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Indian Polity

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CONSTITUTION OF INDIA

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CHAPTER 1

EVOLUTION OF INDIAN CONSTITUTION

1.1 Introduction

“The Constitution was not made to fit us like a straitjacket. In its elasticity lies its chief greatness. The trouble with the theory (of limited and divided government) is that Government is not a machine, but a living thing. This is where the living and breathing Constitution comes from. It is modified by its environment, necessitated by its tasks, shaped to its functions by the sheer pressure of life. It is getting to be harder to run a Constitution than to frame one.”

—Woodrow Wilson

The British came to India as traders in 1608. They started controlling administration as the time progressed. The Britishers delineated the boundaries of India. After consolidation, they felt the need of legal Charters and Acts for strengthening the British rule and keeping firm control over Indians from far away in Britain. Continuous demand from moderates also put pressure to increase Indian representation in Governance. The Constitutional development helped in removing arbitrariness and in establishing an order in India. But the purpose of Constitutional development was to rule through fear during British time. However independent Indian Constitution focused on welfare of people by giving them rights and setting administrative structures. And for achieving the objective, after independence, Indian Constitution was made through research and deliberations by body of eminent representatives of people rather than as a result of political revolutions.

CONSTITUTIONALISM

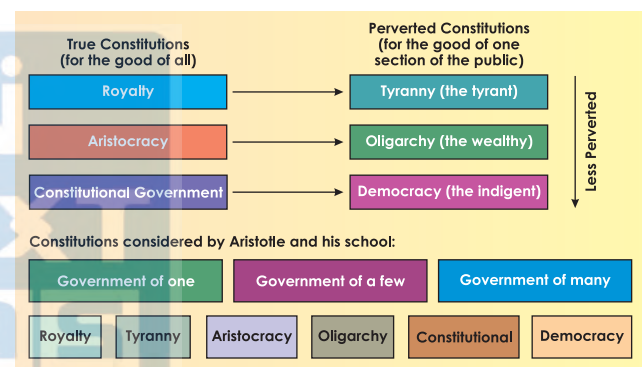
Constitutionalism is a system where Constitution is supreme and institution's structure and processes are Governed by the Constitutional principles. It provides the template/ framework within which the state has to carry out its operations. It also puts limitations on government.

1.1.1 Aristotle's Classification of Constitutions

The term “Constitution” had a different meaning to Aristotle than it does to us today. The Constitution that Aristotle envisioned was not single, organized documents like the one created by modern Nation-States. Aristotle wrote

that a “Constitution is the way of life of a citizen-body.” According to Aristotle, citizens were “all who share in the civic life of ruling and being ruled in turn.”

Aristotle identified six different kinds of Constitutions, and he classified them as either “**Right**” or “**Wrong**.” According to Aristotle, “Right” Constitutions served the common interests of all citizens. “Wrong” Constitutions served only the selfish interests of a certain person or group. On the chart below, the “Wrong” Constitutions are shown as corrupted forms of the Right Constitutions:



1.1.2 Significance of the Constitution

Constitution is the fundamental law of the country which gives legal sanction for governance. It is essential not only for institutional efficiency but also for citizen's welfare. The need for Constitution arises because of following reasons:-

1. Constitution provides for independence and interdependence of institutions by clearly defining their roles and goals.
2. Constitution tells us the fundamental nature of our society.
3. Constitution represents the collective will and conscience of a country.
4. Constitution is not just Politico-Legal document but also a Socio-Economic document for citizens.
5. Constitution reflects the grand vision of nation building.

Dr. B. R. Ambedkar puts that “**Laws alone does not determine the Rights, rather it is the social and moral consciousness that determine the Rights.**” Constitution acts as the manifestation of this social and moral consciousness in a society which keeps on evolving

with changing value systems and ethical foundations. For instance, when USA wrote their Constitution, only the Rights of (White American) Men were recognized while women and blacks were denied equal rights. As society progressed and time evolved, later modern Constitutions like that of India provided equal rights to all from the very first day of enactment of the Constitution after independence.

Most Constitutions seek to regulate the relationship between institutions of the state, in a basic sense the relationship between the executive, legislature and the judiciary and also the detailed relationship of institutions within those branches. It is thus the most basic law of a territory from which all the other laws and rules are hierarchically derived.

1.2 Classification of Constitutions

1.2.1 Codified Constitution

Most of the states in the world have codified Constitutions. Codified Constitutions are often the product of some political regime change, sometimes through a revolution. The process by which a country adopts a Constitution is closely tied to her historical and political context driving this fundamental change.

1.2.2 Uncodified Constitution

Uncodified Constitutions are the product of an “evolution” of laws and conventions over centuries. Uncodified Constitution may also have some written sources. e.g. Constitutional statutes enacted by the Parliament, Royal Charter, Magna Carta etc., unwritten sources may include Constitutional conventions, observation of precedents, royal prerogatives, custom and tradition, such as always holding the General Election on Thursdays etc. Together these constitute the British Constitutional law.

Type	Form	Example
Codified	In single Act (document)	United States of America, India
Uncodified	Fully written (in few documents)	Israel, Saudi Arabia
	Partially unwritten	New Zealand, United Kingdom

1.3 Development during British Era

The British came to India as traders, in the form of East India Company, which had the exclusive right of trading in India under a charter granted by Queen Elizabeth I. In 1765, the Company obtained the ‘Diwani’ rights (i.e., rights over revenue and civil justice) of Bengal, Bihar and Orissa. East India Company became powerful after getting such rights.

In 1858, in the wake of the ‘sepoy mutiny’, the British Crown assumed direct responsibility for the governance of India. This rule continued until India attained independence on August 15, 1947. The system of governing laws made by the British served as the de-facto Constitution of India before 1947.

The present Constitution was promulgated after getting independence in 1947. However, various features of the Indian Constitution and polity have their roots in the governance structure and the laws made in the British rule. The various acts formulated under the British rule are explained below in a chronological order.

1.3.1 The Company Rule (1772-1858)

Regulating Act of 1773

The Battle of Buxar (1764) was a milestone to establish the British rule in India. After the successful conquest and strengthening of Company rule, the Regulating Act of 1773 was enacted. It provided legal sanction to the conduct of the Company and also to protect the interest of Britishers.

Significant Provisions

- This Act strengthened the control of the British Government over the Company by seeking reports on its revenue, civil, and military affairs in India.
- It designated the *Governor of Bengal as the ‘Governor-General of Bengal’* and created an *Executive Council of four members* to assist him. *Warren Hastings was designated as the first Governor General of Bengal.*
- It made the Governors of Bombay and Madras Presidencies subordinate to the Governor-General of Bengal, unlike earlier times, when the three presidencies were independent of one another.
- The Governor General of Bengal was required to carry out the work according to the majority opinion of the council. Governor General of Bengal had casting vote only.

Casting vote is a vote given in the situation of tie for making a decision.

- The Regulating Act provided for a Supreme Court with a Chief Justice and three puisine judges. (established at Calcutta) Sir Elijah Impey was appointed the Chief Justice. The Supreme Court was given the power to try civil, criminal, admiralty and ecclesiastical cases. The jurisdiction of the Supreme Court was extended to all the British Subjects residing in Bengal, Bihar and Orissa.
- The Regulating Act prohibited the servants of Company from engaging in any private trade as well as from receiving presents as bribe.

Amending Act of 1781

The Amending Act of 1781 was enacted by the British Parliament to remove some of the deficiencies of the Regulating Act of 1773. This act is also known as the *Act of Settlement*.

Significant Provisions

- **Jurisdiction:** Servants of the Company were to be subject to the Jurisdiction of the Supreme Court for wrongs done by them or trespass. Cases could be brought before Supreme Court by the agreement of both the parties. The jurisdiction of the Supreme Court was excluded in cases of inheritance or succession to lands or goods.
- **Religious and Social Customs:** Religious and social customs as well as Indian condition were the basis for functioning of Supreme Court. Government was also to keep these in view while making regulations.
- **Rules regarding Provincial Courts:** Governor General Council was given the power to make regulations for the provincial courts and Councils. Formerly, the rules and regulations made by the Governor-General were required to be registered with the Supreme Court.
- **Exclusion of revenue matter:** To have jurisdiction overall inhabitants of Calcutta and also required the court to administer personal laws of defendants.

Appeals from provincial court would go on to Governor General in Council and not to the Supreme Court.

Pitt's India Act, 1784

Governor General of Bengal faced difficulty in taking decision mainly because lack of consensus between four councilors. Pitt's India Act of 1784 was brought to empower Governor General in decision making. This Act introduced *Board of Control* to supervise the policy of the Court of Directors. It also modified the Councils of Madras and Bombay on the pattern of Bengal. Under the Act, the Company's territories in India were called '*the British possessions in India*'. This was the first clear assertion of the Crown's claim of ownership over the Indian territory acquired by the Company.

Significant Provisions

- The Act distinguished between the *commercial and political functions* of the Company.
- The Act *empowered the Board of Control to supervise and direct all operations* of the civil and military government or revenues of the British possessions in India.
- The Act created a separate department of the British Government in England whose main function was to

exercise control over the Directors of the Company and the Indian administration.

- **System of Double Control:** This Act introduced system of double government. The Board of Control represented the King, and the Court of Directors symbolised the Company. Patronage or appointments as well as the trading activities of the Company remained in the hands of the Court of Directors. On the other hand, the Board of Control was to exercise control on matters of policy over the directors and the Indian administration.
- The number of councilors of the Governor-General was reduced to three, including the Commander in Chief. This was done to increase effectiveness of the casting vote of the Governor-General. In a body of three, the Governor-General could have his way by getting only one member on his side.
- A Governor and three councilors, including a commander-in chief was appointed in each of the two presidencies.
- Veto power was granted to Governor General of Bengal in Executive Council to strengthen the decision making ability.

The Amending Act of 1786

The Amending Act of 1786 was passed by the British Government to invest more power into the Governor-General to override the decision of his council and act without its concurrence in extraordinary conditions. Lord Cornwallis was taking up the role of the Governor-General and wanted more powers to be vested in him. The Amending Act of 1786 is a direct result of that.

Significant Provisions

- Lord Cornwallis got the power of working as Both Governor-General & Commander in Chief and he became the first effective ruler under the authority of the Board of Control and the Court of Directors.
- Due to this power, Lord Cornwallis reorganized the judicial system and brought administrative reforms and Permanent Settlement in Bengal

Charter Act of 1793

The Charter of the East India Company was reviewed in 1793. This *Act authorized the Company to carry on trade with India for next 20 years*.

Significant Provisions

- The Governor-General and the Governors were given the power to override their Councils.

- Governor General was given the power to appoint Vice-President of his Executive Council from the members of the council.
- The admiralty jurisdiction of Calcutta Supreme Court was extended to the high seas.
- It was provided that the payment of the members and the staff of the Board of Control should be made out of the Indian revenues which substantially contributed to 'Drain of Wealth'. This system continued up to 1919.
- It also gave the Governor General more powers and control and also the controlled the subordinate presidencies of Bombay in Madras.
- The Commercial functions of the Company were taken away by this act and the Company henceforth, was to remain in India only as a political functionary. It provided that the company's territories in India were held by it in trust of the British Crown. The act also deprived the Governor of Bombay and Madras of their legislative powers. *The Governor General of India was given exclusive legislative powers for the entire British India.* The laws made under the previous acts were called as Regulations while laws made under this act were called as Acts.
- President of the Board of Control now became the *Minister for India Affairs.*

Charter Act of 1813

By passing the Charter Act of 1813, the British Parliament renewed the East India Company's charter for another 20 years. *This Act is important in that it defined for the first time the Constitutional position of British Indian territories.*

Significant Provisions

- Company's commercial monopoly was ended, except for the tea and opium trade and the trade with China.
- No Changes were made in the Company's Constitution and the grant of its territorial acquisition in India with the attended revenues was extended for another twenty years.
- Nothing substantial was changed in terms of governance in India except that the Charter Act 1813 for the first time explicitly defined the Constitutional position of the British territories in India. The Act also empowered the Local Governments in India to impose taxes on persons and to punish those who did not pay them.
- Christian Missionaries were permitted to come to India for enlightening the people.
- Spread of western education among the inhabitants of British India Territory.

Charter Act of 1833

The Act of 1833 renewed the Charter of the East India Company for another twenty years. This Act was an important step towards centralization in British India.

Significant Provisions

- The Governor-General of Bengal became the Governor-General of India. The Act vested in him all civil and military powers. Thus, the Act created, for the first time, a *Governor General of India* having authority over the entire territorial area possessed by the British in India. *Lord William Bentick was the first Governor-General of India.*

- The Charter Act of 1833 introduced a system of open competition for selection of civil servants, and stated that the Native Indians should not be debarred from holding any place, office and employment under the Company. However, this provision was negated after opposition from the Court of Directors.
- The Charter Act added a new member to the Executive Council of the Governor-General known as the *law member*. His work was mainly to assist Governor General in legislation. He was not given the powers to cast vote.

Charter Act of 1853

The Charter Act 1853 was enacted by the British Parliament to renew the East India Company's Charter. Unlike the previous Charter Acts of 1793, 1813 and 1833 which renewed the Charter for 20 years; this act did not mention the time for which the Company Charter would be renewed. This Act was passed by the British Parliament when Lord Dalhousie was the Governor-General of India. This was the last of the series of Charter Acts passed by the British Parliament between 1793 and 1853. It was a significant Constitutional landmark.

Significant Provisions

- The recruitment of civil servants was now done through open competition in which no discrimination of religion, caste or creed was to be made.
- The Charter Act of 1853 resulted in the separation of the legislative and the executive functions of the Governor General.
- The Act for the first time introduced *the local representation in the Indian (Central) Legislative Council*. Of the six new Legislative Members of the Governor-General's Council, four members (Madras, Bombay, Bengal and Agra) were to be appointed by the provincial Governors.
- The Chief justice of the Supreme Court of Calcutta was to be an ex-officio member of this Council.

- This Act reduced the number of Directors of the Company in England from 24 to 18.
- This Act empowered the Court of Directors to constitute a new presidencies or to appoint a Lieutenant Governor.

1.3.2 The Crown Rule (1858–1947)

Government of India Act of 1858

The Government of India Act 1858, known as the 'Act for Better Government of India' was passed in 1858. This significant Act was enacted in the wake of the Revolt of 1857 also known as the First War of Independence or the 'Sepoy Mutiny'. *This Act transferred the powers of government, territories and revenues from the East India Company to the British Crown.*

Significant Provisions

- The Governor-General came to be known as the Viceroy. The Military and Naval forces of the Company were transferred to the Crown. To be governed in the name of "Her Majesty"
- It ended the system of double government by abolishing the Board of Control and Court of Directors. It created a new office, Secretary of State for India, vested with complete authority and control over Indian administration. The Secretary of State was a member of the British Cabinet and was responsible ultimately to the British Parliament.
- The Indian Council was a body of permanent civil servants chosen for their knowledge of Indian administration to safeguard the Indian revenues against a British Secretary of State for India. The India Council was to see that there was no tampering with the Indian civil service for political reasons.
- The Council of India consisted of fifteen members, seven of them were to be elected by the Court of Directors and rest eight members to be appointed by Crown. The council was advisory body chaired by *Secretary of State of India.*

Significance of the GOI Act, 1858

The Act passed in 1858 was an event of great Constitutional significance. It closed one great period of Indian history viz., the rule of East India Company and ushered in a new era of direct rule of the Crown.

The Act did away with the diffusion of responsibility, which resulted because of division of power of the government between the Court of Directors and the Board of Control. But, the Act failed to grant significant political rights to the Indians and did not allow them any share in the administration of their own country.

Indian Councils Acts of 1861

The Indian Councils Act of 1861 is considered as an important landmark in the evolution of the Constitution of India. Under the Act, *Indians were nominated for the first time as members of the Executive Council, while meeting for legislative purposes.* This development was called as the *policy of 'benevolent despotism'*, because the Government remained irresponsible to the citizens as before.

Significant Provisions

- This Act started the process of decentralization by restoring the legislative powers of Madras and Bombay Presidencies.
- This Act introduced the *portfolio system* for the first time.
- Viceroy could nominate some Indians to Executive Council as non-official member. In 1862, three Indians were also nominated to the Legislative Council. They were Raja of Banaras, The Maharaja of Patiala and Sir Dinkar Rao.
- A 5th member was added to Executive Council of the Viceroy. He was to be "a gentleman from legal profession, a jurist rather than a technical lawyer".
- The Executive Council was to be strengthened by the addition of not less than 6 and not more than 12, members nominated by the Governor-General for the purpose of legislation. Not less than half of the additional members were to be non-officials. They were to hold office for two years.
- The function of the Council was strictly limited to legislation and the Act expressly forbade the transaction of any other business.
- No distinction was made between the central and provincial subjects. But measures concerning public debt, finances, currency, post-office, telegraph, religion, patents and copyrights were to be ordinarily considered by the Central Government.
- The Governor-General was given the power to create new provinces for legislative purposes and to appoint Lieutenant-Governors for them. He was also authorized to divide or alter the limits of any presidency, province or territory.

Indian Councils Act, 1892

The Act of 1892 further widened the functions of the legislature. *It provided the Indians with an opportunity to have representation in the Councils at the highest levels and thus laid down the foundations of the representative government in country.* This Act was an important milestone

for the establishment of parliamentary government at a later stage.

Significant Provisions

- **Expansion of Number of Members in the Council:** The Executive Council of the Governor-General was expanded further for purpose of legislation with additional members, whose number was not to be less than ten or more than sixteen in Bombay and Madras.
- **System of Indirect Election:** A system of indirect election was introduced for the non-official members. Nominations were to be made on the recommendations of bodies like the Provincial Councils, District Boards, Chambers of Commerce, University Senates etc.
- **Expansion of Functions of the Council:** The Councils were given the right to ask questions to the Executive Councilors. The right to discuss the Budget was provided for the first time to the Council but without right to vote on it. No supplementary questions were allowed.

Indian Councils Act, 1909

The Morley-Minto Reforms of 1909 represent the next Constitutional advance after the Council Act of 1892. The reforms were drafted by Lord Morley, the Secretary of State and Lord Minto, the Viceroy of India.

Significant Provisions

- **Enlarged Legislative Council:** Morley-Minto reforms enlarged the size of the Legislative Council. The number of members in the Central Legislative Council was raised from *16 to 60*. The number of members in the provincial Legislative Councils were also increased.
- **Enlargement of Functions:** The functions of the Legislative Councils were increased. Elaborate rules were made for the discussion of the budget in the Imperial Legislative Council. Every member was given the right to move any resolution relating to any alteration in taxation.
- **Right to Ask Questions:** The members were given the right to ask questions and supplementary questions for further elucidating any point. However, the member in charge of department might refuse to answer the supplementary questions. He may also demand some time for the same.
- **Discussion on Matters of General Public Interest:** Rules were also framed under the Act for the discussion of matters of general public interest in the Legislative Councils.
- **Executive Council:** The act increased the number of members of the Executive Councils in Bombay,

Bengal and Madras to four. It also empowered the Government to constitute an Executive Council for a Lieutenant Governor's province also. It provided (for the first time) for the association of *Indians with the Executive Councils of the Viceroy and Governors*. *Satyendra Prasad Sinha* became the first Indian to join the Viceroy's Executive Council as a law member.

- **Separate Electorate:** It introduced a system of communal representation for Muslims by accepting the concept of '*separate electorate*'. The remaining seats were allotted to the Municipalities and district boards, which were called "general electorates" Under this, the Muslim members were to be elected by Muslim voters only. Thus, the Act is criticized for legalizing communalism and *Lord Minto came to be known as the 'Father of Communal Electorate'*. Also *Separate Representation of Presidency, Corporation, Chambers of Commerce, University And Zamindar*.

Government of India Act, 1919

The Government of India Act of 1919, also known as the *Montagu-Chelmsford or Montford Reforms*. Edwin Samuel Montagu was the Secretary of State and Lord Chelmsford was the Viceroy of India.

Significant Provisions

- **Separate Subjects for Centre and Provinces:** The Act relaxed the central control over the provinces by demarcating and separating the central and provincial subjects. The central and provincial legislatures were authorized to make laws on their respective list of subjects. However, the structure of government continued to be centralized and unitary.
- **Dyarchy in Provinces:** The Act further divided the provincial subjects into two parts '*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*, on the other hand, were to be administered by the Governor and his Executive Council without being responsible to the Legislative Council. This dual scheme of governance was known as '*Dyarchy*'. However, this experiment was largely unsuccessful.
- **Bicameralism and Direct Elections:** The act introduced, for the first time, bicameralism and direct elections in the country. Thus, the Indian Legislative Council was replaced by a bicameral legislature consisting of an Upper House (Council of State) and a Lower House (Legislative Assembly). The majority of members of both the Houses were chosen by direct election.

- **Expansion of Executive Council:** It required that the three of the six members of the Viceroy's Executive Council (other than the commander-in-chief) were to be Indian.
- **Extension of Separate Electorate:** It extended the principle of communal representation by providing separate electorates for Sikhs, Indian Christians, Anglo-Indians and Europeans.
- **Limited Franchise:** It granted franchise to a limited number of people based on property, tax or education.
- **Office of High Commissioner:** The Act created a new office of the High Commissioner for India in London and transferred to him some of the functions hitherto performed by the Secretary of State for India.
- **Public Service Commission:** The Act provided for the establishment of a Public Service Commission. Hence, a Central Public Service Commission was set up in 1926 for recruiting civil servants. This was done on the recommendation of the *Lee Commission on Superior Civil Services in India (1923-24)*.
- **Statutory Commission:** The Act provided for the appointment of a Statutory Commission to inquire into and report on its working after ten years of its coming into force.

DYARCHY

The most significant of the provisions of the Act of 1919 were related to the Provincial Administration. The Act marked the beginning of responsible government, by introducing, Dyarchy in the Provincial sphere.

The word Dyarchy simply means double government or rule by two authorities. Subjects were divided into Central and Provincial Lists. The Provincial List was further divided into the "Reserved and Transferred Subjects".

- **Reserved Subjects:** These subjects were kept under the control of the Governor. The Reserved Subjects included Police; Administration of Justice; Land Revenue; Irrigation and Canals; Famine Relief; Control of Newspapers, press and books; Borrowing; Forests; Prisons and Reformatories; Settlement of labour disputes etc., **These were called as "Nation Building Departments."**
- **Transferred Subjects:** It included those subjects which required more local knowledge and experience. The Transferred Subjects included Education; Public Works; Agriculture and Fisheries; Local Self-Government; Excise; Public Health; Sanitation and Medical Administration; and the Development of Industries and Industrial Research.
- **Provincial Executive:** Provincial Executive consisted of the Governor and his councillors. The Crown on the recommendation of the Governor appointed the members of the Executive Council. As they were the ex-officio members, the Councillors were not removable by the Legislature. The Governor was given extensive powers to discharge his duties. The Governor with the help of his Executive Council administered the Reserved Subjects.
- **Governor and His Ministers:** Governor and his Ministers administered the Transferred Subjects. The Ministers were selected by the Governor to hold office during his pleasure. They were selected from among the non-official members of the Legislature. The maximum number of Ministers to be appointed by the Governor was not uniform between the Provinces.
- **Provincial Legislature:** Provincial Legislature was unicameral, known as the Legislative Council. It was entrusted with increased functions and powers. Direct election were introduced to elect the members to the Legislative Council.

Shortcomings of the Act of 1919

- The very principle of administrative dichotomy was defective, unnatural and unscientific.
- The ministers of the Legislative Councils were made responsible to both the electorate and the Governor. This in turn eroded the accountability.
- The reforms proposed in Montford reforms fell much short of the demand of self-rule by Congress especially Swarajist. The act attracted widespread opposition in India.

Simon Commission

The British reaction to the national demand was the announcement of the appointment of the Simon Commission two years early, as per the provisions of Government of India Act 1919.

Constitution of the Commission

The Royal Commission was constituted under the Chairmanship of Sir John Simon, a member of the British Liberal Party. Besides the Chairman, it comprised of, seven

members, all of them were Englishmen. The Commission was granted wide powers. It was expected to inquire into the working of the Constitution of 1919. In short, the Simon Commission was constituted to investigate the working of Dyarchy and to suggest further Constitutional measures.

Indian Reaction

The exclusion of Indians from the Commission evoked widespread condemnation. The Congress passed the memorable resolution to boycott the Commission at every stage and in every form.

Report of the Commission

The Commission in its report recommended:

1. Dyarchy has failed so Provincial Autonomy should replace dyarchy and maximum freedom should be given to the ministers for running the provincial administration.
2. The Central Government should be reconstituted on federal principle, embracing not only British India but the Princely States as well.
3. Provincial Legislatures should be enlarged, abolishing the official block and giving the Muslims special and adequate representation.
4. It recommended for the continuation of communal electorate.

Communal Award

Following the recommendations of the Simon Commission, in August 1932, *Ramsay MacDonald*, the British Prime Minister, announced a scheme of representation of the minorities, known as the **Communal Award**. The award continued separate electorates for the Muslims, Sikhs, Indian Christians, Anglo-Indians and Europeans. Besides, it extended it to the depressed classes (scheduled castes). To Consider Proposals of Commission, The British Government Convened *Three Round Table Conferences*.

Gandhi was distressed over this extension of the principle of communal representation to the depressed classes as it strengthened the policy of divide and rule. So, he undertook fast unto death in Yerawada Jail (Poona) to get the award modified.

Poona Pact

Finally, there was an agreement between the leaders of the Congress (mainly Mahatma Gandhi) and the depressed classes (mainly B.R.Ambedkar). The agreement, known as

Poona Pact, retained the Hindu joint electorate and gave reserved seats to the depressed classes.

Government of India Act, 1935

The Government of India Act of 1935 was the Crowning climax of a prolonged process of Constitution making that had commenced in 1927 with the appointment of the Simon Commission.

Significant Provisions

The main provisions of the Act of 1935 were as follows:

- The Act provided for an *All-India Federation*. It was to comprise of the British Indian Provinces and the Princely States. However, this provision of the act did not come into operation at all.
- The Act introduced Dyarchy at the Centre and abolished Provincial Dyarchy.
- The Act introduced responsible government in provinces, that is, the Governor was required to act with the advice of ministers responsible to the provincial legislature. This came into effect in 1937 and was discontinued in 1939.
- The Federal Legislature was to consist of two Houses- Council of States and Federal Assembly.
- Provision was made for the establishment of a Federal Court to interpret the controversial clauses of the Act and to settle disputes arising among the constituent units and between a unit and the Federal Government. *Supreme Court of India is based on this model.*
- 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 *Concurrent List* (for both, with 36 items). Residuary powers were given to the Viceroy.
- Provision was made for electoral safeguards and reservations for the minorities.
- It further extended the principle of communal representation by providing separate electorates for depressed classes (scheduled castes), women and labour (workers).
- It abolished the Council of India, established by the Government of India Act of 1858. The Secretary of State for India was provided with a team of advisors.
- It extended franchise. About 10 per cent of the total population got the voting right.

- It provided for the establishment of a Reserve Bank of India to control the currency and credit of the country.
- It provided for the establishment of a Federal Public Service Commission, a Provincial Public Service Commission and Joint Public Service Commission for two or more provinces.

Significance of Government of India Act, 1935

Constitution of India is based on the structure provided by Government of India Act 1935. Following are the provisions borrowed from the Act:

- **Federalism:** GOI Act 1935 for the first time introduced federal system of Government in India. However, it did not come in practice due to opposition from Princely States. This idea of federalism was adopted in 1950 Constitution.
- **Distribution of Subjects:** Subjects were classified in 3 lists Federal list, Provincial list and Concurrent list. This is the main feature of Dyarchy at Centre introduced in GOI act 1935. Indian Constitution also provides for three lists under Schedule VII which are Union list, State list and Concurrent list.
- **Dyarchy at Centre:** Dyarchy was introduced at Centre. Today's Lok Sabha and Rajya Sabha are successor of Federal Assembly and Council of States (Bicameral nature).
- **All India Court:** For the first time an all India court called 'Federal Court of India' was set up. Once Indian Constitution came into force it was substituted by Supreme Court of India.
- **Emergency Powers:** A degree of autonomy was given to provinces but British authority retained the right to suspend the responsible government. This is the genesis of Article 356 of Indian Constitution which gives the power to impose President's rule in the state in case of failure of Constitutional machinery in the State.
- **Office of Governor:** Office of Governor was provided in the Government of India Act, and was adopted in our Constitution post-independence.
- **Public Service Commission:** The Act provided for the Public Service Commission like Federal Public Service Commission. Indian Constitution also provides for Public Service Commission for the union and for the states under Article 315.

Indian Independence Act of 1947

The Indian Independence Act was based upon the Mountbatten plan of 3rd June 1947 and was passed by the British Parliament on July 5, 1947. It received royal assent on July 18, 1947.

Significant Provisions

- It ended the British rule in India and declared India as an independent and sovereign state from August 15, 1947.
- It provided for the partition of India and creation of two independent dominions of India.
- It abolished the office of Viceroy and provided, for each dominion, a Governor-General, who was to be appointed by the British King on the advice of the dominion cabinet.
- It empowered the Constituent Assemblies of the two dominions to frame and adopt any Constitution for their respective nations and to repeal any act of the British Parliament, including the Independence Act itself.
- It empowered the Constituent Assemblies of both the dominions to legislate for their respective territories till the new Constitutions were drafted and enforced. No Act of the British Parliament passed after August 15, 1947 was to extend to either of the new dominions unless it was extended thereto by a law of the legislature of the dominion.
- It abolished the office of the Secretary of State for India.
- It provided for the governance of each of the dominions and the provinces by the Government of India Act of 1935, until the new Constitutions were framed. The dominions were however authorised to make modifications in the Act.
- At the stroke of midnight of 14–15 August, 1947, the British rule came to an end and power was transferred to the two new independent Dominions of India and Pakistan. Lord Mountbatten became the first Governor-General of the new Dominion of India. He swore in Jawaharlal Nehru as the first Prime Minister of independent India. The Constituent Assembly of India formed in 1946 became the Parliament of the Indian Dominion.
- It proclaimed the lapse of British Paramountcy over Indian Princely States and treaty relations with tribal areas from August 15, 1947.
- It deprived the British monarch to Veto bills.

Interim Government (1946)

The Interim Government of India, also known as the Provisional Government of India, formed on 2nd September 1946 from the newly elected Constituent Assembly of India. It remain in place until 15th August 1947. The total number of Members were 15.

MEMBER AND PORTFOLIO	
Member	Portfolios Held
The Viscount Wavell (15 October 1946 – 20 February 1947)	Viceroy and Governor-General of India.
The Viscount Mountbatten of Burma (21 February 1947)	President of the Executive Council.
Sir Claude Auchinleck	Commander-in-Chief
Jawaharlal Nehru	Vice-president of the Council; External Affairs & Commonwealth Relations.
Sardar Vallabhbhai Patel	Home, Information & Broadcasting
Dr. Rajendra Prasad	Food & Agriculture
Dr. John Mathai	Industries & Supplies
Jagjivan Ram	Labour
Sardar Baldev Singh	Defence
C.H. Bhabha	Works, Mines & Power
Liaquat Ali Khan	Finance
Abdur Rab Nishtar	Railways and Communication, Posts and Air
C. Rajagopalachari	Education & Arts
Ibrahim Ismail Chundrigar	Commerce
Ghaznafar Ali Khan	Health
Joginder Nath Mandal	Law

First Cabinet of Free India (1947)

Members	Portfolios Held
Jawaharlal Nehru	Prime Minister, External Affairs & Commonwealth Relations, Scientific Research
Sardar Vallabhbhai Patel	Home, Information & Broadcasting, States
Dr. Rajendra Prasad	Food & Agriculture
Maulana Abul Kalam Azad	Education
Dr. John Mathai	Railways & Transport
R.K. Shanmugham Chetty	Finance
Dr. B.R. Ambedkar	Law
Jagjivan Ram	Labour
Sardar Baldev Singh	Defence
Raj Kumari Amrit Kaur	Health
C.H. Bhabha	Commerce
Rafi Ahmed Kidwai	Communication
Dr. Shyam Prasad Mukherji	Industries & Supplies

Members	Portfolios Held
V.N. Gadgil	Mines & Power

Constitutional Development at a Glance

Acts	Features
Regulating Act (1773)	<ul style="list-style-type: none"> Governor of Bengal designated as Governor General of Bengal (Warren Hastings). Centralisation:- Governor of Bombay and Madras were made subordinate to Governor General of Bengal in matters like waging wars or peace. Established Governor General in Council = 5 members [1 Governor General and 4 Members]. First Supreme Court at Calcutta (1774) – First Chief Justice : Elijah Impey. Prohibits corruption and arbitrariness – Prohibited servants of Company to engage in private or personal trade.
	<ul style="list-style-type: none"> Court of Directors (Governing body of the Company) formed in Britain (24 directors). Strengthened the control of the British Government over the Company by requiring the Court of Directors to report on its revenue, civil, and military affairs in India. First step taken by the British Government to control and regulate the affairs of the EIC.
Pitts India Act (1784) (William Pitt, the then PM of Britain)	<ul style="list-style-type: none"> It distinguished between the commercial and political functions of the Company. Double Government: Court of Directors for Commercial affairs and Board of Control for Political & administrative affairs. Board of Control = 6 members [2 Cabinet Ministers and 4 Privy Council members]. Governor General's Executive Council = 4 members [1 + 3 (ICS)]. Veto power to Governor General of Bengal in Executive Council. Empowered the Board of Control to the establishment of all operations of the civil and military government or revenues of the British possessions in India. Company's territories in India were for the first time called 'British possessions in India' British Government was given the supreme control over Company's affairs.
Charter Act (1793)	<ul style="list-style-type: none"> It extended monopoly privilege of Company for another 20 years. Governor General received overriding powers over council members. Drain of wealth – The salaries of Board of Control were paid from Indian Revenue. Commander in Chief was not ipso facto member of Executive Council.
Charter Act (1813)	<ul style="list-style-type: none"> Ended East India Company's monopoly but exempted trade with China & trade in tea. Benevolent despotism – Company to spend 1 Lakh for Education (White Men's Burden). Christian Missionaries allowed to preach. Asserted the sovereignty of the British Crown over the Indian territories held by Company.
Charter Act (1833)	<ul style="list-style-type: none"> Governor General of Bengal designated as Governor General of India (William Bentick). Exempted trade with China and trade in tea abolished. Ended the activities of East India Company as commercial body, which then became purely an administrative body. Centralisation:- Deprived Governor of Bombay & Madras of any Legislative powers. Governor General of India was given exclusive legislative powers for entire India. Governor General's Council = 5 members [including (Law Expert Macaulay)]. Law Commission was appointed under Lord Macaulay (1834). Restriction on European immigration abolished; allowed to own property. No Discrimination on the basis of color, caste, place of birth or class for jobs under Company. Administration was centralized. Act V of 1843 made slavery Illegal. Introduction of open competition but negated by Court of Directors.

Acts	Features
<p>Charter Act (1853)</p>	<ul style="list-style-type: none"> • Indian Civil Services open for all. First open competitive Exam in London 1885. • The members of Court of Directors were reduced from 24 to 18 (6 to be nominated by Crown). • Law member became full member of Governor General Executive Council. • New Governor General Legislative Council formed with 6 members (in addition to Governor General Executive Council) [4 appointed by Local provincial Governments of Madras, Bombay, Bengal and Agra each].
<p>Government of India Act (1858)</p>	<ul style="list-style-type: none"> • Crown rule:-Indian Administration was taken over by British Crown. • Viceroy:-Governor General title got changed to Viceroy of India. (Lord Canning). • Double Government of Board of Control and Court of Director was abolished. • Office of Secretary of State was created with 15-member Council of India to assist it.
<p>Indian Councils Act (1861)</p>	<ul style="list-style-type: none"> • Decentralization: - Madras and Bombay provinces were given power to legislate. New Legislative Councils created in Bengal, North West Frontier Province and Punjab. • Representative Institution :-Imperial (Central) Legislative Council to include non-official nominated members [members increased from 6 to 10] – Indians were included for the first time such as Maharaja of Benaras, Patiala & Sir Dinkar Rao . • It gave recognition to Portfolio System introduced by Canning in 1859. • Viceroy given powers to issue ordinances with life of six months.
<p>Indian Councils Act (1892)</p>	<ul style="list-style-type: none"> • Number of non-official members in Imperial Legislative Council were increased from 10 member to 16 members. • Budget could be discussed and Questions could be asked with prior permission of the Governor General. They were not allowed to ask supplementary questions. • Elections (indirect) introduced for the first time.
<p>Indian Councils Act (1909)</p>	<ul style="list-style-type: none"> • Also known as Morley-Minto Reforms. • Introduced Separate electorate for Muslims. • Number of total members in Imperial Legislative Council increased to 68 members. • Beginning of non-official resolutions. • Introduction of Indians in Viceroy's Executive Council [Satyendra Nath Sinha].
<p>Government of India Act (1919)</p>	<ul style="list-style-type: none"> • Also known as Montagu Chelmsford Reforms. • Introduced Dyarchy in Provinces – System of transferred & reserved subjects. • Bicameralism at Centre: Legislative Assembly and Council of States • Viceroy's Executive Council: 3 out of 6 members (except commander-in-chief) to be Indian. • Extension of Separate Electorate to Sikhs, Christians, Anglo-Indians, Europeans. • Indian Civil Services exam to be conducted in India. (1st time in Allahabad in 1922). • Public Service Commission established in 1926 [recommended by Lee commission (1923-24)]. • Resolution for appointment of Statutory Commission after 10 years for reviewing Dyarchy (Simon Commission). • Direct elections were introduced. • A High Commissioner for India at London was appointed. • Women were given the right to vote. • 25% of Budget made votable and Supplementary Questions can be asked.

Acts	Features
Government of India Act (1935)	<ul style="list-style-type: none"> • Replaced Depressed Classes with Scheduled Caste. • Financial Control from Secretary of State to Viceroy. • Council of India (established in 1858 in Britain to Secretary of State) abolished. • Establishment of Reserve Bank of India. • Establishment of Federal Court. (Set up in 1937) • Separate Electorate expanded: Depressed Classes (Schedule Class), women and labour. • Creation of All India Federation: British Provinces and Princely State. (Didn't come into effect as it was not accepted by Princely States) • Three fold division of subjects (Federal, Provincial & Concurrent). Residuary powers rest with Viceroy. <p>Centre</p> <ul style="list-style-type: none"> • Executive: Dyarchy at Centre. • Legislative: Legislative Assembly indirectly elected and Council of State directly elected. <p>Provinces</p> <ul style="list-style-type: none"> • Executive: Provincial Autonomy. Dyarchy in provinces were abolished. • Legislative: Separate Electorate based on Communal Award to be made operational – Introduced Bicameralism in provinces (6 out of 11 provinces).



MAKING OF THE CONSTITUTION

2.1 Introduction

India being the largest democracy, living and breathing in the air of sovereignty has been gifted with the lengthiest Constitution in this world comprising 448 Articles in 25 Parts and 12 Schedules. The story that exists behind the formation of the Constitution of India receives a remarkable position in Indian history. In 1934 the seed of forming a Constituent Assembly was first sown by an Indian pioneer of the Communist movement, *Mr. M. N. Roy*. Followed by this, it was the Indian National Congress whose demand for forming a Constituent Assembly to give shape to the Constitution of India took the center stage in 1935. Though this demand was accepted by the British Government in 1940, the draft proposal that was sent over by the British Government to India with *Sir Stafford Cripps* did not receive a warm welcome from the Muslim League.

It was finally the *Cabinet Mission* that put forth the idea of the Constituent Assembly which marked the beginning of formulating the Indian Constitution thereby creating history. The supreme law of democratic India was drafted by the Assembly from November 1946 to November 1949 and was finally adopted on 26th November 1949 but the major part of the constitution came into force with effect from 26th January 1950, which has been celebrated as the Republic Day of India. The Constituent Assembly had precisely taken two years, eleven months, and seventeen days to complete the historic duty of drafting the Indian Constitution. During this period, the Assembly held eleven sessions spread over 165 days, among which 114 days were spent solely on consideration of the Draft Constitution.

2.2 Evolution of The Indian Constitution

The process of evolution of democratic institutions and rights had started much before the Constituent Assembly really made the Constitution of India. It, however, must be underlined that the features of democratic institutions and values which were introduced during the colonial period were meant to serve the colonial interests in contrast to the purpose of the provisions of the Constitution made by the Constituent Assembly of India.

Although the Indian Constitution was result of the deliberations (from December 9, 1946 to November 26, 1949) of the Constituent Assembly, some of its features had evolved over three quarters of a century through various Acts, i.e., from 1858 to 1935.

The key milestones in the drafting of the Constitution before the formation of Constitution Assembly in 1946 were:

1. The Nehru Report, 1928 (First Indian Initiative to Draft Constitution):

The first attempt by Indians themselves to prepare a Constitution of India was made in the Nehru Report(1928). Earlier, effort by Indians was made in the name of the swaraj (self-rule) by leaders of Indian national movement during the non-cooperation movement in 1921-22. The Nehru Report was known as such because it was named after the chairman of its drafting committee, Motilal Nehru.

The decision to constitute the drafting committee was taken in the conference of the established All India parties. The principal among these parties included Indian National Congress, Swaraj Party and Muslim League.

The Nehru Report demanded universal suffrage for adults and responsible government both in the centre and in the provinces. It, however, supported the Dominion Status, not complete independence for India. It meant that Indians would have freedom to legislate on certain limited matters under the control of the British India government. For this, the Nehru Report prepared list of central and provincial subjects, and Fundamental Rights. It also raised demands for universal suffrage for men and women adults.

2. **June 1934 Resolution:** Congress opposed the White Paper of British Government for the Constitutional reform in India, as any Constitution can only be drafted by Indian People.

3. **August Offer (August 1940):** Britishers agreed to form Constituent Assembly mainly by Indians to ensure participation of Indian in second world war. They agreed on providing Dominion Status as well as expansion of Viceroy's Executive council also. But Indian leaders were disillusioned and they demanded

complete Independence. Due to this it was rejected by the Indian leaders.

4. **Cripps Mission 1942:** The mandate of the mission under Sir Cripps was to find out a workable agreement between Congress and Muslim league for drafting of Constitution. The mission failed in its objective due to lack of understanding between the two parties
5. **Cabinet Mission Plan, 1946:** After, the end of second World War, Cabinet Mission was sent for constituting a mechanism for framing of the Constitution for the Independent Nation in near future. This mission was successful in establishing the Constituent Assembly.

2.3 The Journey to Constituent Assembly

The idea of a Constituent Assembly for India started mainly after the boycott of Simon Commission. The formation of the Constituent Assembly was the culmination of aspirations of the people and the demand of the national movement. After the demands of Poorna Swaraj, Indian leaders were firm that the Constitution of India should be framed not by the British Parliament but by the chosen representatives of the Indians.

2.3.1 Cripps Mission

Stafford Cripps, a member of the War Cabinet, was sent to India (in 1942) to discuss the British Government's Draft Declaration on the Constitution of India with representative Indian leaders from all parties. The Cripps Mission failed and the issue of India's Constitution was postponed until the end of the war. By early 1942, Japan had made advances in South-East Asia and they were on the border of India. The British Government was keen to secure the full cooperation of Indians in the effort against the Japanese. Mounting pressure from China and the United States, as well as from the Labour Party in Britain, led Prime Minister Winston Churchill to send Stafford Cripps to India to discuss the Draft Declaration, as settled by the War Cabinet and its Committee, containing proposals to resolve the Indian question of a new Constitution and self-government.

Proposals Under Cripps Mission

1. Granting of Dominion Status to India after ensuring full cooperation in war efforts.
2. Formation of a Constituent Assembly solely by Indians in which representatives may be partly elected by Provincial Assemblies through proportional representations and partly nominated by princes.
3. British Government would accept the new Constitution if a treaty would be signed between British Government

and Constitution making body for safe transfer of power. It provided defense of India to be remained in British hands and power of Governor General to remain intact.

4. Any Province not willing to join the Union can have a separate Constitution and can form a separate Union (can lead to secessionist tendency).

Indian leaders did not fall in the trap of 'Divide and Rule' again. They rejected the mission demanding a sovereign nation. Even Gandhiji said this mission as '*The post dated cheque*'.

2.3.2 Cabinet Mission Plan

There was a huge international pressure on colonizers for decolonization. It became costly to maintain the colonies after the crisis of Second World War. Besides Indian national movement was also on its peak. After the failure of Wavell plan, Early in 1946, the Labour Government dispatched an all-party parliamentary delegation to India under Cabinet Mission plan for an early settlement of the Indian Constitutional issue. Members were Lord Patrick Lawrence, Stafford Cripps and A. V. Alexander.

This plan rejected the demand of full-fledged Pakistan and focused on formation of three tier executive and legislature at Provincial, Sectional and Union level. There was a focus on the formation of Constitutional Assembly which may consist of members partly elected from Provinces and partly nominated from Princely States. Still there was a proposal to have a common centre for controlling Defense, Communication and External Affairs. This plan also envisaged Provincial autonomy and freedom to Princely States to join Successor Government or British Government. An Interim Government was to be formed from the Constituent Assembly.

Indian leaders rejected the Cabinet Mission plan as their focus was on complete independence. This further created the pressure on British Government.

2.3.3 Attlee's Declaration

While the country was passing through these uncertainties, Prime Minister Attlee announced on February 20, 1947, in the House of Commons, that the British would quit India after transferring power "into responsible hands not later than June 1948". Attlee apparently believed the announcement of the terminal date for the British withdrawal from India would bring pressure on the Indian people to settle their differences before then.

Attlee also announced the appointment of Lord Mountbatten as Viceroy in place of Lord Wavell. After holding discussions with the Indian political leaders, Lord Mountbatten found that the leaders of the Muslim League were adamant about

breaking up the country along communal lines. Mahatma Gandhi was vehemently opposed to the idea and had declared: "If the Congress wishes to accept partition it will be over my dead body. So long as I am alive, I will never agree to the partition of India". Another staunch opponent of the proposed partition was Abul Kalam Azad.

After the reluctant consent of the Congress for the partition of India, Lord Mountbatten held final discussions with the Congress, the League and the Sikh leaders, to seek their agreement on his partition plan. On June 3, 1947, Prime Minister Attlee announced the Partition Plan or the June 3rd Plan in the House of Commons.

2.3.4 3rd June Plan

Attlee announced the plan for Independence of British India into two dominions of India and Pakistan in the House of Commons on 3rd June 1947; Hence it came to be known as the '3rd June Plan'. The salient points of the plan were:

1. The work of the existing Constituent Assembly was not to be interrupted. However, the Constitution framed by the Assembly would not apply to all those parts of India which were unwilling to accept it.
2. In order to ascertain the wishes of different parts of India, two methods were suggested:
 - Through the existing Constituent Assembly which would be joined by the representatives of the dissident Princely States.
 - Through separate Constituent Assemblies of representatives of the dissident Princely States.
3. As for the provinces, the following arrangements were envisaged:
 - Punjab and Bengal Legislative Assembly would be divided into two sections, one for members belonging to the Muslim majority districts and the other for the non-Muslim districts. If they opted for partition of the provinces, each section would join the Constituent Assembly the province would join.
 - The Legislative Assembly of a province would decide which Constituent Assembly the province would join;
 - In the North West Frontier Province this choice would be exercised through a referendum of the electors of the Legislative Assembly;
 - The district of Sylhet in Assam would also decide its choice by means of a referendum;
 - The Governor-General would prescribe the method and mode of ascertaining the will of the people of Baluchistan;
 - There would be elections in parts of the Punjab, Bengal and in Sylhet to choose representatives for their respective constituent assemblies.

There would be negotiations:

- Between the successor governments concerning the central subjects in regard to the administrative consequences of partition;
- Between the successor governments and Her Majesty's Government for treaties in regard to matters arising out of the transfer of power;
- Between the parts of the partitioned provinces concerning the administration of provincial subjects.

So in Indian States, Her Majesty's Government would cease to exercise the paramount powers and the rights surrendered by the States to the paramount power would revert to the States. It would then be open to the States to enter into political relations with the successor governments.

2.4 Composition of Constituent Assembly

The Constituent Assembly, consisting of *indirectly elected representatives*, was established in November 1946 to draft a Constitution for India (including the now-separate countries of Pakistan and Bangladesh). It existed for almost three years, and held *the status of the first Parliament of India* after independence in 1947. The Assembly was not elected on the basis of universal adult suffrage, and Muslims and Sikhs received special representation as minorities.

The Muslim League boycotted the Assembly as it wanted a separate Constituent Assembly for Muslims. Although a large part of the Constituent Assembly was drawn from the Congress Party in a single party environment, but the Congress Party at that time included a wide diversity of opinions – from conservative industrialists and radical Marxists to Hindu revivalists – all of whom participated in the process.

- The total strength of the Constituent Assembly was to be 389. Of these, 296 seats were to be allotted to British India and 93 seats to the princely states. members were chosen by indirect election by the members of the Provincial Legislative Assemblies, according to the scheme recommended by the Cabinet Mission.

ALLOCATION OF SEATS IN THE CONSTITUENT ASSEMBLY OF INDIA (1946)		
S.No.	Areas	Seats
1.	British Indian Provinces (11)	292
2.	Princely States (Indian States)	93
3.	Chief Commissioners' Provinces (4)	4
Total		389

- Each Province and Princely State were allotted seats in proportion to their respective population. Roughly, one seat was to be allotted for every million population.
- Seats allocated to each British Province were to be divided among the three principal communities: Muslims, Sikhs and General (all except Muslims and Sikhs), according to their population.
- The representatives of each community were to be elected by members of that community in the Provincial Legislative Assembly and voting was to be done by the method of proportional representation by means of single transferable vote.
- The representatives of the Princely States were to be nominated by the heads of the Princely States.

Thus, the *Constituent Assembly was a partly elected and partly nominated body*. Moreover, the members were indirectly elected by the members of the Provincial assemblies, who themselves were elected on a limited franchise.

The elections to the Constituent Assembly (for 296 seats allotted to the British Indian Provinces) were held in July-August 1946. However, the 93 seats allocated to Princely States remained vacant as they decided to stay away from the Constituent Assembly.

RESULTS OF THE ELECTIONS TO THE CONSTITUENT ASSEMBLY (JULY–AUGUST 1946)		
S.No.	Name of the Party	Seats Won
1.	Congress	208
2.	Muslim League	73
3.	Unionist Party	1
4.	Unionist Muslims	1
5.	Unionist Scheduled Castes	1
6.	Krishak - Praja Party	1
7.	Scheduled Castes Federation	1
8.	Sikhs (Non-Congress)	1
9.	Communist Party	1
10.	Independents	8
	Total	296

Although the Constituent Assembly was not directly elected by the people of India on the basis of adult franchise, the Assembly comprised representatives of all sections of the Indian society – Hindus, Muslims, Sikhs, Parsis, Anglo-Indians, Indian Christians, SCs, STs including women of all these sections. The Assembly included all important personalities of India at that time, with the exception of Mahatma Gandhi.

COMMUNITY-WISE REPRESENTATION IN THE CONSTITUENT ASSEMBLY (1946)		
S.No.	Community	Strength
1.	Hindus	163
2.	Muslims	80
3.	Scheduled Castes	31
4.	Indian Christians	6
5.	Backward Tribes	6
6.	Sikhs	4
7.	Anglo-Indians	3
8.	Parsees	3
	Total	296

2.5 Working of Constituent Assembly

The Assembly met for the first time in New Delhi on 9 December 1946, and its last session was held on 24 January 1950. During this period (two years, eleven months and eighteen days) the Assembly held eleven sessions, sitting for a total of 165 days. Of these, 114 days were spent on the consideration of the Draft Constitution.

Dr. Sachchidananda Sinha, the oldest member, was elected as the temporary President of the Assembly, following the French practice. Later, Dr. Rajendra Prasad was elected as the President of the Assembly. Similarly, both H.C. Mukherjee and V.T. Krishnamachari were elected as the Vice-Presidents of the Assembly. Jurist B.N. Rau was appointed Constitutional adviser to the assembly; Rau prepared the original draft of the Constitution and was later appointed a judge in the Permanent Court of International Justice in the Hague.

2.5.1 Stages in Working of Constituent Assembly

- Committees presented reports on issues.
- B.N. Rau prepared an initial draft based on the reports and his research into the Constitutions of other nations.
- The drafting committee, chaired by B. R. Ambedkar, presented a detailed draft Constitution which was published for public discussion.
- The draft Constitution was discussed, and amendments proposed and enacted.
- The Constitution was adopted, with a committee of experts led by the Congress Party (known as the Congress Assembly Party) which played a pivotal role in final adoption and enactment of the Constitution of India.

Sessions of the Constituent Assembly

First Session	: 9 – 23 December, 1946
Second Session	: 20 – 25 January, 1947
Third Session	: 28 April – 2 May, 1947
Fourth Session	: 14 – 31 July, 1947
Fifth Session	: 14 – 30 August, 1947
Sixth Session	: 27 January, 1948
Seventh Session	: 4 November, 1948 – 8 January, 1949
Eighth Session	: 16 May – 16 June, 1949
Ninth Session	: 30 July – 18 September, 1949
Tenth Session	: 6 – 17 October, 1949
Eleventh Session	: 14 – 26 November, 1949

The Assembly met once again for its final session on 24 January, 1950, when the members appended their signatures to the Constitution of India. However, *it continued as the provisional Parliament of India* from January 26, 1950, till the formation of new Parliament after the First General Elections in 1951–52.

2.5.2 Objectives Resolution

On December 13, 1946, Jawaharlal Nehru moved the historic 'Objectives Resolution' in the Assembly. It was basically the embodiment of the philosophies and values, on the basis of which the Constitution will be drafted.

This Resolution was unanimously adopted by the Assembly on January 22, 1947. It influenced the eventual shaping of the Constitution through all its subsequent stages. The Preamble to the Constitution of India borrows heavily from the ideals enshrined in the Objectives Resolution.

The draft of Objectives Resolution passed in the Constituent Assembly was contained following provisions:

1. This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution.
2. Wherein India shall be a union of erstwhile British Indian territories, Indian States, and other parts outside British India and Indian states as are willing to be a part of the Union.
3. Wherein the territories forming Union shall be autonomous units and exercise all powers and functions of the government and administration except those assigned to or vested in the Union. Boundary disputes between provinces may be resolved by Constituent Assembly.
4. Wherein all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people.

5. Wherein it shall be guaranteed and secured to all the people of India justice – social economic and political. Equality of status, opportunity and equality before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality.
6. Wherein adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes.
7. Whereby it shall be maintained that the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilized nations; and
8. This ancient land attains its rightful and honoured place in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.

2.5.3 Changes Made by the Indian Independence Act of 1947

The Princely States representatives, who had stayed away from the Constituent Assembly earlier, gradually joined it. As a result of the partition under the Mountbatten Plan of 3rd June, 1947, a separate Constituent Assembly was set up for Pakistan due to which representatives of some Provinces ceased to be members of the Assembly.

The Indian Independence Act of 1947 made the following changes in the position of the Assembly:

1. The Assembly was **made a fully sovereign body**, which could frame any Constitution it pleased. The act empowered the Assembly to alter or abrogate any law made by the British Parliament in relation to India.
2. The **Assembly also became a legislative body**. So, two separate functions were assigned to the Assembly, i.e., making of the Constitution for free India and enacting of ordinary laws for the country. Thus, **the Assembly became the first Parliament of free India**. Whenever the Assembly met as the Constituent body it was chaired by Dr. Rajendra Prasad and when it met as the legislative body, it was chaired by G.V. Mavlankar.
3. The Muslim League members (hailing from the areas included in the Pakistan) withdrew from the Constituent Assembly for India. Consequently, the total strength of the Assembly came down to 299 as against 389 originally fixed in 1946 under the Cabinet Mission Plan. The strength of the Indian Provinces (formerly British Provinces) was reduced from 296 to 229 and those of the Princely States from 93 to 70.

The state-wise membership of the Assembly as on December 31, 1947, is shown below:

STATEWISE MEMBERSHIP OF THE CONSTITUENT ASSEMBLY OF INDIA AS ON 31 DECEMBER, 1947		
S.No.	State	No. of Members
PROVINCES-229		
1.	United Provinces	55
2.	Madras	49
3.	Bihar	36
4.	Bombay	21
5.	West Bengal	19
6.	C.P. and Berar	17
7.	East Punjab	12
8.	Orissa	9
9.	Assam	8
10.	Delhi	1
11.	Ajmer-Merwara	1
12.	Coorg	1
INDIAN STATES (PRINCELY STATES)-70		
1.	Alwar	1
2.	Baroda	3
3.	Bhopal	1
4.	Bikaner	1
5.	Cochin	1
6.	Gwalior	4
7.	Indore	1
8.	Jaipur	3
9.	Jodhpur	2
10.	Kolhapur	1
11.	Kotah	1
12.	Mayurbhanj	1
13.	Mysore	7
14.	Patiala	2
15.	Rewa	2
16.	Travancore	6
17.	Udaipur	2
18.	Sikkim and Cooch Behar Group	1
19.	Tripura, Manipur and Khasi States Group	1
20.	U.P. States Group	1
21.	Eastern Rajputana States Group	3
22.	Central India States Group (including Bundelkhand and Malwa)	3
23.	Western India States Group	4

STATEWISE MEMBERSHIP OF THE CONSTITUENT ASSEMBLY OF INDIA AS ON 31 DECEMBER, 1947		
S.No.	State	No. of Members
24.	Gujarat States Group	2
25.	Deccan and Madras States Group	2
26.	Punjab States Group I	3
27.	Eastern States Group I	4
28.	Eastern States Group II	3
29.	Residuary States Group	4
Total		299

2.6 Committees of the Constituent Assembly

While elections to the Constituent Assembly were still in progress, on July 8, 1946, the Indian National Congress appointed an Experts Committee for the purpose of preparing material for the Constituent Assembly.

2.6.1 Experts Committees of the Congress

This committee consisted of the following members:

1. Jawaharlal Nehru (Chairman)
2. M. Asaf Ali
3. K.M. Munshi
4. N. Gopaldaswami Ayyangar
5. K.T. Shah
6. D.R. Gadgil
7. Humayun Kabir
8. K. Santhanam

Later, on the Chairman's proposal, it was resolved that Krishna Kripalani be co-opted as member and convener of the committee.

The committee discussed the procedure to be adopted by the Constituent Assembly, the question of the appointment of various committees and the draft of a resolution on the objectives of the Constitution to be moved during the first session of the Constituent Assembly.

Accordingly, the Constituent Assembly appointed a number of committees to deal with different tasks of Constitution making. Out of these, 8 were major committees and the others were minor committees. The names of these committees and their chairmen are given below:

2.6.2 Major Committees

1. Union Powers Committee – **Jawaharlal Nehru**
2. Union Constitution Committee – **Jawaharlal Nehru**
3. States Committee (Committee for Negotiating with States) – **Jawaharlal Nehru**

4. Provincial Constitution Committee – **Sardar Patel**
5. Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas – **Sardar Patel**

This committee had the following five sub-committees:

- Fundamental Rights Sub-Committee
– **J.B. Kripalani**
 - Minorities Sub-Committee – **H.C. Mukherjee**
 - North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee – **Gopinath Bardoloi**
 - Excluded and Partially Excluded Areas (other than those in Assam) Sub-Committee
– **A.V. Thakkar**
 - North-West Frontier Tribal Areas Sub-Committee*
6. Drafting Committee – **Dr. B.R. Ambedkar**
 7. Steering Committee – **Dr. Rajendra Prasad**
 8. Rules of Procedure Committee
– **Dr. Rajendra Prasad**

*Following a referendum, the North-West Frontier Province and Baluchistan became part of the territory of the Dominion of Pakistan and as a result the tribal areas in this region became a concern of that Dominion.

2.6.3 Minor Committees

1. Committee on the Functions of the Constituent Assembly – **G.V. Mavalankar**
2. Committee on Chief Commissioners' Provinces
– **B. PattabhiSitaramayya**
3. House Committee – **B. PattabhiSitaramayya**
4. Ad-hoc Committee on the National Flag
– **Dr. Rajendra Prasad**
5. Finance and Staff Committee – **Dr. Rajendra Prasad**
6. Order of Business Committee – **Dr. K.M. Munshi**
7. Credentials Committee – **AlladiKrishnaswamyAyyar**
8. Ad-hoc Committee on the Supreme Court
– **S. Varadachari (Not an Assembly Member)**
9. Linguistic Provinces Commission
– **S.K. Dar (Not an Assembly Member)**
10. Expert Committee on the Financial Provisions of the Union Constitution
– **Nalini Ranjan Sarkar (Not an Assembly Member)**
11. Ad-hoc Committee on Citizenship
– **S. Varadachari (Not an Assembly Member)**

12. Press Gallery Committee – **Usha Nath Sen**
13. Special Committee to Examine the Draft Constitution
– **Jawaharlal Nehru**

2.7 Drafting Committee

On 29th August, 1947 the Constituent Assembly adopted the resolution for forming a Drafting Committee of seven members with Dr. B. R. Ambedkar as chairman. The mandate of the committee was to prepare the draft of the Constitution of the Independent India. The seven members, including the Chairman of the 'Drafting Committee' were as follows:

1. Dr. B.R. Ambedkar (Chairman)
2. N. Gopalaswamy Ayyangar
3. Alladi Krishnaswamy Ayyar
4. Dr. K.M. Munshi
5. Syed Mohammad Saadullah
6. N. Madhava Rau (He replaced B.L. Mitter who resigned due to ill-health)
7. T.T. Krishnamachari (He replaced D.P. Khaitan who died in 1948)

2.8 Some Important Facts

1. **Sir B.N. Rau** was appointed as the Constitutional advisor (Legal advisor) to the Constituent Assembly.
2. **S.N. Mukherjee** was the chief draftsman of the Constitution in the Constituent Assembly.
3. Elephant was adopted as the symbol (seal) of the Constituent Assembly.
4. **H.V.R. Iyengar** was the Secretary to the Constituent Assembly.
5. **Prem Behari Narain Raizada** was the calligrapher of the Indian Constitution.
6. The original version was beautified and decorated by artists from Shantiniketan including **Nand Lal Bose** and **Beohar Rammanohar Sinha**.
7. The calligraphy of the Hindi version of the original Constitution was done by **Vasant Krishan Vaidya** and elegantly decorated and illuminated by **Nand Lal Bose**.
8. **Acharya J.B. Kripalani** was the first person to address Constituent Assembly. He represented United Province in Constituent Assembly. It was him who requested Dr. Sachidananda Sinha to take the chair and invited him to be the provisional Chairman of the Constituent Assembly.
9. The total expenditure incurred on making the Constitution amounted to Rs 64 lakhs.
10. The Speech known as '**Grammar of Anarchy**' was made by **Dr. B.R. Ambedkar** in Constituent Assembly on November 25, 1949, while presenting the Indian Draft Constitution for approval.

2.9 Enactment and Enforcement of Constitution

Dr. B.R. Ambedkar, who was Law Minister as well as chairman of the Drafting Committee presented "Draft Constitution of India" on November 4, 1948 (first reading). The Assembly had a general discussion on it for five days (till November 9, 1948).

The second reading (clause by clause consideration) started on November 15, 1948, and ended on October 17, 1949. During this stage, as many as 7653 amendments were proposed and 2473 were actually discussed in the Assembly. It was finalised on 26 November 1949 after receiving the signature of the President and Members of the Constituent Assembly. Out of a total 299 members of the Assembly, only 284 were actually present on that day and signed the Constitution. This is also the date mentioned in the Preamble as the date on which the people of India in the Constituent Assembly adopted, enacted and gave to themselves this Constitution. But it was January 26, 1950 which became the date of commencement of the Constitution.

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. The remaining provisions (the major part) of the Constitution came into force on January 26, 1950. This day is referred to in the Constitution as the '*date of its commencement*', and celebrated as the Republic Day.

January 26 was specifically chosen as the 'date of commencement' of the Constitution because of its historical importance. It was on this day in 1930 that Purna Swaraj day was celebrated, following the resolution of the Lahore Session (December 1929) of the Indian National Congress.

2.9.1 Other Functions Performed by Constituent Assembly

In addition to the making of the Constitution and enacting of ordinary laws, the Constituent Assembly also performed the following functions:

1. It adopted the national flag on July 22, 1947.
2. It ratified the India's membership of the Commonwealth in May 1949.
3. It adopted the national anthem on January 24, 1950.
4. It adopted the national song on January 24, 1950.
5. It elected Dr. Rajendra Prasad as the first President of India on January 24, 1950.

2.10 Hindi Text of the Constitution

The Constitution of India was adopted by the Constituent Assembly in English. A Hindi translation of the Constitution,

signed by the members of the Constituent Assembly, was also published in 1950 under the authority of the President of the Constituent Assembly in accordance with a resolution adopted by that Assembly.

There has been a general demand for the publication of an authoritative text of the Constitution in Hindi incorporating therein all the subsequent amendments. A provision in this regard was made by the *58th Constitutional Amendment Act, 1987*. This amendment inserted a new *Article 394-A* in the last part of the Constitution i.e., Part XXII. It contains the following provisions:

1. The President shall cause to be published under his authority:
 - The translation of the Constitution in Hindi language. The modifications which are necessary to bring it in conformity with the language, style and terminology adopted in the authoritative texts of the Central Acts in Hindi can be made in it. All the amendments of the Constitution made before such publication should be incorporated in it.
 - The translation in Hindi of every amendment of the Constitution made in English.
2. The translation of the Constitution and its every amendment published shall be construed to have the same meaning as the original text in English. If any difficulty arises in this matter, the President shall cause the Hindi text to be revised suitably.

2.11 Criticism of Constituent Assembly

Though Constituent Assembly was immediate manifestation of our grand independence movement, it was not free from criticism. It was criticized on various grounds. Some of the grounds are as follows:

1. **Lawyer's Politicians Body:** It was alleged to be comprised of an elite group which comprised of Western educated elites like Lawyers.
2. **Body of Congress:** It was criticized on being dominated by members of Indian National Congress.
3. **Western Dominated:** Right wing thinkers criticize it as being shadow of Western Constitutional system.
4. **Limited Franchise:** Limited franchise raises a question mark on the representative character of Constituent Assembly.
5. **Not true reflection of diversity:** It was not considered as the true reflection of the diversity of India.
6. **British Controlled:** It was criticized as working under control of British Government.
7. **Hindu Dominated:** It was said to be dominated by majority mainly upper caste Hindus.

