

Indian Polity Notes Part 1 English PDF

OVERVIEW, BRIEF HISTORY AND DEVELOPMENT OF INDIAN CONSTITUTION

The British administration can broadly be divided into two phases, that is

- (1) The Company Administration (1773-1857)
- (2) The Crown Administration (1858-1947)

The following are the important Acts, regulations and developments which eventually led to the development of the present-day Indian polity.

THE COMPANY ADMINISTRATION

Regulating Act - 1773

- (1) The post of 'GOVERNOR' was now made 'GOVERNOR-GENERAL' and Bengal was the first province to have **Warren Hastings** as the first Governor-General. He was assisted by an executive council of four members.
- (2) The Supreme Court at Calcutta was established with one chief justice and three other judges. Sir **Elijah Impey** was the Chief Justice.

Pitt's India Act – 1784

- (1) Created another body- 'BOARD OF CONTROL' to manage political affairs in India. COURT OF DIRECTORS kept on managing commercial affairs though.
- (2) Thus, companies' possessions were for the first time called 'British possessions in India' and commercial wing was headed by court of directors and political wing headed by board of control.
- (3) The Act was introduced by the then British Prime Minister **William Pitt**.

Charter Act – 1813

Ended the monopoly of the trading rights of British East India Company and allowed other companies to participate in trading activities with India.

Charter Act – 1833

- (1) Created the post of 'GOVERNOR GENERAL OF INDIA' in place of Governor General of Bengal. The presidencies of Madras and Bombay were taken away with their respective legislative powers and were made sub-ordinate to the Presidency of Calcutta. **William Bentick** was the first Governor General of India.
- (2) This act completely ended the commercial activities of the company. The company existed but it became a purely administrative and a political organization.

Charter Act – 1853

- (1) Established a separate Governor General's Legislative council.
- (2) Introduced an open system of competition for Indians into Civil Services. Macaulay committee was formed (1854) for this purpose. Satyendra Nath Tagore became the first Indian to qualify that service in 1863.
- (3) **NOTE** – Father of Civil Services in India – Lord **Charles Cornwallis** because of his efforts to modernize civil services in India.

THE CROWN ADMINISTRATION

Government of India Act of 1858

- (1) Also known as Act for Good Government of India.
- (2) Abolished the British East India Company. Abolished the Mughal administration as well.
- (3) Abolished the Governor General's post and created a new post Viceroy. Lord **Canning** became the first Viceroy of India.
- (4) Also created a new office – **Secretary-of-State** for India and a 15-member council to assist him. He was a member of British parliament.

Indian Councils Act 1861

- (1) Expanded the viceroy's executive council. Made provisions for him to nominate some Indians as non-official members. Lord Canning nominated the Raja of **Benaras**, the Maharaja of **Patiala** and Sir **Dinkar Rao**.
- (2) New Legislative councils for Bengal (1862), North Western Frontier Province (1866) and Punjab (1897) were established.

Indian Councils Act 1892

- (1) Power of discussing the budget was given to the legislative council in the then India.
- (2) Expanded the councils and some members could be nominated to both Central as well as Provincial Legislative councils.

Indian Councils Act 1909

- (1) Also known as **Morley-Minto** reforms.
- (2) Number of members in the Central Legislative council was increased from 16 to 60.
- (3) **Satyendra Prasad Sinha** became the first Indian to be nominated as a **law member** to the Viceroy's executive council.
- (4) Communal electorate was introduced. Muslims were given separate representation to elect their representatives. Hence, **Minto** is also referred to as '**Father of Communal Electorate**'.

Government of India Act 1919

- (1) Also called as **Montague-Chelmsford** reforms and it came into effect in 1921.
- (2) Central and provincial subjects or lists were introduced where they could frame laws in their respective lists. Provincial subjects were further divided into transferred and reserved. Thus, this act introduced **diarchy**.
- (3) Introduced **Bicameralism** and direct elections.

Government of India Act 1935

- (1) Provided for the establishment of an All-India Federation with provinces and princely states as units. The federation never came into being as princely states did not join it.
- (2) Abolished diarchy in the provinces and introduced 'provincial autonomy' in its place. But in centre it introduced diarchy; however that never came into being.
- (3) Introduced bicameralism in provinces as well as an extended separate electorates to depressed classes as well.
- (4) Established RBI and a federal court at the centre.

(2)



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Indian Independence Act 1947

- (1) **Partition Plan** or the **Mountbatten Plan (3rd June 1947)** was to give effect to partition of the country and **Atlee's declaration (20th February 1947)** to provide independence to the Nation.
- (2) Created two independent dominions of India and Pakistan, ended British rule and authorised the two independent Nations' constituent assemblies to frame their respective constitutions.
- (3) The Indian independence bill got the royal assent on **18th July, 1947**.

THE CONSTITUENT ASSEMBLY & FRAMING OF THE CONSTITUTION - IMPORTANT POINTS

1. It was **M.N Roy** who proposed the idea of an independent constituent assembly for India in 1934.
2. The constituent assembly was formed as per the guidelines suggested by the Cabinet Mission Plan, 1946. The mission was headed by **Pethick Lawrence** and included two other members apart from him – **Stafford Cripps** and **A.V Alexander**.
3. The total strength of the assembly was 389. However, after partition only 299 remained. It was partly elected and partly nominated body.
4. The elections to form the assembly took place in July-August 1946 and the process was completed by November 1946. The first meeting of the assembly took place on **9th December, 1946** and was attended by **211 members**.
5. **Dr. Sachhidanand Sinha** became the temporary President of the assembly following the French practice.
6. On 11th December, 1946 **Dr. Rajendra Prasad** and **H.C Mukherji** were elected as President and Vice-President respectively.
7. **Sir B.N Rau** was appointed as the constitutional advisor to the assembly.
8. On 13th December, 1946, Pt. Nehru moved the Objectives resolution which later went on to become the Preamble of the constitution in slightly modified form. The resolution was unanimously adopted on 22nd January, 1947.
9. The Constituent Assembly ratified India's membership of the commonwealth in May, 1949. Also, it adopted National Song and National Anthem on 24th January 1950. Adopted the National Flag on 22nd July, 1947.
10. The assembly met for 11 sessions, took 2 years, 11 months and 18 days to frame up the final draft, sat for 141 days in total and draft constitution was considered for 114 days. Total amount incurred was around rupees 64 lakhs.
11. The assembly had 15 women members which were reduced to 9 after partition.
12. Some important committees of the constituent assembly along with their respective chairpersons are as follows:
 - (a) Union Powers Committee-Jawahar Lal Nehru
 - (b) Union Constitution Committee-Jawahar Lal Nehru
 - (c) Provincial Constitution Committee-Sardar Patel
 - (d) Drafting Committee- B.R Ambedkar
 - (e) Rules of Procedure Committee-Dr. Rajendra Prasad
 - (f) Steering Committee-Dr. Rajendra Prasad

13. The following were the members of the Drafting Committee
 - (a) Dr. B.R Ambedkar (Chairman)
 - (b) Alladi Krishnaswamy Ayyar
 - (c) Dr. K.M Munshi
 - (d) N. Gopaldaswamy Ayyangar
 - (e) Syed Mohammad Saadullah
 - (f) N Madhava Rau
 - (g) TT Krishnamachari
14. The final draft of the constitution was adopted on 26th November, 1949 and it contained 8 schedules, 22 parts and 395 articles.

VARIOUS SOURCES OF THE INDIAN CONSTITUTION

1. **Government of India Act of 1935** - Federal Scheme, Office of governor, Judiciary, Public Service Commissions, Emergency provisions and administrative details.
2. **British Constitution** - Parliamentary government, Rule of Law, legislative procedure, single citizenship, cabinet system, prerogative writs, parliamentary privileges and bicameralism.
3. **US Constitution** - Fundamental rights, independence of judiciary, judicial review, impeachment of the president, removal of Supreme Court and high court judges and post of vice-president.
4. **Irish Constitution** - Directive Principles of State Policy, nomination of members to Rajya Sabha and method of election of president.
5. **Canadian Constitution** - Federation with a strong Centre, vesting of residuary powers in the Centre, appointment of state governors by the Centre, and advisory jurisdiction of the Supreme Court.
6. **Australian Constitution** - Concurrent List, freedom of trade, commerce and intercourse, and joint sitting of the two Houses of Parliament.
7. **Weimar Constitution of Germany** - Suspension of Fundamental Rights during Emergency.
8. **Soviet Constitution (USSR, now Russia)** - Fundamental duties and the ideal of justice (social, economic and political) in the Preamble.
9. **French Constitution** - Republic and the ideals of liberty, equality and fraternity in the Preamble.
10. **South African Constitution** - Procedure for amendment of the Constitution and election of members of Rajya Sabha.
11. **Japanese Constitution** - Procedure established by Law.

PARTS OF THE INDIAN CONSTITUTION

Parts	Subject Matter	Articles Covered
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SCHEDULES OF THE INDIAN CONSTITUTION

First Schedule:

- Names of the States and their territorial jurisdiction.
- Names of the Union Territories and their extent.

Second Schedule:

Provisions relating to the emoluments, allowances, privileges etc.

Third Schedule:

Forms of Oaths or Affirmations etc.

Fourth Schedule:

Allocation of seats in the Council of States.

Fifth Schedule:

Provisions relating to the administration and control of scheduled areas and scheduled tribes.

Sixth Schedule:

Provisions as to the administration of tribal areas in the states of Assam, Meghalaya, Tripura and Mizoram.

Seventh Schedule:

Division of powers between the Union and the States in terms of List I (Union List), List II (State List) and List III (Concurrent List).

Eighth Schedule:

Languages recognized by the Constitution. Originally, it had 14 languages but presently there are 22 languages.

NOTE : Maithili and Santhali were added by the 92nd Amendment Act of 2003.

Ninth Schedule:

Acts and Regulations (originally 13 but presently 282) of the state legislatures dealing with land reforms and abolition of the Zamindari system and of the Parliament dealing with other matter. Added by the 1st Amendment (1951).

Tenth Schedule:

Disqualification of the members of Parliament and State Legislatures on the ground of defection. Added by the 52nd Amendment Act of 1985, also known as Anti-defection Law.

Eleventh Schedule :

Specifies the powers, authority and responsibilities of Panchayats. It has 29 matters. This schedule was added by the 73rd Amendment Act of 1992.

Twelfth Schedule:

Specifies the powers, authority and responsibilities of Municipalities. It has 18 matters. This schedule was added by the 74th Amendment Act of 1992.

THE PREAMBLE

- The term 'preamble' refers to the introduction or preface to the Constitution. It's a kind of summary or essence of the Constitution.
- The American Constitution was the first to begin with a preamble.
- N.A Palkiwala has termed preamble as 'the identity card of the constitution'.
- Somewhat based on the 'Objectives Resolution' (see Constituent Assembly).
- The Preamble has been amended only once so far, that is by 42nd Amendment Act of 1976. Three words were added by that amendment – SOCIALIST, SECULAR, INTEGRITY.
- The Preamble reveals four ingredients or components:
 - Source of authority of the Constitution: The Preamble states that the Constitution derives its authority from the people of India.
 - Nature of Indian State: It declares India as a sovereign, socialist, secular democratic and republican polity.
 - Objectives of the Constitution: To provide justice, liberty, equality and fraternity to the citizens of India.
 - Date of adoption of the Constitution: 26th November, 1949.
- Berubari Union* case (1960) - the Supreme Court said that the Preamble isn't a part of the Constitution.
- Kesavananda Bharati* case (1973) - the Supreme Court rejected the earlier opinion and held that Preamble is a part of the Constitution.
- The Preamble is neither a source of power to legislature nor a prohibition upon the powers of legislature. Provisions in the preamble are non-enforceable in the court of law, that is, it's non-justiciable.

THE UNION & ITS TERRITORY

- Articles 1 to 4 under Part-I of the Constitution deal with the Union and its territory.
- Article 1**-India, that is, Bharat as a 'Union of States'.



3. Article 2 empowers the Parliament to 'admit into the Union of India, or establish, new states on such terms and conditions as it thinks fit'. Thus, Article 2 grants two powers to the Parliament: (a) the power to admit into the Union of India new states; and (b) the power to establish new states.
4. Article 3 relates to the formation of or changes in the existing states of the Union of India. In other words, Article 3 deals with the internal re-adjustment *inter se* of the territories of the constituent states of the Union of India.
5. Some committees that were important in the reorganization of states in the Indian Union – Dhar Commission, JVP Committee, Fazl Ali Commission and states reorganization Commission (1st one was in 1956).
6. Hence new states that were created after 1956 with year - **Maharashtra and Gujarat** In 1960, **Goa, Daman and Diu** India acquired these three territories from the Portuguese by means of a police action in 1961. They were constituted as a union territory by the 12th Constitutional Amendment Act, 1962. Later, in 1987, Goa was conferred a statehood, **Nagaland** In 1963, **Haryana, Chandigarh and Himachal Pradesh** In 1966, **Manipur, Tripura and Meghalaya** In 1972, Sikkim in 1974-75, **Mizoram, Arunachal Pradesh and Goa** In 1987, **Chhattisgarh, Uttarakhand and Jharkhand** In 2000, and now most recently Telangana on 2nd June, 2014.

THE CITIZENSHIP

1. Part 2nd and covers articles 5-11.
2. The Constitution confers the following rights and privileges on the citizens of India (and denies the same to aliens):
 - A. Article 15, 16, 19, 29 & 30.
 - B. Right to vote in elections to the Lok Sabha and state legislative assembly.
 - C. Right to contest for the membership of the Parliament and the state legislature.
 - G. Eligibility to hold certain public offices, that is, President of India, Vice-President of India, judges of the Supreme Court and the high courts, governor of states, attorney general of India and advocate general of states.
3. Articles 5-8 only deal with the citizenship of individuals who became citizens of India at the commencement of the Constitution. Also, these articles take into account migration issues.
4. No person shall be a citizen of India or be deemed to be a citizen of India, if he has voluntarily acquired the citizenship of any foreign state (**Article 9**).
5. Every person who is or is deemed to be a citizen of India shall continue to be such citizen, subject to the provisions of any law made by Parliament (**Article 10**).
6. Parliament shall have the power to make any provision with respect to the acquisition and termination of citizenship and all other matters relating to citizenship (**Article 11**).
7. Hence, the Parliament enacted the Citizenship Act, 1955, which has been amended in 1986, 1992, 2003, and 2005 and most recently in 2015. The amendment bill 2016 is still pending though.
8. The five modes of acquisition of citizenship as per the citizenship act are
 - (a) By Birth
 - (b) By Descent
 - (c) By Registration
 - (d) By Naturalization
 - (e) By acquisition of any other territory into the Indian Union.

9. Loss of Citizenship is by – Termination, Renunciation and Deprivation.
10. India provides for single citizenship.
11. **PIO**- A person registered as PIO card holder under the Ministry of Home Affairs' scheme dated 19-08-2002.
12. **OCI**- A person registered as Overseas Citizen of India (OCI) under the Citizenship Act, 1955. The OCI scheme is operational from 02-12-2005.
13. Now both the schemes have been merged with effect from 9th January, 2015.

PART – 3rd THE FUNDAMENTAL RIGHTS (12-35)

1. Described as the **Magna Carta** of India.
2. The concept has been taken from the US' bill of rights. Earliest known evidences of rights were also present in ancient India, Iran etc.
3. The Fundamental Rights are named so because they are guaranteed and protected by the Constitution, which is the fundamental law of the land. They are 'fundamental' also in the sense that they are most essential for the all-round development (material, intellectual, moral and spiritual) of the individuals.
4. The original constitution contained seven fundamental rights, however, after 44th constitutional amendment act, 1978, right to property was repealed and now only six fundamental rights remain.
5. Following are the articles related to the fundamental rights
 - A. 12- Definition of the State
 - B. 13- Laws inconsistent with part-3 or Fundamental Rights
6. Following is the segregation of the Fundamental Rights
 - C. Right to equality (Articles 14–18)
 - (a) Equality before law and equal protection of laws (Article 14).
 - (b) Prohibition of discrimination on grounds of religion, race, caste, sex or place of birth (Article 15).
 - (c) Equality of opportunity in matters of public employment (Article 16).
 - (d) Abolition of untouchability and prohibition of its practice (Article 17).
 - (e) Abolition of titles except military and academic (Article 18).
 - D. Right to freedom (Articles 19–22)
 - (a) Protection of six rights regarding freedom of:
 - (i) speech and expression,
 - (ii) assembly,
 - (iii) association,
 - (iv) movement,
 - (v) residence, and
 - (vi) profession (Article 19).
 - (b) Protection in respect of conviction for offences (Article 20).
 - (c) Protection of life and personal liberty (Article 21).
 - (d) Right to elementary education (Article 21A).
 - (e) Protection against arrest and detention in certain cases (Article 22).
 - E. Right against exploitation (Articles 23–24)
 - (a) Prohibition of traffic in human beings and forced labour (Article 23).
 - (b) Prohibition of employment of children in factories, etc. (Article 24).



- F. Right to freedom of religion (Article 25–28)
 - (a) Freedom of conscience and free profession, practice and propagation of religion (Article 25).
 - (b) Freedom to manage religious affairs (Article 26).
 - (c) Freedom from payment of taxes for promotion of any religion (Article 27).
 - (d) Freedom from attending religious instruction or worship in certain educational institutions (Article 28).
- G. Cultural and educational rights (Articles 29–30)
 - (a) Protection of language, script and culture of minorities (Article 29).
 - (b) Right of minorities to establish and administer educational institutions (Article 30).
- H. Right to constitutional remedies (Article 32)- Heart and Soul of the Constitution.
Right to move the Supreme Court for the enforcement of fundamental rights including the writs of
(i) *habeas corpus*, (ii) *mandamus*, (iii) *prohibition*, (iv) *certiorari*, and (v) *quo warranto* (Article 32).
- 7. Article 33 deals with the power of Parliament to modify the fundamental rights.
- 8. Article 34 deals with Martial Law
- 9. Article 35 deals with legislations required to deal with fundamental rights
- 10. Fundamental Rights which are available to only citizens - 15, 16, 19, 29 and 30.
- 11. Fundamental Rights those are available to both citizens as well as non-citizens – 14, 20, 21, 21A, 22, 23, 24, 25, 26, 27 and 28.

DIRECTIVE PRINCIPLES OF STATE POLICY

1. Mentioned in part-4th and cover articles from 36-51 of the Constitution of India.
2. Called as **Novel Features** of the Constitution.
3. Inspired by the Irish constitution.
4. Similar to the Instruments of Instructions mentioned in the Government of India Act, 1935.
5. Together with fundamental rights they are termed as the **conscience of the constitution**.
6. 'Directive Principles of State Policy' denotes the ideals that the State should keep in mind while formulating policies and enacting laws. These are the constitutional instructions or recommendations to the State in legislative, executive and administrative matters.
7. The DPSPs constitute a very comprehensive economic, social and political programme for a modern democratic State. They aim at realising the high ideals of justice, liberty, equality and fraternity as outlined in the Preamble to the Constitution. They embody the concept of a '**welfare state**'.
8. The Directive Principles are **non-justiciable** in nature, that is, they are not legally enforceable by the courts for their violation. Therefore, the government (Central, state and local) cannot be compelled to implement them. Nevertheless, the Constitution (Article 37) itself says that these principles are fundamental in the governance of the country and it shall be the duty of the State to apply these principles in making laws.

9. Some Important Articles in DPSPs are :
 - A. To promote the welfare of the people by securing a social order permeated by justice— social, economic and political—and to minimise inequalities in income, status, facilities and opportunities4 (**Article 38**).
 - B. To secure (a) the right to adequate means of livelihood for all citizens; (b) the equitable distribution of material resources of the community for the common good; (c) prevention of concentration of wealth and means of production; (d) equal pay for equal work for men and women; (e) preservation of the health and strength of workers and children against forcible abuse; and (f) opportunities for healthy development of children5 (**Article 39**).
 - C. To promote equal justice and to provide free legal aid to the poor (**Article 39 A**). This was added by 42nd constitutional amendment act, 1976.
 - D. To secure the right to work, to education and to public assistance in cases of unemployment, old age, sickness and disablement (**Article 41**).
 - E. To make provision for just and humane conditions for work and maternity relief (**Article 42**).
 - F. To take steps to secure the participation of workers in the management of industries8 (**Article 43 A**). Also added by 42nd constitutional amendment act, 1976.
 - G. To organise village panchayats and endow them with necessary powers and authority to enable them to function as units of self-government (**Article 40**).
 - H. To promote cottage industries on an individual or co-operation basis in rural areas (**Article 43**).
 - I. To prohibit the consumption of intoxicating drinks and drugs which are injurious to health (**Article 47**).
 - J. To prohibit the slaughter of cows, calves and other milch and draught cattle and to improve their breeds (**Article 48**).
 - K. To secure for all citizens a uniform civil code throughout the country (Article 44).
 - L. To provide early childhood care and education for all children until they complete the age of six years (**Article 45**). Also, amended by 86th constitutional amendment act, 2002.
 - M. To separate the judiciary from the executive in the public services of the State (**Article 50**).
 - N. To promote international peace and security and maintain just and honourable relations between nations; to foster respect for international law and treaty obligations, and to encourage settlement of international disputes by arbitration (**Article 51**).
10. The 86th Amendment Act of 2002 changed the subject-matter of Article 45 and made elementary education a fundamental right under **Article 21A**. The amended directive requires the State to provide early childhood care and education for all children until they complete the age of six years.
11. The 97th Amendment Act of 2011 added a new Directive Principle relating to co-operative societies. It requires the state to promote voluntary formation, autonomous functioning, democratic control and professional management of co-operative societies (Article 43B).
12. The DPSPs are instructions to the State.



FUNDAMENTAL DUTIES

1. They are set of 11 guidelines to the citizens.
2. The original constitution did not mention about the FDs.
3. The idea has been taken from the former **Soviet Constitution** and now even Russia does not have them. Probably only Japan is one such major country which has an exclusive chapter on fundamental duties.
4. In 1976, the fundamental duties of citizens were added in the Constitution. In 2002, one more Fundamental Duty was added.
5. They were added on the recommendations of the Swaran Singh Committee which was constituted by Indira Gandhi in 1975. It recommended only 8 fundamental duties then with pecuniary punishments as well. However, the government did not welcome the punishments part.
6. A new part – 4th A, A NEW ARTICLE 51A were added by virtue of 42nd constitutional amendment act, 1976. Ten duties were added to 51A. Presently there are eleven duties.
7. The 11th Fundamental Duty was added by 86th amendment act, 2002.
8. Following is the list
 - (a) To abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
 - (b) To cherish and follow the noble ideals that inspired the national struggle for freedom;
 - (c) To uphold and protect the sovereignty, unity and integrity of India;
 - (d) To defend the country and render national service when called upon to do so;
 - (e) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities and to renounce practices derogatory to the dignity of women;
 - (f) To value and preserve the rich heritage of the country's composite culture;
 - (g) To protect and improve the natural environment including forests, lakes, rivers and wildlife and to have compassion for living creatures;
 - (h) To develop scientific temper, humanism and the spirit of inquiry and reform;
 - (i) To safeguard public property and to abjure violence;
 - (j) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement; and
 - (k) To provide opportunities for education to his child or ward between the age of six and fourteen years. This duty was added by the 86th Constitutional Amendment Act, 2002.



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