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*Revised Study Notes*

## GENERAL STUDIES

PAPER - II



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# GENERAL STUDIES-II (200 MARKS)

## UNIT-I

### SUB UNIT-1

## Constitution of India

### Historical underpinning, Evolution

The Indian constitutional development start from the year of 1858. It was after the first war of independence (*Sepoy Mutiny*) in 1857, the transfer of power from the East India Company to the British crown was affected by the Government of India Act, 1858. It was subsequently followed by the Indian Councils Act, 1861 and the Indian Councils Act, 1892.

Though the British Govt. repeatedly asserted its desire of providing better and more participatory government to the Indians, all the acts cited above, in effect, strengthened the hands of the British government. The much lauded Indian Councils Act, of 1909, which, in fact, initiated the process of decentralisation had a positive vice in the form of introduction of communal representation for the first time.

The seeds of separation between the Hindus and the Muslims were sown for the first time aiming to weaken the nationalist agitation. During the First World War, which started in 1914, the British government, in order to elicit Indian support, declared on 20th August 1917 its desire to associate the Indians in a significant manner in the administration after the end of the war. However, the Government of India Act, 1919, which was subsequently enacted, was a big disappointment for the Indians. Apart from retaining the unitary and centralised features of ad-

ministration, it sought to perpetuate the communal representation system introduced in 1909.

Subsequent to the enactment of the 1919 Act, a seven-man Statutory Commission was appointed in 1927 under the chairmanship of Sir John Simon to report on the working of the 1919 Act. The Indian National Congress boycotted the Commission as all the members were English men. The report of the Commission was placed before a Round Table Conference which was boycotted by the Congress.

The findings of the conference was again examined by a Joint Select Committee of the British Parliament and on the recommendations of the Select Committee, the Government of India Act, 1935 was enacted. While this Act, promised to set up a federal government in India, an attempt was simultaneously made to deepen the communal cleavages in the country further by providing separate representation not only to the Muslims, but also to the Sikhs, the European, Indian, Christians and Anglo-Indians.

The Congress won overwhelmingly in the 1937 elections held as per the provisions of the 1935 Act. However, with the outbreak of Second World War in 1939, the Indian National Congress governments resigned demanding right of self determination by framing their own Constitution through a Constituent Assembly. Such a demand was earlier made by the Congress for the first time in 1935 and repeatedly made several times between 1935 and 1939. It was never paid any attention by the British Government till 1942, when it was faced with the danger of defeat at the, hands of Germany.

The *Cripps Mission* which came to India in 1942 though accepted the demands of an elected Constituent Assembly to frame a constitution, it indirectly accepted the plans of the Muslim League for a sepa-

rate state i.e. Pakistan.

The rejection of *Cripps proposal* was followed by the dynamic Quit India Movement in August 1942. It was only after the end of the war, the British Government despatched the Cabinet Mission to India in March 1946. As per its recommendations, elections were held to the Constituent Assembly.

The *Muslim League* members, though elected, boycotted the proceedings of the house which started on 1 Dec. 1946. The grouping clause of the cabinet recommendation indirectly accepted the Muslim League's demand. Ultimately on 20th February, 1947 the British Government announced its decision to transfer power to India by June 1948, keeping the option open to hand over power to a truncated India.

The Mountbatten Plan envisaged by Lord Mountbatten clearly decided in favour of partitioning India. With surprising speed, the Indian Independence Act 1947 was passed by the British Parliament on 4th July and received royal assent in 18th July 1947. Accordingly, India and Pakistan were to emerge as two independent Dominions and the Constituent Assembly of each Dominion was to have unlimited powers to frame and adopt any constitution it liked. India and Pakistan became two completely sovereign states on the 'appointed day', that is 15 August 1947.

### Salient features of Indian Constitution

The Constitution of India, as opted by the Constituent Assembly in 1949, was not something absolutely new. It was, to a great extent, influenced by the Government of India Act of 1935 that was passed by the British Parliament. In order to understand and appreciate the Constitution, it is necessary to glance at the constitutional development during the British rule in India. Some of the landmarks in the constitutional development are given in the following passages.

The foundation of British authority in India was laid in down through the establishment of East India

Company in England under a Charter of the British Queen Elizabeth. Under the Charter the Company was given an exclusive right of trading with India. In the beginning the Company was purely a trading organization, but later on due to political circumstances, it acquired territorial power.

### Regulating Act of 1773

With the expansion of political power of the Company, it was felt in England that the affairs of the Company needed some regulation. As a result, the Regulating Act of 1773 came into being. Some of the salient features of the Act were as follows - (i) it set up a government in Calcutta Presidency consisting of a Governor-General and a Council of four members who exercised their authority jointly, (ii) the governments of the Presidencies of Bombay and Madras were subordinated to the government in Calcutta and (iii) it empowered the British Crown to establish a Supreme Court in Bengal with jurisdiction over Bengal, Bihar and Orissa.

The Act subjected the legislative authority of the Governor-General and Council to certain limitations: (i) the rules and regulations made by them were not to be repugnant to the laws of England, (ii) they required registration by the Supreme Court which was given the power to veto them, (iii) there could be an appeal against them to the British Government and (iv) the Governor-General and the Council were under the duty to forward all such rules and regulations to England and the King-in-Council was competent to disapprove them at any time within two years.

### The Charter Act of 1833

To make the legislative functions of the government distinct, the British Government enacted the Charter Act of 1833. It made substantial changes in the constitutional set up of India. The sole legislative power in India was vested in the Governor-General-in-Council. The Council was to consist of four members, of whom one was to be a Law Member, who could attend the Council meetings, as a matter of right, only when it was to perform legislative func-

tions. The Council's functions were, thus, divided into two categories.

When it performed executive functions, it consisted of the Governor-General and three members only. But, when it performed legislative functions, it consisted of the Governor-General and the four members. In this way, the Act laid the foundation of the future Central Legislature, also called Imperial Legislative Council.

### The Charter Act of 1853

In order to strengthen the legislative machinery the Charter Act of 1853 was enacted. The Act further extended the machinery of legislation. Under the new Act, the Governor-General's Council, when acting in its legislative capacity, was enlarged by the addition of six new members. Among these six members, one was to be an official representative from each of the four Provinces viz., Madras, Bombay, Bengal and North Western Provinces, and the Chief Justice and a puisne judge of the Supreme Court. Besides, the Commander-in-Chief was also given an extraordinary membership. Thus, the strength of the Legislative Council became twelve.

### The Act of 1858

The First War of Independence of 1857 brought the era of the East India Company to an end. In 1858 the British Crown took over the rights of the Company's Government in India in its own hands. The Act brought substantial changes in the constitutional set-up. Some of the important changes were: (i) it abolished the Board of Directors and the Board of Control and vested their powers in one of Her Majesty's Secretary (a Minister in the British Cabinet), (ii) he was designated as the Secretary of State for India and was empowered to superintend, direct and control all the governmental affairs in India, (iii) the Secretary of State was to be assisted by a Council of India, (iv) the Governor-General and Governors of the Presidencies were to be appointed by the Crown and the members of their Councils by the

Secretary of State-in-Council, (v) Lieutenant Governors were to be appointed by the Governor-General, subject to the approval of Her Majesty and appointments to the covenanted civil service were to be made through open competition with the assistance of the Civil Service Commission.

### Indian Councils Act of 1861

In 1861 the British Government decided to expand the legislative Councils. This was done through the Indian Councils Act of 1861. The main provisions of the Act were as follows :

(i) the Governor-General's Council was expanded for legislative purposes by adding 6-12 new members, to be nominated for two years, (ii) prior sanction of the Governor-General was essential for introducing some measures, (iii) every Act passed by the Legislature in India was subject to approval of Her Majesty acting through the Secretary of State-in-Council, (iv) the Governor-General was authorised to exercise a veto and issue ordinances in an emergency and (v) the strength of the Governor-General's Council for executive purposes was raised to five by addition of one more member.

### Indian Councils Act of 1892

In 1892 another Act was passed to further expand and strengthen the legislative councils. The main features of the Act were as follows - (i) the strength of the central and provincial

legislative councils was expanded by adding 8-20 new members, (ii) two fifth of these new additional members were to be non-officials, (iii) the Governor-General-in-Council was authorized to make rules subject to the sanction of the Secretary of State-in Council, for discussion of annual financial statements and for asking questions.

### Indian Councils Act of 1909

During the beginning of the twentieth century, the British Government was confronted with three types of pressures. While on the one hand the moderates were appealing for more reforms and the ex-

tremists were agitating for getting Swarajya, the revolutionaries, on the other hand, were resorting to terrorist activities to achieve their goal, i.e. end of the alien rule. In order to mollify the discontent, to some extent, the government enacted the Indian Councils Act of 1909.

*The salient features of the Act were as follows :*

- (a) The Act provided for the expansion of the Legislative Councils at both the levels, Central as well as Provincial.
- (b) It maintained the majority of official members in the Central Legislative Council. There were four categories of members i.e. ex-officio members, nominated officials, nominated non-officials and elected members.
- (c) It provided for non-official majority in the Provincial Legislatures. But then, the combined strength of official and nominated non-official members out-numbered the elected members.
- (d) The Act enlarged the functions of the Legislative Councils. This Act (i) empowered the members to discuss the budget and move resolutions before it was finally approved, (ii) they were allowed to ask supplementary questions, to move resolutions on matters relating to loans to local bodies, additional grants and new taxes and (iii) it also extended to the members the right to discuss matters of public interest, adopt resolutions or demand a division on them, but the resolutions adopted by the House were not binding on the government.
- (e) One of the most important and unfortunate feature of this Act was the introduction of separate and discriminatory electorate. The electorate for returning the representatives to the councils was divided on the basis of class, community and interests. For the provincial councils the electorate provided for three categories, viz., general, special and class (such as land owners and chambers of commerce). For the Central Council one more category viz. Muslim was added to it.

The qualification of the electorate based on income, property and education differed from community to community and region to region.

### **The Government of India Act of 1919**

During the First World War, Gandhiji had requested the nation to help the allies in their war efforts because they were fighting for the cause of democracy. After the war was over, the people were feeling that they would also get democratic reforms. The Government of India Act of 1919 was enacted to satisfy the people of India to some extent.

*The salient features of the Act were as follows :*

- (a) Preamble: The Act provided for a Preamble that laid down the basic principles and policies upon which it was based. According to it the policy of the British Parliament was – (i) to provide for the increasing association of Indians in every branch of Indian administration, (ii) to develop self governing institutions with a view to the progressive realisation of responsible government in British India as an integral part of the empire; (iii) the time and manner of gradual advance towards this goal was to be decided by the British Parliament and (iv) accordingly, the Preamble suggested for a decentralised unitary form of government.
- (b) Distribution of Functions: The Act divided the functions of government in two categories: central and provincial. The provincial subjects were further subdivided into transferred and reserved. In the transferred subjects the Governors were to be assisted by the ministers responsible to the legislature while in the reserved subjects the Governors were to be advised by the councillors who were not accountable to the legislature. Thus, in the provinces a new form of government, dyarchy, was introduced. Dyarchy means dual set of governments, e.g. accountable and non-accountable.
- (c) Categories of Members: The Act provided for three categories of members: elected, nominat-