

## Historical Background of the Constitution of India<sup>1</sup>

### **1600 to 1765: The British Influence**

In 1599, some prominent London merchants petitioned the Queen to get incorporated into a Company for carrying on trade with Indies. After a year, on 31st December 1600, the East India Company finally came into existence after procuring a Royal Charter from the Queen. The company got incorporated under the name of 'the Governor and Company of Merchants trading into the East Indies.'

The Company thus formed was granted an exclusive right to trade between the Cape of Good Hope and the straits of Magellan, for a period of 15 years. The Royal Charter further empowered the Company to make bye-laws and issue orders as well as ordinances for the good governance of the Company.

The Company was incorporated by the merchants with the head objective of Spices of the Indies. During this period, Bombay, Madras, and Calcutta became the Chief settlement presidencies of the Company.

### **Charter of 1726: (Mayor's Court)**

Initially, the Mayor's Court was established in 1683 while the Charter of 1726 established a Mayor's Court that drew their powers directly from the Crown. It also provided for establishment of a corporation in each Presidency town. The Charter of 1762 is considered a glowing landmark in the history of legal system since it introduced English Laws in India.

### **1765 to 1858: Beginning of the British Rule**

- The grant of Diwani made the Company become true masters (i.e. Diwan) of the provinces of Bengal, Bihar, and Orissa. This meant that the Company could collect revenue from these three provinces and also be responsible for Civil Justice there.
- After the death of Mir Jaffar in 1765, his son entered into a treaty with the company, thus transferring Nizamat functions to the company.

### **The Regulating Act, 1773**

- The British government passed the Regulating Act in 1773 as an attempt to regulate the affairs of the East India Company.

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<sup>1</sup> <https://blog.ipleaders.in/constitution-of-india-2/>

- Constitution of the Company in England was modified to further improve its administration in India.
- The Act ensured Parliamentary Control over the Court of Directors.
- Governor of Bengal was made the first Governor-General of Bengal (Warren Hastings).
- Brought the Governors of Bombay and Madras under the control of the Governor-General of Bengal.
- Governor-General was given the right to make rules and regulations for further improvement of administration over the three presidencies under the Company.
- A better relationship was established between the three Presidencies of Bengal, Madras, and Bombay.
- A Supreme Court was set up in Calcutta under the Charter of 1744. The Supreme Court further prohibited Company Officials from engaging in Private trade or to accept bribes from natives.

### **The Act of Settlement, 1781**

The Act of Settlement, 1781 came into force to remove the defects of the Regulating Act of 1773 and improve it. The Act of Settlement, 1781 made the following changes:

- It exempted the Company Officials from implications of jurisdiction of the Supreme Court over any act done in an official capacity.
- Refined and modified Supreme Court's Jurisdiction over Natives and the Company Officials.
- Guidelines were given as to which laws are to be applied by the Supreme Court.
- Empowered the Governor-General to set regulations for Provincial Courts and Councils.

### **The Pitt's India Act, 1784**

- British Government claimed ownership over the territories owned by the Company in India by calling those territories "The British Possessions in India."
- Commercial and Political functions of the Company were distinguished by appointing separate Committees for the same.
- British Government placed direct control over Indian affairs.
- Councils of Governor were established in Bombay and Madras.

### **The Charter Act of 1813**

- East India Company's monopoly over Indian Trade was shut down;
- Indian Trade was made open to all British Subjects;

- British Crown asserted supreme power over the Councils.

### **The Charter Act of 1833**

- Governor-General of Bengal was made the Governor-General of India;
- Crucial step towards Centralization in British India;
- East India Company was turned into an Administrative body.

### **The Charter Act of 1853**

- This Charter Act carried on the task of separating the Legislative and Executive functions of the Council of the Governor-General.
- A separate Legislative Council was created for India.
- Recruitment of all Civil Servants of the Company was based on an open competition system.
- Finally, Indian Territories were transferred to the British Crown, thus the East India Company's career came to an end.

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### **1858 to 1919: End of Company's Rule**

#### **The Government of India Act, 1858**

- After the Revolt of 1857, the East India Company ended and rule of the Company was replaced by the rule of British Crown.
- The British Queen issued a Royal Proclamation transferring the Government of India to the British Crown.
- Powers of the Crown were vested in the Secretary of State of India.
- Secretary of State was to be assisted by the 'Council of India,' consisting of 15 members.
- Secretary of State was vested with complete authority to regulate the Indian Administration through Viceroy and his agents.
- Lord Canning was made the first Viceroy of India.
- Court of Directors and Board of Control were abolished.

#### **The Indian Council Act of 1861**

- The Act provided the basic framework for Government in India;
- Legislative Councils established in the provinces and the Centre;
- Legislative powers to Bombay and Madras provinces restored;
- Introduced Indirect Elections with partial representation of people;

- Redefined and further enlarged the functions of Legislative Councils;
- Powers to discuss the Budget and to make the Executive accountable were also vested in the Legislative Council.

### **The Indian Councils Act of 1909: Morley Minto Reforms**

**The Indian Councils Act was introduced and implemented by Morley (Secretary of State) and Minto (Viceroy of the State) in 1909.**

It included the following reforms:

- Central Legislative Council was renamed as the 'Imperial Legislative Council';
- Number of members of the Central Legislative Council were increased from 16 to 60;
- Direct elections were introduced to the Legislative Council;
- A Separate Communal Electorate was established for representing Muslims;
- India was included as a member in Viceroy's Executive Council.

### **1919 to 1947: Introduction to Self-Government**

#### **The Government of India Act, 1919: Montagu-Chelmsford Report**

The Morley Minto Reforms failed because of lack of support towards Parliamentary form of Government which led to a need for new reforms. As a result, The Government of India Act was passed in 1919. This Act allowed for greater role and association of Indians in Administrative matters.

Some of the main features of the Act were as follows:

- Dyarchy system was introduced in the provinces where the provincial subjects were bifurcated into 'Reserved' and 'Transferred.'
- Governor was not responsible to the Legislative Council over the Reserved subjects.
- Bicameral Legislature was introduced at the Centre.
- A Public Service Commission was established in India.
- A necessary condition was also introduced, requiring 3 of the 6 members of the Viceroy's Executive Council to be Indians.
- Extended voting rights allowing 10% of the population their right to vote.

#### **Simon Commission, 1927**

The British Government appointed the Simon Commission in 1927 under Stanley Baldwin to provide a report on the working of the Constitution of India, established by the government of India Act, 1919. Further, in 1928, a group of 7 MPs were sent to India, from Britain to study

the Constitution and also suggest reforms or make recommendations to the government. The Commission composed purely of British people.

### **Boycott of the Simon Commission**

Indians got heated due to exclusion from the Commission, thus the Congress Party decided to boycott the Simon Commission at their session in Madras. Soon, the Muslim League also boycotted the Simon Commission. Opposition to the Commission led to mass black flag demonstrations, hartals, and major protests in the country. Chants of “Simon go back” could be heard all across the nation. As a result, police had to resort to violent lathi charge over the protestors.

### **The Commission Report and its Impact:**

- The Simon Commission’s Report was published in 1930.
- The Government ensured the people of India that their opinion would be rightfully considered.
- Dyarchy system’s abolition was suggested, along with setting-up of Representative Governments in provinces.
- The Committee recommended not to continue the Separate Communal electorate.
- Led to the Government of India Act, 1935 which further went on to be the basis of our current Constitution.

### **The Government of India Act, 1935**

- It was the bulkiest and the last Constitutional Reform introduced by the British in India and the princely states.
- Legislative power was bifurcated between Central and Provincial Legislature.
- Legislative power was further distributed among the Centre and States through Federal list, State list, and Concurrent list.
- The Act provided for the establishment of the All India Federation consisting of both the British India provinces and Princely States (or, any other States that desired to be a part of the Federation).
- The Act further proposed combining of British India Provinces and Indian States as a single unit.
- A Bicameral legislature was introduced.
- The Federal Court was established.
- Indian Council was abolished.
- Accession of states to the Federal was initiated and each ruler of such state had to sign an ‘Instrument of Accession’ at the time of joining.
- The Act continued till the Indian Constitution came into force.

### **Federal Court**

- Federal Court of India was established under the Government of India Act, 1935;

- Original, advisory and appellate jurisdiction was awarded to the Federal Court;
- It comprised of one Chief Justice and 6 other judges;
- Judges were appointed by the Crown;
- Necessary qualifications of Judges of Federal Court defined.

### **Cripps Mission, 1942**

In 1942, a mission was sent to India with Constitutional proposals. Such mission was headed by Stafford Cripps.

Proposals made by the Cripps Mission:

- An elected body should be set up in India to frame the Indian Constitution.
- Provisions should be made to encourage the involvement of Indian states in the Constitution-making body.
- Elected people from the provincial legislatures and those nominated by the Indian Princess should be included in the Constitution drafting body.
- The British government shall accept the new constitution only if:

(i) any province unwilling to join the Union can have a separate Constitution, forming a separate union, and

(ii) the new constitution-making body and the British government would negotiate a treaty to safeguard religious and racial minorities and to give effect to the transfer of power.

Thus, the Cripps Mission was mainly sent to India seeking the support of India in the Second World War. However, Indians were highly dissatisfied with the proposals of the Mission and hence, rejected them.

### **The Cabinet Mission, 1946**

- The Cabinet Mission was introduced in India on 4th March, 1946.
- The mission was introduced with an attempt to reach an agreement with Indian leaders for framing of the Indian Constitution, to establish an Executive Council, and to formulate the Constituent Assembly of India.
- The mission proposed the inclusion of British India and the States in Union of India.
- The mission also suggested the setting up of an interim government with the support of major political parties.

### **The Indian Independence Act, 1947**

- The Act provided for the creation of Indian and Pakistan as two independent dominions. It also provided for the partition of Punjab and Bengal.

- The Boundary Commission was to decide the boundaries between the two dominion states.
- The Princely States received an independent choice to join either India or Pakistan, or remain independent.
- The Constituent Assemblies of both countries were given the powers to frame a Constitution for their respective country.
- The British government would cease to have any control over the Dominions or Provinces, after the 15th of August, 1947.

### **1947 to 1950: Framing of the new Constitution**

The Constituent Assembly came into force in 1946. Members of the Constituent Assembly included Jawaharlal Nehru, Dr. Rajendra Prasad, Sardar Patel, Maulana Azad and many more supreme leaders of the country. On 9th December, 1946, the first meeting of the Constituent Assembly took place. Dr. Rajendra Prasad was later appointed as the chairman of the Constituent Assembly. A Drafting Committee was also established under the chairmanship of Dr. B.R. Ambedkar.

#### **Conclusion**

In January 1948, a draft of the Indian Constitution was published, to which, various amendments were proposed and further discussed. On 26th November, 1949, the Constitution of India was passed and adopted by the Constituent Assembly. Finally, after 2 years, 11 months, and 18 days, the Constitution of India came into force on 26th January, 1950.