



BPSC

BIHAR PUBLIC SERVICE COMMISSION

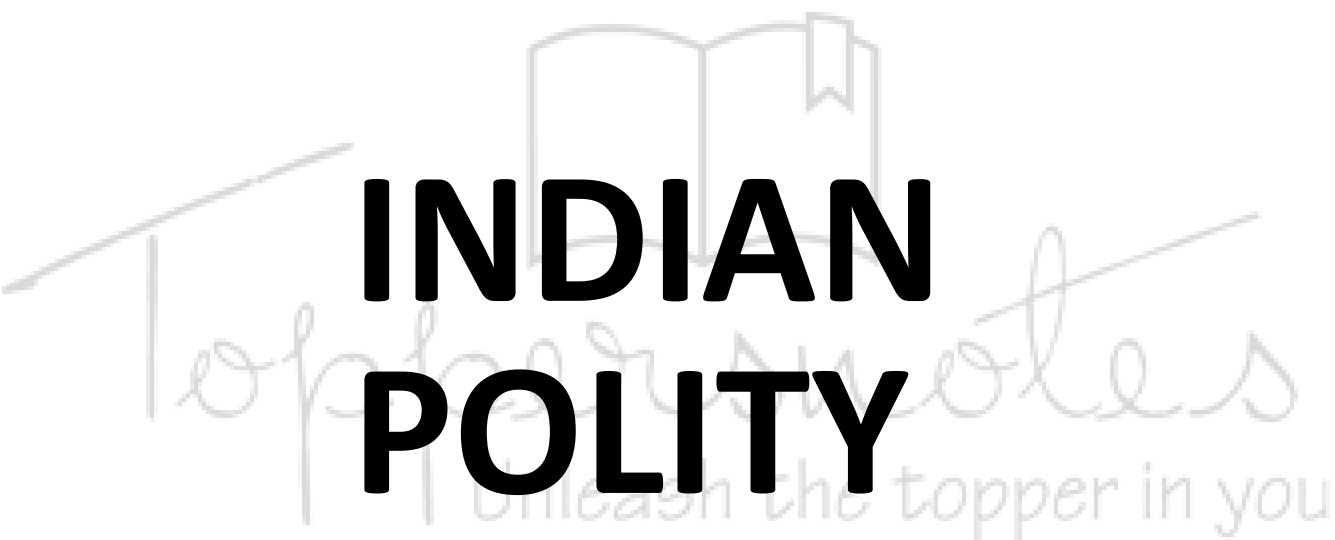
INDIAN & BIHAR POLITY

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INDIAN POLITY

Indian Polity, Constitution, Governance

Historical Underinnings of Indian Constitution

Today's constitution has close link with some of the significant development took place in british India. These are as follows :-

- On 31 Dec ¹⁶⁰⁰ AD, EIC (East India Company) got royal charter permission from Queen Elizabeth to carry out business activity in India.
- EIC setup one administrative body, named as Court of Director. in which there was one governor and 24 one man committee under him.
- EIC was expanding very rapidly and wanted to take over entire India.

Black
note
tragedy

Weakening mughal empire motivated company further and sudden death of Aurangzeb in 1707 resulted into first war that EIC waged against India in 1757 named as Battle of Plassey, in which Siraj ud-Daulah, Nawab of Bengal, was defeated and victory of EIC in this battle resulted into foundation of british empire in India. Following this victory, governor of Bengal was appointed in 1758 (Lord Clive became first GOB).

- Company waged another war, Battle of Buxar in 1764 against Shah Alam, Nawab of Outh (Awadh) and victory of company in this battle resulted into Diwani or tax collection rights from Bengal, Bihar and Orissa.

gov.
 ↙ ↘
 Revenue admin.
 collection

	<p>→ Overnight success of company brought it lots of revenue and because of this, officers of company indulged in corrupted and mal practices and there were frequent tax evasion cases.</p>
	<p>Complaints of it soon reached British parliament and Lord North committee was set up to investigate these charges.</p>
	<p>This committee found charges correct and recommended regulating or controlling company activities.</p>
to regulate affairs of East India Company	<p>For this, Regulating act 1773 was brought, which has following provisions :-</p>
	<p>→ Company license was now to be renewed in every 20th year, subject to honest and fair business of company. This renewal was to be done by charter act.</p>
	<p>→ Post of governor of Bengal was enlarged and was renamed as governor general of Bengal. (Lord Warren Hastings became first GGOB).</p>
for solving conflicts → b/w french, dutch, portuguese and east India company	<p>One judicial body named as Supreme Court was setup in Calcutta (It has no connection with SC of Delhi). (1774, Fort Williams)</p>
India company	<p>Following charter Act were brought to renew company's license :-</p>
(1)	<p>Charter Act of 1793 :-</p> <p>In this, SC was given power to interpret rules & regulations</p>

	made of Board of Control. (William Pitts, PM of Britain)
	It is to be noted that in 1784, Pitts India Act was brought to fill the gaps in regulating act 1773.
	This act created BOC over and above company's administrative body, court of director so that legislative, executive and administrative functions could be shifted from COD to BOC.
	By this, EIC was reduced to business firm only. (centralization of power)
	Officers in BOC were decided to be paid out of Indian revenue from 1793 onwards, which can be seen as classic example of "Drain Theory of India", a book written by Dadabhai Naoroji.
(2)	Charter Act of 1813 :-
other companies in Britain also wanted to do trade with India.	In this charter, monopoly of EIC for exporting tobacco, cotton, tea etc. was ended and same rights to export these crops was given to French and Portuguese.
	It resulted into better remuneration for Indian farmers on one hand and on other, domination of EIC got a setback. (Missionaries were opened to convert religion)
(3)	Charter Act of 1833 :-
last step of gov. to centralize the power	By this post of GGOB was enlarged and was renamed as governor ^{gen.} of India. (Lord William Bentick became first GGOI).
Patronage system was abolished but postponed	He was provided with one governor general in council and one legislative house was also provided with name Indian Council, which is known as Lok Sabha today.
	One law commission provision was also provided which is considered as faint beginning of constitution writings.

	<p>Charter Act of 1853 :-</p> <p>This is last charter act of British India, in which GOB post was recreated, because of increased work.</p> <p>Policy of open recruitment was also started to end nepotism and spoil system. → 1853 - Lord Macaulay merit system - 1854</p>
<p>origination of parliamentary form of govt.</p>	<p>After 1855, pressure of exploitation on Indians was so high that it could not be tolerated anymore.</p> <p>Because of this, first war of independence was fought in 1857 in which we pushed EIC back to Britain but at last we were pushed back by advanced British forces.</p>
<p>administration of country ↓ GOI</p>	<p>British India was taken by British parliament in 1858 by govt. of India Act which has following other provisions:-</p>
	<p>(1) BOC, COD were abolished and these were replaced by one post named as Secretary of State (Lord Stanley became first SOS). member of British cabinet & responsible to parliament.</p> <p>This SOS post which was now to be known as Viceroy, means more respect (Lord Canning was first Viceroy).</p> <p style="text-align: center;">↓ last GOI</p> <p style="text-align: right;">responsible to crown & SOS.</p>
<p>Indian house ↓ 15 members (all white)</p>	<p>(2) Doctrine of Lapse policy was also ended so that provincial autonomy could be guaranteed.</p> <p>British India was now considered as extended British territory and British Parliament had to perceived indirect policy of exploitation on name of welfare in form of divide & rule and carrot & stick policy.</p> <p>We can see following example of this policy :-</p>

(1) Govt. of India Act 1909 or Minto - Morley reform :-

In this, communal representation was introduced in form of separate electorates for Muslims.

They said that Bengal area is geographically large so it is hard to manage administratively. But real reason was that Britishers realised that united India cannot be ruled for long. These seeds of poison were sown in 1909, came out to be gigantic tree in form of Pak in 1947.

(2) GOI Act 1919 or Montague - Chelmsford report (Mont-ford report)
In this, 2 elements were introduced -

(dual governance)

(i) Dyarchy :- (2 list system)

It was introduced at provincial level in form of 2 lists - namely reserved list and transferred list.

Highly
unsuccesful

In reserved list which was with english included important subjects like finance, defence etc. and nominal subjects like agriculture, irrigation etc were kept in transferred list.

It was done to satisfy those Indians who were demanding to be part of legislative functions.

We were blamed for failed agriculture to which britishers were making every contribution by not allotting money for canals etc.

(ii) Bicameralism :-

It means 2-house system, which was introduced at central level to create upper house over and above Indian council.

It was done to accomodate those Indians who wanted to become legislature.

We were blamed for delayed legislative process.

	GOI Act 1935 :-
	It is also called as first constitution of British India and it is based on Nehru report which was made after accepting Simon commission challenge that we Indians can't
6 states adopted bicameralism	make constitution.
	In this act, dyarchy was shifted from provinces to centre and it was introduced in form of 3 list namely - federal list, provincial list and concurrent list.
	This arrangement, today, we find in Schedule 7 of Indian constitution.
First time women got right to vote.	Bicameralism was also introduced in provinces to have upper house like Vidhan Parishad and lower house like Vidhan Sabha.
	This act is also known for birth of RBI.
	It is also known for birth of All India Federation which never came into before 1950 as all provinces did not join the centre.
	Establishment of federal court.

Cripps Proposal 1942 → Dominion Status (This was (May independence) rejected) X



Cabinet mission 1946 - comp. Independence
Two nation theory X



Mount Pattern Plan 1947
(India indep alt)

↳ Constituent assembly drafting - 389 members
- 220 Committees

9 Dec. 1946 - First Meeting
Dr. S. Sinha

14 Dec.

External sovereignty - in hands of british parliament till 1950.

After 1935, process of getting independence was very fast and Indians were protesting for complete independence.

Because of onset scenario of World War II, Britain was also realizing that it would have to leave the occupied colonies including India.

The first attempt in this regard was made in form of Cripps proposal 1942 in which dominion status was proposed. It means half independence that we rejected as we demanded for complete independence.

Again, another attempt was made in form of Cabinet Mission Plan 1946 in which complete independence was granted but Theory of two nation was not accepted as it was not good for Britain's commercial interests.

This proposal was reshaped as Moutbatten Plan 1947 where along with comp. independence, two nation theory was accepted.

This plan was approved as Indian Independence Act. It provided for one body called as constituent assembly which was assigned the task of framing the Indian constitution.

It was not an elected body but it was partially elected and partially indirectly.

It had 389 members who were categorized into more than 20 major and minor committees. The most imp. committee was drafting comm. which was headed by Dr. B.R. Ambedkar.

This constituent assembly had its first meeting on 9 Dec 1946 in which Dr. S. Sinha was elected as its provisional or temp. chairperson, as after 2 days, on 11 Dec 1946, Dr. R. Prasad

was elected as its permanent chairperson.

This assembly worked for 2 yrs. 11 months 18 days time to frame the constitution which was adopted on 26 Nov 1949 and constitution was enforced after 2 months on 26 Jan 1950, which we celebrate every year as Republic day.

Structure of Constitution

U.S.A.^o (Format)

L'Intro - Preamble

- Objective reso. of Pt. Nehru

L chapters - Parts 15

5 } Bechar Ram (Tabalpur)
-22, (design.)

$$L_{22} L_{25}$$

1 Info. $\left\{ \begin{array}{l} \text{Points - Articles} \\ \text{Para} \end{array} \right.$ 30

395-448

L Appendix - schedule - 8-12

Structure of Constitution :-

Constitution is Supreme law book in India which is a codified document and it is sequentially arranged & organically linked.

Its introduction is called Preamble and chapters are called parts and appendix attached in last is called Schedules.

The info. in points and paragraph has been presented in form of articles.

Schedules :-

1. Schedule 1 - Name of Indian States and Union Territories

It is complementary to Part 1 and it includes the name of 29 states and 7 UTs, their areas and other factual info. related to them.

It can be amended by simple majority i.e. more than 50% of present and voting.

2. Schedule 2 - Salary and emoluments

It provides for salary and allowance provision for various constitutional dignities like President, PM etc.

The significance of Schedule 2 is that, it provides for an expression charged expenditure, which means salary of functionary will not be reduced during his tenure so that he/she can function neutrally and without any pressure. It provides for another expression named as Warrant of Precedence i.e. hierarchy or senior-junior chain. It can be amended by simple majority.

3. Schedule 3 - Oath and Affirmation

It provides for various format of oath and affirmation for different posts.

Oath is taken in the name of god, whereas affirmation means promise to carry out duties attached with post.

If a person does any mistake while repeating or taking oath and affirmation, he may not be allowed to sit in office.

Supreme court in KM Sharma vs Devital case in 1990 categorized Schedule 3 in 2 parts namely - descriptive part and substantive part.

In descriptive part, name and surname of person, name of post, name of the god are to be included. If there is any mistake while uttering descriptive part then oath will not be invalidated and the person will be allowed to sit in office.

In 2nd part which is substantive one includes obligations of duties which if wrongly uttered may result into invalidation of entire oath and person have to take it again in correct format.

It is to be noted that Schedule 3 violate principle of secularism in India as it recognizes god.

Schedule 3 can be amended by special majority or by constitutional amendment Act under article 368.

4. Schedule 4 - Allocation of Rajya Sabha seats among states

It provides for distribution of Rajya Sabha seats among 29 states and Delhi and Puducherry in proportion to the population residing there. (UP has max. and goa, sikkim etc have min. R.S. seats).

It is to be noted that Schedule 4 violate principle of equality as every state has not been given equal share in R.S.

In USA, every small or big state has been given share of 2 seats in Senate to make a total of 100 seats. That's why, India is union not a federation.

Schedule 4 can be amended by simple majority.

5. Schedule 5 - Administration of Scheduled area & scheduled tribe:

It provides protection to backward areas and backward communities termed as scheduled body.

President by way of governor save these bodies from state politics so that industries are not permitted there, resulting in cutting of forest and disturbing flora and fauna.

Schedule 5 is available for entire India except some north east states.

6. Schedule 6 - Administration of Tribal area in Assam, Meghalaya, Tripura and Mizoram

It provides protection to tribal areas located in Assam, Meghalaya, Tripura and Mizoram.

To understand it better, let's differentiate it with Schedule 5 in following table :-

Schedule 5

- All States are covered except 4 North east States
- It does not provide autonomous status to any scheduled area.
- It provides for body TAC (Tribal Advisory Council) which is nominated body to advise governor on administration of that area.

Schedule 6

- It is available only for A, M, T, M
- It provide for autonomous status.
- It provides for DC (District Council), RC (Regional Council) which are partially elected & partially nominated & enjoys legislative, judiciary & executive power subject to certain restrictions

→ It provides protection for welfare of ST only.

It not only provide protection for welfare but it also provide protection for social ^{& culture} custom like marriage practices.

→ Parliamentary & state laws are automatically applied after some modification that governor may do, on TAC advice.

Parliamentary & state laws are not automatically applied & DC/RC suggest changes in them before their application.

Schedule 5 and Schedule 6 can be amended by simple majority or by ordinary legislation.

Schedule 7 - Distribution of subjects

It distributes subjects or power b/w center and states.

It has been done by categorizing them in 3 lists namely -

- Union list
- States list
- Concurrent list

The union list includes approx. 97 subjects, state list with 67 subject and concurrent list with 47 subjects.

DOP shows federal provision but long, union list comparison to small state list shows unitary inclusion in it.

If any residuary subjects come up like LGBT, then it belong to union but in federal state like USA, it belongs to state.

DOP is different with SOP in sense that SOP is for legislative, executive and judiciary which is partially found in article 50, whereas DOP is ^{for subjects} b/w centre and states found in schedule 7.

Amendment in schedule 7 can be done by special majority or by constitutional amendment act under article 368.

Schedule 8 - Languages

Originally, it provided for 14 languages but today there are 22 languages in it.

Sindhi was added in it in 1967 by 21st constitutional amendment act.

Konkani, Manipuri and Nepali were added in 1992 by 71st constitutional amendment act.

Bodo, dogri, Maithali and Santhali were added in 2003 by 92nd constitutional amendment act 2003.

It is to be noted that hindi is not our national language nor it is mother language of every state, but it is only official lang. of some Indian states.

Nepali is only foreign lang. which has been given a constitutional status.

Schedule 8 provides linguistic base to organize Indian states.

Amendment in schedule 8 can be done by special majority under article 368 for const. amend. act.

From 1950 till 1965, english used to be official lang. of union as well as for Supreme court and high court but after 1965, Devanagari script was adopted by union for official purpose but SC and HC kept english as their official lang. despite const. directives for change of lang. from english to any local lang.

Schedule 9 - Validation of certain rules and regulations

It was added by 1st CA act 1951. It is also called Iron box. It was enacted to save parliamentary laws from judicial examination.

Technically, it is an explanation to article 31 B which says that if any law kept in schedule 9 is violatory of one or more fundamental rights, it may not be declared as unconstitutional.

SC in Shankari Prasad case 1951 upheld the validity of schedule 9 but in Keshwa Nanda Bharti case 1973, the court revised its earlier decision and held that if any law destroys basic structure of constitution, it may be declared as unconstitutional.

Originally, schedule 9 was intended to protect land reform, zamindari abolishment, nationalisation which were imp. for nation further it was used sparingly but in 1970s when constitution was attempted to be changed ingenuinely and unnecessarily Keshwa Nanda Bharti case decision saved the decorum of constitution.

Still then, govt. kept on using schedule 9 and no. of laws in it were inflated from 66 in 1973 to 284 in 2007.

The free and ingenuine use of schedule 9 resulted in filing of IR Coelho case 2007 challenging constitutional validity of schedule 9.

In this case, court held that the laws kept in schedule 9 on or before 24 April 1973 shall continue to enjoy immunity from judicial examination but after that date any law that was kept in it or will be kept is open

for judicial examination and can be declared unconstitutional. So, present position is that schedule 9 is ineffective for laws kept in it from 25 April 1973 till date. The court in Waman Rao case 1980 reaffirmed its decision of Keshwa Nanda Bharti case.

Schedule 10 - Anti-Defection Law

Dal badal kanoon.
 Anti House trading act.
 Anti-politicking law.
 Aaya ram - gaya ram law

It was added in 1985 by 52nd CA Act. It is also known as anti-house trading law, anti-politicking law etc.

It was brought to stop defections in political parties.

India saw one party govt. from 1950 till 1975 but after this phase India first became 2 party democracy and then multi-party demo. in 1989.

There are 7 national recognized parties today, and it is not possible to have clear cut majority every time by political party.

The results in election were of fractured verdict nature, to overcome this problem political parties started making fronts, like UPA, NDA etc, and coalition form of govt.

became order of the day, in which many pull and push pressures were there as MP/MLAs were lured for monetary & materialistic reasons, hence, bringing instability in govt.

To stop such greedy and bad practices, ADL was brought with following provisions:

→ If any political party MP/MLA leaves his political party & joins any other political party then he will be disqualified.

→ Any independent MP/MLA joins any political party then he will be disqualified.