it. The Ministerial responsibility in respect of transferred matters worked inefficiently. In large measure, the Governor came to dominate the Ministerial Policy, partly because finance was mainly under his control and partly because the official bloc so large that it could not sustain in office a ministry unfriendly to it. There was a persistent demand for further reforms. The Government of India Act, 1919 had provided for the appointment of a Statutory Commission after the expiry of 10 years from the passing of the Act to inquire and report on the condition of India under its new Constitution. The Commission contemplated in the Act was appointed in 1927 and in 1929 to announce that dominion status was the goal of Indian political development. The Commission headed by the Sir John Simon reported in 1930.

The Report declared that Diarchy had outlived its usefulness, and recommended a large extension of responsible Government in the provinces. It recommended no immediate material changes in the structure of the Centre but looked forward to the ultimate establishment of a federation of Indian States and Provinces and recommended that until this ideal could be realized. Problems affecting British India and the State should be discussed between the parties in a consultative but no legislative Council of greater India, consisting of representatives drawn from the States and the British India Legislature. At that time, it was not anticipated that the States would be willing to enter an all India Federation in the very immediate future. But in 1930, a new factor became active. The Indian princes manifested an unexpected readiness, to accede a federal system. It became necessary to reconsider the whole position. The British Government thereupon convened a round table conference of the representative of the British Government, the princes and British India. On the basis of its results, government white paper was prepared embodying the outline of the reforms. The white paper

<sup>6</sup>.Dr. D.D. Basu: Introduction to the constitution of India.



was submitted to a joint select committee of Parliament. The Committee was assisted by an Indian delegation. After prolonged sittings, the joint select committee submitted and elaborates report.

The Government of India Bill was introduced in the Parliament. The Bill was extensively amended during its passage. The Bill received the Royal assent on August 2, 1935 and becomes the Government of India Act, 1935.<sup>7</sup>

### **Government of India Act, 1935:-**

The Government of India Act, 1935 is regulated as the second milestone on the highway leading to a full responsible Government. It was a lengthy document, detailed and complicated having 321 sections with 10 schedules. The basic feature of the Act was the introduction of partial responsibility at the Center and an All India Federation.

### **The All India Federation:-**

The Act provided for the establishment of an All India Federation comprising of the British India provinces and such Indian State who would desire to come into the federation. While under all the previous Government of India Acts, the Government of India was unitary, the Act of 1935 proposed a federation taking the provinces and the Indian States as one unit. But the accession of the States to the federation was optional. It could not be established until the states had given their assent to join the federation. At the time of joining it each ruler of the State was required to sign an Instrument of Accession mentioning therein the extent to which it consented to surrender its authority to the Federal Government.<sup>8</sup>

But not withstanding the provincial autonomy the Act of 1935 retained the control of the Central Government over the provinces in certain spheres requiring the Governor to act in his discretion or in the exercise of his individual judgment in certain matters. In such matters the Governor was to act without ministerial advice and under the control and directions of the Governor General and through him of the Secretary.

<sup>7</sup> V.N.Shukla: constitution of India.

<sup>8</sup> .Dr.J.N.Pandey: Constitutional Law of India.



# Legal Research Development

An International Refereed e-Journal

(Peer Reviewed, Refereed & Open Access, Index, Journal of Law)

Web: [www.lrdjournal.com](http://www.lrdjournal.com), Email: [journal1257@gmail.com](mailto:journal1257@gmail.com)

Impact Factor : 2.010

ISSN: 2456-3870

Vol. 1, Issue-III  
March 2017

e-ISJN: A4372-3116

## Distribution of Legislative power between the centre and the provinces:-

The Act made a three-fold division of power between the centre and the provinces-Federal List, j provincial List and concurrent List. The federal legislature had exclusive power of legislation over the subjects mentioned in the federal list. The federal list consisted of 59 subjects. These subjects were subjects of national importance and essential and vital for the existence of the federation. The most important of them were external affairs, currency and coinage, naval, military, Air force, census, etc. The provincial Legislature had exclusive jurisdiction to make laws on subject mentioned in the provincial List. It consisted of 54 subjects which were subjects' local importance. The main amongst them were police, provincial public services, education etc. The federal and provincial legislatures were to have concurrent powers to legislate on subjects mentioned in the concurrent List. The subjects in the concurrent list were essentially of a provincial and local nature but required and uniform policy throughout India. It contains 26 subjects: criminal law, civil law, marriage divorce, arbitration etc amongst them.

The federal legislature had the power to legislate with respect to the subjects enumerated in the provincial list if a proclamation of emergency was made by the Governor-General. The federal legislature could also legislate with respect to a provincial subject if the legislature of two or more provinces desired this in their common interest. In case of repugnancy in the concurrent field. A federal law prevailed over a provincial law to the extent of the repugnancy. But 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 allocation of residuary power of legislation in the Act was unique. It was not vested in either of the Legislatures, central or provincial. But the Governor-General was empowered to authorize, either the Federal or the provincial to enact a law with respect to any matter which was not enumerated in any of three legislative lists.

The Government of India Act, 1935 was greatly criticized by almost all the parties of India. The Act came in to force in regard to the provinces in April 1937, but the central Government continued to be governed in accordance with the provisions of the Government of India Act, 1919, with minor amendments. The elections took place and popular ministries came into office in the provinces but they lasted only for two years.





## The Indian Independence Act, 1947:-

On the basis of the Mountbatten plan, the Independence Act was passed by the British parliament in July, 1947. The Act constituted two independent states of India and Pakistan with effect from August 15, 1947.<sup>9</sup>

## Provisions of the Indian Independence Act, 1947:-

The following were the main provisions of the Act –

- (i) The Act provided for the creation of two Independent Dominions – India and Pakistan from 15<sup>th</sup> August, 1947. The Act also provided for the complete transfer of control to Indian hands from that date.
- (ii) The territories of the Indian dominion included Bombay, Madras, U.P., Central Province, Bihar, Eastern Punjab, western Bengal, Assam, Delhi, Ajmer, Merwara and Coorg.

The territories of Pakistan included the remaining parts of India, namely the provinces of Sind, North-West Frontier, Western Punjab, Western Bengal, the Muslim majority areas of the district of Sylhet in Assam and Baluchistan. For demarcating the respective territories of the Indian Union and Pakistan in the provinces of Punjab and Bengal, Boundary Commission were to be set up by the Governor General consisting of two judges from each of the dominions with Sir Cyril Radcliffe, a British lawyer, as a Chairman. These commissions were immediately set up. As the Indian members of the Commissions did not agree on the boundary lines, Sir Radcliffe gave his award and decides the issue for the time being.

- (iii) The power in each dominion was transferred to its constituent assembly which became fully sovereign from 15 August, 1947. The Constituent Assemblies were made absolutely free to draw whatever Constitution they liked for their respective

---

<sup>9</sup> Ramanand Aggarwala: National Movement and Constitutional Development of India.



dominion and were given the right even to sever their countries from the British Commonwealth of Nations.

- (iv) The Government General of each dominion was to be appointed from August 15, 1947. On the advice of the dominion cabinet under this power, Lord Mountbatten was nominated by the Congress for India and for Pakistan, the Muslim League named Mr. Jinnah, the Governor's General became Constitutional head.
- (v) Until the new Constitutions were framed the Act of 1935 was to govern both the centre and the provinces with some necessary alterations and modifications. The Governors in the provinces were to become purely constitutional head and were left with no discretionary powers. They were to follow the advice given by their ministers under all circumstances. The Governors of the provinces were also to be nominated by the dominion cabinets.
- (vi) The provisions of the Statutes of west ministers of 1931 were to apply to both the dominions. The Secretary of State and the Indian Office were to stop functioning from August 15. The India and Pakistan affairs were to come thereafter under the Secretary of the Common Wealth relations.
- (vii) During the transition period the function of the Central Legislatures of the two dominions were to be carried on by their respective constituent assemblies. The British Government no longer posed the right to disallow laws passed by the legislatures of the new dominions.
- (viii) From August 15, 1947 all rights of paramount of the British Crown over the Indian States were to lapse. The Indian States were free to join either the Indian Union or Pakistan or even to declare themselves absolutely independent.

### **CONCLUSION & SUGGESTIONS:-**

It is suggested that a regular committee will be set-up to scrutinize the dominion status of India from time to time and solve the problems lie ahead of the government and providing safety and welfare to the people without facing any difficulties by the state.

With the passing of this Act India and Pakistan entered the community of free nations. Some of the States declaring themselves absolutely independent. Hence the provisions of the Independence



# Legal Research Development

An International Refereed e-Journal

(Peer Reviewed, Refereed & Open Access, Index, Journal of Law)

Web: [www.lrdjournal.com](http://www.lrdjournal.com), Email: [journal1257@gmail.com](mailto:journal1257@gmail.com)

**Impact Factor : 2.010**

**ISSN: 2456-3870**

Vol. 1, Issue-III  
March 2017

**e-ISJN: A4372-3116**

Act were generally resented by the Indian leaders. As for the rest of its provinces, the Act meant the cessation of every form of control of the British Government over Indian affairs. The dominion status meant no limitation whatsoever on the full and final sovereignty of the respective constituents assemblies.