

Constitutional Development in British India: 1935-47

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Abstract

Although the colonial process of sharing authority with the local people had started from early 1860s however, the motive of the imperialist supremacy always remained there. In spite of desperate efforts by the British Raj to keep India under the colonial rule, the period from 1935 to 1947 can rightly be called a period of transition and the Government of Indian Act of 1935 can rightly be called as a landmark leading towards independence. However, in the Cripps Mission, the British authorities recognized the right of Dominion for the Indians. Although it accepted the demand of an elected Constituent Assembly but it could not solve their constitutional problem. However, Lord Wavell proposed an Executive Council at the Centre to frame the constitution in which all members except Vice Chancellor and the Commander in Chief would be Indians but the number of Muslims in the Council i.e. 6 out of 14 was not accepted by the Congress. However, breakup of Royal Indian Navy mutiny compelled the colonial authorities to send the Cabinet Mission in order to draw up the constitution of an independent India. Finally by the month of June the Prime Minister Atlee decided to transfer the power through the Indian Independence Act which removed the last impediment in the way of

achieving independence. This present study will strive to explore the historical perspective of constitutional development in British India during 1935 to 1947 i.e. the last phase of freedom struggle.

Keywords: Separate electorate, Government of India Act, constitutional issues, Congress, Muslim League, Indian Independence Act

BACKGROUND

The first formal legislation for the British parliament was about the transfer of power from East India Company to the British crown according to which the Secretary of State would exercise the powers of the state instead of company.¹ In continuation of constitutional reforms in 1859 empowers the governors and certain officers of India to sell and dispose all real and personal estate in India and the execution of any contract.² However, complete formal structure of the constitution was formulated during 1861. According to which the British government passed the Legislative Council Act to introduce the better provisions for the Governor General's Council and to the local Governance. In point of fact, the Indian Council's Act 1861 laid the foundation of the representative institutions in British India. With the induction of non-official Indians, the legislative assemblies became the forum of discussions.³ However, an active political movement has been started in India during late 1870s resulted in the formation of first ever Indian political party in 1885 i.e. the All Indian National Congress. Although, the Indian Council Act of 1892 which was an improved shape of 1861 Act was passed to increase the number of Indian members in legislative as well as administrative affair of the state. However, due to its non-practical approach, these reforms could not satisfy majority of the local people.⁴

Although the Muslim minority of British India used to take part in the political affairs of the state mostly under the banner of

Congress party but formulation of All India Muslim League during 1906 provided them a separate platform for their stand point. Consequently, the demand for a separate electorate was reaffirmed by the Muslim League resulted in the commencement of Minto-Morley reforms in 1909. It was the first major achievement of the League leadership through which they could get the separate electoral system for minorities. During 1916 both Congress and Muslim League suggested measures for attainment of provincial autonomy and for representation through election as well as suggested the introduction of communal electorate.⁵ However under the Government of India Act 1919, the subjects were divided in to reserved and transferred subjects to be dealt with Governor-General and ministers.⁶ At the same time, the women were given right to vote.⁷ The Act provided a setup of two chambers for the Indian legislature, one the Council of State and other the Legislative Assembly.⁸ It also introduced the system of 'dyarchy' in the provinces. Yet constitutional and political issues could not satisfactory majority of the Indian community. Hence, the Simon Commission was sent to resolve the deadlock. It paid two visits to India and recommended the abolition of diarchy in the provinces, introduction of federal system and to give the right to vote to more people. After the strong opposition of the Simon commission, the Lord Birkenhead declared in the parliament "the Indians are so divided opposed and fed-up of each other that they are unable to produce a unanimously accepted constitution." The statement of the lord stirred the vanity of Indian political leaders accepted the challenge to produce unanimous proposal, however, both Nehru and Jinnah responded in opposite manner by reflecting their designs.⁹

To resolve the constitutional deadlock a series of round table conferences were held in 1930s that proposed the formulation of Franchise Committee to examine the questions of franchise.¹⁰ The Government also appointed a committee of seven representatives from states and twenty from British India including five Muslims to solve the constitutional issues on priority basis.¹¹ On the recommendations of the committee, a report was presented to the parliament on November 22, 1934.

It initiated a debate in the parliament that finally ended at the approval of the parliament in February 1935 and assent of the royal authority on July 24, 1935 to implement the India Act of 1935.¹²

GOVERNMENT OF INDIA ACT 1935

In order to remove the constitutional deadlock, to meet the growing needs of self-governance and to strengthen the British rule in India, the Government of India Act, 1935 was implemented and worked for almost a decade. There were two parts of the Act one was federal and the second was provincial part.¹³ Although the Act declared India as federation yet the federal part was never implemented in its true spirit because majority of the princely states never intended to join the federation. However, it replaced the Government of India Act 1919 with much larger support.¹⁴

The act practically divided the subjects into three lists; provincial, federal and concurrent list. The provinces were made separate legal entities and were given autonomy. Moreover, the system of diarchy was introduced in the Center by abolishing it from the provinces. The federal executive was to be composed of Governor General and the Council of Ministers; however, the legislature would be of two houses i.e. Council of State and House of assembly. The Council of State was comprised of 156 members from British India and 104 from princely states while the House of Assembly with 205 representative from British India and 125 from the princely states.¹⁵ The act provided more powers to the Governor General as he could dissolve the legislative assembly. Moreover, the council for the Secretary of State was replaced by the body of advisors; however, their advice was not binding on him.¹⁶ Under the Government India Act of 1935, federal or provincial legislature was not authorized to amend or modify the constitution as the powers of modification or amendment were only in the hands of the British parliament.¹⁷ Similarly, the powers of the Governor General remained unchanged, however, two type of ministers were to assists him; three members of the council, chosen by himself to help in foreign

affairs, defense and tribal areas while ten ministries were to be appointed to deal with remaining issues.¹⁸ Like the previous acts, the separate electorate was retained. Muslims were granted One-third of their representation at the Center. However, Muslims who were 57 per cent in Punjab and 50 per cent in Bengal, but they were allotted only 86 seats in an assembly of 175.¹⁹

Although the act provided more powers to the provinces by ending the diarchy yet special powers were given to the English Governor General. Both major political parties i.e. Indian National Congress and Muslim League were not ready to accept it.²⁰ Moreover, the princely states did not join the federation by realizing interference from the centre as the Governor General could exercise vast powers of external and internal defense, foreign affairs, currency, fiscal policy and administration of land etc.²¹ Rajendra Parsad commented on the act, "This type of federation will boost blatant dictatorship of one-third on popular will of two-thirds."²² By following his footsteps, Jawahar Lal Nehru declared it "charter of slavery" and in the same manner, Quaid-e-Azam described it "thoroughly decayed, primarily awful and completely undesirable".²³

ABORTIVE EFFORTS THROUGH CRIPS MISSION

As discussed earlier, majority of the Indian political leadership were not happy with powers of viceroy bestowed on him through Indian Act of 1935. On one hand, Congress demanded for the self-government and Muslim League considered it as inappropriate for the Muslim minority. However, when the British authorities made it clear that government will transfer the power after the world war, Gandhi launched his Civil Disobedience Movement.²⁴ In order to find out a solution of this difficult situation, the British government sent a mission under the cabinet member Sir Stafford Cripps. He was declared as "messenger of peace". However, the Indian political stake holder did not agree with the British establishment.

At his arrival Mr. Cripps intended to negotiate with both major political parties of India, the Congress and Muslim league. He tried to convey the message of British colonial authorities, but he departed within a fortnight without achieving any objective.²⁵ While addressing a press conference on March 29th 1942, he explained his formula that after the War a new constitution will be framed for the state.²⁶ However, by defining his stand point Muhammad Ali Jinnah complained the attitude of Congress leadership, "Gandhi demanded a constitution but without Muslims rights including two-nation theories."²⁷ In point of fact, there were different objection of the different groups on the Cripps mission proposal but above all, Mr. Cripps defended the non-accession clause of his declaration due to which he failed to satisfy majority of the Indian.²⁸ Under the leadership of Mr. Nehru and Maulana Abul Kalam Azad Congress strongly opposed the proposal that only offered the dominion status.²⁹ They criticized the process of nomination of the state representatives instead of elections. They believed that the right of provinces to secede was against the principle of national unity. In point of fact, they rejected the powers and supremacy that has been given to the British authorities.³⁰

Like the Congress, Muslim League also stood against the Cripps proposal. League opposed the apparatus for the formation of a Constituent Assembly and the procedure to decide on the accession of provinces to the Union.³¹ Its leadership strongly believed that the proposal was against the creation of Pakistan by defying their right of self-determination. Like Hindus or Muslims, other communities also criticized the right to secede that has been given to provinces by the Cripps proposal.³² In point of fact, the incapacity of Cripps to go beyond the Draft Declaration and the adoption of a rigid "take it or leave it" attitude added to the deadlock.

WAVELL PLAN AND CABINET MISSION PLAN

In the situation of severe deadlock, the Lord Linlithgow was replaced by Lord Wavell as the new Viceroy of India in

October 1943. The first task before him after assuming the charge was the framing of the plan which must be acceptable for all stakeholders including both All India Muslim League and Congress.³³ After doing some homework at the local level politics; he visited London for discussing the situation with British authorities. These discussions resulted in the approval of the plan which was publicly announced on June 14, 1945 by L. S. Amery, Secretary of the State for India. After this the Lord Wavell presented it in a speech at Delhi. The Plan popularly known as Wavell plan, offered the whole control of the country to the Indian leaders but the defense control will be in the hand of the British government, however, as expected, both Congress and Muslim League strongly opposed the plan.³⁴

At the end of World War II, by realizing the weakness of its political grip, the British government showed anxiety to settle the future constitution of India. They proposed that there should be union of India which would deal with subjects including foreign affairs, defense and the communication, however, the union government would have the necessary powers to rise finances required for three subjects.³⁵ Moreover, the plan intended to start examining the most radically revisionist solution to the communal problem i.e. Pakistan. It was observed that the most obvious contradiction stemmed from demographic realities... if Punjab and Bengal were to be included without partition, then the total percentage of Muslims in Pakistan would have been about 60 per cent or so.³⁶ Twenty million Muslims would be left behind in British India to fend for themselves out of a total population of nearly nineteen crores.³⁷ It is believed that the Cabinet Mission Plan noted that the arguments employed by the Muslim League in favour of Pakistan can “be used in favour of the exclusion of the non-Muslims areas from Pakistan.”³⁸ The Secretary of State Sir Lord Pethick Lawrence announced that a mission consisting of three cabinet ministers including Mr. A. V. Alexander, Sir Stafford Cripps and he himself Mr. Pethick Lawrence in the association with the Viceroy would be sent to India for discussions with the local leaders to find out a viable solution of the problem.

The Mission reached in India in March 1946. During a addressing a press conference the Plan told about the purpose of the mission. They revealed that it is to frame the machinery for the constitutional structure in which the Indian would be more power to control their destiny and the framing of the new constitution.³⁹ However, by considering volatile political situation of India, the Mission did not bring any concrete proposal with it to be followed.⁴⁰ Yet the Congress which was much and more stronger and well organized political party than Muslim league, could successfully get favor of the Mission Plan.⁴¹ Mr. Jinnah, on the other hand, by realizing the intensity of the situation, convened a meeting of the Muslim League and passed a resolution that the president should alone meet with the cabinet mission and viceroy.⁴² The League leadership reaffirmed their old demand that no constitutional formula would be acceptable to the Muslim nation unless it meet to the demand of the Pakistan zone consisting upon the Muslim majority provinces i.e. Frontier Province, Sindh and Balochistan in the North-West of India.⁴³ Mission started its work by giving opportunities to all major stakeholders to reach an agreement by own in the best interest of their communities.⁴⁴

However, as expected, both the Congress and Muslim league could not meet to even a single point and after a series of inconclusive interviews and discussions with the political leaders, the Mission finally announced a three-tiered constitutional structure for India.⁴⁵ The Plan was to be accepted or rejected as a whole. It was further made clear that if either of the two parties refused to join the Interim Government, the Viceroy would seek the help of other party to form the government. But the Congress which was insisted on "its own interpretation on grouping of provinces" rejected the Plan.⁴⁶ As the British authorities could not bypass the Congress, they reluctant to handover the authorities to the Muslim League. Consequently, Muslim League also refused to accept it and in the end of the June the Cabinet Mission left to England and without full filling their task which was a great failure. Practically it was the last hope for Indian Union to be under the British Raj.⁴⁷

3RD JUNE PLAN AND INDIAN INDEPENDENCE ACT 1947

After losing the final hope of uniting both Hindus and Muslims under the British Rule, the authorities finally decided to divide India into two parts on the communal basis. Lord Mountbatten was handed over the task to formulate the partition plan. Although it was a secret plan yet Nehru grabbed the chance of seeing it before it was made public.⁴⁸ It is believed that he modified the formula with the help of Mountbatten and got approval of Lord Attlee and his Cabinet.⁴⁹ The plan was made public on June 3, 1947. According to which the provincial Assemblies of Punjab and Bengal was to meet in two parts separately, one representing Muslim majority districts while another the Hindu Majority districts to decide by the vote on partition. It also elaborated that for Sindh and Balochistan, their provincial assemblies would decide the matter but for NWFP, the matter would be decided through referendum. Similarly, referendum would be organized in those areas of Sylhet and Assam where the Muslim were in majority. However, fate of the princely states would be decided by their own to join either of India or Pakistan. By having no other options, the Congress committee during its meeting on the June 14, 1947, ultimately accepted the division of Pakistan with heavy heart.⁵⁰

Finally, on August 14, the Indian independence Act was implemented that resulted in the creation of two dominions Pakistan and India with their own Governor-Generals. At this occasion, British Prime Minister Mr. Attlee described the Act the as not abdication but only the fulfillment of the British mission in India.⁵¹ Yet, the British Government gave up all powers and control over the affairs of the Dominions after August 15, and the Governor-General for each of the Dominion was to be appointed as their Constitutional Head, however, there was no sphere in which he could act against the wishes of the elected representatives.⁵² In the light of Act, all princely states became independent and treaties and agreements made by the British with reference to States lapsed from August 15, 1947.⁵³ They were free to associate themselves with either the Dominion or to remain independent. Under the section 8, of the

Indian Independence Act 1947, the Government of India Act 1935 was adopted as interim constitution with certain modifications and amendments till the framing of their own constitutions.

CONCLUSION

At the end of this discussion, we may conclude that in spite of desperate efforts by the colonial authorities to keep the British India under the Raj, the period from 1935 to 1947 can rightly be called a period of transition. No doubt the imperialist forces gradually handed over the authority to the local people yet the motive of colonial supremacy has always been there. By passing the Regulating Act 1773 the history of constitutional India started. Due to the Revolt of 1857 an important change occurred in the British administration of India. After 1858 the British government slowly and gradually brought the Indian people into the folds of governmental affairs in 1862, 1892 and 1909 constitutional reforms. After 1909 and 1919 gave more powers to Indians and in 1935 the provincial autonomy was granted to Indian provinces. Although the process of sharing authority in the state affairs by the colonial forces started from early 1860s however, the Government of India Act of 1935 can be called a landmark leading towards independence. The Act declared the Indian State as a Federation but as majority believes, it was never actually brought into operation in real sense of the word. The bicameral system although continued but the Governor-General was empowered on many issues and without his consent no legislation could be made. The principle of communal representation was accepted where the system of separate electorate system was not only retained for the Muslims but for many other communities as well.

The Congress was reluctant to accept it in the beginning but, later on, agreed to participate in the upcoming elections of 1936-37. During the Elections Congress won the majority seats but it refused to make a coalition government with the Muslim League. After the outbreak of the Second World War it

resigned from the ministries on the plea “nothing short of complete independence” can be accepted. In the Cripps Mission, the British authorities recognized the right of Dominion for India. Although it accepted the demand of an elected Constituent Assembly, however, it did not solve the constitutional problem. A further plan came on June 14, 1945 when Lord Wavell proposed an Executive Council at the Centre to frame the constitution and in which all members except Vice Chancellor and the Commander in Chief would be Indians. However, the number of Muslims in the Executive Council i.e. 6 out of 14 was not accepted by the Congress.

In the meantime, the Conservative Party was defeated by the Labour Party and Mr. Clement Atlee became the new British Prime Minister, who announced to hold the General Election in India. In these elections the Congress secured over 91 percent votes and the Muslim League secured all the Muslim seats. However, breakup of Royal Indian Navy mutiny during the same year made an impression on the new administration to better leave the country. In this regard, the Cabinet Mission was sent to indicate the draw up the constitution of an independent India. Thus the mission was like a declaration of India’s independence. Finally by the month of June, CNIC had granted the consent of the partition of the country and the Prime Minister Atlee decided to transfer the power. This Indian Independence Act was based upon the Mountbatten plan of 3rd June 1947 and was passed by the British parliament on July 5, 1947. It finally received the royal assent on July 18, 1947 which removed the last impediment in the way of achieving independence.

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