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# **MINUTES FROM MIDNIGHT TO REPUBLIC**

AUTHORED BY - DARRON C JOSEPH

Until going through Rohit De's work '*Between midnight and republic: Theory and practice of India's Dominion status*', I was unaware that India held dominion status from the years 1947 to 1950. This was not just a gap in my historical knowledge – it felt like a gaping hole in how I understood India's transformation from a colony to a republic. To understand how alone I was with this ignorance, I asked my peers - eleven out of fifteen shared my confusion upon first reading. Two others learned about it from the same text, and the remaining two, whom I consider intellectual benchmarks, were already aware.

De's article explores India's often overlooked period as a British Dominion. De describes the time period as a duration about which there is virtual silence of the legal-political transitions that were executed.<sup>1</sup> '*The relevance of Dominion status for these three years remains an awkward history*,' De says.<sup>2</sup> But as awkwardness is where the truth lies, De's interrogation of the phase reveals<sup>9</sup> a political choreography behind independence and state building. Laying light on this paper, Here I look into some pivotal elements that went into being through few discussions and conferences of the congressmen and the British authorities. While I also look over to Pakistan to form a brief understanding of how the Pakistani leadership took into the dominion status.

Rohit De has portrayed the 'transitional phase' as crucial for understanding India's postcolonial constitution and the broader process of decolonisation.<sup>3</sup> Moreover, a firm opinion formed by De is that the period helped the Congress stabilize its control over the society and economy.<sup>4</sup> The article examines the debates surrounding Dominion status and the perspectives offered by the British and the Indians. It pushes the need to analyse the legal and institutional legacies of this period on the formation of the Indian Republic, including issues of legal temporality and constitutional legitimacy. The idea of Dominion status as a time of 'legal temporality' one

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<sup>1</sup> Rohit De, 'Between Midnight and Republic: Theory and Practice of India's Dominion Status' (2019) 17(4) *International Journal of Constitutional Law* 1213 <https://doi.org/10.1093/icon/moz081> accessed 27 March 2025.

<sup>2</sup> Ibid 1215.

<sup>3</sup> Ibid 1216

<sup>4</sup> Rohit De, 'Between Midnight and Republic: Theory and Practice of India's Dominion Status' (2019) 17(4) *International Journal of Constitutional Law* 1213 <https://doi.org/10.1093/icon/moz081> accessed 27 March 2025.

where India was not yet a fully sovereign adult in the international community, contrasts sharply with the myth of midnight independence.<sup>5</sup> Before getting into the complexities of the politics played out the continuity of the Judiciary must be addressed. My interpretation of the illustration suggests that the Supreme Court at the advent of Independence inherited the temperance and an obsession of textual legality from the British Courts. Not only did the judges lack the power to intervene but also the imaginative capacity to push through the lens of constitutionalism. Though it can be debated that such action arose later and took form of Judicial overreach in cases such as *Keshavananda Bharti*.<sup>6</sup>

The paper asserts that existing literature has also nothing to elaborate on the time period in discussion.<sup>7</sup> De has also expressed that the period helped the congressmen used this legal limbo in erasing guarantees to princely states and consolidate authority.<sup>8</sup> Moreover, the period also saw several arrests of political workers, extended emergency measures and also re-enacted laws considered draconian by the same men fifteen years ago.<sup>9</sup> I have come to realise that how convenient it is that this phase has no place in our textbooks.

De addresses some attempts of erasure of history though the abrupt ending of C. Rajagopalachari's term as Governor-General and he not being nominated as President.<sup>10</sup> The front page of The Hindu on August 15, 1947, had an elaborate illustration of the subcontinent and a title 'Dominion of India', the newly appointed Prime Minister has little to say in his speech at the constituent assembly.<sup>11</sup> In 'Tryst with Destiny' Nehru mentions that 'India awakens to life and freedom' but does not mention to what extent was the freedom we received.<sup>12</sup> 'The achievement, we celebrate today is but a step' is the only hint at the period of transition.<sup>13</sup> Then further in 1950, his republic day speech mentions the glorious rights and the

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<sup>5</sup> Ibid 1215

<sup>6</sup> *Kesavananda Bharati v State of Kerala* (1973) 4 SCC 225

<sup>7</sup> Rohit De, 'Between Midnight and Republic: Theory and Practice of India's Dominion Status' (2019) 17(4) *International Journal of Constitutional Law* 1213 <https://doi.org/10.1093/icon/moz081> accessed 27 March 2025.

<sup>8</sup> Ibid 1217.

<sup>9</sup> Ibid 1226.

<sup>10</sup> Rohit De, 'Between Midnight and Republic: Theory and Practice of India's Dominion Status' (2019) 17(4) *International Journal of Constitutional Law* 1213 <https://doi.org/10.1093/icon/moz081> accessed 27 March 2025.

<sup>11</sup> Stuart Roberts, 'A tryst with destiny: Freedom and Fragmentation: Images of Independence, Decolonisation and Partition at Cambridge University' < <https://www.cam.ac.uk/files/a-tryst-with-destiny/index.html> > accessed on 20 March 2025, last accessed on 27 March 2025

<sup>12</sup> Ibid

<sup>13</sup> Ibid

shadows of partition that still linger, but barely any mention of the dominion status.<sup>14</sup> Accusations by the opposition arose within 6 months of ‘independence’ that the ruling power was misusing the state apparatus and lack of space in the political environment.<sup>15</sup>

The top brass of the congress had no desire to snap out of relations with the Commonwealth especially with the colonist.<sup>16</sup> At the Indian Round table conference in London, 1931 Gandhi had iterated that *‘I have aspired, I still aspire, to be a citizen, not in an Empire but in a Commonwealth; in partnership if possible – if God wills it, an indissoluble partnership - but not a partnership superimposed by one nation on another.’*<sup>17</sup> Reading this after De’s analysis made me reconsider how even Gandhi, often the embodiment of moral clarity in our textbooks, was operating within the realistic constraints of international politics. A feeling that Pakistan would be the favourite of the British Commonwealth must have persuaded the Congressmen to please Britain to the fullest possible extent.<sup>18</sup> Prime Minister Nehru commended the London Declaration of 1949 (which was also ratified by the constituent assembly), and said ‘this new Republic of India, completely sovereign and owing no allegiance to the King, as the other Commonwealth countries do owe, will nevertheless be a full member of this commonwealth and it agrees that as a symbol of this free partnership, or association rather, the King will be recognised as such’.<sup>19</sup> De appropriately comments that pragmatism is what led the leaders to accept dominion status.<sup>20</sup> It is clear that South Asian leaders fighting for their country found it practical that in order to gain their objective it easier to parley with the British using the dominion model.<sup>21</sup> Thus an opinion that the phase of dominion hood was not an anomaly is rightfully formulated. The congress thought of the situation as a ‘fast-track’ for political freedom.

<sup>14</sup> ‘From the Red Fort: Nehru’s Independence Day Speech (15 August 1947)’ (*The Nehru* blog, 24 August 2022) [https://www.thenehru.org/2022/08/from-red-fort-nehrus-independence-day\\_24.html](https://www.thenehru.org/2022/08/from-red-fort-nehrus-independence-day_24.html) accessed 27 March 2025.

<sup>15</sup> Shalini Sharma, “‘Yeh Azaadi Jhooti Hai!’: The Shaping of the Opposition in the First Year of the Congress Raj’ (2014) 48(5) *Modern Asian Studies* 1358 < <https://doi.org/10.1017/S0026749X1400038X> > accessed 27 March 2025.

<sup>16</sup> P Kodanda Rao, ‘India: The Republican Dominion’ (1953) 25(148) *Current History* 331 <http://www.jstor.org/stable/45308565> accessed 18 March 2025.

<sup>17</sup> P Kodanda Rao, ‘India: The Republican Dominion’ (1953) 25(148) *Current History* 331 <http://www.jstor.org/stable/45308565> accessed 18 March 2025.

<sup>18</sup> Ibid 338.

<sup>19</sup> P Kodanda Rao, ‘India: The Republican Dominion’ (1953) 25(148) *Current History* 331 <http://www.jstor.org/stable/45308565> accessed 18 March 2025.

<sup>20</sup> Rohit De, ‘Between Midnight and Republic: Theory and Practice of India’s Dominion Status’ (2019) 17(4) *International Journal of Constitutional Law* 1213 <https://doi.org/10.1093/icon/moz081> accessed 27 March 2025.

<sup>21</sup> Harshan Kumarasingham, ‘The “Tropical Dominions”: The Appeal of Dominion Status in the Decolonisation of India, Pakistan and Ceylon’ (2013) 23 *Transactions of the Royal Historical Society* 223 <http://www.jstor.org/stable/23726109> accessed 18 March 2025.



Prior to independence, the Constituent Assembly passed a resolution on 22 January 1947 with the objective that India must become an 'Independent Sovereign Republic'.<sup>22</sup> However as the past shows pragmatic considerations probably reopened the rhetoric for 'Dominion Status'. Moreover, the arrival of Mountbatten with instructions from Downing Street to maintain British influence even after independence might have add the persuasion from the Viceroy's office as well.<sup>23</sup> Krishna Menon ( not to be confused with V.P Menon) had several interviews with Mountbatten in light the of the entire process.<sup>24</sup> Menon was the Congress confidant in the office of the Viceroy serving as a bridge between the freedom for India and the laws of the British.<sup>25</sup>

The Indian leadership required to find a way to keep the control of the Raj, to use the advantages of the complete control to mitigate the protestations of other ideological factions within the country. <sup>26</sup> Menon's interactions with the Lord Mountbatten in 1947 provides records of such congress ambitions.<sup>27</sup> Nehru was also swift to demand that he be treated as dominion prime minister, probably to carry out the phase of change 'efficiently'. This complements De's argument that Dominion status rather than being an endpoint was used by Indian nationalists as a stepping stone. Menon played advocate in making sure the British armour remains after independence.<sup>28</sup> While Rohit De critiques the legal liminality of Dominion status, figures like Krishna Menon sought to resolve that ambiguity externally. The lack of importance laid down for the period in the history curricula of the country, might be a sub-conscious effort reflecting on the swift and smooth transfer that Nehru intended through the Dominion Status.

De' iterates that the events in Pakistan during the same period, '*laid foundations for authoritarian constitutionalism*'.<sup>29</sup> Though the evidence of such is available in comparison to the Indian records of the period, in reflection it is felt that a glance on the mishaps in Pakistan

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<sup>22</sup> 'Objectives Resolution', in B Shiva Rao (ed), *The Framing of India's Constitution: A Study* (Bombay, 1968) 121–22.

<sup>23</sup> Clement Attlee to Lord Mountbatten (18 March 1947) in Nicholas Mansergh (ed), *Constitutional Relations between Britain and India: The Transfer of Power 1942–47*, vol IX: *The Fixing of a Time Limit*, 4 November 1946 – 22 March 1947 (1980) 972–74.

<sup>24</sup> Harshan Kumarasingham, 'The "Tropical Dominions": The Appeal of Dominion Status in the Decolonisation of India, Pakistan and Ceylon' (2013) 23 *Transactions of the Royal Historical Society* 223 <http://www.jstor.org/stable/23726109> accessed 18 March 2025.

<sup>25</sup> Ibid 234

<sup>26</sup> Ibid.

<sup>27</sup> Ibid.

<sup>28</sup> Ibid.

<sup>29</sup> Rohit De, 'Between Midnight and Republic: Theory and Practice of India's Dominion Status' (2019) 17(4) *International Journal of Constitutional Law* 1213 <https://doi.org/10.1093/icon/moz081> accessed 27 March 2025.

would help form a better image to understand the period in India. Mohammed Ali Jinnah, rejected the idea of Mountbatten assuming the post of Governor-General (like in India) as took the seat under himself, citing the need for strong leadership and effective control.<sup>30</sup> However his demise (1948) also left a vacuum. Contemporary Pakistan's troubled history of political instability and praetorian rules arcs back to the country phase of dominion status.<sup>31</sup> The phase gave way for the unaccountable executive dominance.<sup>32</sup> Key Pakistani leaders paved into authoritarian regimes, straying away from the *Westminster Model*. Such movement meant that Pakistan's Dominion-era governance increasingly relied on personal authority and unelected power. Not only did Pakistan's dominion period last way more than India's, but the country also had to establish two constituent assembly as a part of turbulent measures. Pakistani leaders relied heavily on British civil servants and officers shadowing a continuation of colonial structures while failing to establish political development parallelly.

This phase does not necessarily embody a betrayal of independence but a negotiation of such. What appears to be conservation of colonial frameworks, I believe might have been calculated moves to prevent complete institutional rupture. The phase of dominion does not form a large part of oral history for the reason that it does not resonate with the moral victory. Ultimately revisiting this period opens the doors into the *realpolitik* of decolonialization. I believe this shows how pragmatic decision-making often overshadows ideological aspirations. Maybe, the pragmatic decision making in the case of Nehru and Patel might have paved the way to the 'succession of power' while minimising hindrances. Understanding this past allows a more nuanced understanding of the journeys of India and Pakistan shaping their distinct democratic and political trajectories. The entirety of events on the eve of independence especially the decisions on Dominion Status offers a lesson on realist considerations. This challenges the colonial/postcolonial binary and reveals a more complex legal and political genealogy.

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<sup>30</sup> Harshan Kumarasingham, 'The "Tropical Dominions": The Appeal of Dominion Status in the Decolonisation of India, Pakistan and Ceylon' (2013) 23 *Transactions of the Royal Historical Society* 223 <http://www.jstor.org/stable/23726109> accessed 18 March 2025.

<sup>31</sup> Mara Malagodi, 'Dominion Status and the Origins of Authoritarian Constitutionalism in Pakistan' (2019) 17(4) *International Journal of Constitutional Law* 1235 <https://doi.org/10.1093/icon/moz080> accessed 27 March 2025.

<sup>32</sup> Ibid 1237.