

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

INDIAN SYSTEM OF ADMINISTRATION

Indian democracy is a Parliamentary form of democracy where the executive is responsible to the Parliament. The Parliament has two houses – Lok Sabha and Rajyasabha. Also, the type of governance is Federal, ie there is separate executive and legislature at Center and States. We also have self-governance at local government levels. All these systems owe their legacy to the British administration. Let us see the historical background of Indian Constitution and its development through years.

Regulating Act of 1773

- ☞ The first step was taken by the British Parliament to control and regulate the affairs of the East India Company in India.
- ☞ It designated the **Governor** of Bengal (Fort William) as the **Governor-General (of Bengal)**.
- ☞ Warren Hastings became the first Governor-General of Bengal.
- ☞ Executive Council of the Governor-General was established (Four members). There was no separate legislative council.
- ☞ It subordinated the Governors of Bombay and Madras to the Governor-General of Bengal.
- ☞ The Supreme Court was established at Fort William (Calcutta) as the Apex Court in 1774.
- ☞ It prohibited servants of the company from engaging in any private trade or accepting bribes from the natives.
- ☞ Court of Directors (the governing body of the company) should report its revenue.

Pitt's India Act of 1784

- ☞ Distinguished between commercial and political functions of the company.
- ☞ Court of Directors for Commercial functions and Board of Control for political affairs.
- ☞ Reduced the strength of the Governor General's council to three members.
- ☞ Placed the Indian affairs under the direct control of the British Government.
- ☞ The companies territories in India were called "the British possession in India".
- ☞ Governor's councils were established in Madras and Bombay.

Charter Act of 1813

- ☞ The Company's monopoly over Indian trade terminated; Trade with India open to all British subjects.

Charter Act of 1833

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

Charter Act of 1853

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

Government of India Act of 1858

- ☞ The rule of Company was replaced by the rule of the Crown in India.
- ☞ The powers of the British Crown were to be exercised by the Secretary of State for India
- ☞ He was assisted by the **Council of India**, having 15 members
- ☞ He was vested with complete authority and control over the Indian administration through the Viceroy as his agent
- ☞ The Governor-General was made the Viceroy of India.
- ☞ Lord Canning was the first Viceroy of India.
- ☞ Abolished Board of Control and Court of Directors.

Indian Councils Act of 1861

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

India Council Act of 1892

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

Indian Councils Act of 1909

1. This Act is also known as the Morley- Minto Reforms.
2. Direct elections to legislative councils; first attempt at introducing a representative and popular element.

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3. It changed the name of the Central Legislative Council to the Imperial Legislative Council.
4. The member of Central Legislative Council was increased to 60 from 16.
5. Introduced a system of communal representation for Muslims by accepting the concept of 'separate electorate'.
6. **Indians for the first time in Viceroy's executive council. (Satyendra Prasad Sinha, as the law member)**

Government of India Act of 1919

- ⇒ This Act is also known as the Montague-Chelmsford Reforms.
- ⇒ The Central subjects were demarcated and separated from those of the Provincial subjects.
- ⇒ The scheme of dual governance, 'Dyarchy', was introduced in the Provincial subjects.
- ⇒ Under dyarchy system, the provincial subjects were divided into two parts – transferred and reserved. On reserved subjects, Governor was not responsible to the Legislative council.
- ⇒ The Act introduced, for the first time, **bicameralism at center**.
- ⇒ **Legislative Assembly** with 140 members and **Legislative council** with 60 members.
- ⇒ Direct elections.
- ⇒ The Act also required that the three of the six members of the Viceroy's Executive Council (other than Commander-in-Chief) were to be Indians.
- ⇒ Provided for the establishment of Public Service Commission.

Government of India Act of 1935

- ⇒ The Act provided for the establishment of an All-India Federation consisting of the Provinces and the Princely States as units, though the envisaged federation never came into being.
- ⇒ Three Lists: The Act divided the powers between the Centre and the units into items of three lists, namely the Federal List, the Provincial List and the Concurrent List.
- ⇒ The Federal List for the Centre consisted of 59 items, the Provincial List for the provinces consisted of 54 items and the Concurrent List for both consisted of 36 items
- ⇒ The residuary powers were vested with the Governor-General.
- ⇒ The Act abolished the Dyarchy in the Provinces and introduced 'Provincial Autonomy'.
- ⇒ It provided for the adoption of Dyarchy at the Centre.
- ⇒ Introduced bicameralism in 6 out of 11 Provinces.
- ⇒ These six Provinces were Assam, Bengal, Bombay, Bihar, Madras and the United Province.
- ⇒ Provided for the establishment of Federal Court.
- ⇒ Abolished the Council of India.

Indian Independence Act of 1947

- ⇒ It declared India as an Independent and Sovereign State.
- ⇒ Established responsible Governments at both the Centre and the Provinces.
- ⇒ Designated the Viceroy India and the provincial Governors as the Constitutional (normal heads).
- ⇒ It assigned dual functions (Constituent and Legislative) to the Constituent Assembly and declared this dominion legislature as a sovereign body.

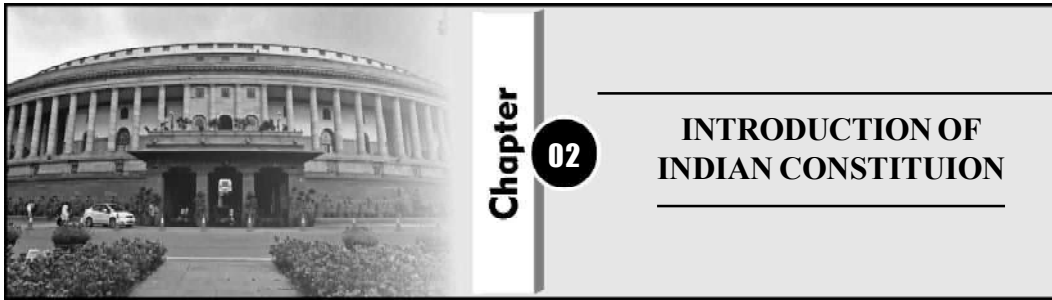
Points to be noted

- Laws made before Charter Act of 1833 were called **Regulations** and those made after are called **Acts**.
- Lord Warren Hastings created the office of District Collector in 1772, but judicial powers were separated from District collector later by Cornwallis.
- From the powerful authorities of unchecked executives, the Indian administration developed into a responsible government answerable to the legislature and people.
- The development of portfolio system and budget points to the separation of power.
- Lord Mayo's resolution on financial decentralization visualized the development of local self-government institutions in India (1870).
- 1882: Lord Ripon's resolution was hailed as the 'Magna Carta' of local self-government. He is regarded as the 'Father of local self-government in India'.
- 1921: Railway Budget was separated from the General Budget.
- From 1773 to 1858, the British tried for the centralization of power. It was from the 1861 Councils act they shifted towards devolution of power with provinces.
- 1833 Charter act was the most important act before the act of 1909.
- Till 1947, the Government of India functioned under the provisions of the 1919 Act only. The provisions of 1935 Act relating to Federation and Dyarchy were never implemented.
- The Executive Council provided by the 1919 Act continued to advise the Viceroy till 1947. The modern executive (Council of Ministers) owes its legacy to the executive council.
- The Legislative Council and Assembly developed into Rajyasabha and Loksabha after independence.

IMPORTANT QUESTIONS FOR MAINS

1. Write a short note on the Salient Features of the Government of India Act, 1935.
2. To what extent did the Government of India Act, 1935, contribute to the present Constitution of India? Discuss, pointing out relevant provisions of each.

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MEANING OF THE CONSTITUTION

A Constitution may be defined as “a document having a special legal sanctity which sets out the framework and the principal functions of the organs of the Government of a state and declares the principles governing the operation of those organs”. It is the basic or fundamental document of a society or a country and contains the basic, the fundamental, the first law of the country.

THREE MAIN ORGAN OF THE GOVERNMENT

The three organs of government are the legislative, executive, and judicial. I will describe the role of each below. Most governments around the world, though arranged differently, exercise these powers in one way or another. Since many governments around the world have a system of government not unlike those of the United States and Great Britain, I have used them as illustrative examples:

Legislative

This refers to making laws, a power usually vested in a representative assembly of some kind. In the federal government of the United States, Congress is the legislative branch. It is divided into two houses, each of which must approve potential legislation by a majority vote. In Great Britain, this power is held by Parliament.

Executive

The executive power is broadly defined as the power to enforce, or carry out, laws. In the United States, this power belongs to the President and the Executive Branch. In most countries, the actual work of enforcing laws is done by an enormous and complex bureaucracy which the President is tasked with supervising. In Great Britain and other parliamentary systems, the executive power is exercised by a number of ministers who head offices similar to those in the United States.

Judicial

The judicial branch basically interprets and applies laws, including the Constitution, through legal decisions. In the United States federal government, there is a judicial branch headed by a Supreme Court that mostly hears important constitutional cases on appeal. Beneath the Supreme Court there is a federal appeals court system and a district court system responsible for civil and criminal cases in federal law. In Great Britain, the judicial power is also held by a judiciary branch which has gradually become independent from Parliament (it was formally made independent in the 2000s.)

Remember that in most governments, these powers can overlap. The President, for example, can issue executive orders that carry the power of law. Moreover, in the American system of government each branch is granted certain powers, or checks, over the others. The Presidential veto is one example of this power.

FEDERAL AND UNITARY FEATURES OF INDIAN STATE

Is the Indian Constitution federal, unitary or quasi-federal? The members of the Drafting Committee of the Constituent Assembly of India called it federal. But there are jurists who dispute this title. It is, therefore, imperative to ascertain, what is a federal Constitution and what are its essential characteristics? However, the answer to this Question is compounded by the fact that there is no agreed definition of a federal State and it is customary with scholars on the subject to start with the model of the United States, the oldest (1787) of all federal Constitutions in the world, and to exclude any system that does not conform to that model from the nomenclature of federation. But it is generally agreed that whether a State is federal or unitary is one of degree and whether it is a federation or not depends upon the number of federal features it possesses.

A FEDERAL STATE

A federation has well-established dual polity or dual government viz., the federal government and the state governments. The force of the government is divided between the federal and state governments which are not subordinate to one another but co-ordinate bodies that are independent within their respective allotted spheres. Therefore, the existence of co-ordinate authorities independent of each other is the foundation of the federal principle. A Constitution which embodies a federal system is said to possess the following five characteristics:

1. Distribution Of Powers

An essential feature of a federal Constitution is the distribution of powers between the central government and the governments of the several units (provincial governments) forming the federation. Federation means the distribution of the power of the State among a number of co-ordinate bodies, each originating from and controlled by the Constitution.

2. Supremacy Of The Constitution

This means that the Constitution should be binding on the federal and state governments. Neither of the two governments should be in a position to override the provisions of the Constitution relating to the powers and status which each is to enjoy. This requirement is satisfied if the supremacy or overriding authority is accorded only to the provisions relating to the division of powers. Other provisions of the Constitution, which do not relate to the relationship between the Centre and the units, need not be supreme.

3. Written Constitution

The Constitution must necessarily be a written document. It will be practically impossible to maintain the supremacy of the Constitution, unless the terms of the Constitution have been reduced into writing.

4. Rigidity

This feature is a corollary to the supremacy of the Constitution. Here rigidity does not mean that Constitution is unamendable or not subject to change. It simply means that the power of amending the provisions of the Constitution which regulates the status and powers of the federal and state government should not be confined exclusively either to the federal or state governments, but must be a joint act of both. As regards the provisions of the Constitution that are not concerned with the federal system there is no need to maintain the same rigidity.

5. Independent And Impartial Authority Of Courts

The legal supremacy of the Constitution which is an essential feature of a federal State makes it necessary that there must be an authority above both, the federal government and

the component state governments to decide whether they are operating under the frame of the Constitution in desired manner. This aspect of involves two connected matters. *Firstly*, there must be some authority, normally the courts of law to maintain the division of powers not only between the state governments, but also between the federal government on one hand and the state governments on the other. The courts of law are vested with power to declare laws made by the federal or state governments, *ultra vires* on the ground of excess of power. *Secondly*, to constitute a final Supreme Court which should not be dependent upon the federal or state governments and should be armed with the final authority to interpret the Constitution? A perusal of the provisions of the Constitution of India reveals that the political system introduced by it possesses all the aforesaid essentials of a federal polity.

The Indian Constitution establishes a dual polity. The dual polity consists of the Union at the Centre and the States at the periphery, each endowed with powers to be exercised in the field assigned to them respectively, by the Constitution. The powers of the Union and the States are clearly demarcated. The Constitution is written and supreme. Enactments in excess of the powers of the Union or the State Legislatures are invalid. Moreover, an amendment which makes any changes in the status or powers of the Centre or the State Legislatures is invalid. Further, any amendment which makes changes in the status or powers of the Centre or the units is possible only with the concurrence of the Union and of a majority of the States. Finally, the Constitution establishes a Supreme Court to decide disputes between the Union and the States or between the States and to interpret finally the provisions of the Constitution.

UNITARY STATE

A State is unitary when it is governed constitutionally as one single unit, with one constitutionally created legislature. All power is top down. In federal system, power is divided between federal units. A unitary State is a sovereign State governed as one single unit in which the Central government is supreme and any administrative divisions (subnational units) exercise only powers that the Central government chooses to delegate. Thus, while in a federal State, both the Central government and State governments derive their authority from the same Constitution, in a unitary State, the State governments derive their authority as delegated by the Central government.

IMPORTANT QUESTIONS FOR MAINS

1. Discuss briefly the ‘three leading characters of a completely developed Federalism’ mentioned by Dicey and point out the merits and demerits of a Federal Constitution.
2. It has been observed that ‘since’ the expression “quasi-federal” is liable to be used as a hideout for lurking federalism, it is appropriate that the fact that the Constitution of India is not federal should be started and acknowledged in those unambiguous, simple, and accurate words. Develop arguments for this view and refute them, giving at the end of your answer own independent views on the matter.
3. “The Indian Constitution is federal in form but unitary in substance”. Comment
4. Explain the meaning, scope, and extent of the term “citizen” within the purview of the Constitution of India.
5. The Governor of a State dismissed Council of Ministers enjoying the confidence of the House. ‘A’ challenges the action of the Governor on the ground that his action is unconstitutional. Will ‘A’ succeed? Give reasons for your answer with the help of suitable examples.
6. Judicial Legislation is antithetical to the doctrine of separation of powers as envisaged in the Indian Constitution. In this context justify the filing of large number of public interest petitions praying for issuing guidelines to executive authorities.

7. Though the federal principle is dominant in our Constitution and that principle is one of its basic features, it is equally true that federalism under the Indian Constitution leans in favour of a strong Centre, a feature that militates against the concept of strong federalism.
8. Constitutional mechanisms to resolve the inter-state water disputes have failed to address and solve the problems. Is the failure due to structural or process inadequacy or both? Discuss.

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