

Chapter – 2

History of Constitution

2.1 Introduction

- The British company known as English East India Company came to India in 1600 AD as traders.
- The Company has exclusive rights to trade in India. In the year 1765, the East India Company obtained 'Diwani' (Rights over revenue and civil justice) of Bengal, Bihar and Orissa.
- After the Sepoy mutiny in the year 1858, the British crown assumed direct responsibility for the governance of India. It continued up to August 15, 1947, after India is a free India. (India got independence)
- Before 1947, India was divided into two main entities.
- British India which consisted of 11 provinces; and
- The Princely states ruled by Indian princes under subsidiary alliance policy.
- The two entities merged together to form the Indian Union. Many of the legacy systems in British India are followed even now.
- The historical underpinnings and evolution of the Indian Constitution can be traced to many regulations and acts passed before Indian Independence.

2.2 Indian System of Administration

- Indian democracy is a Parliamentary form of democracy where the executive is responsible to the Parliament.

The Parliament has two houses:

- Lok Sabha; and
- Rajya Sabha
- Also, the type of governance is federal, i.e., there is separate executive and legislature at Centre and States.
- We also have self-governance at local government levels.
- All these systems owe their legacy to the British administration.

Let us see the historical background of the Indian Constitution and its development over the years.

2.3 Regulating Act of 1773

- Regulating Act of 1773 was the first step taken by the British Parliament to control and regulate the affairs of the East India Company in India.
- It designated the Governor of Bengal (Fort William) as the Governor-General (of Bengal).
- Warren Hastings became the first Governor-General of Bengal.
- Executive Council of the Governor-General was established (four members).
- There was no separate legislative council.
- It subordinated the Governors of Bombay and Madras to the Governor-General of Bengal.

- The Supreme Court was established at Fort William (Calcutta) as the Apex Court in the year 1774.
- It prohibited servants of the company from engaging in any private trade or accepting bribes from the natives.
- Court of Directors (the governing body of the company) should report its revenue.

2.4 Pitt's India Act of 1784

- The commercial and political functions of the company separated.
- The Court of Directors managed the commercial activities while the Board of Control managed political affairs.
- It has reduced the strength of the Governor General's council to three members. It placed the Indian affairs under the direct control of the British Government.
- The company's territories in India were called 'the British possession in India.
- Governor's councils were established in Madras and Bombay.

2.5 Charter Act of 1813

- The East India Company Act 1813, also known as the Charles Act 1813, was an Act of the Parliament of the United Kingdom which renewed the charter issued to the British East India Company and continued the Company's rule in India.
- The Company's monopoly over Indian trade terminated.

2.6 Charter Act of 1833

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

2.7 Charter Act of 1853

- The legislative and executive functions of the Governor-General 's Council were separated.
- The council of legislative purposes which had 6 members now was expanded to 12-members.
- Four out of six members were appointed by the provisional governments of Madras, Bombay, Bengal, and Agra.
- It introduced a system of open competition as the basis for the recruitment of civil servants of the Company (Indian Civil Service opened for all).

2.8 Government of India Act of 1858

- The role of the Company was replaced by the rule of the Crown in India.
- The powers of the British Crown were to be exercised by the Secretary of State for India. He serves assisted by the Council of India having 15 members.
- He was vested with complete authority and control over the Indian administration through the Viceroy as his agent.

- The Governor-General was made the Viceroy of India.
- Lord Canning was the first Viceroy of India.
- It abolished the Board of Control and Court of Directors.

2.9 Indian Councils Act of 1861

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

2.10 India Councils Act of 1892

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

2.11 Indian Council Act of 1909

- This Act is also known as the Morley- Minto Reforms.
- Elections, mainly indirect; were affirmed for all levels of society. The elected Indians were also enabled to debate budgetary and complementary matters and table resolutions.
- It changed the name of the Central Legislative Council to the Imperial Legislative Council.
- The number of members of the Central Legislative Council was increased to 60 from 16.
- Introduced a system of communal representation for Muslims by accepting the concept of separate electorate.
- The first time, Indians were given place in Viceroy's Executive Council. (Satyendra Prasad Sinha, as the law member)

2.12 Government of India Act of 1919

- This Act is also known as the Montague-Chelmsford Reforms.
- The Central subjects were demarcated and separated from those of the Provincial subjects.
- The scheme of dual governance, 'Dyarchy', was introduced in the Provincial subjects (i.e., there were two classes of administrator's Executive councillors and ministers).
- Under the dyarchy system, the provincial subjects were divided into two parts - transferred and reserved. On reserved subjects, governor was not responsible for the Legislative council.

- The Governor was the executive head of the province. The Governor was in charge of the reserved list along with his executive councillors. The subjects under this list were law and order, irrigation, finance, land revenue. etc.
- The Ministers oversaw subjects under the transferred list. The subjects included were education, local government, health, excise, industry public works, religious endowments, etc.
- The Ministers were responsible for the people who elected them through the legislature.
- These Ministers were nominated from among the elected members of the Legislative Council.
- The executive councillors were not responsible to the legislature, unlike the Ministers.
- The secretary of state and the Governor-General could interfere in matters under the reserved list, but his interference was restricted for the transferred list.
- The Act introduced, for the first time, bicameralism at the centre.
- Legislative Assembly with 140 members and Legislative council with 60 members.
- A system of direct elections was introduced.
- The Act also required that the three of the six members of the viceroy's Executive council (other than commander-in chief were to be Indians.
- Provided for the establishment of a public service commission.

2.13 Government of India Act of 1935

- The Act provided for the establishment of an All-India Federation consisting of the Provinces and the princely states as units, though the envisaged federation never came into being.
- Three Lists: The Act divided the powers between the centre and the units into items of three lists, namely the Federal List, the Provincial List, and the Concurrent List.
- The Federal List for the centre consisted of 59 items, the provincial List for the provinces consisted of 54 items and the concurrent List for both consisted of 36 items
- The residuary powers were vested in the Governor-General.
- The Act abolished the Dyarchy in the provinces and introduced Provincial Autonomy.
- It provided for the adoption of Dyarchy at the Centre.
- It introduced bicameralism in 6 out of the 11 provinces.
- At the State level, the equivalent of the Lok Sabha is the Vidhan Sabha (Legislative Assembly), and that of the Rajya Sabha is the Vidhan Parishad (Legislative Council)
- These six Provinces were Assam, Bengal, Bombay, Bihar, Madras and the United Provinces.
- A Federal Court was established at Delhi for the resolution of disputes between provinces and also between the center and the provinces. It has Chief Justice and not more than 6 judges.
- The Indian Council was abolished.
- The Secretary of State for India would instead have a team of advisors.
- This Act introduced direct elections in India for the first time. About 10% of the whole population acquired voting rights.
- Sindh was carved out of Bombay Presidency. Burma was severed off from India.
- Aden was also separated from India and made into a Crown colony.
- The British Parliament retained its supremacy over the Indian legislatures both provincial and federal.
- A Federal Railway Authority was set up to control Indian railways. The Reserve Bank of India was established as per this Act.

- The Act was a milestone in the development of a responsible constitutional government in India. The Government of India Act 1935 was replaced by the Constitution of India after independence.

2.14 Indian Independence Act of 1947

- Lord Mountbatten became the first Governor-General of independent India. Jawaharlal Nehru was sworn in as the first Prime Minister of India.
- Muhammad Ali Jinnah became the first Governor-General of Pakistan.
- The Act ended the British rule and declared India as an independent and sovereign state from August 15, 1947.
- It provided for the partition of the country into India and Pakistan.
- The office of Viceroy was abolished and provided for the Governor -General for each dominion (India and Pakistan) appointed by the king.
- The Act empowered the constituent assemblies to frame and adopt any constitution.
- The Indian Independence Act granted freedom to the princely states either to join India or Pakistan or to remain independent.
- An idea for a Constituent Assembly of India was proposed in 1934 by M. N. Roy, a pioneer of the Communist movement in India and an advocate of radical democracy.
- It became an official demand of the Indian National Congress in 1935.
- The constituent assembly constituted in November 1946 under the scheme formulated by the Cabinet Mission plan.
- The Constituent Assembly met for the first time in New Delhi on 9 December 1946 in the Constitution Hall which is now known as the Central Hall of Parliament House.
- Constituent Assembly declares its firm and solemn resolve to proclaim India as the Independent Sovereign Republic and to draw up for her future governance of India.