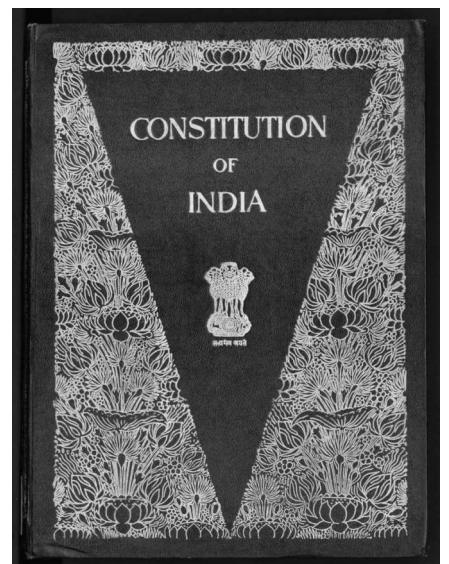


**PRELIMS
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History

**CONSTITUTIONAL
DEVELOPMENTS**



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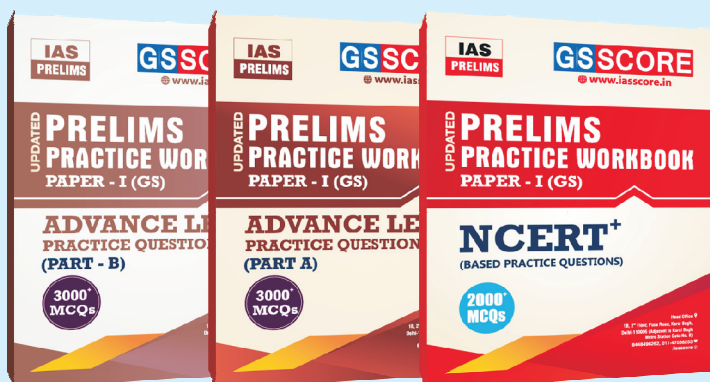
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CONSTITUTIONAL DEVELOPMENTS

Constitutional Developments

- The **first intervention in Indian affairs by the British government came in 1767**. It demanded 10 percent share in the plunder amounting to 4 million pounds annually.
- **1765-72**: The **dual system of government** where the Company had the authority but no responsibility and its Indian representatives had all the responsibility but no authority continued for seven years.

The Company Rule (1773-1858)

■ The Regulating Act of 1773

- It recognised that the Company's role in India **extended beyond mere trade to administrative and political fields**, and introduced the element of **centralised administration**.
- For the first time, the **British cabinet was given the right to exercise control over Indian affairs**.
- In Bengal, the **administration was to be carried out by governor-general and a council consisting of 4 members**, representing civil and military government. They were required to function according to the majority rule.
- A **Supreme Court of judicature was to be established in Bengal** with original and appellate jurisdictions.
- The **governor-general could exercise some powers over Bombay and Madras**.

■ Amendments (1781)

- The **jurisdiction of the Supreme Court was defined**—within Calcutta.
- The servants of the government **were immune if they did anything while discharging their duties**.

■ Pitt's India Act of 1784

- The Company became a **subordinate department of the State**. The Company's territories in India were **termed 'British possessions'**.
- A Board of Control consisting of the chancellor of exchequer, a secretary of state and four members of the Privy Council (to be appointed by the Crown) were to **exercise control over the Company's civil, military and revenue affairs**.
- In India, **the governor-general was to have a council of three** (including the commander-in-chief), and the presidencies of Bombay and Madras were **made subordinate to the governor-general**.

■ The Act of 1786

- Cornwallis wanted to have the **powers of both the governor-general and the commander-in-chief**. The new Act conceded this demand and also gave him the power.
- **Cornwallis was allowed to override the council's decision** if he owned the responsibility for the decision.

■ The Charter Act of 1793

- The **royal approval was mandated for the appointment** of the governor-general, the governors, and the commander-in-chief.
- Senior officials of the Company were **debarred from leaving India without permission**—doing so was treated as resignation.
- The Company was empowered to give licences to individuals as well as the Company's employees to trade in India. **This paved the way for shipments of opium to China**.
- The **revenue administration was separated from the judiciary** functions (led to disappearing of the Maal Adalats).
- The Home Government members **were to be paid out of Indian revenues** (continued up to 1919).

■ The Charter Act of 1813

- The Company's monopoly over trade in India ended **except the trade with China and the trade in tea**.
- The **constitutional position of the British territories in India was defined explicitly** for the first time.
- **Powers of the Board of Control were further enlarged**.
- A **sum of one lakh rupees was to be set aside** for the revival, promotion and encouragement of literature, learning and science among the natives of India, every year.
- The regulations made by the Councils of Madras, Bombay and Calcutta were **now required to be laid before the British Parliament**.
- **Christian missionaries were also permitted** to come to India and preach their religion.

■ The Charter Act of 1833

- The **Company's monopoly over trade with China and in tea also ended.**
- **All restrictions** on European immigration and the acquisition of property in India **were lifted.**
- The way was paved for the **wholesale European colonisation of India.**
- The governor-general was given the power to **superintend, control and directs all civil and military affairs of the Company.**
- Bengal, Madras, Bombay and all other territories were placed under **complete control of the governor-general.**
- All revenues were to be raised **under the authority of the governor-general who would have complete control over the expenditure.**
- The Governments of Madras and Bombay were **drastically deprived of their legislative powers.**
- **A law member was added to the governor-general's council.** Indian laws were to be codified and consolidated.
- No Indian citizen was to be denied employment under the Company **on the basis of religion, colour, birth, descent, etc.**
- The **administration was urged to take steps to ameliorate the conditions of slaves** and to ultimately abolish slavery.

■ The Charter Act of 1853

- The Company was to continue possession of territories unless the Parliament provided otherwise.
- The strength of the **Court of Directors was reduced to 18.**
- The **Company's patronage over the services was dissolved**—the services were now thrown open to a competitive examination.
- The separation of the executive and legislative functions of the Government of British India progressed with the inclusion of six additional members for legislative Purposes.
- **Local representation was introduced in the Indian legislature.**
- The legislative wing came to be known as the **Indian Legislative Council.**

The Crown Rule (1858-1947)

■ The Act for Better Government of India, 1858

- India was to be governed by and in the name of the Crown **through a secretary of state and a council of 15-members**. The council was an advisory body. The secretary of state was made the chairman of the council.
- The **dual system** introduced by the Pitt's India Act **came to an end**.
- **Governor-General became the viceroy**.

■ Indian Councils Act, 1861

- The **principle of representatives of non-officials in legislative bodies became accepted**; laws were to be made after due deliberation, and **they could be changed only by the same deliberative process**.
- **The portfolio system introduced by Lord Canning** laid the foundations of cabinet Government in India.
- The Act by **vesting legislative powers in the Governments of Bombay and Madras** and by making provision for the institution of similar legislative councils in other provinces **laid the foundations of legislative devolution**.

■ Weaknesses of Indian Councils Act, 1861

- The councils **could not discuss important matters and no financial matters at all** without previous approval of government.
- They had **no control over budget**. They could not discuss executive action.
- Final passing of the bill **needed viceroy's approval**. Even if approved by the viceroy, the **secretary of state could disallow legislation**.
- Indians associated as non-officials were **members of elite sections only**.

■ Indian Councils Act, 1892

- The **Legislative Council of the Governor-General** (or the Indian Legislative Council, as it came to be known) **was enlarged**.
- The universities, district boards, municipalities, zamindars, trade bodies and chambers of commerce were **empowered to recommend members to the provincial councils**.
- An **element of indirect election was accepted** in the selection of some of the non-official members.
- The members of the legislatures were **now entitled to express their views upon financial statements** which were henceforth to be made on the floor of the legislatures.
- They **could also put questions within certain limits** to the executive on matters of public interest after giving six days' notice.

■ Indian Councils Act, 1909 (Morley-Minto Reforms)

- The Act made the **first attempt to bring in a representative and popular element** in the governance of the country.
- The **strength of the Imperial Legislative Council was increased**.
- An **Indian member was taken for the first time in the Executive Council of the Governor-General** (Satyendra Prasad Sinha was the first Indian to join the Governor-General's—or Viceroy's— Executive Council, as law member.)
- The members of the **Provincial Executive Council were increased**.
- The **powers of the legislative councils**, both central and provincial, **were increased**.

Problems with Morley-Minto Reforms

- The real power remained with the government. **Separate electorates for Muslims were introduced**.
- Representation in **excess of their population strength was accorded** to the Muslims.
- Also, the **income qualification for Muslim voters was kept lower** than that for Hindus. The system of election was very indirect. Thus, the representation of the people at large remained remote and unreal.

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

- The Indian Legislative Council at the Centre was **replaced by a bicameral system** consisting of a Council of State (Upper House) and a Legislative Assembly (Lower House).
- Each house was to have a majority of **members who were directly elected**. So, direct election was introduced, though the **franchise was much restricted**.
- The **principle of communal representation was extended** with separate electorates for Sikhs, Christians and Anglo-Indians, besides Muslims.
- The **Act introduced dyarchy in the provinces**. The provincial legislature was to consist of one house only (legislative council).
- The Act **separated for the first time the provincial and central budgets**, with provincial legislatures being authorised to make their budgets.
- A **High Commissioner for India was appointed**, who was to hold his office in London for six years and whose duty was to look after Indian trade in Europe. Some of the functions hitherto performed by the Secretary of State for India were transferred to the high commissioner.
- The Secretary of State for India who used to get his pay from the Indian revenue was **now to be paid by the British Exchequer**.

Issues with Montague-Chelmsford Reforms

- There was **no fulfilment of the demand for responsible government**.
- Though a measure of power devolved on the provinces with demarcation of subjects between centre and provinces, **the structure continued to be unitary and centralised**.
- **Dyarchy in the provincial sector failed**.

- The governor-general was given the power to **secure the enactment of laws which he considered essential** for the safety, tranquility or interests of British India, or any part of British India.
- The Indian legislature under the Act of 1919 was **only a non-sovereign law-making body** and was **powerless before the executive in all spheres of governmental activity**.

■ Government of India Act, 1935

- Dyarchy, rejected by the Simon Commission, was provided for in the Federal Executive.
- The **Federal Legislature was to have two chambers** (bicameral)—the Council of States and the Federal Legislative Assembly. The Council of States (the Upper House) was to be a permanent body.
- **There were to be three subject lists**—the Federal Legislative List, the Provincial Legislative List and the Concurrent Legislative List. Residuary legislative powers were subject to the discretion of the governor-general
- There was a **provision for joint sitting in cases of deadlock** between the houses. Residuary legislative powers were subject to the **discretion of the governor-general**.
- Even if a bill was passed by the federal legislature, **the governor-general could veto it**, while even Acts assented to by the governor-general **could be disallowed by the King-in-Council**.
- **Dyarchy in the provinces was abolished and provinces were given autonomy**, i.e., the distinction between Reserved and Transferred Subjects was abolished and full responsible government was established.
- Provinces derived their power and authority **directly from the British Crown**. They were given **independent financial powers and resources**.
- **Provincial legislatures were further expanded**. Bicameral legislatures were provided in the six provinces of **Madras, Bombay, Bengal, United Provinces, Bihar and Assam**, with other five provinces retaining unicameral legislatures.
- The principles of '**communal electorates**' and '**weightage**' were **further extended** to depressed classes, women and labour.
- **Franchise was extended**, with about 10 per cent of the total population getting the right to vote.
- The Act also provided for a Federal Court with original and appellate powers, but the **Privy Council in London was to dominate this court**.
- The India Council of the **Secretary of State was abolished**.
- The British government **decided to introduce the provincial autonomy on April 1, 1937**, but the Central government continued to be **governed in accordance with the 1919 Act**.

Issues with Government of India Act, 1935

- The Act provided a **rigid constitution with no possibility of internal growth**. Right of amendment was **reserved for the British Parliament**.
- **Extension of the system of communal electorates** and representation of various interests promoted separatist tendencies—culminating in partition of India.
- The 1935 Act was condemned by nearly all sections and **unanimously rejected by the Congress**.

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