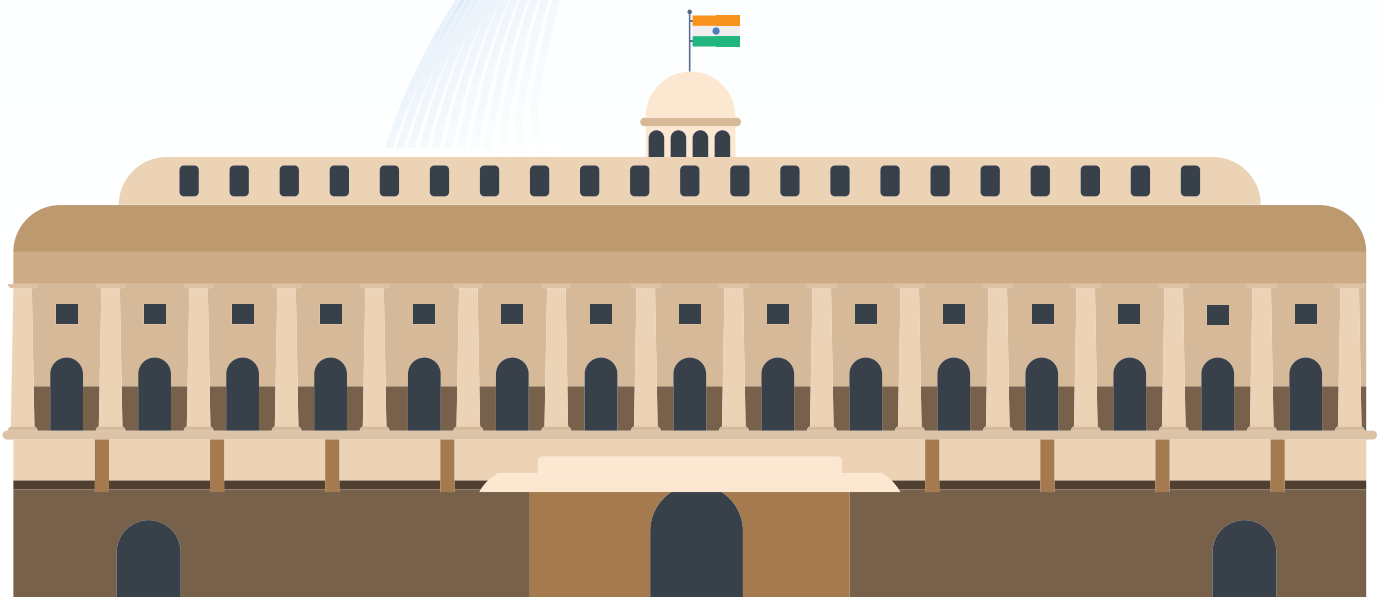


CONSTITUTION AND POLITY



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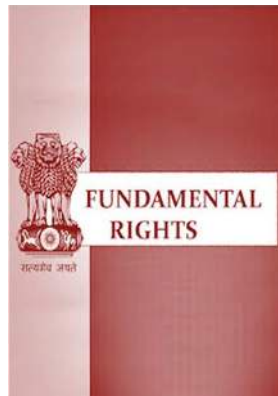
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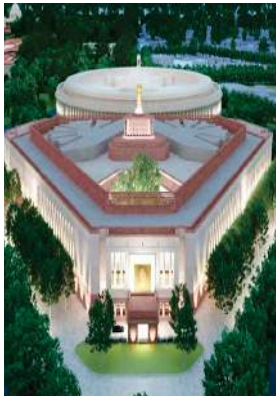
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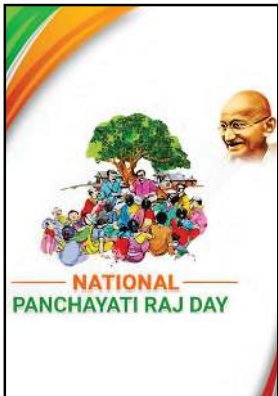
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PART-I

HISTORICAL UNDERPINNINGS OF INDIAN CONSTITUTION

- The piecemeal process of encroachment over Indian affairs by the British started from 1765 in the name of 'Diwani Rights'. The 10 per cent stake of the plunder which fetched around 4 million pounds annually. The journey which started from a trader, eventually led to an administrator which finally culminated in 1947.
- The British government passed various Acts for the governance of India starting 1773. None of them, however, met Indian expectations, owing to the fact that they were enforced by foreign rulers.
- The company rule viz. 1773-1858 followed by the direct rule of the crown i.e. 1858-1947 witnessed a series of Constitutional and administrative changes with the intention to serve the British imperial ideology but partially proved to be a blessing in disguise since they introduced several elements of the modern State into India's administrative and political system which can be experienced till date.

The Constitutional development can be grouped in to two phases:

1. During the rule of East India Company (1773-1858)
 1. Regulating Act of 1773
 2. Amending Act, 1781
 3. Pitt's India Act, 1784
 4. The Act of 1786
 5. The Charter Act of 1793
 6. The Charter Act of 1813
 7. The Charter Act of 1833
 8. The Charter Act of 1853
2. During the direct rule of the Crown (1858 – 1947)
 1. Government of India Act, 1858
 2. Indian Councils Act, 1861
 3. Indian Councils Act, 1892
 4. Indian Councils Act, 1909 (Morley-Minto Reforms)
 5. Government of India Act, 1919 (Montague-Chelmsford Reforms)
 6. Government of India Act, 1935

During the rule of East India Company (1773-1858)

Regulating Act of 1773

- Governor General of Bengal.
- Executive Council of Governor General.
- Supreme Court in Calcutta.
- Governors of Bombay and Madras under Governor General of Bengal.

- It was formally called as the East India Company Act, 1772.
- This was the stepping stone in the series of acts promulgated in the near future. It gave legal sanctity to the business of the company.
- The company's political and administrative roles were considered and placed under official scrutiny for the first time. It laid the foundation of central administration in India.

- The Governor of Bengal was designated as the '**Governor-General of Bengal**'. **Lord Warren Hastings** was the first to become the Governor General of Bengal.
- The **Executive Council of the Governor-General** was established (4 members). There was no separate Legislative Council.
- The Governors of Bombay and Madras were subordinated to the Governor-General of Bengal and a Supreme Court was created in Calcutta (1774).
- **Sir Elijah Impey** was the first Chief Justice of this Supreme Court.
- In practice; however, the Supreme Court was put at loggerheads with the council over with respect to overlapping jurisdictions. The entire system was supposed to be based on checks and balances.
- By forcing the Court of Directors to report on the Company's revenue, civil and military affairs in India, it increased the British Government's influence over the company.

Amending Act, 1781

- To rectify the errors made in the Regulating Act of 1773, the British Parliament passed the Amending Act of 1781, which was also called as the Act of Settlement or Declaratory Act, 1781.
- The central theme of this act was to delineate the jurisdiction of the Supreme Court and the Governor General in Council.
- It tried to streamline the relations between the Supreme Court and the Governor General in council.
- The Supreme Court's jurisdiction was confined to Calcutta; it was supposed to administer the personal law of the defendant.

Pitt's India Act, 1784

- Company's territories as 'British Possessions'.
- Commercial: Court of Directors
Political: Board of Control.
- System of Dual Government.
- Veto to Governor General.

- Indian affairs became the prerogative of British Government in Britain. The Company's territories within Indian subcontinent were known as '**British possessions**'.
- The **political and commercial functions** of the company were **segregated**.
- It allowed the Court of Directors to handle the company's commercial affairs while also establishing a separate Board of Control (consisting of the chancellor of exchequer, a secretary of state and four members of the Privy Council to be appointed by the Crown) to oversee the company's political affairs. As a result, it created a **system of dual government**.
- It gave the British Government complete control over the Company's affairs and administration in India, allowing the **Board of Control** to supervise and direct all civil and military government activities as well as revenues from British possessions in India. i.e. the act made the company directly subordinate to the British government.
- The right of veto was given to the Governor-General.

The Act of 1786

- The act empowered the Governor-General with the **powers of both the Governor-General and the Commander-in-Chief**. In 1786, Lord Cornwallis was appointed as Governor-General and commander in chief in India.

- Cornwallis was given the power to **override** the council's decision in special cases; later, this power was expanded to all Governor generals.

The Charter Act of 1793

- The Company's **commercial privileges were changed** by this act. It extended the trade monopoly of the Company in India for another period of twenty years.
- **Royal approval was made mandatory** for the appointment of the Governor-General, the Governors and the commander-in-chief.
- It laid down that the members of the Board of Control and their staff were, henceforth, to be paid out of the Indian revenues.
- Separation of company's functions into the revenue administration and **the judiciary functions**. Thus, Maal Adalats (revenue courts) disappeared.
- A sum of one lakh rupees was assigned for the **revival, promotion and encouragement of academics and associated fields** (education) among the natives of India, every year.
- The regulations of the Madras, Bombay and Calcutta Councils were now expected to be laid before the British Parliament, clearly defining the Constitutional status of the British territories in India for the first time.
- The power of superintendence and direction of the Board of Control was not only defined but also enlarged considerably.
- **Christian missionaries were indirectly promoted** by authorizing them to come to India and preach their religion which eventually led to evangelism.
- This act also granted local governments the right to levy taxes on subjects that come under the Supreme Court's jurisdiction.

Charter Act, 1813

- End of Company's trade monopoly.
- Exception: Trade with China and tea trade.
- Rs. 1 lakh for education.
- Regulations of councils of Madras, Bombay, Calcutta in British Parliament.

- The **monopoly of trade rights of the company in India was terminated**, however business with China and trade in tea continued.
- The British possessions in India and the **revenue generated from it remained under the purview of the Company**, without prejudice to the sovereignty of the Crown.

Charter Act, 1833

- Governor General of Bengal as Governor General of India.
- Governor General of India: All civil and military powers.
- Company's trade monopoly completely ended.
- Laws to be called 'Acts'.

- This Act was the **cornerstone for Centralization**.
- Governor-general of Bengal was designated as the **Governor General of India** (Lord William Bentinck was the first Governor-general of India).
- Governor General **encompassed all civil and military powers**.
- The **Governors of Bombay and Madras were deprived** of their legislative powers.

- It ended the dominance of **EIC being a commercial entity** and confined it to an administrative body only. Company's **monopoly in trade was totally abolished**.
- It **introduced a law member** (Macaulay) in the Governor General's Council. Under the Charter Act of 1833, India's first law commission was created, with Lord Macaulay as its Chairman.
- The laws made under the previous acts were called as regulations while laws made under this act are called as an Acts.
- The President of the Board of Control now became the minister of India affairs.
- The act sought to establish a process of free competition for civil servant selection. However, after the Court of Directors objected, this clause was repealed.
- The law member was promoted as a full member of the Governor-general's executive council.
- It pioneered, for the first time, **local representation in the Indian (Central) Legislative Council**.
- The **Chief Justice of the supreme court of Calcutta was supposed to be the ex-officio member** of this council.
- **Open competition was introduced** in the covenanted civil services, thus opening the gateways for Indians as well.

The Company's shortcomings in administering in a dynamic situation were shown by the 1857 rebellion. There had been little oversight up until that point. This inconsistency was addressed by the 1858 Act.

The series of Charter Acts passed by the British Parliament between 1793 and 1853 was ended with Charter Act, 1853. The act was a significant Constitutional landmark.

During the Direct Rule of the Crown (1858–1947)

Government of India Act, 1858

Charter Act, 1853

- Separate functions of Governor General's council - legislative and executive.
- Six members in Indian Legislative Council (ILC).
- Local representation in ILC.
- Open competition in civil services.

- This act **separated the legislative and executive/administrative functions** of the Governor General's council.
- Six new members known as Legislative Councillors were supposed to be added to the council known as the **Indian (Central) Legislative Council**.

- Governor General of India Viceroy of India.
- System of dual government ended.
- Doctrine of lapse ended.
- Secretary of State.

- It is also called as the **Act for the Good Government** of India.
- The company's rule was reinstated by the **Rule of British Crown**.
- The Governor-General of India was renamed as the **Viceroy of India**. Lord Canning became the first Viceroy.
- Viceroy became an agent of the crown.
- This act **terminated the concept of dual government** put forward by the Pitt's India Act.

- The **doctrine of lapse also came to an end.**
- The Secretary of State was a British cabinet member who was ultimately

accountable to the British Parliament.

- A 15-member Council of India was constituted to assist the Secretary of State for India.

| Charter Act of 1853 | Government of India Act of 1858 |
|--|---|
| <p>Was a significant Constitutional landmark.</p> <ol style="list-style-type: none"> 1. Separated legislative and executive functions of Governor-General's council (1st time). 2. Provided addition of 6 new members (legislative councillors) to Governor-General's legislative council which is also called as Indian (Central) Legislative Council. (Functioned as a mini-Parliament, adopting the same procedures as British Parliament). 3. Introduced local representation in Indian Legislative Council (1st time). (Out of 6 members, 4 were by local governments of Madras, Bombay, Bengal and Agra). 4. Legislation was treated as a special function of government (1st time). 5. Introduced an open competition system of selection and recruitment of civil servants. (Macaulay Committee 1854). 6. Extended Company's rule and allowed it to retain possession of Indian territories on trust of Crown. | <ol style="list-style-type: none"> 1. Abolished East India Company and transferred powers of government, territories and revenues to British Crown. 2. Provided that India be governed by in name of the Crown. It designated Viceroy (Lord Canning) of India as direct representative of British Crown. 3. Ended system of double government by abolishing Board of Control and Court of Directors. 4. Created Secretary of State for India vested with complete authority and control over Indian administration. (Member of British cabinet and was responsible to British Parliament). 5. A 15-member Council of India to assist secretary of state for India (Chairman). Council was an advisory body. 6. Constituted secretary of state-in-council as a body corporate, capable of suing and being sued in India and in England. <p>(However, the act did not alter in any substantial way system of Government that prevailed in India).</p> |

Indian Councils Act, 1861

- The foremost step towards **decentralization** i.e. restoring legislative powers to Bombay and Madras. (These powers were removed by Charter Act, 1833).
- **Introduced representative institutions** in India by connecting Indians with the law-making process.
- Few Indians were nominated by the viceroy as non-official members of his expanded council.
- The three Indians nominated in the council were:
 1. The Raja of Banaras,
 2. The Maharaja of Patiala and
 3. Sir Dinkar Rao
- **Ordinance making power** (during emergency) and **framing of Rules of business** were added to the Viceroy's jurisdiction. (The same power is given to the President of India under Article 77 with respect to rules of business).
- The **portfolio system** set up by Lord

Canning laid the foundations of cabinet government in India, each branch of the administration having its official head and spokesman in the government, who was responsible for its administration.

- **New legislative councils** for North-Western Frontier Provinces (NWFP), Bengal and Punjab were established.

Question: Why was the legislative councils started by the Act of 1861 called a toothless tiger?

- Even though this Act allowed Indians in the legislative council for the first time and also put the first step towards decentralisation, it missed many important matters.
- » No financial matters could be discussed at all without previous approval of the government.
- » They had no control over the budget.
- » They were unable to discuss executive action.
- » The viceroy's approval was required for the bill's final passage. The secretary of state has the right to veto legislation, even though it has been accepted by the viceroy.
- » Indians appointed as non-officials were members of elite sections only.

Indian Councils Act, 1892

- Power to discuss budget, but not to vote budget.
- Indirect election for central legislative council.
- Legislative Council: Power to make or repeal laws.

- In the legislative councils, the act increased the number of additional or non-official members.
- Council was devolved with the **power**

to discuss the budget and to address questions to the Executive. They **could not vote on the budget**. They **could not ask supplementary questions**.

- It was the **first step towards a representative form of government in modern India**. It made provision for indirect election of some of the members of the Central Legislative Council through the Provincial Council. However, the word '**election**' was **not mentioned in the Act**.
- With the Governor-General's approval the legislative councils were given the power to make new laws and repeal old ones.
- Through this act, the principle of representation was created. The universities, district boards, municipalities, Zamindars and chambers of commerce were authorised to recommend members to the Provincial Councils.

Indian Councils Act, 1909 (Morley-Minto Reforms)

- Element of election introduced
- Legislative Council enlarged
- Members in Executive Council increased
- Indians in Executive Council
- Separate electorate for Muslims

- Represented the next **Constitutional advancement after the council act of 1892**.
- An element of elections (although indirect) to the Legislative Councils was introduced for the first time.
- **Enlarged legislative councils:** The size of legislative councils at the Centre and the provinces increased. The Central Legislative Council has been expanded from 16 to 60 members. In the provincial

legislative councils, the number of members varied.

- **Enhanced functions of the legislative council:** like every member of the Imperial legislative council has the right to move any resolution regarding any alteration in taxes. The members could **discuss the budget and move resolutions**. They could also ask **supplementary questions**.
- It held the official majority in the Central Legislative Council but gave non-official majority to the provincial legislative councils.
- **Executive council:** The act increased the number of members to the executive council of Bengal, Bombay and Madras.
- It allowed Indians to join the Executive Councils of the Viceroy and Governors for the first time. (The first Indian to join the Viceroy's Executive Council was Satyendra Prasad Sinha. He was chosen as the law member).
- It introduced the **concept of Separate Electorates for Muslims**. The Muslim representatives were to be chosen solely by Muslim voters under this arrangement. As a result, the Act "legalised communalism."
- **Lord Minto** (the then Viceroy of India) came to be known as the **Father of Communal Electorate**.

Government of India Act, 1919 (Montague-Chelmsford Reforms)

In August 1917, the British government for the first time declared that its **objective was to gradually introduce responsible government** in India, but as an integral part of the British Empire. Thus, the Government of India Act, 1919 was enacted.

- Diarchy in Provincial Councils.
- Provincial subjects reserved and transferred.
- Bicameralism and direct election: First time.
- Office of the High Commissioner to India.
- Communal representation to Sikhs, Indian Christians, Anglo-Indians and Europeans.
- Separated provincial budgets from the Central budget.
- Central Public Service Commission.

- The **act reduced the central control over the provinces** by segregating central and provincial subjects. The provincial and central legislatures were given the authority to pass laws on the subjects on their respective lists.
- The **Diarchy was introduced in the Provincial Governments**. The provincial subjects were divided into two categories viz. reserved and transferred. The reserved subjects were kept with the Governor and transferred subjects were kept with the Governor acting with aid of Ministers responsible to the legislative council.
- The act for the first time introduced **Bicameralism and direct elections**. As a result, the Indian Legislative Council was replaced by a bicameral legislature consisting of a Lower House (Legislative Assembly) and an Upper House (State Council). Direct election was used to elect the majority of representatives of both Houses.
- The Viceroy's Executive Council was supposed to have three Indian members out of six other than the Commander-in-Chief.
- Salary of the Secretary of State, which had previously been paid from Indian revenue, was now to be paid by the British Exchequer, thus undoing an

injustice in the Charter Act of 1793.

- **Communal representation extended** to Sikhs, Indian Christians, Anglo-Indians and Europeans, besides Muslims.
- It issued a limited franchises based on land, taxes, or education.
- For the first time, it **separated provincial budgets** from the Central budget and authorised the provincial legislatures to enact their budgets.
- The act entailed the provisions of setting up a **public service commission**, hence Central public service commission was established in 1926 (Lee commission).
- The **Office of the High Commissioner to India** was formed in London.



| Government of India Act, 1909 (Morley-Minto Reforms) | Government of India Act, 1919 (Montagu-Chelmsford Reforms) |
|--|--|
| <ol style="list-style-type: none"> 1. It increased the size of legislative councils, both Central (16 → 60) and provincial (not uniform). 2. It retained the official majority in the Central Legislative Council but allowed provincial legislative councils to have non-official majority. 3. Enlarged deliberative functions of legislative councils at both levels (allowed asking supplementary questions, move resolutions on budget, etc.). 4. Provided association of Indians with executive Councils of Viceroy and Governors (for 1st time). 5. Introduced a system of communal representation for Muslims by accepting the concept of separate electorate. Thus, Act 'legalised communalism' and Lord Minto came to be known as Father of Communal Electorate. 6. Provided separate representation of presidency corporations, chambers of commerce, universities and zamindars. | <ul style="list-style-type: none"> • Objective was a gradual introduction of responsible Government in India (1st time). • Relaxed central control over provinces by demarcating and separating central and provincial subjects. • However, the structure of the government continued to be centralised and unitary. • Divided provincial subjects into two parts: <ul style="list-style-type: none"> » Transferred subjects were to be administered by the Governor with aid of ministers responsible to the legislative Council. » Reserved subjects were to be administered by the Governor and his executive council without being responsible to the legislative Council. (i.e. diarchy) → Largely unsuccessful. • Introduced bicameralism and direct elections in the country. Thus, Indian Legislative Council was replaced by a bicameral legislature. Direct election was used to elect the majority of representatives of both Houses. • Required that 3 of 6 members of Viceroy's executive Council (except commander-in-chief) were to be Indian. • Extended principle of communal representation by providing separate electorates for Sikhs, Indian Christians, Anglo-Indians and Europeans. • It issued a limited number of franchises on the basis of property, tax or education. • Created High Commissioner for India in London and transferred some of the functions of Secretary of State. • Provided establishment of a public service commission. (Central PSC was set up in 1926). • Separated provincial budgets from Central budget (for first time). • Provided appointment of a statutory commission to inquire and report on its working. |

Simon Commission

- The **Act of 1919** had provided for the appointment of a Commission to review the provisions of the act. The British government declared the formation of a seven-member statutory commission, chaired by Sir John Simon, which was boycotted by all Indian political parties because all of the members were British.
- **Congress and Muslim League boycotted** it whereas the Justice party of south India supported the government.
- Lala Lajpat Rai, who was leading the anti-Simon Commission demonstration in Lahore, was violently lathi-charged. He died later that year as a result of the injuries he had suffered at the time.
- Lord Birkenhead was responsible for setting up the Commission.
- The Commission included Clement Atlee. Later, during India's independence and partition in 1947, he would become Britain's Prime Minister.
- The commission submitted its report in 1930 and recommended the **abolition of dyarchy, extension of responsible government in the provinces, establishment of a federation of British India and princely states, continuation of communal electorate** and so on.
- The British Government held three round table conferences with representatives from the British Government, British India and Indian princely states to consider the commission's proposals.
- Based on these consultations, a "White Paper on Constitutional Reforms" was drafted and sent to the Joint Select Committee of the British Parliament for consideration.
- The committee's recommendations were incorporated (with some changes) into the next Government of India Act, which was passed in 1935.

NEHRU REPORT, 1928

- Indians, especially the Congress Party, vehemently opposed the Simon Commission because it did not include a single Indian.
- As a result, Lord Birkenhead, the Secretary of State for India, challenged Indian leaders to draft a new Constitution for India, claiming that Indians were incapable of finding a common ground and drafting a Constitution.
- An All Party Conference was held and a committee was formed to enact a Constitution, with Motilal Nehru as the head and Jawaharlal Nehru as the secretary.
- The final report was signed by Motilal Nehru and Jawaharlal Nehru, Ali Imam, Tej Bahadur Sapru, Madhav Shrihari Aney, Mangal Singh, Shuaib Qureshi, Subhas Chandra Bose and G. R. Pradhan.
- This new Constitution was known as the Nehru Committee Report or Nehru Report.
- Some of its **provisions** are as follows:
 - » It contained a Bill of Rights.
 - » All power of government and all authority shall be exercised through organisations established by, or under and in accord with, this Constitution.
 - » No state religion;
 - » Equal rights to men and women.
 - » Federal form of government with residuary powers vested in the centre.
 - » No separate electorates for any community, the reservation of minority seats in provinces having a minorities of at least ten per cent
 - » The Union's official language will be Indian and it will be written in Devanagari (Hindi/Sanskrit), Telugu, Kannada, Marathi, Gujarati, Bengali, or Tamil. It is permissible to use the English language.

Communal Award (1932)

- In August 1932, the British Prime Minister (Ramsay MacDonald) declared a Communal Award to **extend a separate electorate** not only for Muslims, Sikhs, Indian Christians, Anglo- Indians and Europeans but also widened its horizon to encompass the depressed classes (scheduled castes).
- **Gandhiji carried out fast unto death in Yerwada Jail** (Poona) to get the award modified.
- At last, there was a concurrence between the leaders of the Congress and the depressed classes. The agreement came to be known as **Poona Pact**.
- The pact **retained the Hindu joint electorate and gave reserved seats to the depressed classes**.

Government of India Act, 1935

- The Act was a second step in India's transition to a fully responsible government.
- This Act being the Centre stage of the Constitutional chronology provided for the establishment of an **All-India Federation** consisting of provinces and princely states as units. (Note: Princely States did not join and so Federation didn't come into existence)
- The Act divided the powers between the Centre and units in terms of three lists. **Federal List** (for Centre, with 59 items), **Provincial List** (for provinces, with 54 items) and the **Concurrent List** (for both, with 36 items).
- The Viceroy was granted the residuary powers.
- The concept of Diarchy at the Centre was introduced. The federal subjects were divided into transferred subjects and reserved subjects. (Earlier

introduced at provincial level through Montford reforms).

- **Abolished Dyarchy in the provinces** and provided 'provincial autonomy' in its place. It started **responsible government in provinces**.
- Launched Bicameralism in six out of eleven provinces. Thus, the legislatures of Bombay, Bengal, Bihar, Madras, United Provinces and Assam were made bicameral.
- The act gave impetus to the principle of communal representation by **extending separate electorates to depressed classes (scheduled castes), women and labour (workers)**.
- Put an **end to the Council of India**, which was established by the Government of India Act of 1858.
- The Secretary of State for India was offered with a team of advisors.
- To manage the currency and credit of the country the act entailed the establishment of the **Reserve bank of India**.
- It required the establishment of the **Federal Public Service Commission**, Provincial Public Service Commission and Joint Public Service Commission for two or more provinces.
- It allowed for the establishment of a **Federal Court**, which was set up in 1937.
- About 10 per cent of the total population was given the privilege to vote, hence **extended franchise**.

A range of other developments took place after the 1935 Act. There was the August Offer of 1940, the Cripps Proposals of 1942 and the C. R. Formula of 1944 trying to seek the cooperation of the Muslim League, Wavell Plan of 1945 and the Cabinet Mission. Then came the Mountbatten Plan in 1947 and finally the Indian Independence Act, 1947.

Indian Independence Act, 1947

- It ended British rule in India and proclaimed India an independent and sovereign state on August 15, 1947.
- It abolished the office of viceroy and replaced it with a Governor-General, who was appointed by the British King on the advice of the dominion cabinet.
- It provided for the division of India and the creation of two separate dominions, India and Pakistan, with the right to secede from the British Commonwealth.

- India as independent and sovereign state.
- Partition of India.
- Office of Viceroy abolished.
- Princely states: Option to join India or Pakistan.

- It gave the two dominions' Constituent Assemblies the right to create and enact any Constitution for their respective countries, as well as repeal any British Parliament act, including the Independence Act itself.
- It gave both dominions' Constituent Assemblies the right to legislate for their respective territories before new Constitutions were drafted and implemented.
- It announced the end of British sovereignty over Indian princely states and treaty relations with tribal areas on August 15th, 1947.
- It repealed the office of the secretary of state for India and shifted his duties to the secretary of state for Commonwealth Affairs.
- It gave Indian princely states an option of joining the Dominion of India or the Dominion of Pakistan, or remaining independent; and it established the Government of India Act of 1935 to rule

each of the dominions and provinces until new Constitutions were drafted.

- The dominions, on the other hand, were given the authority to amend the Act.
- It stripped away the British Monarch's power to veto bills or order. This authority, however, was reserved for the Governor-General.
- The Governor-General of India and the provincial Governors were appointed as the states' Constitutional (nominal) heads. In all matters, they were required to follow the advice of their respective councils of ministers.
- It dropped the title of Emperor of India from the royal titles of the king of England.
- It **discontinued the appointment** to civil services and reservation of posts by the secretary of state for India. The members of the civil services appointed before August 15, 1947 would continue to enjoy all benefits that they were entitled to till that time.

Note:

- The Indian Independence Act which came into force on 18th July, 1947, divided British Indian territory into two new states: India and Pakistan.
- To demarcate the boundary line between India and Pakistan a commission was constituted under the chairmanship of Sir Cyril Radcliffe.
- Lord Mountbatten became the first Governor-General of the new Dominion of India or Independent India. He swore in Jawaharlal Nehru as the country's first prime minister.
- C. Rajagopalachari was elected Governor-General of independent India by the Constituent Assembly.
- The Constituent Assembly of India, which was formed in 1946, became the Indian Dominion's Parliament.

MAKING OF THE INDIAN CONSTITUTION

Key Points:

- M. N. Roy, the founder of the communist movement in India, first suggested the concept of a Constituent Assembly for India in 1934.
- For the first time in 1935, the Indian National Congress (INC) called for a Constituent Assembly to enact the Indian Constitution.
- The demand was finally acknowledged in principle by the British Government in what is known as the '**August Offer**' of 1940.
- The Constituent Assembly (CA) was constituted in November 1946 as per the **Cabinet Mission Plan**.
- The Constituent Assembly was to be a partly elected and **partly nominated body**. Besides, the **members were to be indirectly elected** by the members of the provincial assemblies, who themselves were elected on a limited franchise.
- The Assembly encompassed all main personalities of India at that time, with the exception of Mahatma Gandhi.
- **Dr. Rajendra Prasad was elected as the President of the Assembly.**

Note:

- The **first meeting** of the Constituent Assembly was held on 9th December, 1946 with **Sachidanand Sinha** as the interim President.
- **Objective Resolution** was moved by **Jawaharlal Nehru**.
- The Drafting Committee was appointed, with **Dr. B. R. Ambedkar** as the Chairman.
- The Constituent Assembly took almost **2 Years, 11 Months and 18 days** to complete its task.
- On 26th November, 1949, the people of India through the Constituent Assembly adopted, enacted and gave themselves the Constitution of India.
- The Constitution of India came into force on **26th January, 1950**.

Objective Resolution:

On December 13, 1946 Pandit Jawaharlal Nehru moved the Objective Resolution. It incorporated the fundamental propositions of the Constitution and set forth the political ideas that should guide its deliberations. The major principles of the resolution were:

1. India to be an independent, sovereign republic.
2. To be a democratic union in which all constituent parts have equal levels of self-government.
3. The people give the Union Government and the governments of the constituent parts all of their power and authority.
4. The Constitution should guarantee to the people justice based upon social, economic and political equality of opportunity and equality before law.
5. There should be freedom of thought,

belief, expression, faith, worship, vocation, association and action.

6. The Constitution must give just rights for minorities and people from backward and tribal areas, etc. so that they might be equal participants of social, economic and political justice.
7. The Constitution should protect India, a due place in the community of nations.

This Resolution was collectively adopted by the Assembly on January 22, 1947. It swayed the way to eventual shaping of the Constitution through all its subsequent stages. Its modified version forms the Preamble of the present Constitution.

The Indian Independence Act of 1947 and the position of the Assembly:

- The **Assembly was made a fully sovereign body** to frame Constitution (Constituent Body).
- The act authorized the Assembly to abrogate or alter any law made by the British Parliament in relation to India.
- The Assembly also set off to become a legislative body.
- Two separate functions were assigned:
 1. Making of a Constitution for free India and
 2. Enacting ordinary laws for the country.
- Dr. Rajendra Prasad presided over the Assembly as the Constituent body and G. V. Mavlankar presided over the Assembly as the legislative body.

- **Drafting Committee:** Drafting Committee was the most important committee (set up on August 29, 1947); the mandate of the committee was to draft the Constitution of independent India. It consisted of seven members Viz.:

- » **Dr. B. R. Ambedkar (Chairman)**
- » N. Gopalaswami Ayyangar
- » Alladi Krishnaswamy Ayyar
- » Dr. K. M. Munshi
- » Syed Mohammad Saadullah
- » N Madhava Rau (He replaced B. L. Mitter who resigned due to ill-health)
- » T. T. Krishnamachari (He replaced D. P. Khaitan who died in 1948)

- The Drafting Committee started scrutinising the Draft Constitution prepared by B. N. Rau, the Constitutional Advisor. On February 21st, 1948, it made numerous amendments to the Draft Constitution and submitted it to the President of the Constituent Assembly.
- During the Committee stages and the Constituent Assembly debates, the Drafting Committee and its members had a major impact on the Indian Constitution. The Draft Constitution(s) prepared by the Drafting Committee influenced the debates in the Constituent Assembly.

Enforcement of the Constitution

- Most provisions of the Constitution came into force on **January 26th, 1950**. This day is celebrated as the **Republic Day**. January 26 was specifically chosen as the 'date of commencement' of the Constitution due to its historical importance. **Purna Swaraj day** was celebrated on this day in 1930, trailing the resolution of the Lahore Session (December 1929) of the INC.