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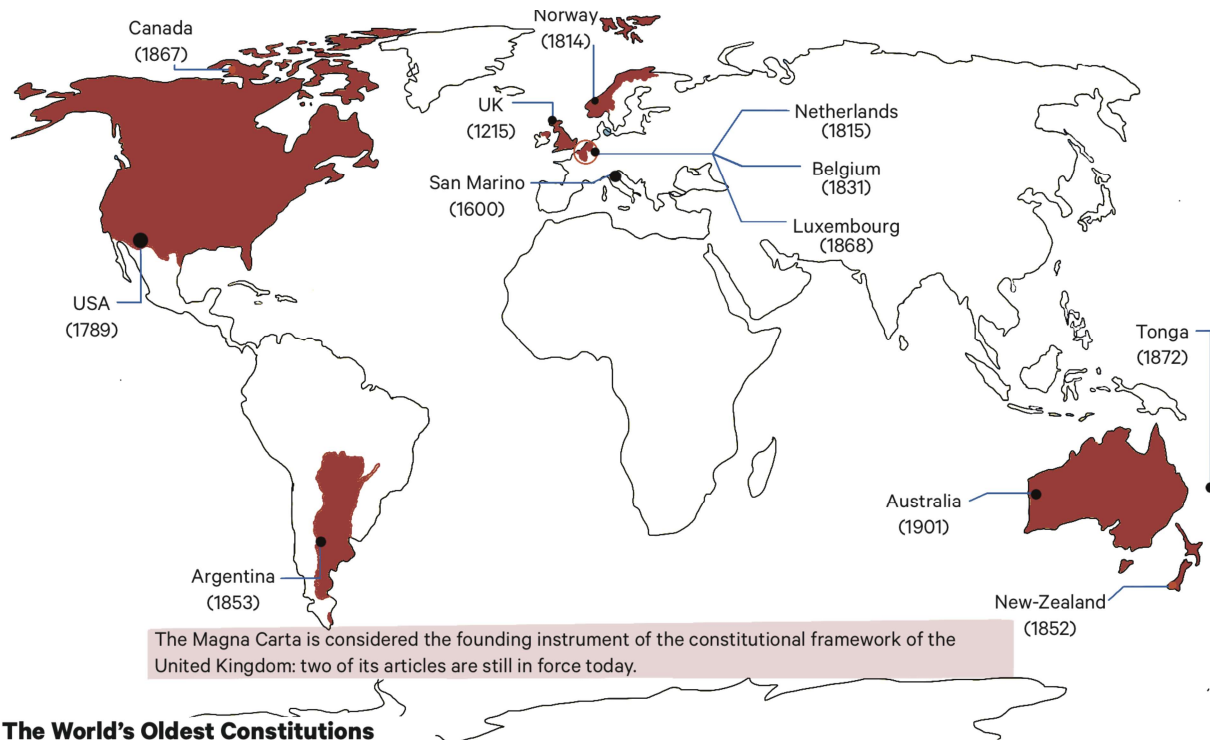
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IDEA PAGES

WHAT IS THE CONSTITUTION?

A constitution is the rule book for a state. It sets out the fundamental principles by which the state is governed. It describes the various institutions of

the state and defines the relationship between them (for example, between the executive, legislature and judiciary). It also sets the limits of the power of these institutions and sets out the rights and duties of its citizens.



PURPOSE AND FUNCTIONS OF A CONSTITUTION

- **Basic Rules:** A constitution provides a set of basic rules that allow for minimal coordination amongst members of a society
- **Constitution of Government:** It specifies who has the power to make decisions in a society. It decides how the government will be constituted.
- **Limitations on the power of Government:** It sets some limits on what a government can impose on its citizens. These limits are fundamental in the sense that government may never trespass them. Aspirations: It enables the government to

fulfil the aspirations of a society and create conditions for a just society.

- **Fundamental Identity:** A constitution expresses the fundamental identity of a people. This means the people as a collective entity come into being only through the basic constitution

CHARACTERISTICS OF A CONSTITUTION

- **Adaptability:** One of the most important characteristics of a good constitution is its ability to adapt to a changing society. A good constitution must be flexible to some extent. It must always adapt to the social, political, economic, technological and other changes that are inevitable in the prosperity of a country.

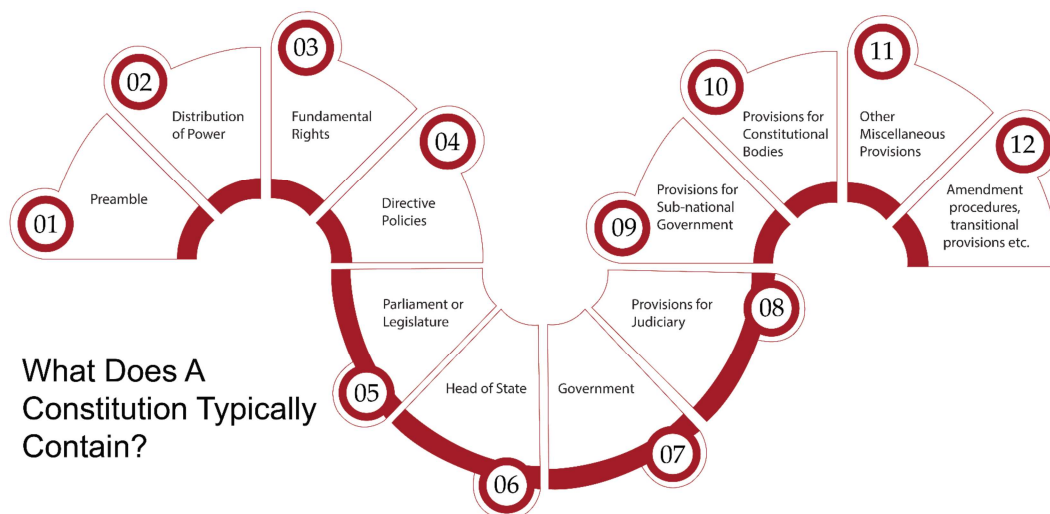
- **Responsibility and accountability:** It ensures accountability of the various institutions which exercise power.
- **Separation of power:** Separation of powers is one of the most important political theories that must be present in a political system to avoid dictatorship. The sharing of power among the three arms of the state and a system of checks and balances help avoid the concentration of power.
- **Representation of the people in government:** It is usually advisable for the constitution to provide for the representation of the people in government. This means that the people should be able to choose who can represent them at the federal, state and local levels of government.
- **Comprehensiveness:** The constitution must be comprehensive because the lives of the citizens depend on the information. If a constitution is not comprehensive enough, it will lead to confusion and the possibility of miscarriage of justice.
- **Protects the fundamental human rights of citizens:** It should protect the human rights of the citizens. Human rights are inalienable and immutable rights and are given to citizens because they are human beings.

- **Independence of the judiciary:** Any constitution that wants to safeguard its citizens' rights must protect and ensure the independence of the judiciary. Immunity of the judiciary is provided for, in the constitution of many countries of the world.

TYPES OF THE CONSTITUTION:

The Constitution helps check the country's legal, political and social functions in different ways. Below are the types of constitutions:

- **Codified Constitution:** Almost all constitutions are "codified", meaning they are written down clearly in a specific document called "the constitution".
- **Uncodified Constitution:** However, some countries, such as Israel, New Zealand and the United Kingdom, have "uncodified" constitutions, which means they are unwritten.
- **Procedural Constitution:** Here, the constitution mentions government agencies' legal and political structures and lays out the legal limits for government power to protect democratic processes and fundamental human rights (for example, the right to freedom, right to life etc.).
- **Perspective Constitution:** It provides a collective vision of what might be considered a good society based on a homogeneous community's common values and aspirations.



The constitution at the intersection of legal, social and political life:

As legal, political and social documents, constitutions are at the intersection of the legal system, the political system and society

1. **Constitution as legal instruments:** It makes the operation of power procedurally predictable, upholds the rule of law, and limits the arbitrariness of power. It is the supreme law of the land, and it provides the standards that ordinary statutes have to follow.
2. **Constitution as social declarations:** Constitution often attempts, to varying degrees, to reflect and shape society-for example, by expressing the (existing or intended) common identity and aspirations of the people or by proclaiming

shared values and ideals. These provisions are generally found in preambles and opening declarations but can also be found in oaths and mottos or on flags and other symbols that are defined by the constitution.

3. **Constitution as political instruments:** The constitution prescribes a country's decision-making institutions: the constitution identifies the supreme power, distributes power in a way that leads to effective decision making and provides a framework for continual political struggle. The political provisions show how state institutions (parliament, executive, courts, head of state, local authorities, independent bodies, etc.) are constituted, their powers, and how they relate to one another.

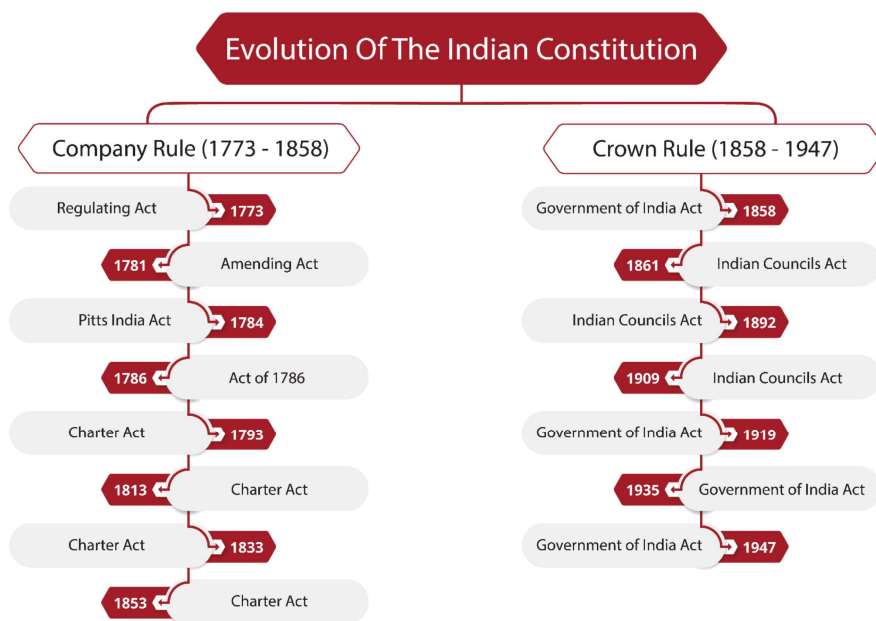
EVOLUTION OF CONSTITUTION

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. The evolution of the Indian Constitution can be traced back to various acts and policies undertaken during the **Company** and the **British** administration. The evolution can be studied under two broad timelines:

- The Company rule (1773-1858)
- The Crown rule (1858-1947)



THE COMPANY RULE (1773-1858)

REGULATING ACT OF 1773

Background

The Act was passed because of the following reasons:

- **Inefficient Dual System:** Company officials were taking advantage of the system of dual government in Bengal which was introduced by Robert Clive after the victory of the British in the Battle of Buxar (1764). Neither the Nawab of Bengal who had Nizamat rights (judicial and political rights) nor the company which had diwani rights cared for the welfare of the people. As a result, farmers and the general population suffered as their improvement was neglected which led to a great famine in Bengal in 1770.
- **Misgovernance:** Company was in a severe financial crisis due to misgovernance in Bengal, the Bengal famine and the prevalence of corruption among the company officials.
- **Financial Distress:** The defeat of the company against Mysore's Hyder Ali in 1769 gave a great blow to the company's financial situation. As a result, the Company asked for a **loan of 1 million** pounds from the British government in **1772**. Thereafter, the British parliament considered it important to regulate the affairs of the company and passed the **Regulating Act of 1773**.

Provisions of the Act

- **Designation:** Changed the designation of the Governor of Bengal as the Governor General of Bengal. **Warren Hastings was appointed as the first Governor General of Bengal.**
- **Executive Council:** Constituted a **four-person Executive Council** to assist the Governor General of Bengal in his role.
- **Centralisation:** The Governors of Bombay and Madras were made subordinates to the

Governor-General of Bengal. With this, the autonomy of the Governor of Bombay and Madras was diminished.

- **Supreme Judiciary:** A Supreme court in Calcutta was established comprising one chief justice and three other judges. It had civil and criminal jurisdiction over the British subjects and not Indian natives.
- **Restriction on private trade:** The Act barred the officials of the company from engaging in private commerce or receiving bribes and gifts from the native population.
- **Accountability of EIC:** It mandated that the Company's governing body, the Court of Directors, disclose all its affairs to the British Government, including revenue, civil, and military matters.

Significance of the Act

- It was the first step by the British parliament to regulate and control the affairs of the East India company.
- It **laid the foundation of centralised administration** in India by making the Governors of Bombay and Madras presidencies subordinate to the Governor-General of Bengal.
- For the first time ever, the political and administrative functions of the company in India were officially recognised.

Issues with Act

There were practical loopholes in enacting the **Regulating Act (1773)**, such as:

- Governor General didn't have any veto power in the Executive council.
- Powers of the Supreme court were not well defined.
- Governors of Madras and Bombay restrained themselves from following the orders of the Governor-General of Bengal, whose biggest example was the First Anglo-Maratha war (1775-82).

These issues were addressed by the passing of subsequent acts by the British parliament.

AMENDING ACT OF 1781

Background

It was passed by the British Parliament on 5th July 1781 to remove the defects of the Regulating Act of 1773. It is also known as the **Act of Settlement, 1781**.

Provisions of the Act

- **Judicial Changes:** Acts done by the Governor General, its Council and the servants of the Company in their official capacity were exempted from the jurisdiction of the Supreme court.
 - ♦ All the **matters related to revenue** were also exempted from the jurisdiction of the court.
 - ♦ Court's **geographical jurisdiction** was applicable to all inhabitants of Calcutta. Hindus were to be tried according to the Hindu law and Muslims were to be tried according to the Mohammedan law.
 - ♦ The Court's **appellate jurisdiction** was also curtailed. The appeals from the Provincial Courts could be taken to the Governor-General-in-Council and not to the Supreme Court.
- It empowered the Governor-General-in-Council to frame regulations for the Provincial Courts and Councils.

Significance of the Act

Amending Act of 1781 was the first attempt in India towards the separation of the executive from the judiciary by defining the respective areas of jurisdiction.

PITT'S INDIA ACT OF 1784

Background

The Act was passed by the British parliament to fix the flaws of the Regulating Act, of 1773. The

Company's Court of Directors was known to be corrupt. Thus, the Act reduced their authority and demarcated the company's commercial and political roles.

Provisions of the Act

- It introduced the system of **double government**. A Board of Control was created for managing political affairs and the Court of directors was entrusted with managing only the commercial affairs of the company.
 - ♦ In this system, the British government was represented by the Board of Control and the company was represented by the Court of Directors
- The Act gave the Board of Control (BOC) control over all civil and military operations and revenues of the "British Possessions" in India.
- The Governor-General's council's strength was reduced to three members.

Significance of the Act

- The Company's territories in India were for the first time called the '**British possessions in India**'.
- The British government was given the supreme court over Company's affairs and its administration in India.
- It was in continuation of the policy of decentralisation of administration which began by enacting the Regulating Act, 1773.

CHARTER ACT OF 1786

Background

The Act was passed to fulfil the demands of Lord Cornwallis to appoint him as the Governor-General.

Provisions of the Act/demands of Lord Cornwallis

- He should be given the power to override the decision of his council in special cases.
- He would also be the Commander-in-Chief.

CHARTER ACT OF 1793

Background

It was passed by the British Parliament **to renew the charter** of the East India Company. This act authorised the trade monopoly of the company with India for the next 20 years.

Provisions of the Act

- The **company's trade monopoly** in India was extended for another 20 years.
- The overriding power given to Lord Cornwallis over his council was extended to all future Governors-General and Governors of Presidencies.
- The Act gave **more powers to the Governor-general** over the presidencies of Bombay and Madras.
- The company was now made responsible for the payment of the employees and the Board of Control from the Indian revenues. Also, the company was required to pay the British government Rs.5 lakhs from Indian revenue each year.

CHARTER ACT OF 1813

Background

It was passed **to renew the company's charter** for another 20 years. The company's monopoly to trade in the east was severely opposed by the local British merchants including some parliamentarians. So, this act also allowed other merchants to trade in India under a strict licensing system.

Provisions of the Act

- **Partial Trade Monopoly:** It ended the trade monopoly of the company except for trade in tea and trade with China.
- **Sovereignty:** It asserted the Crown's sovereignty over British possessions in India.

- **Religious Activities:** It granted permission to the Christian missionaries to come to India and engage in religious proselytization.
- **Empowering local government:** It empowered the local governments to tax people including punishing people in case of non-payment of taxes.
- **Education:** A sum of Rs. 1 lakh was granted for the education of the Indians.

CHARTER ACT OF 1833

Background

The Act was passed by the British Parliament to renew the charter of the East India Company (EIC) for the next 20 years. It deprived the company of the commercial privileges which it enjoyed so far.

Provisions of the Act

- **Administrative body:** EIC became purely an administrative body. The Act provided that the company's territories in India were held on behalf of the British crown.
- **Designation:** It made the Governor General of Bengal the Governor General of British India. All financial, administrative and military powers were centralised in the hands of the Governor General-in-Council. **Lord William Bentinck** became the **"First Governor General of British India"**.
- **Centralisation:** It deprived the governors of Bombay and Madras of their legislative powers. The Governor-General of India was given exclusive legislative powers for the entire British India.
- **Law Commission:** It provided for the establishment of **an Indian Law commission** for the codification of laws. **Lord Macaulay** was made the Chairman of the Law Commission.
- **Open Competition:** It attempted to introduce a system of open competition (including Indians) for the selection of civil

servants but couldn't be implemented due to opposition from the Court of Directors.

- **Resident rights:** It allowed the British to freely settle in India.

Significance of the Act

- Centralization of the Indian administration reached its zenith after the elevation of the Governor General of Bengal as the Governor-General of India.
- EIC was made a trustee of the British crown in the field of administration.
- India's first Law commission was constituted which was responsible for drafting the **Indian Penal Code (IPC)** which was enacted later in 1860.

CHARTER ACT OF 1853

Background

This Act was primarily passed to renew the charter of the East India Company. It was the last charter act passed by the British parliament. There were other reasons as well for passing the act-

- There were concerns raised about the Governor-General of India's role as Governor of Bengal because it led to some decisions in favour of Bengal.
- There was also a call for decentralisation of the power and giving the Indians a say in how their own lives were run.

Provisions of the Act

- **Unpredictable Company Rule:** It extended the Company's rule and allowed it to retain the possession of Indian territories on trust for the British Crown. But it did not specify any particular period, unlike the previous Charters.
- **Separation of power:** The governor-general's Council's legislative and executive functions were separated for the first time. A separate Indian (Central) legislative council was constituted which included 6 members as

legislative councillors. The Indian (Central) Legislative Council was like a small Parliament (on the same lines as the British Parliament).

- **Administrative inclusion:** The Government required Good civil servants to help write and implement the law. Hence, it introduced an open competition system of selection and recruitment of civil servants including Indians.
- **Local Representation:** For the first time, local representation was introduced into the legislative council in the form of four members from the local governments of Bengal, Bombay, Madras and North Western Provinces.

Significance of the Act

- For the first time, legislation was seen as a special job for the Government, which needed special tools and a special process.
- Unlike the previous charters, it indicated that the Company rule could be terminated any time the parliament liked.
- It was the first step towards the inclusion of Indians in administration and law-making.

CROWN RULE (1857-1947)

People in India were angry, resentful, and had a lot of complaints about the policies of the company which led to the Revolt of 1857. This warranted a change in the way people were treated and administered. As a result, the British government decided to dissolve the East India Company and run India on its own. From 1858 to 1947, India was run by the British Crown.

Under the Crown rule, All Acts were called either the Indian Council Acts or the Government of India (GOI) Acts.

GOVERNMENT OF INDIA ACT, 1858

Background

It is also known as the Act of Good Government of India. The act was enacted to transfer the powers of the government, administration, revenue and

territories to the British crown. The act aimed at dissolving the East India Company, whose policies were blamed for the rebellion.

Provisions of the Act

- Indian territories were to be governed in the name of the British Queen.
- **Secretary of state:**
 - ♦ The Court of Directors and the Board of Control were scrapped, and a new office called the “**Secretary of State for India**” (**SOS**) was created.
 - ♦ **Advisory council:** A **15-member Council was established by the Act** to support the Secretary of State, but this Council was an Advisory body.
 - ♦ **Designation:** The Act changed the designation of the Governor-General of India to **Viceroy of India**. He had to be assisted by an Executive Council. **Lord Canning became the first Viceroy of British India.**
 - ♦ **Powers of Secretary of State:** He had complete control and authority over the Indian administration. Secretary of state was a member of the British Cabinet whose ultimate responsibility lied to the British parliament. He was also the channel of communication between the British government in Britain and the Indian administration.

Significance of the Act

- **Direct rule:** This act made India a direct British colony.
- **Focused on administrative machinery:** Most of the work done by the **GOI Act, 1858**, was done to improve the administrative machinery in England. Its objective was to keep the Indian Government in check. However, no substantial changes were brought in the system of Governance which prevailed in India.

In the Charter Act of 1853, a new Legislative Council called the Indian (Central) Legislative Council was introduced. After the 1857 war of Independence, the British Government thought it was important to get help from Indians in running the administration. Three acts were passed in 1861, 1892, and 1909 by the British Parliament in order to follow this “policy of association”. Those acts were famously known as the **Indian Councils Act**.

INDIAN COUNCILS ACT – 1861

Provisions of the Act

- **Non - official members:** It enabled the Viceroy of India to nominate some Indians as non-official members of his expanded Legislative Council. In 1862, Lord Canning, the viceroy at the time, put three Indians in his legislative Council- **Raja of Benares, Maharaja of Patiala and Sir Dinkar Rao.**
- **Decentralisation:** The process of decentralisation was started. The Bombay and Madras Presidencies were given legislative powers again (legal devolution).
- **New legislative bodies:** It also provided for the creation of new legislative bodies for Bengal, the North-Western Frontier Province (NWFP), and Punjab.
- **Ordinance powers:** The Viceroy was given the power to promulgate ordinances without the council’s concurrence during emergencies. Such an ordinance could not last more than six months
- **Recognised Portfolio system:** The ‘**Portfolio system**’ introduced by Lord Canning in 1859 was recognised. This system worked somewhat similar to the modern-day cabinet system. Six members of the Executive Council took charge of different parts of the business.

Significance of the Act

- **Representative institutions:** It marked the beginning of representative institutions by

associating Indians with the law-making process.

- **Introduced Decentralisation:** It reversed the policy of centralisation under the Company's rule which was started by the Regulating Act of 1773 and reached its climax under the Charter Act of 1833.

INDIAN COUNCILS ACT – 1892

Background

After 1861, there was an increase in the organised political activities in the country. Organisations such as Poona Sarvajanik Sabha and British Indian Association were actively engaged in enhancing political consciousness and feeling of nationalism among masses. In 1885, the Indian National Congress was formed which put forward demands such as reforms of legislative councils and the use of elections instead of nominating members in the councils.

Provisions of the Act

- **Increased non - official members:** Number of Indian (non-official) members of the Central and provincial legislative councils were increased. However, the majority of the members in the council were not Indians.
- **Empowered legislative councils:** The role of legislative councils was expanded. It gave them the power to discuss the budget and ask questions to the executive.
- **Power of recommendation:** The district boards, municipalities, universities, zamindars, and chambers of commerce could now recommend Indians to be non-official members of the provincial councils.
- **Election process:** In a very small way, the Act made it possible for some non-official seats in the Central and provincial legislative councils to be filled by a by-election. However, “election” was not used in the Act.

Significance of the Act

In a very limited sense it initiated the principle of representation. As a result, the number of Indians increased in the legislative councils. This enabled leaders like Gopal Krishna Gokhale to enter the councils and enhance political consciousness among the masses.

INDIAN COUNCILS ACT – 1909/ MINTO-MORLEY REFORMS

Background

The Act was passed due to the following reasons:

- Lord Curzon partitioned Bengal into two parts in 1905 which led to a huge revolution in Bengal. Due to this, British rulers understood the need for reforms in the governance of Indians.
- The Indian National Congress (INC) also pushed for more changes and for Indian self-government. In 1906, the INC demanded ‘home rule’ for the first time.
- The plan for a separate electorate for Muslims was led by **Aga Khan** when they met Lord Minto in 1906 in Shimla.

As a result, this act was passed in 1909 to get moderates in the Indian National Congress and Muslims on the side of the British administration.

Provisions of the Act

- **Number of seats increased :** It increased the number of seats in Legislative Councils- both central and provincial.
 - ♦ Strength of the Central legislative council increased from 16 to 60
 - ♦ Strength of the provincial legislative council was not uniform.
- **Majority in councils:** The official majority in the Central Legislative Council was maintained, while the non-official majority in provincial legislative councils was allowed.

- **More powers to Legislative councils:** Legislative councils at both levels were given more authority to act, including the ability to pass budget resolutions and ask supplemental questions.
- **Indians in executive council:** For the first time, The Viceroy and Governors could associate Indians with the executive councils". **Satyendra Sinha was the first Indian to be appointed to Viceroy's executive council.**
- **Separate electorates:** It introduced the concept of a separate electorate for Muslims. Under this, Muslim members could be appointed by Muslim voters only.

Significance of the Act

- **Increased participation:** Indians were given membership in the Imperial Legislative Council for the first time.
- **Communalism:** This act legalised 'Communalism', and **Lord Minto** came to be known as the **Father of Communal Electorate.**

In 1917, Edwin Samuel Montague, the then-Secretary of State for India, issued the historic August Declaration of 1917 or Montague Reforms, establishing British policies in India. British Prime Minister David Lloyd George announced on August 20, 1917, that the "gradual establishment of responsible administration" in India was his government's goal. Consequently, the laws which came are referred to as the Government of India Acts (GOI)

GOVERNMENT OF INDIA ACT -1919

Background

The act was based on the recommendations of a report by Edwin Montague, the then Secretary of State for India, and Lord Chelmsford, India's Viceroy between 1916 and 1921. It was in line with the announcement of the British PM to gradually establish responsible administration in India. This

shift in British policy was due to the 'Home Rule' movement of 1916 which was led by Tilak and Annie Besant.

Provisions of the Act

- **Legislative powers:** Central and provincial legislatures could legislate on their lists of subjects, distinct from one another. Governor was the executive head of the province.
- **Separation of Budget:** Separated the provincial budget from the central budget for the first time. Now, Provincial legislatures could enact their budgets.
- **Introduction of Dyarchy:** For the first time Dyarchy was introduced in the provinces under which Provincial subjects were further subdivided into two categories: **transferred subjects** and **reserved subjects**. **Sir Lionel Curtis** is known as the **Father of the Dyarchy**.
 - ♦ **Transferred subjects** were administered by the Governor with the help of ministers who were accountable to the Legislative Council. Examples- education, local government, health, excise, industry, public works etc.
 - ♦ **Reserved subjects** were administered by the Governor and his executive council. They were not accountable to the council. Examples- law and order, irrigation, finance, land revenue, etc.
- **Introduction of Bicameralism:** The act introduced Bicameralism. The Imperial legislative council was replaced by an Upper House and a Lower house.
- **Introduced Direct election :** For the first time **Direct elections** were introduced in the country's upper and lower houses. The majority of members in both houses were elected by direct election. Voting rights were given to a limited number of people based on property, tax or education.
- **Viceroy executive council :** It allowed the **appointment of 3 Indian members** in the

Viceroy's Executive Council (other than the Commander-in-chief).

- **Extension of Separate electorates:** Separate electorates were extended to Sikhs, Christians in India, Anglo-Indians, and other Europeans.

Simon's Commission -1927

British Government announced the formation of a seven-member statutory commission two years ahead of the scheduled time. **Sir John Simon was the Committee's chairman.**

Under the new Constitution, a statutory committee was established to examine India's then state of affairs. All parties boycotted the commission because it was made up entirely of British members. In 1930, the commission presented its findings.

The Recommendations under Simon's Commission

- Abolish dyarchy
 - Extend responsible Government in the provinces
 - Establishment of a federation of British India and princely states
 - Continuation of the communal electorate.
- **New authority:** It established a new office for the High Commissioner for India in London and shifted part of the duties of the Secretary of State to him.
 - **Public Service commissions:** It provided for the constitution of a Public Service Commission. The commission was set up in 1926 for the recruitment of civil servants.
 - **Statutory commission:** It provided that the viceroy would appoint a statutory commission to investigate and make a report on the law's performance after ten years of operation.

GOVERNMENT OF INDIA ACT - 1935

Background

British Government arranged three round table conferences with members from the British government, British India, and Indian princely States to explore the recommendations of the Simon Commission. A '**White Paper on Constitutional Reforms,**' based on the discussions at the conferences, was drafted and presented to the Joint Select Committee of the British Parliament. The Committee's recommendations were included in the 1935 Government of India Act with certain modifications.

Provisions of the Act

- **Provincial autonomy:** It abolished '**dyarchy**' in the provinces and introduced '**provincial autonomy**'. Responsible government in provinces was introduced i.e the Governor was required to act on the advice of ministers responsible to the provincial legislature. However, it was in operation only from **1937 to 1939**.
- **Dyarchy at the centre:** It provided for the adoption of dyarchy at the Centre, i.e Federal subjects were divided into 'transferred' and 'reserved' subjects. However, this never came into operation.
- **Bicameralism in provinces:** It introduced bicameralism in six out of eleven provinces. Those six provinces were Bengal, Bombay, Madras, Assam, United Provinces and Bihar.
- **Division of powers:** It divided the powers between the centre and provinces into three lists- **Central list, Provincial list and Concurrent list**. The Residuary powers were vested with the Governor.
- **All - India Federation:** Provided for the establishment of an All-India Federation consisting of provinces and princely states as units. (However, the federation never came into being as the princely states did not join it.)

- **Extension of separate electorates:** It extended the separate electorates to the depressed classes (scheduled castes), women and labour (workers).
- **Extension of Franchise:** Nearly 10% of the population got voting rights.
- **Federal court :** Provided for the establishment of a Federal Court which was set up in 1937.
- **Reserve Bank of India:** Provided for the establishment of a Reserve Bank of India to control the currency and credit of the country.
- **Created Public service commissions:** Created **Federal Public Service Commission (PSC)** and **Provincial PSC** and **Joint PSC** for two or more states.

Significance of the Act

The Government of India Act intended to bring a completely responsible government to the British Indian provinces. Large-scale elections were also conducted for the first time in all the provinces in 1937 as per the provisions of the Act. Many of the provisions and the framework of the Indian constitution have been taken from this act, and hence, this act is also called the '**Mini Constitution**'.

INDIAN INDEPENDENCE ACT OF 1947

Background

Lord Mountbatten came to India with the specific task of handing over the authority to Indians. But the INC and the League could not agree on the question of partition. Finally, Mountbatten came up with the last plan known as the 3rd June Plan or the Mountbatten Plan which was accepted by all parties. The INC, which was opposed to any partition of the country, finally accepted it as an inevitable process. The plan was accepted by both the Congress and the Muslim League. This proposal was given immediate effect by enacting the **Indian Independence Act (1947)**.

Provisions of the Act

- **End of British rule:** It terminated British authority in India and declared India an

independent and sovereign state on August 15, 1947.

- **Partition of India :** It provided for India's partition, and two dominions, India and Pakistan, were created with a right to secede from the Commonwealth.
- **Removed British offices:** It removed the offices of Viceroy and Secretary of State
- **Ended British responsibility:** It provided that the British Government would bear no responsibility for the governments of India or Pakistan. Instead, it gave the Constituent Assembly of both dominions the authority to draft and approve a constitution and annul any act of the British Parliament, including the Independence Act itself.
- **Ended British paramountcy:** It declared the end of British supremacy over the Indian princely kingdoms and the termination of treaty connections with tribal areas on August 15, 1947. It gave Indian princely kingdoms the option of joining the Dominion of India or the Dominion of Pakistan or remaining independent.
- **Nominal heads:** It established the Governor-General of India and provincial governors as the states' constitutional (nominal) heads. They were mandated to follow the advice of their respective ministerial councils on all subjects.
- **Civil services :** It discontinued the appointment to civil services and reservation of posts by the Secretary of State for India.
- **Royal titles changed:** It provided that The British emperor would cease to use the title 'Emperor of India'

Lord Mountbatten was appointed as the Dominion of India's first governor-general. He swore in Jawaharlal Nehru as the country's first prime minister. The Constituent Assembly of India, established in 1946, became the Indian Dominion's first Parliament.

MAKING OF THE CONSTITUTION

The Constitution of India came into effect on January 26, 1950, and transformed the Dominion of India into the Republic of India. It had been drafted, discussed, and finalised by the Constituent Assembly between 1946 and 1949. The Constituent Assembly of India was formed following the Cabinet Mission of 1946 and had its first meeting on December 9, 1946. It witnessed the historical journey of India's independence, discussed various provisions of the Constitution, took decision on the national flag and finally adopted the Constitution of India.

CONSTITUENT ASSEMBLY: DETAILS

In 1934, **M. N. Roy**, a pioneer of communist movement in India, came up with the idea of having a constituent assembly. Later, in 1935, the Indian National Congress (INC) officially demanded the setting up of a Constituent Assembly for framing the Constitution of India. This demand for the constitution of a Constituent Assembly on the basis of the adult franchise was reiterated by the INC in 1938.

August Offer

In early 1940, Lord Linlithgow, the then Viceroy of India responded to these demands through the **August Offer**.

This proposal included:

- the establishment of an advisory war council,
- the inclusion of more Indians in administration, and

- recognized the right of Indians to frame their own Constitution after the end of the Second World War.

The offer was, however, rejected by both Congress Working Committee and the Muslim League.

Cripps Mission

The Cripps Mission, headed by Sir Stafford Cripps, was sent in March 1942. It was entrusted with drafting a draft proposal on framing of an independent constitution after the end of World War II. However, It also failed in its objective.

Cabinet Mission

In 1946, the Cabinet Mission was sent to India with the **objective to discuss the transfer of power from the British Government to Indian leadership**.

- It held discussions with representatives of British India and the Indian States to set up a Constituent body.
- It put forth a scheme for the formation of the Constituent Assembly.

The scheme was accepted by the Indian National Congress and the Muslim League. However, it **rejected the idea of two Constituent Assemblies**. Thus, the Constituent Assembly for India was formed under the provisions of this plan.

FORMATION OF CONSTITUENT ASSEMBLY

The Constituent Assembly was constituted in November 1946. The primary task of the Constituent

Assembly was to frame a Constitution for India to enable the appropriate transfer of sovereign power from British authorities to Indian leadership. To give adequate representation to various sections, the Assembly had representation from existing provincial legislatures and from various princely states.

- **Composition:** There were to be a **total of 389 representatives** from the entire India to form the Constituent Assembly. This included **296 representatives from British India and 93 seats were allocated to the princely states.**
- **Allocation of seats:** Every province and princely state was to be allotted seats in proportion to their respective population. Roughly, for **every one million population, there was to be one representative.** In British provinces, allocated seats were divided among the **three principal communities – Muslims, Sikhs, and General (all except Muslims and Sikhs),** in proportion to their population.
- **Mode of election:** **The members of the Constituent Assembly were not elected directly by the people of India.** Instead, it was to be a partially indirectly elected and partially nominated body. Members from provinces were selected by the members of the provincial legislative assembly. This was done on the basis of proportional representation by the method of a single transferable vote. In the case of princely states, the representatives were to be nominated by the heads of princely states.
- **Participation of princely states:** Initially, the princely states did not participate in the Constituent Assembly as they wanted to establish and rule their independent states after the exit of the British administration
- **Representation:** The Constituent Assembly thus formed included all important personalities at the time with the **exception of Mahatma Gandhi.** It gave representation to various sections of society including Hindus,

Muslims, Sikhs, Parsis, Anglo-Indians, Indian Christians, SCs, STs and women.

- **Elections:** The elections to the Constituent Assembly (for 296 seats allotted to the British Indian Provinces) were held in July-August 1946. The Indian National Congress won 208 seats, the Muslim League 73 seats and the small groups and independents got the remaining 15 seats.

The members of the Constituent Assembly held their first meeting on **December 9, 1946.** This was boycotted by the Muslim League which insisted on a separate state of Pakistan. Thus, the meeting was attended by only 211 members and was presided over by **Dr. Sachchidananda Sinha** who was the oldest member in the Assembly. Later, **Dr. Rajendra Prasad** was elected as the **President of the Assembly.** The Assembly also had **two Vice-Presidents: H.C. Mukherjee and V.T. Krishnamachari.**

Further, the representatives of the princely states, who, initially, did not participate in the Constituent Assembly, gradually joined it. While only six states were part of the Constituent Assembly in 1947, after the acceptance of the Mountbatten Plan of June 3, 1947, most princely states took their seats in the Assembly. The members of the Muslim League from the Indian Dominion also took their place in the Assembly.

Changes made in the constituent assembly by the Indian Independence Act, 1947

- **Sovereign body:** It made the Assembly a fully sovereign body and also a legislative body. This meant that the Assembly could frame any Constitution and abrogate or alter any law made by the British government.
- **Legislative body:** As a legislative body, it performed two different functions: **framing the Constitution and enactment of ordinary laws for free India.**
- **First Parliament of free India:** The Assembly became the **first Parliament of free India:**

chaired by **Rajendra Prasad** to perform **constituent functions** and chaired by **G.V. Mavlankar** to perform **legislative functions**. This continued till November 26, 1949, when the task of making the Constitution was over.

- **Final strength:** After the partition of the country, the Muslim League members from the Pakistan Dominion withdrew from the Constituent Assembly for India. Thus, the final strength of the Assembly came down from 389 (originally fixed under Cabinet Mission Plan) to **299**.

WORKING OF THE CONSTITUENT ASSEMBLY

In the third meeting of the Constituent Assembly on 13th December 1946, Jawaharlal Nehru moved the '**Objectives Resolution**'. This resolution laid down the underlying principles and philosophy of the constitutional structure. The summary of the resolution read as follows:

- India is an independent sovereign republic with the power to draw up its own Constitution.
- Indian Union shall comprise territories of British India, the territories that now form the Indian States and other parts outside India and the States who are willing to be constituted into India.
- All the territories forming India shall be autonomous units with all powers and functions of Government and administration save and except such powers and functions as are vested in or assigned to the Union.
- All power and authority of sovereign independent India and its constituent parts are derived from the people.
- All people of the Indian Union shall be guaranteed and secured justice (social, economic and political); equality of status of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality.

- Adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes.
- The territorial integrity of the Republic and its sovereign rights on land, sea and air will be maintained according to justice and the law of civilised nations.
- India will make its full and willing contribution to the promotion of world peace and the welfare of mankind.

The Constituent Assembly, apart from framing the Constitution, performed other functions as well:

- Enactment of the **ordinary laws** of the country.
- Ratification of India's membership of the **Commonwealth** in May 1949.
- Adoption of the **national flag** on July 22, 1947.
- Adoption of the **national anthem** and **national song** on January 24, 1950.
- Elected Dr. Rajendra Prasad as the **first President** of India on January 24, 1950

It continued to function as the parliament of the country till the formation of the first parliament after the general elections of 1951-52. It took **2 years, 11 months and 18 days** to frame the Constitution of India.

COMMITTEES OF CONSTITUENT ASSEMBLY

The Constituent Assembly formed 22 committees to take up the responsibility of drafting the new Indian Constitution. Here are the following important committees:

Major Committees

There were 8 major committees

- Union Power Committee headed by Jawaharlal Nehru
- Union Constitution Committee headed by Jawaharlal Nehru
- States Committee (Committee for negotiating with states) headed by Jawaharlal Nehru
- Provincial Constitution Committee headed by Sardar Patel

- Drafting Committee headed by Dr. B.R. Ambedkar
- Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas headed by Sardar Patel. This committee had the following sub-committees:
 - ♦ Fundamental Rights Sub-Committee headed by J.B. Kripalani
 - ♦ Minorities Sub-Committee headed by H.C. Mukherjee
 - ♦ North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee headed by Gopinath Bardoloi
 - ♦ Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee headed by A.V. Thakkar
- Rules of Procedure Committee headed by Dr. Rajendra Prasad
- Steering Committee headed by Dr. Rajendra Prasad

Minor Committees

- Committee on the Functions of the Constituent Assembly headed by G.V. Mavalankar
- Order of Business Committee headed by Dr. K.M. Munshi
- House Committee headed by B. Pattabhi Sitaramayya
- Ad-hoc Committee on the National Flag headed by Dr. Rajendra Prasad
- Special Committee to Examine the Draft Constitution headed by Jawaharlal Nehru
- Credentials Committee headed by Alladi Krishnaswamy Ayyar
- Finance and Staff Committee headed by Dr. Rajendra Prasad
- Press Gallery Committee headed by Usha Nath Sen
- Committee to Examine the Effect of Indian Independence Act of 1947
- Committee on Chief Commissioners' Provinces headed by B. Pattabhi Sitaramayya

- Commission on Linguistic Provinces headed by S.K. Dar
- Expert Committee on Financial Provisions headed by Nalini Ranjan Sarkar
- Ad-hoc Committee on the Supreme Court headed by S. Varadachari
- Ad-hoc Committee on citizenship headed by S. Varadachari

DRAFTING COMMITTEE OF THE CONSTITUTION

A committee called the Drafting Committee was established on August 29, 1947. It was the most important of all the committees of the Constituent Assembly. The function of the drafting committee was to formulate a rough draft of the new Constitution.

Drafting Committee Consists of **Seven Members** (including Chairman).

Chairman – Dr BR Ambedkar

Members:

- N Gopalaswamy Ayyangar
- Syed Mohammad Saadullah
- Alladi Krishnaswami Ayyar
- KM Munshi
- N Madhava Rao substituted BL Mitter following his resignation on health issues
- Dr DP Khaitan (died in 1948 and was substituted by TT Krishnamachari)

Union Powers Committee and Union Constitution Committee were two of the committees in the Assembly that gave the main points of the proposed Constitution to the people. The Drafting Committee took 141 days to prepare the draft. This draft became the basis of discussion which later transformed into various provisions of the Constitution of India.

Enactment and Enforcement of the Constitution

The Drafting Committee that was led by Dr. Ambedkar published "**Draft Constitution of India**"

- The final draft of the Constitution, or the first reading, was presented to the Assembly on **November 4, 1948, by Dr. B R Ambedkar.**
- The second reading or clause-by-clause review began on November 15, 1948, and ended on October 17, 1949. They discussed and voted on as many as 2,473 amendments out of 7,635 that were proposed in the Assembly.
- In November 1949, the third reading of the draft began. Dr. B R Ambedkar moved a motion to pass the Constitution as it was agreed on by the Assembly. The vote on the draft constitution was declared to be done on **November 26, 1949**, and 284 members out of 299 signed it on January 24, 1950.

The Constitution that was put into place on November 26, 1949, had a **Preamble, 395 Articles, and 8 Schedules.** The Preamble was written after the rest of the Constitution was written. Some provisions of the Constitution pertaining to citizenship, elections, provisional parliament, temporary and transitional provisions, and short title contained in Articles 5, 6, 7, 8, 9, 60, 324, 366, 367, 379, 380, 388, 391, 392 and 393 came into force on November 26, 1949, itself.

ENFORCEMENT OF THE CONSTITUTION

The rest of the Constitution came into effect on **January 26, 1950.** It was on this day in 1930 that **Purna Swaraj Day** was celebrated, and the tricolour flag of independence was unfurled after the Indian National Congress passed a resolution at its Lahore Session (December 1929). This day is called the **“date of its commencement”** and is celebrated as **“Republic Day.”**

People in India began to live under the Constitution of India from January 26, 1950. The Constituent Assembly was discontinued. It became the Provisional Parliament of India until a new Parliament was formed in 1952.

With the commencement of the Constitution, the Indian Independence Act of 1947 and the Government of India Act of 1935, as well as all

other laws that changed or supplemented them, were abolished. The Abolition of Privy Council Jurisdiction Act of 1949, on the other hand, was still in place.

Expert Committee of the Congress

On July 8, 1946, the Congress Party (Indian National Congress) created an Experts Committee to prepare material for the Constituent Assembly while the elections were still ongoing. The members of this committee were as follows:

- Jawaharlal Nehru (Chairman)
- M. Asaf Ali
- K.M. Munshi
- N. Gopalaswami Ayyangar
- K.T. Shah
- D.R. Gadgil
- Humayun Kabir
- K. Santhanam

Later, on the recommendation of the Chairman, Krishna Kripalani was co-opted as a committee member and convener.

From July 20 to 22, 1946, the committee held its first meeting in New Delhi; from August 15 to 17, 1946, it held its second meeting in Bombay.

Contribution of the Experts Committee:

- Prepared a number of notes
- Discussed the procedure to be adopted by the Constituent Assembly
- Provided basic recommendations about autonomous zones, provincial governments' rights as well as the central government's ability to modify the constitution.
- Provided a resolution similar to the Objectives Resolution

British constitutional scholar Granville Austin remarked on the committee's importance in the constitution-making process: “It was the Congress Experts Committee that set India on the road to her present Constitution.”

CRITICISM OF THE CONSTITUENT ASSEMBLY

The critics have criticised the Constituent Assembly on various grounds, as follows

- **Non-Representative:** Critics have contended that the Constituent Assembly was not a representative body since its members were not directly elected by the people of India based on the universal adult franchise.
- **Not Sovereign:** According to critics, the Constituent Assembly was not a sovereign body because it was constituted by the British Government's proposals. They further claimed that the British government had given the Assembly permission to meet.
- **Long time taken:** According to critics, the Constituent Assembly took a long time to frame the Constitution. They compare it with the American Constitution whose framers completed their work in four months.
- **Congress dominated:** Critics argue that the assembly was dominated by only Congress. 'The Constituent Assembly was a one-party assembly in an essentially one-party republic,' Granville Austin argued that "The Assembly was the Congress, and the Congress was India,"
- **Dominated by Lawyers and Politicians:** Critics claim that the Constituent Assembly was dominated by lawyers and politicians. Other sections of the society were not sufficiently

represented. This, in their view, is the primary cause of the Constitution's bulkiness and complication.

6. **Hindu Dominated:** Critics argue that the Constituent assembly had the representation from only one major community that is Hindus and others were not adequately represented in the assembly.

Hindi Text of the Constitution

Originally, our Constitution was written in the English language only. Later, due to demand of the people for an official translation of the Constitution in Hindi, Parliament enacted 58th constitutional amendment Act in 1987 which inserted an article- 394-A under Part- XXII in the Constitution. This authorised the President to publish the Constitution in Hindi language under his authority. It also provided for other provisions such as-

- Every change/amendment made in the Constitution till 58th amendment shall also be translated in Hindi language.
- Hindi translation of the constitution and every amendment shall have the same meaning as that of original text written in the English language.
- Hindi text will also be considered as the authoritative text along with English text.

IMPORTANT FACTS

Elephant	It was adopted as the symbol (seal) of the Constituent Assembly.
Sir B.N. Rau	He was the legal/constitutional advisor to the Constituent Assembly.
H.V.R Iyengar	He was the secretary to the Constituent Assembly
S.N. Mukerjee	He was the chief draftsman of the constitution in the Constituent Assembly
Prem Behari Narain Raizada	was the calligrapher of the Indian Constitution.

Elephant	It was adopted as the symbol (seal) of the Constituent Assembly.
Nand Lal Bose and Beohar Rammanohar Sinha.	The original version of the constitution was beautified and decorated by these artists
Vasant Krishan Vaidya	The calligraphy of the Hindi version of the original constitution was done by him.