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Indian Polity - I

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INDEX

1. Historical Background.....	6
1.1. The Company Rule (1773-1858).....	6
1.2. The Crown Rule (1858-1947).....	8
2. The Constitution.....	11
2.1. What is constitution?.....	11
2.2. Classification of Constitutions.....	11
2.3. Salient Features of the Constitution.....	11
2.4. Making of the Indian Constitution.....	13
2.5. Composition of the Constituent Assembly.....	13
2.6. Working of the Constituent Assembly.....	13
2.7. Objectives Resolution.....	14
2.8. Committees of the Constituent Assembly.....	14
2.9. Drafting Committee.....	15
2.10. Sources of Indian Constitution.....	15
2.11. Parts of the Indian Constitution.....	16
2.12. Schedules of the Indian Constitution.....	16
3. Preamble.....	18
3.1. Text of the Preamble.....	18
3.2. Nature of the Preamble.....	18
3.3. Basic Values in the Preamble.....	18
3.4. Whether Preamble is a part of the Constitution or not?.....	20
3.5. Whether Preamble can be amended or not?.....	20
4. Union and its Territory.....	21
4.1 Srikrishna Commission (Formation of Telangana State).....	24
4.2 India – Bangladesh Land boundary Agreement.....	24
4.3 The Constitution (119th Amendment) Bill, 2013.....	24
4.3 Jammu & Kashmir Reorganisation Act-2019.....	25
5. Citizenship.....	27
5.1. What is citizenship?.....	27
5.2. Single Citizenship.....	27
5.3. Citizenship and the Constitutional Provisions.....	27
5.4. Acquisition of Citizenship in India.....	28
5.5. Loss of Citizenship.....	29
5.6. Few important words.....	29
6. Fundamental Rights.....	33
6.1 Type of Rights.....	33
6.2 Features of Fundamental Rights.....	34
6.3 Classification of Fundamental Rights.....	34
6.4 Writs.....	51
7. Directive Principles of State Policy.....	54
7.1. Difference Between Fundamental Rights and Directive Principles.....	54
7.2. Classification.....	60
7.3. Directive principles outside part-iv of the constitution.....	61
7.4. Conflict between fundamental rights and directive principles of state policy.....	61
8. Fundamental Duties.....	63
8.1. List of Fundamental Duties.....	63
8.2 Importance of Fundamental Duties.....	64
8.3. Justice Verma Committee Report.....	64
8.4. Criticism of Fundamental Duties.....	64
9. Amendment of the Constitution.....	66
9.1. Procedure for Amendment.....	66

9.2. Ways of amendment.....	67
9.3. Basic Structure Doctrine of the Constitution.....	68
10. Emergency Provisions.....	74
10.1. Types of Emergency.....	74
10.2. National Emergency (Article 352).....	74
10.2.1. Revocation of Emergency.....	75
10.2.2. Effect of National Emergency.....	75
10.2.3. Effect on Fundamental Rights.....	75
10.2.4. Proclamation of National Emergency.....	76
10.3. President Rule.....	76
10.3.1. Revocation of emergency.....	77
10.3.2. Cases of Proper and Improper Use.....	78
10.4. Financial Emergency.....	78
11. Central Government.....	80
11.1. The President.....	80
11.1.1 Procedure for the Election Of President.....	81
11.1.2. Qualifications.....	82
11.1.3. Conditions of president office.....	82
11.1.4. Oath or affirmation by the president.....	83
11.1.5. Term of office of president.....	83
11.1.6. Impeachment of president.....	83
11.1.7. Vacancy in President's Office.....	84
11.1.8. Powers of the President.....	84
11.1.9. Veto Powers of President.....	86
11.1.10. Ordinance Making Power of President.....	87
11.1.11. Pardoning Power of the President.....	87
11.1.12. Constitutional Position of President.....	88
11.2. The Vice President.....	89
11.2.1. Election of Vice President.....	89
11.2.2. Oath by Vice-President.....	90
11.2.3. Term of Office and Removal of Vice President.....	90
11.3. Prime Minister.....	91
11.4. Council of Ministers.....	92
11.5. Parliament.....	95
11.5.1. Rajya Sabha.....	96
11.5.2. Lok Sabha.....	97
11.5.3. Qualifications.....	99
11.5.4. Disqualification for Membership.....	99
11.5.5. Vacation of Seats.....	100
11.5.6. Oath of Affirmation.....	100
11.5.7. Presiding Officers of Parliament.....	100
11.5.8. Leader of the House.....	103
11.5.9. Leader of the Opposition.....	103
11.5.10. Whip.....	104
11.5.11. Sessions of Parliament.....	104
11.5.12. Quorum.....	106
11.5.13. Language in Parliament.....	106
11.5.14. Lame-Duck Session.....	106
11.5.15. Devices of Parliamentary Proceedings.....	106
11.5.16. Legislative Procedure in Parliament.....	109
11.5.17. Joint Sitting of Two Houses.....	112
11.5.18. Budget in Parliament.....	112
11.5.19. Other Grants.....	116
11.5.20. Funds.....	116

11.5.21. Relation Between Two Houses.....	117
11.5.22. Parliamentary Privileges.....	118
12. Parliamentary Committees.....	119
12.1. Kinds of Parliamentary Committees.....	119
12.2. Financial Committees.....	121
12.3. Committees to Scrutinise and Control.....	125
12.4. Day to day business related committees.....	125

1. Historical Background

The British authority laid foundation in India in 1600 as traders through the establishment of East India Company under a charter granted by Queen Elizabeth – I. In the beginning the company had only trading functions, but later it acquires territorial power.

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

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

1.1 The Company Rule (1773-1858)

Regulating Act, 1773

- This is the first step taken by the British Government to control and regulate the affairs of the East India Company in India.
- For the first time British government recognized the political and administrative functions of East India Company.
- It laid the foundation of central administration in India.
- A Government, consisting of Governor-General and four council members, was set up in Calcutta Presidency. It designated Governor of Bengal as Governor-General of Bengal and first such Governor-General was Lord Warren Hastings.
- It made the Governors of Bombay and Madras presidencies subordinate to the Governor-General of Calcutta.
- It provided for the establishment of Supreme Court at Calcutta in 1774, with jurisdiction over Bengal, Bihar and Orissa.
- It prohibited the servants of the company from engaging in any private trade or accepting presents or bribes from the natives.
- Court of Directors (the governing body of the company) should report its revenue, civil and military affairs in India.

Amending Act of 1781

- This was the first time the British Parliament intervened directly in the company's administration.
- It compensated the Governor-General and the Officers of the Council who acted on their directives to obstruct the Supreme Court's proceedings.
- It cleared up the ambiguities and difficulties produced by the Regulating Act and the Charter, which essentially divided the government and the courts.
- A four-member Executive Council was also established to assist the Governor-General.

Pitt's India Act, 1784

- Distinguished between commercial and political functions of the company.
- Court of Directors for Commercial functions and created a new body called Board of Control for political affairs. Thus a system of double government is established.
- Reduced the strength of the Governor-General's council to three members.
- The company's territories in India were called "the British possession in India" for the first time.
- Governor's councils were established in Madras and Bombay.

Act of 1786

- In 1786, Lord Cornwallis was appointed as the Governor-General of Bengal. He placed two demands to accept that post, viz.,
- He should be given the power to override the decision of his council in special cases.
- He would also be the Commander-in-Chief.
- Lord Cornwallis was appointed as Governor-General and commander in chief in India. He is known for having instituted land, judiciary, and administrative reforms and reorganized the British army and administration. He had a demand that powers of the Governor-General be enlarged to empower him, in special cases, to override the majority of his Council and act on his own special responsibility. The Act of 1786 was enacted to give him the power of working as Both Governor-General & Commander in Chief.
- Thus via an act of 1786, Cornwallis became the first effective ruler of British India under the authority of the Board of Control and the Court of Directors.

Charter Act of 1793

- It extended the overriding power given to Lord Cornwallis over his council, to all future Governor-Generals and Governors of Presidencies.
- It gave the Governor-General more powers and control over the governments of the subordinate Presidencies of Bombay and Madras.
- It extended the trade monopoly of the Company in India for another period of twenty years.
- It provided that the Commander-in-Chief was not to be a member of the Governor-General's council, unless he was so appointed.
- It laid down that the members of the Board of Control and their staff were, henceforth, to be paid out of the Indian revenues.

Charter Act, 1813:

- It ended company monopoly of the East India Company however the company's monopoly in trade with China and trade in tea was remained intact.
- For the first time this Act explicitly defined the constitutional position of the British territories in India.
- To Grant permissions to the persons who wished to go to India for promoting moral and religious improvements(Christian Missionaries).
- Granted 1 Lakh Rupees for education in India.
- It authorized local governments to collect taxes, and power to punish if denied.
- Sovereignty of British crown over company's territories.

Charter Act, 1833

This was the final step towards centralization in the British India. Laws made under this is called Acts, earlier it was called as Regulations:

- It made the Governor-General of Bengal as the Governor-General of India. First such governor-general was Lord William Bentick. He was given exclusive legislative powers for entire British India.
- It deprived the legislative powers of Governor of Bombay and Madras.
- It ended the activities of the East India Company as a commercial body, which became purely administrative body. The company lost its monopoly on trade with China and other parts of Far East.
- Charter act 1833 attempted to introduce a system of open competition exam for civil servant. However, it was negated after the opposition from Court of directors.
- First Law Commission formed.

Charter Act, 1853

- This was the last charter Act passed by British Parliament between 1773 and 1853.
- The legislative and executive functions of the Governor-General's Council were separated.
- Thus it established a separate Governor-General's legislative council (Indian Legislative Council).
- The Governor-General's Council was enlarged by the addition of six new members. Among these one was to be an official representative from each of four provinces viz. Madras, Bombay, Bengal and North

western provinces, and the Chief Justice and a judge of Supreme Court. The commander-in-chief was also given an extraordinary membership.

- It introduced an open competition system of selection and recruitment of civil servants.
- It extended the company's rule and allowed it to retain the possession of Indian territories.
- It introduced local representation in Indian (Central) Legislative Council. Six new legislative members were added 4 local provincial government of Madras, Bombay, Bengal and Assam.
- It laid foundation for Parliamentary system of government.

1.2 The Crown Rule (1858-1947)

It was enacted in the wake of the Revolt of 1857 (First war of independence or the sepoy mutiny). The company rule was replaced by British Crown Rule.

Government of India Act, 1858

- India 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 as direct representation of British Crown.
- Lord Canning was 1st Viceroy of India.
- It created an office of Secretary of State who was a member of British cabinet and responsible to British parliament.
- It abolished the Court of Directors and Board of Control. Thus ended the system of double government and created a new office, Secretary of state for India. He was empowered to superintend, direct and control all the governmental affairs in India.
- It established a 15member's council of India to assist the Secretary of state (as Chairman) for India. The council was an advisory body.

Indian Council Act, 1861

After 1857 British Government felt the necessity of seeking Co-operation of Indians to rule them.

- The Governor-General's council was expanded for legislative purposes by adding 6 – 12 new members, to be nominated for two years.
- Every Act passed by the Legislature in India was subjected to approval of Her Majesty acting through the Secretary of State-in-Council.
- It provided that the viceroy should nominate some Indians as non-official members of his expanded council (1862 – Lord Canning appointed 3 Indians).
- Decentralization introduced (Legislature powers of Madras and Bombay restored).
- It also provided for the establishment of new legislative councils for Bengal, North-Western Frontier Province (NWFP) and Punjab.
- Viceroy can make rule & regulations. He can issue ordinance during emergency. (That was valid for 6 month).

Indian council Act, 1892

- It increased non-official members in Central and Provincial legislative council, but maintained the official majority in them.
- It increased the functions of legislative councils by providing power of discussing budget (the annual financial statement) and addressing questions to the executive.
- Introduced indirect elections (nomination).

Indian Council Act, 1909 (Morley-Minto reforms)

- Lord Morley was the Secretary of state for India and Lord Minto was the Viceroy of India.
- It increased the size of the legislative councils, both Central (from 16 to 60) and Provincial.
- It maintained the majority of official members in the central legislative council but allowed majority of non-official members in provincial legislative councils.

- It enlarged the functions of the legislative Council by giving them power to more resolutions on budget, and on any matter of public interest.
- The most important and unfortunate feature of this Act was the introduction of separate electorate for the Muslim community. Thus it introduced a system of communal representation in India. Thus Lord Minto came to be known as the Father of Communal Electorate.
- Satyendra Prasad Sinha became the first Indian to join Viceroy's Executive Council. He was appointed as a Law-member.

The Government of India Act, 1919 (Montagu – Chelmsford Reform)

Montagu was the Secretary of State for India and Lord Chelmsford was the Viceroy of India.

Its objective was the gradual introduction of responsible government in India.

- The Central and Provincial legislature were separated. It divided the functions of government into two Categories: Central and Provincial.
- The Provincial subject further divided into two Categories: transferred and reserved. The transferred subjects were to be administered by the Governor with the aid of ministers responsible to the legislative Council. The reserved subjects were to be administered by Governor and his executive Council without being responsible to the legislative Council.
- This dual scheme of governance was known as 'Dyarchy' i.e. double rule.
- It provided for restricted franchise and communal electorate. It extended communal representation by providing separate electorates for Sikhs, Indian Christians Anglo-Indians and Europeans.
- This Act introduced bicameral legislature at the Centre comprising the council of states and the Central legislative assembly and direct election in the country.
- The Central legislature was empowered to consider, pass or reject legislation on any of the subjects enumerated in the Central list. But, Governor-General had final power to consider, whole or any part of bill. He had power to withhold his assent to any bill without which it could not become an Act.
- The budget was divided into two categories, votable (30%) and non-votable (70%). The Governor General was empowered to restore any grant refused or reduced by the legislature.
- The provincial legislative were empowered to legislate on provincial subject. But, Governor empowered to return any bill to the House for reconsideration or reserve it for the consideration of the governor General, who in turn could reserve it for the opinion of crown.
- It created a new office of the High Commissioner for India in London India).
- It provided for appointment of a statutory commission to inquire into and report on working after then years of its coming into force.
- It established Public Service commission.

Simon Commission: Under 1919 Act, commission was scheduled to be appointed to inquire the working of act. In view of public discontent, the British government announced the appointment of a seven-member statutory commission in 1927. It was headed by Sir John Simon.

- All the members of the commission were British hence all parties boycotted the commission.
- The commission submitted its report in 1930. It's recommendations were:
 - (i) Abolish Dyarchy & Establish responsible government in Provinces.
 - (ii) Establish federation of British India and Princely States.
 - (iii) Continue Communal electorate.

Communal Awards:

In 1932, Ramsay MacDonald, the British Prime Minister, announced a Scheme of representation for minorities' i.e. communal representation, which came to be known as Communal Award. It allowed separate electorate for Muslims, Sikhs, Indian Christian, Anglo Indians and Europeans. It also provided separate electorate for depressed (schedule) class. Gandhiji opposed it by announcing fast unto death. It led to an agreement known as Poona Pact, which gave reserved seats to the depressed class.

Government of India Act, 1935: It was another step to have complete responsible government in India. This was result of three round table conferences during 1930-32.

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