

Unit 1. Historical Background of Indian Constitution



Before 1947, India was divided into two main entities – The British India which consisted of 11 provinces and the Princely states ruled by Indian princes under subsidiary alliance policy. The two entities merged together to form the Indian Union, but many of the legacy systems in British India is followed even now. The historical underpinnings and evolution of the India Constitution can be traced to many regulations and acts passed before Indian Independence.



Indian System of Administration

Indian democracy is a Parliamentary form of democracy where the executive is responsible to the Parliament. The Parliament has two houses – Lok Sabha and Rajya Sabha. Also, the type of governance is Federal, i.e. there is separate executive and legislature at Center and States. We also have self-governance at local government levels. All these systems owe their legacy to the British administration. Let us see the historical background of Indian Constitution and its development through years.

Regulating Act of 1773

- The first step was taken by the British Parliament to control and regulate the affairs of the East India Company in India.
- It designated the **Governor** of Bengal (Fort William) as the **Governor-General (of Bengal)**.
- Warren Hastings became the first Governor-General of Bengal.
- Executive Council of the Governor-General was established (Four members). There was no separate legislative council.
- It subordinated the Governors of Bombay and Madras to the Governor-General of Bengal.
- The Supreme Court was established at Fort William (Calcutta) as the Apex Court in 1774.
- It prohibited servants of the company from engaging in any private trade or accepting bribes from the natives.
- Court of Directors (the governing body of the company) should report its revenue.

Pitt's India Act of 1784

- Distinguished between commercial and political functions of the company.
- Court of Directors for Commercial functions and Board of Control for political affairs.
- Reduced the strength of the Governor General's council to three members.
- Placed the Indian affairs under the direct control of the British Government.
- The companies territories in India were called "the British possession in India".
- Governor's councils were established in Madras and Bombay.

Charter Act of 1813

- The Company's monopoly over Indian trade terminated; Trade with India open to all British subjects.

Charter Act of 1833

- **Governor-General (of Bengal)** became as the Governor-General of India.
- First Governor-General of India was Lord William Bentinck.
- This was the final step towards centralization in the British India.
- Beginning of a Central legislature for India as the act also took away legislative powers of Bombay and Madras provinces.
- The Act ended the activities of the East India Company as a commercial body and it became a purely administrative body.

Charter Act of 1853

- **The legislative and executive functions of the Governor-General's Council were separated.**
- 6 members in Central legislative council. Four out of six members were appointed by the provisional governments of Madras, Bombay, Bengal and Agra.
- It introduced a system of open competition as the basis for the recruitment of civil servants of the Company (Indian Civil Service opened for all).

Government of India Act of 1858

- The rule of Company was replaced by the rule of the Crown in India.
- The powers of the British Crown were to be exercised by the Secretary of State for India
- He was assisted by the **Council of India**, having 15 members
- He was vested with complete authority and control over the Indian administration through the Viceroy as his agent
- The Governor-General was made the Viceroy of India.
- Lord Canning was the first Viceroy of India.
- Abolished Board of Control and Court of Directors.

Indian Councils Act of 1861

- It introduced for the first time Indian representation in the institutions like Viceroy's executive+legislative council (non-official). **3 Indians entered Legislative council.**
- Legislative councils were established in Center and provinces.
- It provided that the Viceroy's Executive Council should have some Indians as the non-official members while transacting the legislative businesses.
- It accorded statutory recognition to the portfolio system.
- Initiated the process of decentralisation by restoring the legislative powers to the Bombay and the Madras Provinces.

India Council Act of 1892

- Introduced indirect elections (nomination).
- Enlarged the size of the legislative councils.
- Enlarged the functions of the Legislative Councils and gave them the power of discussing the Budget and addressing questions to the Executive.

Indian Councils Act of 1909

1. This Act is also known as the Morley- Minto Reforms.
2. Direct elections to legislative councils; first attempt at introducing a representative and popular element.
3. It changed the name of the Central Legislative Council to the Imperial Legislative Council.
4. The member of Central Legislative Council was increased to 60 from 16.
5. Introduced a system of communal representation for Muslims by accepting the concept of 'separate electorate'.

6. **Indians for the first time in Viceroy's executive council.** (Satyendra Prasad Sinha, as the law member)

Government of India Act of 1919

- This Act is also known as the Montague-Chelmsford Reforms.
- The Central subjects were demarcated and separated from those of the Provincial subjects.
- The scheme of dual governance, 'Dyarchy', was introduced in the Provincial subjects.
- Under dyarchy system, the provincial subjects were divided into two parts – transferred and reserved. On reserved subjects, Governor was not responsible to the Legislative council.
- The Act introduced, for the first time, **bicameralism at center.**
- **Legislative Assembly** with 140 members and **Legislative council** with 60 members.
- Direct elections.
- The Act also required that the three of the six members of the Viceroy's Executive Council (other than Commander-in-Chief) were to be Indians.
- Provided for the establishment of Public Service Commission.

Government of India Act of 1935

- The Act provided for the establishment of an All-India Federation consisting of the Provinces and the Princely States as units, though the envisaged federation never came into being.
- Three Lists: The Act divided the powers between the Centre and the units into items of three lists, namely the Federal List, the Provincial List and the Concurrent List.
- The Federal List for the Centre consisted of 59 items, the Provincial List for the provinces consisted of 54 items and the Concurrent List for both consisted of 36 items
- The residuary powers were vested with the Governor-General.
- The Act abolished the Dyarchy in the Provinces and introduced 'Provincial Autonomy'.
- It provided for the adoption of Dyarchy at the Centre.
- Introduced bicameralism in 6 out of 11 Provinces.
- These six Provinces were Assam, Bengal, Bombay, Bihar, Madras and the United Province.
- Provided for the establishment of Federal Court.
- Abolished the Council of India.

Indian Independence Act of 1947

- It declared India as an Independent and Sovereign State.
- Established responsible Governments at both the Centre and the Provinces.
- Designated the Viceroy India and the provincial Governors as the Constitutional (normal heads).

- It assigned dual functions (Constituent and Legislative) to the Constituent Assembly and declared this dominion legislature as a sovereign body.

Points to be noted



- Laws made before Charter Act of 1833 were called **Regulations** and those made after are called **Acts**.
- Lord Warren Hastings created the office of District Collector in 1772, but judicial powers were separated from District collector later by Cornwallis.
- From the powerful authorities of unchecked executives, the Indian administration developed into a responsible government answerable to the legislature and people.
- The development of portfolio system and budget points to the separation of power.
- Lord Mayo's resolution on financial decentralization visualized the development of local self-government institutions in India (1870).
- 1882: Lord Ripon's resolution was hailed as the 'Magna Carta' of local self-government. He is regarded as the 'Father of local self-government in India'.
- 1921: Railway Budget was separated from the General Budget.
- From 1773 to 1858, the British tried for the centralization of power. It was from the 1861 Councils act they shifted towards devolution of power with provinces.
- 1833 Charter act was the most important act before the act of 1909.
- Till 1947, the Government of India functioned under the provisions of the 1919 Act only. The provisions of 1935 Act relating to Federation and Dyarchy were never implemented.
- The Executive Council provided by the 1919 Act continued to advise the Viceroy till 1947. The modern executive (Council of Ministers) owes its legacy to the executive council.
- The Legislative Council and Assembly developed into Rajyasabha and Lok Sabha after independence.



Making of Indian Constitution - Constituent Assembly Before 1947, India was divided into two main entities – The British India which consisted of 11 provinces and the Princely states ruled by Indian princes under subsidiary alliance policy. The two entities merged together to form the Indian Union, but many of the legacy systems in British India is

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constitution of india

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