



CIVIL SERVICES ACHIEVERS' POINT

CSAP's SMART BOOK

INDIAN POLITY

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CHAPTER 1

CONSTITUTIONAL

FRAMEWORK

Historical Background of Indian Constitution

- Developments during Company Rule (1773-1857)
 - Regulating Act of 1773
 - Pitt's India Act of 1784
 - Charter act of 1793
 - Charter act of 1813
 - Charter Act of 1833
 - Charter Act of 1853
- Developments during Crown rule (1858-1947)
 - Government of India act 1858
 - Indian Council Act of 1861
 - Indian Council Act of 1892
 - Indian Council Act of 1909 (Morley-minto reforms)
 - Government of India Act of 1919 (Montagu- Chelmsford Reforms)
 - Government of India Act of 1935
 - Indian Independence act of 1947

Making of the Indian Constitution

- Demand for Independent Constituent Assembly
- Cabinet Mission Plan for the Constituent Assembly
 - Changes made by the Indian Independence Act of 1947
- Working of the constituent Assembly
 - Important Facts
 - Objective Resolution
 - Committees of the Constituent Assembly
 - Deliberations and Finalisation of Indian Constitution
 - Other functions performed by constituent assembly
 - Criticism of Constituent Assembly

Features of Indian Constitution

- Longthiest and bulkiest written constitution of the world
- Constitution as living document
- Mixture of Federalism and Unitarianism
- Provisions adopted from constitutions of

- different countries
- Balancing Rights and duties of the citizens
- Directive Principles of State Policy
- Adopting Parliamentary form of Government
- Integrated and Independent Judiciary
- Universal Adult Franchise
- System of Single Citizenship
- System of local government- Panchayats and municipalities
- Independent agencies as bulwarks of constitution
- Emergency provisions
- Schedules of Indian Constitution

Preamble of Indian constitution

- Components of Preamble
- Source of its authority
- Nature of Indian State
- Date of the adoption of Indian Constitution
- Objectives of the Indian constitution
- Important judgements related to preamble

Amendment of Indian Constitution

- Types of Amendments
- Procedure for amendment of Indian Constitution
- Issues with the amendment procedure
- Content of Amendments made so far
- Doctrine of Basic Structure of the Indian Constitution
 - Emergence of this Doctrine
 - What is the doctrine of Basic Structure?

HISTORICAL BACKGROUND OF INDIAN CONSTITUTION

- Basic framework of the Indian Constitution traces its legacy to British rule in India.
- Various developments during British rule starting from Regulating Act, 1773 up to the Government of India Act, 1935 have greatly influenced our Constitution and Polity. Let us look at these developments in chronological order.



A Look at Ancient India-

- India is a home of ancient "**Indus valley civilization**" which goes back to 3300- 1300 BC (mature period 2600-1900 BC). India is a world famous for its ancient history and culture.
- Shiva Pashupati & Swastika Seals from the Indus Valley
- The time Before 500 AD is widely accepted as era of Ancient India. The earliest anatomically modern human remains found in South Asia date from approximately 30,000 years ago.
- But regarding to **Constitutional History, India goes back to only 3rd Century BC (269 BC to 231 BC) in the time of the Emperor Ashoka The Great.**
- The Edicts of Ashoka (324 BC - 185 BC) established constitutional principles for the 3rd century BC Maurya king's rule in Ancient India.
- The Edicts of Ashoka are a collection of 33 inscriptions on the Pillars of Ashoka, as well as boulders and cave walls, made by the Emperor Ashoka of the Mauryan dynasty.

What is a constitution?

- A **Constitution** is central to the administration of the country and to the existence and functioning of a country as a

politico-legal entity. **They are a set of rules and regulations for a state which set out the fundamental principles by which the state is governed.**

- It describes the main institution of the state (Executive, Legislature & Judiciary) and the relationship between these institutions. It places limits on the exercise of power and set out the rights and duties of the citizens

History of Indian Constitution:

In 1600, the British arrived in India as traders in the form of the East India Company (EIC). Under a Charter granted by Queen Elizabeth I, the company had the exclusive rights to trading in India. Initially, they only engaged in trading and were not motivated by political gains. **However, this scenario changed after their victory in the Battle of Buxar in 1764.**

The company which until now was only engaged in trade gained Diwani rights (rights over revenue) of Bengal, Bihar and Orissa. This marked the rise of EIC as a territorial force.

The company went on to administer India **till 1858 when the British Crown directly assumed control of India's affairs in the wake of the 'Revolt of 1857'. The British government went on to rule India till its independence on August 15, 1947.**

India's independence necessitated a Constitution for the country. In 1946, the Constituent Assembly was formed to draft the constitution. The Indian Constitution came into being on 26th January 1950.

Background of Indian Constitution:

- The Indian Constitution has a number of layers in its history. The British government enforced several acts to administer the country in a way

that worked the best and simultaneously created the History of Indian Constitution.

- In 1928, the All-Parties Conference convened a committee in Lucknow to prepare the Constitution of India, which was known as the Nehru Report.
- Most of India was under direct British rule from 1857 to 1947. Upon independence it became clear a new constitution was needed to be created. But for that the all of India needed to be brought into the union. This meant the Princely States needed to be convinced to become a part of the Indian union. Either by force or diplomacy. Sardar Vallabhbhai Patel and V.P Menon did this unenviable task. Until this happened India was still legally a dominion under the British, responsible for external security
- Thus, the constitution of India repealed the Indian Independence Act 1947 and Government of India Act 1935 when it became effective on 26 January 1950. India ceased to be a dominion of the British Crown and became a sovereign democratic republic with the constitution.

Indian Constitution Time Taken

The constituent assembly was **constituted on November 1946 and the first meeting of the constituent assembly was held on December 1946**. Under the chairmanship of **Dr. BR Ambedkar**, the constituent assembly established a drafting committee to come up with a draft of the Constitution for India.

It took around 11 sessions and 167 days, precisely 2 years 11 months and 18 days to prepare the final draft of the constitution with a total of 2000 amendments (approx.).

EVOLUTION

DEVELOPMENTS DURING COMPANY RULE (1773-1857)

During this period, East India Company (EIC) handled the Indian affairs under the overall supervision of British Parliament.

REGULATING ACT OF 1773

It was for the first time that British Government tried to overhaul the affairs of East India Company's Indian administration. It strengthened the Parliamentary control over Company. Important provisions of this Act were:

CHANGES IN ADMINISTRATION

- Governor of Bengal was designated as the **"Governor General of Bengal"**. Warren Hastings was the first such Governor General.
- It created an **Executive Council** of four persons to assist Governor General.

BEGINNING OF CENTRALISATION

It subsumed the presidencies of Bombay and Madras under Bengal's control. Thus it laid the foundations of **Central Administration** in India.

NEW JUDICIAL SYSTEM

Supreme Court was established at Fort William at Calcutta. It comprised of one chief justice and three other judges.

REFORMS IN EIC

- It prohibited the employees of East India Company from engaging in any private/personal trade and accepting gifts or bribes from locals.
- It restricted the Court of Directors to **four-year** terms.
- The Act did not prove to be a long-term solution to concerns over the Company's affairs despite the amending act of 1781, known as the **Act of Settlement**. It provided for:
- Exemption of the Governor-General and his Council from the jurisdiction of Supreme Court.

- It empowered the Governor-General Council to frame regulations for the Provincial courts and councils.
Further, Pitt's India Act was subsequently enacted in 1784 as a more radical reform.

PITT'S INDIA ACT OF 1784

SEPARATING COMMERCIAL AND POLITICAL FUNCTIONS

It started the system of double government. Court of directors of EIC were allowed to manage the commercial/financial affairs, however a six members board of controllers was set up for political activities.

INCREASING CONTROL OVER EIC

Board of Control was also empowered to supervise the civil, military and revenue affairs of British possessions in India.

CHANGES IN EXECUTIVE COUNCIL

The Executive council of the Company in India was reduced to three members.
There were series of Charter Acts passed from 1793 to 1853 in an interval of 20 years each.

CHARTER ACT OF 1793

ADMINISTRATIVE AND JUDICIAL REFORMS

- The Governor-General was given more powers. He could override his council's decision under certain circumstances.
- This Act **separated** the revenue administration and the judiciary functions of the Company.

CHARTER ACT OF 1813

Charter act of 1813 **ended the monopoly** of the EIC in India, however the company's monopoly in trade with China and trade in tea with India was kept intact.

POWERS TO LOCAL GOVERNMENT

- The Act also empowered the Local

Governments in India to impose taxes on persons subject to the jurisdiction of Supreme Court.

CHARTER ACT OF 1833

- From now Governor General of Bengal was designated as —Governor General of India. **Lord William Bentick** was the first Governor-General of India.
- For the first time, the Governor-General's Government was known as the 'Government of India' and his council as the 'India Council'.

CENTRALISATION AT ITS PEAK

- The Governor-General and his executive council were given exclusive legislative powers for the whole of British India. Thus it deprived the Governor of Bombay and Madras of their legislative powers.

REFORMS IN EIC

- It ended the activities of EIC as commercial body. It became an administrative body only.
- It attempted to introduce a system of open competitions in Civil Services examination. However, this provision was negated after opposition from the Court of Directors.

CHARTER ACT OF 1853

It was the final Act of Charter Act series. It marked the recognition of legislation as separate function of the Government.

CREATION OF INDIAN LEGISLATIVE COUNCIL

It **separated** the executive and legislative functions of the Governor General's Executive council. A separate Governor-General's legislative council was created through the addition of six new members in the Executive Council.

CIVIL SERVICES OPENED TO INDIANS

It introduced the **system of open competition** for the selection and recruitment of Civil Servants in India.

BEGINNING OF LOCAL ASSOCIATION

- **Local representation** was introduced in the new Legislative council created under this Act. Four members were appointed by the local (provincial) Governments of Madras, Bombay, Bengal and Agra.
- This was for the first time, that this Charter Act, unlike other charter acts, did not fix any limit for the continuance of the administration of the company in India.
- In the wake of Revolt of 1857 (also known as the First war of Independence) the company's rule came to an end. From now onwards the British crown assumed the direct responsibility to govern India.

GOVERNMENT OF INDIA ACT 1858



This significant Act was enacted in the wake of the Revolt of 1857—also known as the First War of Independence or the 'sepoy mutiny'. The act also known as the Act for the Good Government of India, abolished the East India Company, and transferred the powers of Government, territories and revenues to the British Crown.

The feature of this Act were as follows:

1. It provided that India, henceforth, was to be governed by, and in the name of, Her Majesty. It changed the designation of the Governor-General of India to that of Viceroy of India.
2. He (Viceroy) was the direct representative of the British Crown in India. Lord Canning, thus, became the first Viceroy of India.

3. It ended the system of double Government by abolishing the Board of Control and Court of Directors.
4. It created a new office, Secretary of State for India, vested with complete authority and control over Indian administration. The secretary of state was a member of the British Cabinet and was responsible ultimately to the British Parliament.
5. It established a 15-member council of India to assist the Secretary of State for India. The council was an advisory body. The secretary of state was made the Chairman of the council.
6. It constituted the Secretary of State-in Council as a body corporate, capable of suing and being sued in India and in England. 'The Act of 1858 was, however, largely confined to the improvement of the administrative machinery by which the Indian Government was to be supervised and controlled in England. It did not alter in any substantial way the system of Government that prevailed in India.

SECRETARY OF STATE AND HIS COUNCIL

New office of Secretary of State for India was created. The Secretary of State was a member of the British cabinet and was responsible ultimately to the British Parliament.

Also, a new advisory body named, Council of India was created to assist its chairman the Secretary of State for India.

CHANGING DESIGNATION

Governor General of India was now designated as **Viceroy** of India. Lord Canning was the first Viceroy of India.

To smoothen the political setup in India and to seek the cooperation of Indians in administration three Acts were enacted by British Parliament in 1861, 1892 and 1909.

INDIAN COUNCIL ACT OF 1861

BEGINNING OF DECENTRALISATION

- It restored the legislative powers of Bombay and Madras Presidencies taken away by the Charter Act of 1833. Thus, it began the **process of decentralization** in Indian administration.
- It provided for the creation of legislative councils for Bengal, North-Western Frontier Province (NWFP) and Punjab.
- For example, the number of Additional Members elected to the Central Legislative Council was increased to a range of ten to sixteen.
- Some non-official members were to be nominated in
 - (a) **Central** Legislative Council by the viceroy on the recommendation of the provincial legislative councils and the Bengal Chamber of Commerce, and
 - (b) **Provincial** legislative councils by the Provincial Governors on the recommendation of the district boards, municipalities, universities, trade associations, zamindars and chambers.
- It also increased the functions of legislative council. It **allowed councils to discuss** (not vote on) each year's annual financial statement (Budget).

QUICK FACT:

The system of Budget was introduced in British India in 1860.

Thus, whilst failing to answer calls for direct elections, the **principle of representation was introduced in 1892 Act.**

INDIAN COUNCIL ACT OF 1909 (MORLEY-MINTO REFORMS)

Morley-Minto Reforms



This Act was enacted after the Swadeshi movement (1905), formation of Muslim league (1906) and Surat split (1907) in Congress. There were huge expectations among moderate Congress members from this Act.

CHANGES IN LEGISLATIVE COUNCIL

- It established Indian dominance in the provincial, but not central, legislative bodies.
- 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. In provinces the increase was **not uniform**.
- Members were also enabled to debate budgetary and complementary matters and table resolutions.

RISE OF COMMUNALISM

- It introduced **separate electorates** where seats were reserved for Muslims and in which only Muslims would be polled. It marked the beginning of **communal representation** in India.
- **Satyendra Prasad Sinha** became the first

Indian to join the Viceroy's Executive Council. He was appointed as the law member.

GOVERNMENT OF INDIA ACT OF 1919 (MONTAGU- CHELMSFORD REFORMS)



This Act had a **separate Preamble** which declared that the objective of the British Government was the gradual introduction of responsible Government in India.

REFORMS IN ADMINISTRATION

- It **demarkated Central and Provincial subjects**. The Central and Provincial legislatures were authorised to make laws on their respective list of subjects. Despite these relaxations, Government structure continued to be centralised and unitary.
- **Diarchy was introduced at the Provincial level**. It means a dual set of Governments- one is accountable and other is not. The provincial subjects were divided into **transferred and reserved** subjects. The transferred subjects were to be administered by Governor with the aid of ministers accountable to legislative councils. The reserved subjects were to be administered by Governor without aid of ministers.
- Except Commander in Chief, **three out of six member of viceroy's executive**

council needed to be Indian.

LEGISLATIVE CHANGES

- No Bill of the legislature could be deemed to have been passed unless assented to by the Viceroy. The latter could however enact a Bill without the assent of the legislature.
- It made the Central Legislature **bicameral**. The lower house was the Legislative Assembly, and the upper house was the Council of States.
- The Franchise (Right of voting) was granted to limited number of people **on the basis of tax, property and education**.
- Provincial budgets was separated from the Central budgets for the first time.

EXTENDING COMMUNALISM

Principal of communal representation through separate electorate was extended to Sikhs, Anglo-Indians, Indian Christians and Europeans.

NEW INSTITUTIONS

- It provided for the establishment of a **Public Service Commission** in India for the first time.
- Some of the functions of Secretary of State was transferred to new office of High Commissioner for India.
- It made a provision that a Statutory Commission would be set up at the end of 10 years after the act to inquire into the working system of the government. The **Simon commission of 1927** was an outcome of this provision.

GOVERNMENT OF INDIA ACT OF 1935

This Act was passed in the backdrop of Simon Commission (1927), three round table conferences and Communal Award (1932). It was the lengthiest of all Acts and aimed to establish responsible Government in India.

INDIAN FEDERATION

It provided for the **establishment of an All-India Federation** consisting of provinces and

princely states as units.

CHANGES IN ADMINISTRATION

- It distributed the powers between Centre and provinces through three lists; federal, provincial and concurrent lists. Residuary powers were given to the Viceroy.
- Diarchy was introduced in the Centre. However, it did not come into operation.
- It abolished the Council of India, established by the Government of India Act of 1858. The secretary of state of India was provided with a team of advisers in its place.

DECENTRALISATION AT ITS PEAK

- It abolished diarchy in the provinces. It provided for **provincial** autonomy.
- It introduced **responsible Governments** in provinces, that is, the Governor was required to act with the advice of ministers responsible to the provincial legislature. It was discontinued after 1939.

LEGISLATIVE CHANGES

- **Bicameralism was introduced in six out of eleven provincial legislatures.** Bengal, Bombay, Madras, Bihar, Assam and the United Provinces were made bicameral.
- This Act introduced for the first time **the direct elections.** About 10% of the total population got the voting rights.

NEW INSTITUTIONS

- This Act vested the control of Railway in a new authority called **Federal Railway Authority**, which was free from control of ministers.
- It provided for the establishment of Federal Court to interpret the Act and adjudicate disputes relating to the federal matters.
- It provided for the establishment of Provincial Public Service Commission and Joint Public Service Commission for two or more provinces.
- It provided for the establishment of a Reserve Bank of India.
- Separate electorates for depressed classes

(scheduled castes), women and labour (workers) were introduced.

INDIAN INDEPENDENCE ACT OF 1947

It was the final Act of the British Parliament for India. It was enacted to give effect to **Mountbatten** plan (June, 1947).

INDEPENDENCE WITH PARTITION

- It provided for the Independence of India and ended the British rule.
- It provided for two dominion states: India and Pakistan.
- It provided for partition of Punjab & Bengal and separate boundary commissions to demarcate the boundaries between them.
- It provided, for each dominion, a Governor-General, who was appointed by the British King on the advice of the dominion cabinet.
- It proclaimed the lapse of British paramountcy over the Indian princely states and treaty relations with tribal areas from August 15, 1947.
- It abolished the office for Secretary of state for India.

CONSTITUTIONAL ADVANCEMENT

- The Constituent assemblies of both the dominions were free to make Constitutions of their respective countries.
- For the time being till the Constitution was made, both of them would be governed in accordance with the Government of India Act 1935.
- Those Civil servants who had been appointed before the August 15, 1947, will continue in service with same privileges.

On 15th August, 1947 British rule came to an end. India became independent and Constituent Assembly of India formed in 1946 became the Parliament of the Indian Dominion.