



KAS

Kerala Public Service Commission

Paper 2 – Volume 1

Indian Polity - 1



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Indian Polity - 1

UNIT-1: CONSTITUTIONAL DEVELOPMENT IN INDIA

This unit has been covered under the following segments-

1. Introduction
2. Basic Concepts
3. Historical Underpinnings
4. Constitutional Experiment during the Rule of the East India Company (1773-1857)
5. Constitutional Experiment Under The British Crown (1857-1947)
6. Criticism Of The Constituent Assembly
7. Challenges of the Constituent Assembly
8. Features/Nature/Characteristics of the Constitution
9. Sources of the Constitution
10. Acceptance of Constitution

The above segments have been described below:

1. INTRODUCTION

The polity evolution of India as an independent and sovereign republic has its immediate historical roots in the period of the British rule in India. Certain features of our Constitution can better be comprehended, only if we start with a brief review of the constitutional set up in the preceding periods. But, it is not necessary to go beyond British Period because modern political institutions originated and developed in that period only. The Constitution of India was drawn up by the Constituent Assembly, initially summoned on Dec. 9, 1946. The Constituent Assembly was not a truly representative body as its members were indirectly elected by those who were themselves elected on a narrow franchise. The Constitution was adopted on Nov. 26, 1949 and it came into effect on Jan. 26, 1950. It is the longest written Constitution in the world containing 395 Articles and 12 Schedules.

2. BASIC CONCEPTS

- Nation
- State
- Government
- Population
- Territory
- Sovereignty

- **Nation:**

- It can be defined as feeling of oneness.
- It doesn't exist in real- it's just a mental construct for feeling of belongingness.
- Concept of nation promotes unity in diversity rather than unity by/through uniformity.
- As far as India is concerned it is still nation in making.
- Nation without state

- **State:**

It can be defined as physical entity which exists in real and where people reside together and interact with each other.

It's a part of political entity which comprises of four elements viz:

- Population
- Government
- Territory
- Sovereignty

- **Population**

Population can be defined as sum total of residents in the particular territory under the state. This concept is mainly associated with domicile factor (i.e., intention of making residents into permanent home).

- **Government**

It can be defined as a structural arrangement of-

- Institutions and organizations
- Individuals occupying those I & O
- Rules and regulations prescribing the conduct of those individuals and institutions and organization

Analysis/ conceptual framework: (to be discussed in the class)

- **Territory**

It simply implies geographical boundary of the state. However, it has a different connotation viz-a-viz our constitution i.e.,

As per article 1, India is a union of states. It implies:

- Union of India: Comprises of 29 states only
- Territory of India: Includes 29 states + 7 UT's + any other acquired territory (if any).

- **Sovereignty**

- It can be defined as the undisputed and unlimited authority of the state over the people and territory of India exercised by the government.
- It implies we are not answerable to any external agency or outside force.
- It differs from concept of independence, which is more internal in nature where in sovereignty is more of an external concept.

Analysis: **(to be discussed in the class)**

- **Idea of constitutionalism**

Generally Constitution of any country have two things in common viz.

- Form of government
- Rights of the people.

It can be defined as a legally sanctified document consisting of basic governing principles of the state.

- **Constitutionalism**

It implies the ways and means to workout governmental organization, which exercises its powers and at the same time, ensures individual freedom and liberty.

- Government is not only essential but also useful for smooth functioning of the state.

Analysis: **(to be discussed in the class)**

3. HISTORICAL UNDERPINNINGS

The origin and growth of the Indian Constitution has its roots in Indian history during the British period. From 1773 onwards, various Acts were passed by the British Government for the governance of India. None of them, however satisfied Indian aspirations mainly because they were imposed by the alien rulers.

The period of British Constitutional historical experiments in India can be divided into two phases:

- Constitutional experiment during the rule of the East India Company(1773-1857)
 - Constitutional experiments under the British Crown(1857-1947)
- Brief review of the above phases has been laid down below.

4. CONSTITUTIONAL EXPERIMENT DURING THE RULE OF THE EAST INDIA COMPANY (1773-1857)

TO BE REFERRED FROM HISTORY

During this phase, the major constitutional experiment were incorporated in the following acts and regulations-

- Regulating Act 1773
- Pitt's India Act 1784
- Charter Act 1793
- Charter Act 1813
- Charter Act of 1833
- Charter Act 1853

- **REGULATING ACT, 1773** : Its major provisions included the following-
 1. First attempt by the British Parliament to regulate the affairs of the Company;
 2. (Provided for centralisation of Administration of Company's territories in India;
 3. Governor of Bengal became Governor General for all British territories in India;
 4. Governor General and Council of 4 members was appointed for Bengal;
 5. Court of Directors of 24 members was to be elected for 4 years, with one-fourth members retiring every year;
 6. Bombay (Maharashtra) and Madras (Tamil Nadu) Presidency subordinated to Bengal Presidency;
 7. Supreme Court to be set up at Calcutta; and
 8. Company's Servants forbidden from accepting bribes or doing private trade.

- **PITT'S INDIA ACT, 1784** : Its major provisions included the following-
 1. Transferred the Indian affairs of the Company into the hands of the British Government;
 2. Abolished dual system of governance. Court of Directors consisting of 24 members to look after commercial functions;
 3. Board of Control consisting of 6 Parliamentary Commissioners was constituted to control civil, military and revenue affairs of India;
 4. Court of Directors had to comply with the orders and directions of the Board;
 5. Strength of Governor-General's Council reduced to 3;
 6. Control of Governor-General-in-Council on Bombay and Madras Presidency enlarged and made effective; and (vii) First effective substitution of Parliamentary Control over East India Company.

- **CHARTER ACT, 1793:** Its major provisions included the following-
 1. Company given monopoly of trade for 20 more years
 2. Expenses and salaries of the Board of Control to be charged on Indian Revenue; and
 3. Governor-General could over-ride his Council.

- **CHARTER ACT, 1813 :** Its major provisions included the following-
 1. Company deprived of its trade monopoly in India except in tea and opium trade with China;
 2. All Englishmen could trade with India subject to certain restrictions;
 3. Rules and procedures made for use of Indian revenue; and
 4. A sum of Rs. 1 lakh earmarked annually for education.

- **CHARTER ACT, 1833:** Its major provisions included the following-
 1. End of Company's trade monopoly even in tea and opium with China;
 2. Company was asked to close its business at the earliest;
 3. Governor-General of Bengal to be Governor-General of India;
 4. Govt. of Madras and Bombay deprived of legislative powers;
 5. A fourth member, Law Member, added to Council of Governor-General;
 6. Government Service was thrown open to the people of India;
 7. All laws made by Governor General council henceforth to be known Acts and 'not regulations;
 8. Provision made for appointment of Law Commission for codification of laws; and
 9. Slavery was to be abolished.

- **CHARTER ACT, 1853 :** Its major provisions included the following-
 1. Expanded life of the Company for an unspecified period;
 2. For the first time a separate legislative machinery consisting of 12-member Legislative Council was created;
 3. Law member was made a full member of the Executive Council of the Governor-General. Six additional members added for legislative purposes; and
 4. Recruitment of Civil Services was based on open annual competitive examination.

5. CONSTITUTIONAL EXPERIMENT UNDER THE BRITISH CROWN (1857-1947)

During this phase, the major constitutional experiments were incorporated in the following acts and regulations.

- Govt. of India Act, 1858
- Indian Councils Act, 1861
- Indian Councils Act, 1892
- Indian Councils Act, 1909
- Government of India Act, 1919
- Government of India Act, 1935
- Indian Independence Act, 1947

Brief review of the above has been laid down below.

- **GOVT. OF INDIA ACT, 1858** : Its major provisions included the following-
 1. Rule of company in India ended and that of the Crown began;
 2. System of double government ended. Court of Directors and Board of Control abolished;
 3. Secretary of State for India was created. He was assisted by a 15-member Council (India Council). He was to exercise the powers of the Crown;
 4. Secretary of State to be a member of the British Cabinet;
 5. Secretary of State governed India through the Governor General;
 6. Governor-General was to be called the Viceroy and was the direct representative of the Crown in India; and
 7. A unitary and highly-centralised administrative structure was created.

HIGHLIGHTS OF ACT OF 1858

End of Company rule in India-The Act ushered in a new period of Indian history, bringing about the end of Company rule in India. The era of the new British Raj would last until Partition of India in August 1947, at which time all of the territory of the Raj was granted dominion status within the Dominion of Pakistan and the Union of India.

Transfer of Power- The Act transferred the powers of government, territories and revenues to the British Crown

Sovereignty of India-After the unsuccessful Sepoy mutiny of 1857, the British government took over the Indian administration from the East India Company and thus also assumed sovereignty over India.

Statute for the Governance of India- In 1858 the British Parliament enacted the first statute for the governance of India, under the direct rule of the British government the Government of India Act 1858.

- **INDIAN COUNCILS ACT, 1861** : Its major provisions included the following-
 1. Policy of Association of Indians in legislation started;
 2. Portfolio system was introduced;
 3. For Legislation; Executive Council of Viceroy was enlarged by 6 to 12 members composed of half non-official members. Thus foundations of Indian Legislature was laid down;
 4. Legislative powers of the Presidency Government deprived in 1833 were restored; and
 5. Viceroy could issue ordinances in case of emergency.

- **INDIAN COUNCILS ACT, 1892** : Its major provisions included the following-
 1. Though the majority of official members was retained, the non-official members of the Indian Legislative Council were henceforth to be nominated by the Bengal Chamber of Commerce and the Provincial Legislative Councils, while the non-official members of the Provincial Council were to be nominated by certain local bodies such as universities, district boards, municipalities. Beginning of representative system in India; and
 2. Council to have the power to discuss budget and of addressing questions to the Executive.

- **INDIAN COUNCILS ACT, 1909**: Its major provisions included the following-
 1. This Act is also known as Morley-Minto Reforms (Lord Morley was the then Secretary of State for India and Lord Minto was the then Viceroy of India).
 2. It considerably increased the size of the legislative councils, both Central and provincial. The number of members in the Central Legislative Council was raised from 16 to 60. The number of members in the provincial legislative councils was not uniform.
 3. It retained official majority in the Central Legislative Council but allowed the provincial legislative councils to have non-official majority.
 4. It enlarged the deliberative functions of the legislative councils at both the levels. For example, members were allowed to ask supplementary questions, move resolutions on the budget, and so on.
 5. It provided (for the first time) for the association of Indians with the executive Councils of the Viceroy and Governors. Satyendra Prasad Sinha became the first Indian to join the Viceroy's Executive Council. He was appointed as the law member.
 6. It introduced a system of communal representation for Muslims by accepting the concept of 'separate electorate'. Under this, the Muslim members were to be elected only by Muslim voters. Thus, the Act 'legalised

communalism' and Lord Minto came to be known as the Father of Communal Electorate.

7. It also provided for the separate representation of presidency corporations, chambers of commerce, universities and zamindars.

HIGHLIGHTS OF THE 1909 ACT

- The Act made important changes in the Constitution and functions of the Indian legislatures
- It gave to the members the power to move resolutions on the Budget and on any matter of general public interest and to divide the Council upon them.
- The biggest defect of the 1909 Reforms was the creation of separate or communal system of election providing for representation and reservation of seats in the Councils for special interests like Muslims, chambers of commerce, zamindars, etc.
- It was the biggest shock to, secular Indian nationalism after the suppression of the 1857 revolt and was indeed the greatest victory for the British policy of 'divide and rule

- **GOVERNMENT OF INDIA ACT, 1919:** Its major provisions included the following-
 1. It relaxed the central control over the provinces by demarcating and separating the central and provincial subjects.
 2. The central and provincial legislatures were authorised to make laws on their respective list of subjects. However, the structure of government continued to be centralized and unitary.
 3. It further divided the provincial subjects into two parts-transferred and reserved. The transferred subjects were to be administered by the governor with the aid of ministers responsible to the legislative Council.
 4. The reserved subjects, on the other hand, were to be administered by the governor and his executive council without being responsible to the legislative Council.
 5. This dual scheme of governance was known as 'dyarchy a term derived from the Greek word diarchy which means double rule. However, this experiment was largely unsuccessful.
 6. It introduced, for the first time, bicameralism and direct elections in the country. Thus, the Indian Legislative Council was replaced by a bicameral legislature consisting of an Upper House (Council of State) and a Lower

House (Legislative Assembly). The majority of members of both the Houses were chosen by direct election.

7. It required that the three of the six members of the Viceroy's executive Council (other than the commander-in-chief) were to be Indian.
8. It extended the principle of communal representation by providing separate electorates for Sikhs, Indian Christians, Anglo-Indians and Europeans.
9. It granted franchise to a limited number of people on the basis of property, tax or education.
10. It created a new office of the High Commissioner for India in London and transferred to him some of the functions hitherto performed by the Secretary of State for India.
11. It provided for the establishment of a public service commission. Hence, a Central Public Service Commission was set up in 1926 for recruiting civil servants.
12. It separated, for the first time, provincial budgets from the Central budget and authorised the provincial legislatures to enact their budgets.
13. It provided for the appointment of a statutory commission to inquire into and report on its working after, ten years of its coming into force.

HIGHLIGHTS OF THE 1919 ACT

- The Indian Legislative Council was replaced by a bicameral Legislature consisting of a Council of State (Upper House) and a Legislative Assembly (Lower House), each with an elected majority.
- A tremendous increase in the scope of legislative activity was witnessed and several measures of permanent benefit to the country were enacted.
- The emergence of the Central Legislature was a matter of historic importance. For the first time it gave the representatives of the people a voice in making laws and influencing governmental policies.
- It also played a great role in the shaping of the political destinies of the country.
- One important development during the period was the evolution of the office of the Speaker.

- **GOVERNMENT OF INDIA ACT, 1935** : Its major provisions included the following-
 1. It provided for the adoption of dyarchy at the Centre. Consequently, the federal subjects were divided into reserved subjects and transferred subjects. However, this provision of the Act did not come into operation at all.
 2. It introduced bicameralism in six out of eleven provinces. Thus, the legislatures of Bengal, Bombay, Madras, Bihar, Assam and the United Provinces were made bicameral consisting of a legislative council (upper house) and a legislative assembly (lower house). However, many restrictions were placed on them.
 3. It further extended the principle of communal representation by providing separate electorates for depressed classes (scheduled castes), women and labour (workers).
 4. It abolished the Council of India, established by the Government of India Act of 1858. The secretary of state for India was provided with a team of advisors.
 5. It extended franchise. About 10 per cent of the total population got the voting right.
 6. It provided for the establishment of a Reserve Bank of India to control the currency and credit of the country.
 7. It provided for the establishment of not only a Federal Public Service Commission but also a Provincial Public Service Commission and Joint Public Service Commission for two or more provinces.
 8. The act set up a Federal Court in 1937.

IMPACT OF THE GOVT. OF INDIA ACT, 1935

- The Federal part of the 1935 Act never came into operation.
- The Princely states could not be persuaded to accede to the federation.
- As a result the Constitution of Central government in India remained the same as it was under the Act of 1919 with such modifications as were necessitated by the introduction of autonomy in the provinces.
- No Council of Ministers responsible to the legislature was appointed at the centre and the powers and functions of the Central Legislature as provided in the 1919 Act remained unchanged until the Indian Independence Act, 1947.

AUGUST OFFER, 1940

The 'August offer 1940' was made on August 8, 1940, the eve of the Battle of Britain. The Viceroy at the time, Lord Linlithgow made a fresh offer that promised the expansion of the governor-general's Executive Council to include more Indians, the Establishment of an Advisory War council, giving full weight to minority opinion, recognition of Indians' right to frame their own constitution (after the war would end). In return, it was hoped that all parties and communities in India would cooperate in Britain's war efforts.

The declaration marked an important advance over the existing state of things, as it recognized at least the natural and inherent right of the people of the country to determine the form of their future constitution, and explicitly promised dominion status. However, the Congress rejected this offer, and Gandhi viewed it as having widened the gulf between Nationalist India and the British ruler. But, it was accepted by Muslim League.

THE CABINET MISSION PLAN, 1946

In 1946, British Prime Minister Clement Attlee formulated a cabinet mission to India to discuss and finalize plans for the transfer of power from the British Raj to Indian leadership as well as provide India with independence under Dominion status in the Commonwealth of Nations. The Mission discussed the framework of the constitution and laid down in some detail the procedure to be followed by the constitution drafting body. Elections for the 296 seats assigned to the British Indian provinces were completed by August 1946. The Constituent Assembly of India first met and began work on 26 November 1946.

- **INDIAN INDEPENDENCE ACT, 1947** : Its major provisions included the following-
 - (i) It ended the British rule in India and declared India as an independent and sovereign state from August 15, 1947.
 - (ii) It provided for the partition of India and creation of two independent dominions of India and Pakistan with the right to secede from the British Commonwealth.
 - (iii) It abolished the office of viceroy and provided, for each dominion, a governor-general, who was to be appointed by the British King on the advice of the dominion cabinet. His Majesty's Government in Britain was to have no responsibility with respect to the Government of India or Pakistan.
 - (iv) It empowered the Constituent Assemblies of the two dominions to frame and adopt any constitution for their respective nations and to repeal any act of the British Parliament, including the Independence act itself.

- (v) It empowered the Constituent Assemblies of both the dominions to legislate for their respective territories till the new constitutions were drafted and enforced. No Act of the British Parliament passed after August 15, 1947 was to extend to either of the new dominions unless it was extended thereto by a law of the legislature of the dominion.
- (vi) Abolished the office of the secretary of state for India and transferred his functions to the secretary of state for Commonwealth Affairs.
- (vii) It granted freedom to the Indian princely states either to join the Dominion of India or Dominion of Pakistan or to remain independent.
- (viii) It granted freedom to the Indian princely states either to join the Dominion of India or Dominion of Pakistan or to remain independent.
- (ix) It provided for the governance of each of the dominions and the provinces by the Government of India Act of 1935, till the new Constitutions were framed. The dominions were however authorized to make modifications in the Act.
- (x) It deprived the British Monarch of his right to veto bills or ask for reservation of certain bills for his approval. But, this right was reserved for the Governor-General. The Governor-General would have full power to assent to any bill in the name of His Majesty.
- (xi) It designated the Governor-General of India and the provincial governors as constitutional (nominal) heads of the states. They were made to act on the advice of the respective council of ministers in all matters.
- (xii) It dropped the title of Emperor of India from the royal titles of the king of England.

Indian Independence Act, 1947 discontinued the appointment to civil services and reservation of posts by the secretary of state for India. The members of the civil services appointed before August 15, 1947 would continue to enjoy all benefits that they were entitled to till that time.

6. CRITICISM OF THE CONSTITUENT ASSEMBLY

The critics have criticized the Constituent Assembly on various grounds. These are as follows:

- **Not a Representative Body:** The critics have argued that the Constituent Assembly was not a representative body as its members were not directly elected by the people of India on the basis of universal adult franchise.
- **Not a Sovereign Body:** The critics maintained that the Constituent Assembly was not a sovereign body as it was created by the proposals of the British Government. Further, they said that the Assembly held its sessions with the permission of the British Government.
- **Time Consuming:** According to the critics, the Constituent Assembly took unduly long time to make the Constitution. They stated that the framers of the American Constitution took only four months to complete their work.
- **Dominated by Congress:** The critics charged that the Constituent Assembly was dominated by the Congress party. Granville Austin, a British Constitutional expert, remarked: 'The Constituent Assembly was a one-party body in an essentially one-party country. The Assembly was the Congress and the Congress was India'.
- **Lawyer-Politician Domination:** It is also maintained by the critics that the Constituent Assembly was dominated by lawyers and politicians. They pointed out that other sections of the society were not sufficiently represented. This, to them, is the main reason for the bulkiness and complicated language of the Constitution.
- **Dominated by Hindus:** According to some critics, the Constituent Assembly was a Hindu dominated body. Lord Viscount Simon called it 'a body of Hindus'. Similarly, Winston Churchill commented that the Constituent Assembly represented 'only one major community in India'.

7. CHALLENGES FOR CONSTITUENT ASSEMBLY IN FRAMING (TO BE DISCUSED IN THE CLASS)

- Diversity and vastness of the country-
- Integration of the princely states
- Democracy for all
- Communal issue
- Linguistic re-organization

8. FEATURES/ NATURE/ CHARACTERISTICS OF CONSTITUTION

Members of the CA envisaged a federal form of polity for India. However the word federation had not been used anywhere in the constitution. Rather they had used the word 'union' in place of federation.

Some experts and legal experts are of the view that India is neither a federation nor a union, rather it is quasi-federal in nature.

● **Federation:**

- The term federation can be defined as presence of dual government with equal division of power among them in a co-ordinate relationship rather than superior subordinate relationship.

Basically federal setup has 5 essential features viz:-

- Division of power
- Written constitution
- Supremacy of the constitution
- Rigidity of the constitution
- Presence of Supreme Court.

All the 5 features of a true federal setup are present in our constitution. However still we don't call it federal because there are some other features which violates the true federal nature of our (like- to be discussed in class)

● **Written or un-written constitution**

Written	Un-written
◆ Written format	◆ Un-written format
◆ Rigid	◆ Flexible
◆ Static	◆ Dynamic
◆ Prescriptive	◆ Descriptive
◆ Permanent	◆ Temporary
◆ Law	◆ Order
◆ Simple	◆ complicated
◆ India, US	◆ U.K, Newzialand

- **It has some additional features/ characteristics as:-**Major features of the Indian constitution can be listed as:
 - 3-tier government.
 - Democratic representation and UAF.
 - Directive Principles of State Policy

Emergency Provisions

- Federal and Unitary Features
- Flexibility of the Constitution
- Form of government- parliamentary of government.
- Fundamental Rights
- Independent and integrative judiciary.
- It is the lengthiest Constitution of the world and bulky in nature,

- Judicial Independence
- Judicial Review
- Lengthy and Legalistic Document
- Nature/characteristic of the country- sovereign, socialist, secular, democratic and republic.
- Parliamentary System
- Popular Sovereignty
- Rule of Law
- Secularism in Indian Constitution

Single Citizenship

- Single citizenship
- Socialism
- Unique blend of rigidity and flexibility

9. SOURCES OF THE CONSTITUTION (PT)

- British legacy (1773-1947)
- Government of India act 1909, 1919, 1935
- International communities/countries like U.S, U.K, Japan, Canada, Ireland, and Germany and so on because of the above mentioned sources, sometimes some critiques criticize IC as “Bag of borrowings”.

10. ACCEPTANCE OF CONSTITUTION

- On Aug. 29, 1947, the Constituent Assembly appointed a Drafting committee under the chairmanship of Dr. Ambedkar. The members of the Committee were N. Gopalaswami Ayyanagar, Alladi Krishnaswamy 'Ayyar, K.M. Munshi. Mohd. Sadullah, B.L. Mitter (later replaced by N. Madhava Rao), Dr. D.P.Khaitan, (replaced on death by T.T. Krishnamachari). This committee came out with a draft Constitution of India in Feb. 1948. The Constituent Assembly next met in Nov. 1948 to consider the provisions of the Draft Commission, clause by clause. The second reading of the clauses was completed by Oct. 17, 1949, and the third reading on Nov. 26, 1949, when the Constitution received the signature of the President of the Assembly and was declared as passed. While certain provisions of the constitution - those relating to citizenship, elections, provisional Parliament, etc. were given immediate effect, the rest of the Constitution came into force on Jan. 26, 1950. A day recalling India's declaration of complete independence as it is ultimate goal twenty years earlier.