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Introduction

On 31 December 1600, British East India Company was granted an English Royal Charter under the name "Governor and Company of Merchants of London Trading into the East Indies" by Queen Elizabeth I.

British East India Company is the **oldest among all the contemporary European East Indian Companies.**

- ✓ British East India Company was founded in 1600.
- ✓ Dutch East India Company was founded in 1602
- ✓ Danish East India Company was founded in 1616
- ✓ Portuguese East India Company was founded in 1628
- ✓ French East India Company was founded in 1664
- ✓ Swedish East India Company was founded in 1731

The company was given right to do business for **next 15 years** and the charter needed to be renewed after that. This company operated till it was dissolved in 1874 by **East India Stock Dividend Redemption Act 1873.**

Initial purpose of the company was to provide a vehicle for the creation of exclusive trading privileges in the East Indies which included modern India, Pakistan, Bangladesh, China and Japan for London merchants. However, later in practice the commercial character of the company gradually underwent a complete change in the course of a century and half and it became an "agent of imperialism", till it was forced to pass the direct rule of India to the British Government in 1858.

Initially the company was dependent upon the success of individual voyages, but by 1657 the company had achieved continuous investment through a joint stock arrangement.

The Politics of Monopoly

The company had a monopoly and it was allowed to operate independently and unchecked, however, in the later parts of the 17th century, it had to bow to the forces of opposition in England and in 1694; the Government withdrew the East India Company's trade monopoly. At that time, the English Parliament provided that all English subjects had the right to trade with the Indies.

As a sequel to this, **Scottish East India Company** was formed in 1695. This company soon failed because it had no backing from the English Parliament. In 1698, another **English East India Company** was established, but the second company, which was share, based lost majority control to the first East India Company and by 1702, it was clear that the **First East India Company was stronger.**

Negotiations facilitated by **Sidney Godolphin**, which continued till 1708 and, in 1708 the two companies were formally merged and the company formed now was known as "United Company of Merchants of England Trading to the East Indies"

- ✓ 23 June 1757 was a decisive day for British East India Company, when in Battle of Plassey, the British East India Company got victory over the Nawab of Bengal (Nawab was supported by the French) and this marked the firm establishment of Company rule in India for next 190 years.

The three presidencies, viz. **Bombay, Madras and Bengal** were each put under the control of the Governor and Council (or Governor-in-council) which was appointed by the Commission of the Company. All powers were lodged in the Governor and the Council jointly and the **presidencies were independent of each other.** Each had its own government independent from the others.

However, the financial matters of the company were mismanaged since 1757. The officers turned greedy and corrupt.

☞ In 1773, the company became **almost insolvent** and forced to apply to the British Government for a loan of **One Million Pound Sterling.**

☞ This led to the British government of **Lord North** to undertake a legislation to meet the situation and provide some form of legal government for the Indian possessions of the East India Company, which resulted in Regulating Act of 1773.

Regulating Act of 1773

Regulating Act of 1773 is known to be the first step of the British government to regulate the affairs of the East India Company.

✓ This act designated the Governor of Bengal as the Governor General of Bengal who also was to serve as Governor General of all British Territories in India.

✓ An executive council **with 4 members** was created **to assist the Governor General.**

✓ The Office of the Governor-General of the Presidency of Fort William was created in 1773, and on 20 October 1773, **Warren Hastings** became the first Governor General.

✓ **Warren Hastings was made the First Governor General of Bengal** and the members of the council were as follows:

1. Lt. General John Clavering
2. George Monson
3. Richard Barwell
4. Philip Francis.

✓ The regulating act of 1773 was the almost first indication of the involvement of the British Government in the Indian affairs, which eventually led to complete control in 1858.

✓ The act unequivocally established the **supremacy of the Presidency of Bengal** over the others.

✓ In matters of foreign policy, the Regulating Act of 1773 made the presidencies of Bombay and Madras, subordinate to the Governor General and his council. **Now, no other presidency could give orders for commencing hostilities with the Indian Princes, declare a war or negotiate a treaty.**

✓ To curb the corruption, the act forbade the servants of the company to accept presents and bribes.

India's first Supreme Court, Fort William, Calcutta

✓ **The regulating act of 1773 established a supreme court at Fort William, Calcutta.** This Supreme Court consisted **one Chief Justice and three other regular judges or Puisne Judges.**

✓ Sir **Elijah Impey** was the first Chief Justice of this Supreme Court.

✓ The Supreme Court was the supreme judiciary over all British subjects including the provinces of Bengal, Bihar and Orissa.

✓ This was the starting point of Modern Constitutional History of India, under the British.

Please note that this was though a Supreme Court, but still it was not above the Company. The act of 1773 was **obscure with regard to the relation of the Supreme Court with the Government of Bengal.**

The Supreme Court subjected the company to the control of British Government. Later an amendment in this act was made (The amending act of 1881), in which **the actions of the public servants in the company in their official capacity were exempted from the jurisdiction of the Supreme Court.** The Supreme Court was also made to consider and respect the religious and social customs of the Indians.

☞ **Appeals** could be taken from the provincial courts to the **Governor-General-in-Council** and that was the **final court of appeal.**

☞ The rules and regulations made by the Governor General-in-Council were not to be registered with the Supreme Court.

Pitts India Act 1784

The flaws in the working of the Regulating Act of 1773 were later taken on by William Pitts, the Prime Minister of Great Britain. The bill was introduced in January 1784, but the bill was not passed as parliament subsequently got dissolved. In the subsequent election, William Pitt obtained a majority and got the bill passed in **August 1784, which was known to be Pitt's India Act 1784.**

✓ This act established a **Board of 6 Commissioners in England** for the affairs of India and it was known as **Board of Control.**

- ✓ This board of control comprised of the Chancellor of the Exchequer, Secretary of state and 4 privy Councilors. This Board of control was empowered to control all matters of civil or military government or revenues.
 - ✓ The board was given full access to the company's records. It had the powers to send Governors to India and full authority to alter them.
 - ✓ The Governor General's council was now reduced to 3 members, one of whom was to be the commander-in-chief of the King's army in India.
 - ✓ The governor General was given the right of casting vote in case the members present in a meeting of the council shall any time be equally divided in opinion.
 - ✓ In short, the Pitt's India Act brought the Governor General and his council which was now reduced to 3 members under the *INDIRECT control of the British Government* and other minor Presidencies under the control of Governor General & Council.
 - ✓ This act separated the commercial and political activities of the company. The act now actually provided for a joint government of the company and British crown. The Company was to be represented by the Directors and the Crown was represented by the Board of Control. The Governors of Presidencies of Bombay and Madras were deprived of their independent powers and Calcutta was given greater powers in matters of war, revenue, and diplomacy, thus becoming in effect, the capital of Company possessions in India.
 - ✓ A secret committee of the 3 directors was to transmit the orders of the Board to India. This Secret Committee was to work as a link between the Board of control and the Court of Directors.
 - ✓ All civilians and military officers were ordered to provide the Court of Directors a full inventory of their property in India and in Britain within two months of their joining their posts. Severe punishment was provisioned for corrupt officials.
- Parliament **directly appointed Lord Charles Cornwallis to implement the Act**. Immediately after his joining as Governor General in 1786, Cornwallis embarked upon the responsibility of reform works reposed on him by parliament. In 1793 he completed his mission. He introduced permanent settlement, announced a judicial code, established administrative and police systems and then left for home in the same year.

Act of 1786

- ✓ Act of Act of 1786 was a supplementary Bill, brought by Pitt and was passed in 1786. Lord Cornwallis was appointed as the first Governor-General and he then became the effective ruler of British India under the authority of the Board of Control and the Court of Directors.
- ✓ Lord Cornwallis was given powers to override his council in extraordinary situations.

Charter Act 1793

By 1793, when the company's charter timed out the British parliament passed a new charter which authorized the company to carry on trade with the East Indies for next 20 years.

- ☞ The company was allowed to increase its dividend to 10%.
- ✓ A provision in the Charter act of 1793 was made that the company, after paying the necessary expenses, interest, dividend, salaries, etc from the Indian Revenues will pay **5 Lakh British pounds** annually out of the surplus revenue to the British Government. However, the act also had a provision, that

Crown could order the application of the whole of the revenue for the purpose of defense if the circumstances posed such demands.

Some other Provisions:

- ✓ The Governor General was **empowered** to disregard the majority in special circumstances.
- ✓ The Governor General and respective governors of the other presidencies could **now override the respective councils**, and the commander in chief was not now the member of Governor General's council, unless he was specially appointed to be a member by the Court of Directors.
- ✓ If a high official departed from India without permission, it was to be treated as resignation.
- ✓ The charter act 1793 can be called an act for **consolidation of the Indian Judiciary**. This act reorganized the courts and redefined their jurisdictions. **The revenue administration was divorced from the judiciary functions and this led to disappearing of the Maal Adalats**. The revenue cases were now referred to Zillah adalats or district courts. Court of appeal were made 5 provincial courts at Calcutta, Patna, Dhaka & Murshidabad.

Act of 1797

- ✓ The act of 1797 reduced the number of Judges of the Supreme court at Calcutta from 4 to 3 (One chief Justice and 2 other judges).

Act of 1800

- ✓ Act of 1800 extended the Jurisdiction of the Supreme Court at Calcutta over the districts of Banaras and other districts.
- ✓ This act provided for the constitution of Supreme Court at Madras.

Act of 1807

- ✓ The act of 1807 gave powers to the Governors and Presidencies of Madras and Bombay to make regulations, like the government of Bengal
- ✓ However, these powers were subject to approval and registration by the Supreme Court.

Charter Act of 1813

20 years after the charter of 1793 was renewed, the charter timed out and was to be renewed.

✍ During 1798 to 1805, Lord Wellesley served as the Governor General of India. The 7 years tenure of **Lord Wellesley** is known to be an **important phase** in the development of British power in India. His policy allowed him to **remove all kinds of French influence** from India and he established the British the paramount power in this subcontinent. He was successful in wars and was known to be an **aggressive implementer** of **Policy of annexations**. But **this aggressive policy of annexations plunged the company into financial difficulties**.

This was also an era of successes for Napoleon Bonaparte whose Berlin decree of 1806 & Milan Decree of 1807 forbade the import of British goods into European countries allied with or dependent upon France, and installed the Continental System in Europe.

These circumstances posed hardships to British traders, and they demanded entry to the ports of Asia. But the East India Company clamored that its political authority and commercial privileges cannot be separated. The controversy was later resolved by allowing **all the British merchants to trade with India** under a strict license system.

- ✍ Thus the Charter act of 1813 ended the monopoly of the East India Company in India, however the company's monopoly in trade with china and trade in tea was remained intact.
- ✍ The charter act of 1813, for the first time explicitly defined the constitutional position of the British territories in India.
- ✓ This act also made provisions to grant permission to the persons who wished to go to India for promoting moral and religious improvements. (Christian Missionaries)
- ✓ This act regulated the company's territorial revenues and commercial profits.
- ✓ The company debt was to be reduced and dividend was fixed @10.5% per annum.
- ✓ There was also a provision that Company should invest Rs. 1 Lakh every year on the education of Indians.
- ✓ This act also empowered the local governments to impose taxes on the persons subject to the jurisdiction of the Supreme Court.

Charter Act of 1833

The 20 years renewal of the charter ran out in 1833. This was the time for the government to do a careful assessment of the functioning of the company in India. The charter was renewed for another 20 years, but the company was asked to close its commercial business.

- ✓ The company lost its monopoly in China and also the trade of tea which it enjoyed with Charter act of 1813.

The charter act of 1833 legalized the European colonization of India and the territorial possessions of the company were allowed to remain under its government, but were held "in trust for his majesty, his heirs and successors" for the service of Government of India.

- ✓ This act made the Governor General of Bengal the Governor general of British India and all financial and administrative powers were centralized in the hands of Governor General-in-Council.
- ✓ The number of the members of the Governor General's council was again fixed to 4, which had been reduced by the Pitt's India act. However, certain limits were imposed on the functioning of the 4th member.
- ✓ The 4th member was NOT entitled to act as a member of the council except for legislative purposes.
- ✍ Please note that the first person to be appointed as the 4th member of the Council was Lord Macaulay.
- ✓ This act as had also provided for splitting the Presidency of Bengal, into two presidencies which were to be known as presidency of Fort William and Presidency of Agra. But this provision never came into effect, and was suspended later.
- ✓ Charter act of 1833 distinctly spelt out the powers of the Governor-General-in-Council. He could repeal, amend or alter any laws or regulations including all persons (whether British or native or foreigners), all places and things in every part of British territory in India, for all servants of the company, and articles of war.
- ✓ However, the Court of Directors acting under the Board of control could dis-allow any laws made by the Governor-General-in-Council.

Codifying the Laws:

- ✓ The charter act of 1833 is considered to be an attempt to codify all the Indian Laws. The British parliament as a supreme body, retained the right to legislate for the British territories in India and repeal

the acts. The act of 1833 provided that all laws made in India were to be laid before the parliament and were to be known as Acts.

✓ In a step towards codifying the laws, the Governor-General-in-Council was directed under the Charter act of 1833, to set up an Indian law Commission.

✍ So the first law commission was set up by the Charter act of 1833 and Lord Macaulay was its most important member.

The other members of this commission were English barrister Cameron, Macleod of Madras service, William Anderson of Bombay Service and Sir William McNaughton of the Calcutta Service. However please note that Sir William McNaughton did not accept the appointment.

✍ The objectives of the law commission was to inquire into the Jurisdiction, powers and rules of the courts of justice police establishments, existing forms of judicial procedure, nature and operation of all kinds of laws. It was directed that the law Commission shall submit its report to the Governor General-in-council and this report was to be placed in the British parliament.

Indian's In the Government service:

✓ The section 87 of the Charter Act of 1833, declared that "Normative of the British Territories in India, NOR any natural Boon subject of "His majesty" therein, shall by any reason only by his religion, place of birth, descent, color or any of them be disabled from holding any place, office or employment under the company"

✍ This policy was not seen in any other previous acts. So the Charter act of 1833 was the first act which provisioned to freely admit the natives of India to share an administration in the country.

However this was actually distorted by a policy introduced by Lord Cornwallis, who shut the door for Indians for Powerful Military and Civil Services. Indians could do minor jobs only.

Mitigation of Slavery:

✓ This act also directed the Governor General-in-Council to adopt measures to mitigate the state of slavery, persisting in India since sultanate Era. The Governor General-in-Council was also directed to pay attention to laws of marriage, rights and authorities of the heads of the families, while drafting any laws.

More Bishops:

✓ The number of British residents was increasing in India. The charter act of 1833 laid down regulation of establishment of Christian establishments in India and the number of Bishops was made 3.

Charter Act of 1853

In 1853, the charter of 1833 was to time out and had to be renewed. It was renewed but no substantial changes were made. However, this was for the first time, that this charter act, unlike other charter acts, did not fix any limit for the continuance of the administration of the company in India. The act provided that the Indian territories will remain under the Governance of the company, until the parliament otherwise directed.

✓ In England, Charter Act of 1853 reduced the number of Directors of the Company from 24 to 18. Out of these 18, six were to be appointed by the crown.

✓ The Charter act of 1853 provided for appointment of a separate Governor for the Presidency of Bengal, distinct from the Governor General. However, the court of Directors and the Board of Control were authorized to appoint a lieutenant governor, till the appointment of a Governor was made.

✍ Please note that the Lieutenant governor was appointed in 1854, but **no Governor was appointed** for Bengal till 1912.

✓ This act also empowered the Court of Directors either to constitute a new Presidency (In lines of Presidency of Madras or Bombay) or appoint a Lieutenant Governor.

✍ Here it's worth that No new presidency was constituted but in 1859, a new Lieutenant governor was appointed for Punjab.

✓ Charter Act of 1853 marks the expansion of the Council of the Governor General for legislative purposes. The fourth member (Lord Macaulay) was placed at an equal status with other members. The council of legislative purposes which had 6 members now was expanded to 12 members.

✓ These 12 members were :

1. The Governor General =1
2. The commander in Chief =1
3. Members of the Governor General's Council=4
4. Chief Justice of the Supreme Court (Calcutta)=1
5. A regular judge of the Supreme court Calcutta=1
6. Representative members drawn from the company's servants with 10 years minimum tenure and appointed by the local governments of Bengal, Madras, Bombay and North Western provinces=4

Total =12

Genesis of Indian Civil Services:

✓ The previous charter act of 1833 had laid down that the Court of Directors should nominate annually 4 times as many candidates as there were vacancies, from whom one should be selected by competitive examination. The charter act of 1833 also provided the **Haileybury college of London** should make quota to admit the future civil servants. However, this system of an open competition was never effectively operated. A The Committee under the chairmanship of Lord Macaulay had prepared the regulations in this context. The report said that

☞ Haileybury should cease to be maintained as higher education college for the ICS

☞ There should be a broad general education rather than specialized education for the ICS recruits

☞ The recruitment should be based upon an open competitive examination to bring out the best candidates and not through mere superficial knowledge

☞ The appointments should be subject to a period of probation.

✍ Charter Act of 1853 deprived the Court of Directors of its right of Patronage to Indian appointments and now it was to be exercised under the regulations. This was the Birth of **Civil Services** which was thrown in 1854 for open competition.

New provinces:

By that time, the administrative situation got hard due to annexation of new territories to the company's possession in India.

✓ The Charter Act of 1853 empowered the Governor General of India-in Council to take over by proclamation under his immediate authority and management of the territories for the time being.

✓ He was authorized to issue necessary orders and directions for its administrations or provide for its administration.

- ✓ This resulted in creation of Assam, the central provinces, and Burma.

The Government of India act 1858

- ✍ This act is also called Queen Victoria's declaration, 1858

India's first war of Independence, which was called the "Sepoy Mutiny" by the British, proved to be the last nail in the coffin of Company rule in India. Apart from many social and military causes, the war or mutiny was a direct result of the **Doctrine of lapse** policy of ruthless annexation by Lord Dalhousie.

The mutiny was suppressed. But it **sent ripples of fear to London**, and convinced the British that administration of the *India must be taken over by the Crown*.

- ✓ The British prime Minister, **Palmerstone** had introduced a Bill in 1858 in the parliament for the transfer of Government of India to The crown. However, before this bill was to be passed, Palmerstone was forced to resign on another issue.

- ✓ Later Lord Stanley introduced another bill which was originally titled as "**An Act for the Better Government of India**" and it was passed on August 2, 1858. This act provided that India was to be governed directly and in the name of the crown.

- ✓ **This act abolished the company rule, abolished the Court of directors and abolished the Board of control.**

- ✍ The act provided the Crown will govern India **directly through a Secretary of State for India**, who was to exercise the powers which were being enjoyed by the Court of Directors and Board of control.

On September 1, 1858, the court of directors held its last solemn assembly and the East India Company issued its last instructions to the servants in the East; and offered to its sovereign an empire in these words: "let her Majesty appreciate the gift-let her the vast country and teeming millions of India under her direct control, but let her not forget the great corporation from which she has received them, nor the lessons to be learnt from its success" (Cambridge History of India, 1922)

The first Secretary of state was Lord Stanley, who prior to 2 August 1858, served as President of the Board of Control. The Secretary of State was now the political head of the India.

- ✍ In **1935**, the Government of India Act 1935 provided a new Burma Office, in preparation for the establishment of Burma as a separate colony, but the same Secretary of State headed both Departments and was styled the **Secretary of State for India and Burma**.

- ✍ The **first secretary of state for India and Burma was Lord Dundas**. The India Office of the Secretary of State for India and Burma came to an end in 1947, when we got independence and now the Secretary of state of India and Burma was left to be Secretary of Burma.

- ✍ Viscount Ennismore was the first and last Secretary of Burma, as Burma got independence in 1948.

Centralization

- ✓ The **right of appointment** to important offices in India was vested either in the **crown** or in the **secretary of state of India-in-Council**.

- ✓ This act **abolished the Dual Government introduced by the Pitt's India act.**

- ✓ The **administration of the country was now highly centralized.** All civil, military and executive powers vested in the Governor in council, who in turn was responsible to Secretary of State. There was a provision of creation of an Indian Civil Service under the control of the Secretary of State.

Year 1861, marked the passing of 3 acts. These acts were Indian Civil Services Act 1861, Indian Councils Act 1861 and Indian High courts Act 1861.

Indian Civil Services Act 1861

A competitive examination was organized in 1853, but the Indians could not seek entry. However, the system of reserving **principal posts** for the members of the covenanted service (means British) was introduced in 1858.

- ✓ The Indian Civil Services Act, 1861, validated a number of irregular appointments which were made in India to meet the exigencies in disregard of the restriction that all offices in the civil cadre of the company's service in India were reserved to the civil services of the Presidency.
- ✓ The recruitment in the civil services was scheduled which also included the number of appointments to be filled "only by the members of the covenanted Civil Service in Future".
- ✓ Thus, the **Principal posts were reserved for British.**
- ✓ The civil services act 1861 laid down that any person, whether Indian or European could be appointed to any of the offices (specified in the schedule annexed), provided that he had resided for minimum of 7 years in India.
- ✓ The person had to pass an exam in vernacular language of the district, in which he was employed.
- ✓ The appointment was also made a subject to departmental tests or other qualifications.
- ✓ All appointments were now to be reported to the Secretary of State and unless Secretary of State approves within twelve months, were declared void.
- ⊗ The Indian Civil Services Act could not fulfill the demand of by the educated Indians to secure employment in the Covenanted Civil Service. Further reforms were made later.

Some Questions

What was the "Court of Directors"?

The East India Company's charter was issued on 31 December 1600 by Queen Elizabeth I. Two committees were accordingly constituted in England to run the affairs of the Company smoothly. One of these committees was "Court of proprietors" and another was "Court of Directors". All the share holders of the company were the members of the "Court of Proprietors" and out of them 24 were elected to the "Court of Directors"

What were the functions of "Court of Directors"?

Court of the directors used to execute all the rules and regulations framed by the first committee.

Were the employees of the Company in India allowed to carry on their private trade?

Yes, apart from receiving salary, they were allowed to carry out their private trade.

In which year East India Constituted a Joint stock Company?

For the first time the East India Company constituted a Joint stock Company in 1612. East India Company's income had increased 200 times due to 7 voyages in a period of 3 years from 1610-1613. During the 17th century, its average profit was almost 100%.

What were the changes incorporated by the Regulating Act 1773 in England?

With the Regulating act of 1773, changes were introduced in the administrative structure of the company in both England and in India. In England, it was provisioned that only those shareholders, who possessed a share of 1000 pounds at least a year before the election would be allowed to vote. The directors of the company

were required to place before the British Government, all their correspondence related to revenues and military administration from India. This act prohibited the company servants from carrying out the private trade.

What were the demerits of Regulating Act of 1773?

The biggest demerit was that this act constituted a council which was supposed to assist the Governor General comprising of 4 members, wherein the decisions were to be taken **on the basis of majority votes**. The **position of the Governor General became fragile due to the majority vote**. This act **could not clarify the respective spheres of jurisdiction of the Supreme Court & the Governor General and his council**. Apart from this, this act also **could not establish supremacy of the British parliament over the company**.

With which act, East India Company got a constitutional status?

The **Regulating act of 1773** gave the East India **Company a constitutional status** apart from granting the status of a trading company. This act provided political powers to the Company.

What was the meaning of the “covenanted Services”?

Regarding Civil Servants, Lord Macaulay once said: Even the character of the Governor General was less important than the character and spirit of the servants by whom the administration of India was carried on. Civil Servants were the actual rulers of India and they could not be removed, held accountable not replaced by anybody other than a member of their own services.

Lord Clive was the first person to pay attention to the civil services. Apart from prohibiting them for undertaking any private trade or accept gift, he made them to sign an agreement with regard to this service and those who signed (higher officials) were called **covenanted servants**. Those who did not sign (lower positions) were "Unconvenanted". In true sense this difference ended in 1886-87, with the recommendations of the Public Service Commission but the phrase continued to be used.

Who is known to Europeanized the Civil Services?

Lord Cornwallis. He used to detest Indians and thought they are corrupt.

What was the highest rank an India could go during that time?

An Indian could become a Subedar in army or a Munsif, Sadar Amin or Deputy Collector in the Civil Services.

Who took the first step towards training of the Company's Civil servants?

Lord Wellesley is given the credit for introducing the first step towards the training of the Company's Civil Servants to improve their efficiency. It was because of his efforts that **Fort William College at Calcutta** was founded on November 24, **1800**.

That period is also known as the first phase in the emergence of Calcutta as intellectual centre. Calcutta Madarsa was established in 1781, Asiatic Society in 1784 and Fort William College in 1800. The idea behind this college was **to train the British Officials in Hindi and Bengali**. Actually Lord Wellesley made some provisions for a 3 years integrating training which included training in history and customary laws as well. But due to some unsavory of court of directors it **remained only a language training institute**.

Who founded Calcutta Madarsa?

Calcutta Madarsa was established by Warren Hastings.

By which act, educational qualification was made the sole basis of appointment to the Civil Services?

Clause 87 of the **Charter act of 1833**.

Indian Councils Act 1861

The Governments of Madras and Bombay were deprived of their power of legislation by Charter act of 1833. The Indian Councils Act 1861 restored this power to them. This act is known to have made notable changes in the composition of the Governor General's council for executive & legislative Purposes.

The council of the Governor General of India performed **dual functions of executive and legislature.** For executive functions the notable change was that Council of the Governor General was expanded and a fifth member was added. For the purpose of Legislation, the **Governor General's Council was restructured.** Now the additional new NOT less than 6 and NOT more than 12 members were now to be nominated by the Governor General and they were to hold the office for two years. Out of these, **not less than half were required to be Non-Official.** This was a **beginning towards the establishment of legislative system** by adding legislative non official members to the Council of the Governor General.

However, the functions were limited to the legislation and it had not to do any other function except the consideration or enactment of legislative measures.

It was laid down that without the assent of the Governor General a bill relating to the public revenue or debt, religion, military, naval or foreign relations cannot be passed. However, any such act might be dissolved by the crown acting through the secretary of State of India.

The Indian Councils Act 1861 **restored the power of legislation to the governor-in-councils of Madras and Bombay in respective matters.** The act also laid down the provision for the formation of legislative councils in other provinces.

With the Indian Councils Act for the **first time Portfolio system started.** Each member of the Council of the Governor General was allocated portfolio of a particular department. Lord Canning was the First to start a Portfolio system.

The Governor General was authorized to exercise a veto and issue ordinances in a situation of emergency.

Indian High Courts Act 1861

By Indian High Courts Act 1861, the **Supreme & Sadar Courts were amalgamated.** The 'Indian High Court Act' of 1861, vested in Queen of England to issue letters patent to erect and establish High Courts of Calcutta, Madras and Bombay.

The High Courts of Calcutta, Madras and Bombay were established by Indian High Courts Act 1861.

It's worth note that Indian High Courts Act, 1861 did not by itself create and establish the High Courts in India. The objective of this act was to **effect a fusion of the Supreme Courts and the Sadar Adalats** in the three Presidencies and this was to be consummated by issuing Letter Patent. The jurisdiction and powers exercised by these courts was to be assumed by the High Courts.

Composition of the High Court's:

The Indian High Courts Act 1861 had also spelled the composition of the High Court.

- ✍ Each High Court was to consist of a Chief Justice and NOT more than 15 regular judges.
- ✍ The chief Justice and minimum of one third regular judges had to be barristers and minimum one third regular judges were to be from the "covenanted Civil Service".
- ✍ All Judges were to be in the office on the pleasure of the Crown.

The High Courts had an **Original as well as an Appellate Jurisdiction** the former derived from the Supreme Court, and the latter from the Sudder Diwani and Sudder Foujdari Adalats, which were merged in the High Court.

Please note the following facts:

- ✍ The Charter of High Court of Calcutta was issued on 14th May, 1862 and Madras and Bombay was issued on June 26, 1862.
- ✍ So, the **Calcutta High Court** has the **distinction of being the first High Court** and one of the three Chartered High Courts to be set up in India, along with the High Courts of Bombay, Madras.
- ✍ High Court at Calcutta which was formerly known as High Court of Judicature at Fort William was established on July 1, 1862. Sir Barnes Peacock was its first Chief Justice.
- ✍ On 2nd February, 1863, Justice Sumboo Nath Pandit was the first Indian to assume office as a Judge of the Calcutta High Court.
- ✍ The Bombay High Court was inaugurated on 14th August, 1862.
- ✍ Indian High Court Act 1861 also gave power to set up other High Courts like the High Courts of the Presidency Towns with similar powers.
- ✍ Under this power, a High Court was established in 1866 at High Court of Judicature for the North-Western Provinces at Agra on 17 March 1866 by the Indian High Courts Act of 1861 replacing the Sadr Diwani Adalat.
- ✍ Sir Walter Morgan, Barrister-at-Law was appointed the first Chief Justice of the High Court of North-Western Provinces. However it was shifted to Allahabad in 1869 and the name was correspondingly changed to the **High Court of Judicature at Allahabad from 11 March 1919.**

Indian Councils Act 1892

Indian Councils Act 1892 was the **beginning of the parliamentary System in India.** Before this act was passed, the Indian National Congress had adopted some resolutions in its sessions in 1885 and 1889.

The first session of the Indian national Congress was organized by A O Hume and other leaders. The 4 demands put by the INC were:

1. A simultaneous examination of ICS to be held in England and India
2. Reforms of the legislative council and adoption of the principle of election in place of nomination
3. Opposition to the annexation of Upper Burma
4. Reduction in the Military expenditure.

The second demand mentioned above reflected the dissatisfaction of the Indian National Congress over the existing system of governance. The Indian leaders wanted admission of a considerable number of the elected members. They also wanted the creation of similar councils of North western Province and Oudh and also for Punjab

The Indian leaders also wanted a right to discussion on budget matters.

The demand was taken seriously by Viceroy Lord Dufferin who set a committee. The committee was given the responsibility to draw a plan for the enlargement of the provincial councils and enhancement of their status. The plan was drawn, but when it was referred to the Secretary of State for India, he did not agree to introduction of the Principle of election.

The Indian Councils Act 1892 gave the members right to ask questions on Budget or matters of public Interest. But none of them was given right to ask supplementary questions.

✍ The act was 1892 can be said to be a First step towards the beginning of the parliamentary system in India, where the members are authorized to ask questions.

✍ At least, they were **enabled to indulge in a criticism of the Financial Policy of the Government.**

The Indian Councils act 1892 can also be said to introduce the principle of representation. This act authorized the universities, District Boards, Municipalities, Zamindars and Chambers of Commerce to send members to Provincial councils.

The Indian Councils act 1892 increased the number of the additional members in case of the council of the governor general to maximum of 16. In case of Bombay and Madras 8-20 and In case of the Bengal 20 and In case of North Western province and Oudh 15.

Indian Councils Act 1904

Lord Curzon was the viceroy of India in 1903. He wanted a sixth member in his council for Commerce and Industry. This demand was fulfilled by the Indian Councils Act 1904, in which the crown was empowered to appoint 6th member in the Executive Council of the Governor General. This provision was implemented and the 6th member was appointed who held the Portfolio of Commerce & industry.

Indian Councils Act 1909 (Morley Minto reforms)

Lord Minto served as Viceroy of India since from 1905 to 1910. He succeeded Lord Curzon in 1905. Sir Henry Campbell-Bannerman who is first man to be given official use of the title 'Prime Minister' became Prime Minister in 1905. When he formed his cabinet he appointed John Morley as Secretary of State for India.

This was the time of unrest in India. Both the Viceroy and the Secretary of State for India decided to work out some scheme to reform the Legislative councils. This culminated as Indian Councils act 1909 or Minto-Morley reforms. The idea was to give locals some more power in the legislative affairs. The act was passed in 1911. A provision was made for the expansion of legislative councils at the both the levels viz. central as well as provincial.

☹ Minto Morley Reforms was an unfortunate turn in our history.

It introduced separate and discriminatory electorate. This was for the first time that, electorate for returning to the representatives to the councils was decided on the basis of class & community. For the provincial councils a provision of three categories was made viz. general, special and chambers of commerce. For the central council, one more category Muslims was added. This was for the first time that, the seats in the legislative bodies were reserved on the basis of religion for Muslims. This is called Communal representation.

The Minto Morley reforms are known to envisage a separate electorate for Muslims and this had a long lasting impact on India's polity.

This was for the first time that Muslim community was recognized as a completely separate section of the Indian nation and this triggered "A Cancer" in India called "Hindu-Muslim Disharmony" which later culminated in India and Pakistan.

Separate constituencies were marked for the Muslims and only Muslim community members were given the right to elect their representatives.

The number of members of the legislative councils at the center was increased from 16-60.

the number of the members of the provincial legislatures was also increased and it was fixed 50 for Bengal, madras and Bombay and 30 for rest of the provinces.

Some other features:

1. The act empowered the members to discuss the budget and move resolutions before it was approved finally
2. The members were given rights to ask supplementary questions and move resolutions to on matters related to loans to the local bodies.
3. The members given right to discuss matters of the public interest but please note that the House was not binding on the government.

In The Lahore Session of Indian National Congress, 1909, strong disapproval was expressed against the separate electorate formed on the basis of religion.

Government of India Act 1919

Government of India act is known as a consequence of Montague Chelmsford Reforms.

On 17 July 1917 Edwin Samuel Montagu was made secretary of state for Government of India. Lord Chelmsford became Viceroy of India on 4 April 1916. This was the era of World War I and our country witnessed a rapid growth of revolutionaries.

During the First World War, Gandhi Ji had requested the country to help the allies in war. Indian public was expecting that they would also get democratic reforms.

Samuel Montagu is known to have put a statement in the British Cabinet which asked for "gradual development of free institutions in India with a view to ultimate self-government" however, later the words "ultimate self government" were removed from his statement and He declared what is now known as Montagu Declaration.

The Montagu declaration reads as:

"Increasing association of Indians in every branch of the administration and the gradual development of **self-governing institutions** with a view to the progressive realization of **responsible government** in India as an **integral part of the British Empire**".

The key phrase "ultimate self-government" was removed but, still the another key phrase "**responsible government**" in this statement gave the inference for the first time that rulers are answerable to the public.

✍ The declaration made the moderates happy and they said "It is Magna Carta of India". However extremists expressed that it fell short for legitimate expectations of India. After all, total independence was what they wanted.

✍ The date was 20 August 1917 and it is also known as "August Declaration"

The Government of India act 1919 was passed on the basis of recommendations of Lord Chelmsford and Samuel Montagu to introduce self-governing institutions gradually to India. This act covered 10 years from 1919 to 1929.

Salient Features:

✍ The Government of India act 1919 had a separate Preamble. This Preamble declared that Objective of the British Government is the gradual introduction of responsible government in India.

The beginning was made.

✍ The **beginning was introduction of Diarchy.** Preamble suggested for a decentralized unitary form of government.

Diarchy means a dual set of governments one is accountable another is not accountable.

The Government of India Act of 1919, made a provision for classification of the central and provincial subjects.

The provincial subjects were divided into two groups: One was **reserved** and another was **transferred.** The reserved subjects were kept with the Governor and transferred subjects were kept with the Indian Ministers. This division of subjects was basically what they meant by introducing the Diarchy.

- The **reserved subjects** were the essential areas of law enforcement such as **justice, police, revenue.** The **transferred subjects** were such as **public health, public works, education etc.**

✍ The Indian **executive comprised of the Governor General and his council.**

✍ No bill of the legislature could be deemed to have been passed unless assented to by the governor general. The later could however enact a Bill without the assent of the legislature.

✍ This act made the **central legislature bicameral.** The first house which was central legislature, with 145 members (out of which 104 elected and 41 nominated) was called central **Legislative Assembly** and second called with 60 members (out of which 33 elected and 27 nominated) was called Council of States. The term of the assembly was fixed 3 years and council 5 years.

✍ The central legislature can be called a **primitive model of today's Lok Sabha** & council of states can be called a primitive model of Today's Rajya Sabha.

✍ The act provided for the **establishment of a Public Service Commission** in India for the first time.

✍ This act also made a provision in its part V, that a statutory commission would be set up at the end of 10 years after the act was passed which shall inquire into the working into the system of the government.

✍ The Simon commission of 1927 was an outcome of this provision.

The **communal representation** was **extended** and **Sikhs, Europeans and Anglo Indians** were included. The **Franchise (Right of voting)** was granted to the **limited number of only those who paid certain minimum "Tax" to the government.**

✍ The tenure of the central legislature was 3 years

✍ The **seats were distributed** among the provinces **not upon the basis of the population** but upon the basis of their **importance** in the eyes of the government, on the basis of **communities**, and **property** was one of the main basis to determine a franchisee. Those people who had a property, taxable income & paid land revenue of Rs. 3000 were entitled to vote.

✍ The central legislature was empowered to consider, pass or reject legislation on any of the subjects enumerated in the Central list. But, the Governor-General had the last word on any Bill passed by the Legislature.

✍ He possessed the power to prevent the consideration of a Bill or any of its part, on the plea that it was injurious to the peace and tranquility of the country. He could disallow a question in the legislature. He had the power to withhold his assent to any Bill passed by the legislature without which it could not become an Act. He also had the power to disallow an adjournment motion or debate on any matter. He could enact a law, which he considered essential for the safety and tranquility of the empire even if the legislature had refused to pass it.

✍ The financial powers of the central legislature were also very much limited. The budget was to be divided into two categories, **votable and non-votable**. The votable items covered only one third of the total expenditure. Even in this sphere the Governor-General was empowered to restore any grant refused or reduced by the legislature, if in his opinion the demand was essential for the discharge of his responsibilities.

Government of India Act 1935

The changes introduced by the Government of India act 1919 were too short of a self government in our country. There was only partial transfer of powers through a system of dyarchy. The act was inadequate to satisfy the National aspirations.

The division of subjects in Reserved and transferred was illogical and not acceptable. In November 1920, there were **elections which were boycotted by the congress**. The government of India act 1919 envisaged the centralization through the division of authority between the central and provincial governments in various fields of administration but central legislature was competent to legislate on the Provincial subjects and there was still no federal principle in operation and Government in India was still unitary.

The act of 1919 could not satisfy any one. The dyarchy as an experiment failed, when it was put to practice as there was no substantial transfer of power to the representatives of the people.

There was an emergence of a new spirit, zeal and unity among the educated Indians under the banner of Indian National Congress

✍ In January 1915, Mahatma Gandhi had returned to India from South Africa. In may 1915 he established Sabarmati ashram in Gujarat.

✍ The Champaran agrigarian dispute of North Bihar, a similar dispute in Gujarat at kaira and also a labor dispute in Ahmadabad made Mahatma Gandhi a national hero and his influential political career started. He devised a new technique Satyagraha.

The British were irked by the growing revolutionary terrorism and the ongoing First World War. In 1919, a committee was established by the Governor general Chelmsford under the judge of the Kings Bench in London Sydney Rowlatt. The responsibility of this committee was to investigate into the nature and extent of revolutionary activities and suggest measures. This committee submitted its report in April 1918. Based upon the recommendations of this committee two bills were introduced. One was dropped and another was passed. The name of this passed bill, which was now an act was **Anarchical and Revolutionary Crimes Act** which was called Rowlatt Act.

On February 6, 1919, Gandhi Ji decided to launch the Satyagraha and criticized the Rowlatt act as subversive and unjust and against the principles of liberty. The volunteers courted arrest and a strike was launched country wide on April 6, 1919. On April 13, 1919 the Jallianwala Bagh tragedy occurred and the Satyagraha lost momentum.

Before the government of India act 1935 passed, 3 round conferences in London were held. These have been discussed in our Independence struggle.

Salient Features:

✍ The Government of India Act 1935 **introduced the provincial autonomy and provided for an all India federation.**

✍ This act introduced **dyarchy at the central level.**

-: About this document:-

- ✍ This act had 321 sections and 10 schedules.
- ✍ It made a provision for establishment of a Federal court.
- ✍ The franchisee was extended.
- ✍ It divided the subjects in 3 lists.
- ✍ The Indian council was abolished and an advisory body was introduced.
- ✍ Burma was separated from India, and Aden was surrendered to British Colonial office.

The political conscious of the people of India was not considered. There was no provision of any fundamental right. It perpetuated the sovereignty of the British parliament over India.

All India Federation:

The government of India act 1935 provided for an all India federation. In this all India federation the british India provinces, the chief commissioners of the provinces and those Indian states which might accede to be united were included. The federation consisted of 11 provinces, 6 chief commissioners provinces and other states.

- ✍ The accession to the federation was voluntary.

Some notable Points:

- ✍ This act ended the system of dyarchy introduced by the Government of India Act 1919 and provided for the establishment of a "Federation of India" to be made up of both British India and some or all of the "princely states"
- ✍ This act introduced for the first time the direct elections and increased the franchise from seven million to thirty-five million people.
- ✍ The partial reorganization of the provinces included separation of Sind from Bombay, Splitting Bihar and Orissa into separate provinces, Complete separation of Burma from India, Detachment of Aden from India and establishing as a separate colony.

However, the degree of autonomy introduced at the provincial level was subject to important limitations: the provincial Governors retained important reserve powers, and the British authorities also retained a right to suspend responsible government.

The act proposed that federation of India could come into existence only if as many princely states (which had been given option to join or not to join) were entitled to one half of the states seats in the upper house of the federal legislature.

- ✍ The parts of the Act intended to establish the Federation of India never came into operation, due to opposition from rulers of the princely states. The remaining parts of the Act came into force in 1937, when the first elections under the Act were also held.

The proposed federal polity was to have a bicameral legislature at the center.

Upper House:

The upper house was called **Council of States** and it consisted of 260 members. Out of these 260 members 156 were to represent the provinces and 104 to the native states. Out of the 156 which were to represent the provinces, 150 were to be elected on communal basis. Seats reserved for Hindus, Muslims, Sikhs, were to be filled by direct elections and Seats reserved for Indian Christians, Anglo Indians and Europeans was to be filled by indirect method of a electoral college consisting of their representative members.

Lower House:

-: About this document:-

The lower house was to be called the federal assembly. It consisted of 375 members out of whom 250 were to represent the provinces and 125 to represent the princely states. The term of the assembly was five years but it could be dissolved earlier also.

Federal Court:

A federal court was established which began its functioning from October 1, 1937. The chief Justice of the federal court was Sir Maurice Gwyer.

It consisted of One Chief Justice and not more than 6 Judges.

Federal Railway Authority:

The Government of India Act 1935 vested the control of the railways in federal railway authority, a new 7 member body. This authority was kept free from the control of ministers and councilors. The idea was to assure the British Stakeholders of the railways that their investment was safe. ☺

The Simon commission had promised 'Dominion Status' for India in 1929, but the Government of India Act did not confer it. This act by providing separate electorates for Hindus, Muslims, Sikhs, Europeans, Anglo Indians, Indian Christians etc. proved to be an instrument of disintegrating the unity fabric of the country. It was over obstructing and Nehru called it "all breaks, no engine".

August Offer 1940

On August 8, 1940, a statement was made by the Viceroy, Lord Linlithgow, on the expansion of the Governor-General's Executive Council and the establishment of a War Advisory Council. This offer also promised for giving full weight to minority opinion, recognizing the Indians to form their own constitution.

Cripps Proposals 1942

1942 saw the advancement of British forces in India. Apart from that there was a pressure from the American President F. Roosevelt and Chinese premier Chiang Kai-Shek to concede the real political power to the people of India. The fall of Burma was enough to frighten the British and when the Japanese army began to knock the doors of India after Burma and Singapore, the war cabinet of Britain sent Sir Stafford Cripps to India on March 1942 to elicit cooperation from the Indians. It promised for the fulfillment of past promises to self government to Indian people.

The proposal of the Cripps mission was that: "India would be a dominion associated with the United Kingdom". It promised that immediately after the war is stopped, steps would be taken up to set up an elected body charged with the task of making the constitution for India and provisions would be made so that the Indian states could participate in the framing of the constitution.

✍ Through the Cripps mission for the first time, British government recognized the "Right of Dominion" for India.

✍ Indians were given promise of liberty to frame their own constitution.

The Cripps mission which was a move to appease the Congress, Muslim League and Indian states at the same time was rejected by all of them.

Congress wanted an undivided India, Muslim league wanted a separate Pakistan, Congress demanded a full control over defense "stating that a slave country can not have any inspiration". Muslim league said there was inadequate representation of Muslims. Sikhs rejected because of non accession of provinces. Hindu Mahasabha rejected because the "Pakistan Virus" was alive. The Dalits and depressed classed also rejected because there was nothing new for them.

Cabinet Mission Plan 1946

The cabinet mission plan of 1946 proposed that there shall be a Union of India which was to be empowered to deal with the defense, foreign affairs and communications. It proposed constitution of a constituent assembly with 389 members.

The representation of the Provincial legislatures was to be broken up into 3 sections.

Section I: Madras, UP, Central provinces, Bombay, Bihar & Orissa.

Section II: Punjab, Sindh, NWFP

Section III: Assam and Bengal.

- ✓ The cabinet mission recommended an undivided India and turned down the Muslim League's demand for a separate Pakistan.
- ✓ The Cabinet mission restricted the Communal representation
- ✓ It provided that all the members of the Interim cabinet would be Indians and there would be minimum interference by the Viceroy.
- ✓ It also provided for formation of the constituent assembly on democratic principle of population.
- ✓ It recognized Indian Right to cede from the Commonwealth.
- ✓ The proposed plan was still not too good as it gave the option to the states to join the union or remain independent. The idea behind the Cripps Mission was to make 3 sections of the country and let them enjoy full autonomy in all matters except defense, external affairs and communication, this idea was to split India in 3 parts (rather than 2).

Indian Independence Act 1947

The Indian Independence Act was based upon the Mountbatten plan of 3rd June 1947 and was passed by the British parliament on July 5, 1947. It received royal assent on July 18, 1947.

Salient features:

1. It provided for two dominion states : India and Pakistan
2. The boundaries between the two dominion states were to be determined by a Boundary Commission which was headed by Sir Cyril Radcliff.
3. It provided for partition of Punjab & Bengal and separate boundary commissions to demarcate the boundaries between them.
4. Pakistan was to comprise the West Punjab, East Bengal, Territories of the Sind, North West frontier provinces, Sylhet divisions of Assam, Bhawalpur, Khairpur, Baluchistan and 8 other princely states of Baluchistan.
5. The authority of the British Crown over the princely states ceased and they were free to join either India or Pakistan or remain independent.
6. Both the dominions of India and Pakistan were to have Governor Generals to be appointed by the British King. The act also provided for a common Governor general if both of them agreed.
7. The constituent assemblies of both the states were free to make constitutions of their respective countries.
8. For the time being till the constitution was made, both of them would be governed in accordance with the Government of India act 1935.

9. Any modification or omission could be done by the Governor General.
10. British Government would not continue any control on any dominion.
11. The Governor general was invested with adequate powers until March 1948 to issue orders for effective implementation of the provisions of the Indian independence act 1947.
12. Those civil servants who had been appointed before the August 15, 1947, will continue in service with same privileges.

Drafting of Indian Constitution – The beginning

When the British left our country in August 1947, India was actually the British India and Indian India. The British India was consisting of **9 Governor's provinces, 5 chief commissioners provinces and some other tribal areas, Andaman Nicobar Islands etc.** The Indian India consisted of some 562 Indian states including the major states such as Hyderabad, Kashmir, Mysore, Travancore, Baroda, etc. However, most of them were too small in size and too poor in resources. They all became independent and autocratic and resembled the medieval Europe. **On 15 August 1947 all were technically "Sovereign".**

The Indian independence act made them completely free to join either of the dominion or remain free. Except a few, which joined Pakistan, most of them decided to join India and this was unification of India in several centuries.

The accession to the Indian dominion started the new movement of territorial adjustments which included the integration and merger. Integration Involved joining of two or more states in one big administration unit such as Rajasthan and merger involved small state merging with their neighbor states such as Saraikella in Bihar.

This territorial readjustment brought the number of states under the Indian Union to 16 from the 600. The major political vision and statesmanship behind this movement was Sardar Vallabh Bhai Patel and he is also called the *chief architect of Republic India*.

Constituent Assembly

✍ For the first time while explaining the meaning of the "Swaraj" mahatma Gandhi had indicated in 1922 that **constitution of India would be drafted by the Indians.**

For the first time, the constitution for India was drafted by Nehru Committee in 1928. In the Lahore session of 1929, Congress adopted the Poorna Swarajya. In 1934, the demand for a constituent assembly was raised for the first time, which was later became an official demand in 1935.

This demand was accepted in August 1940 offer by the British. On August 8, 1940, a statement was made by the by the Viceroy, Lord Linlithgow, on the expansion of the Governor-General's Executive Council and the establishment of a War Advisory Council. This offer also promised for giving full weight to minority opinion, recognizing the Indians to form their own constitution.

Under the cabinet mission plan of 1946, elections were held for the first time for constituent Assembly.

✍ The Constitution of India was made by the constituent assembly and it was set up under the cabinet Mission plan on 16 May 1946.

✍ The members of the constituent assembly were elected by the Provincial assemblies by method of single transferable vote system of proportional representations.

✍ Total membership of the constituent assembly was 389, out of which 292 the representatives of the states were, 93 were representatives of princely states and 4 were from the chief commissioners provinces of Delhi, Ajmer-Mewar, Coorg and British Baluchistan.

The **elections** for the 296 seats assigned to the British Indian provinces were completed by July-August 1946.

✍ Congress won 208 seats and Muslim league won 73 seats.

After this election, the Muslim league refused to cooperate with the Congress. The political situation got worse and Hindu Muslim riots started. The Muslim league demanded for a separate Constituent assembly for Muslims in India.

✍ On June 3, 1947, Lord Mountbatten, the last British Governor General of India announced his plan of scrapping the Cabinet Mission plan and this later culminated in Indian Independence Act and separate nations India and Pakistan.

✍ The Indian Independence act was passed on July 18, 1947.

Earlier it was declared that India will get its independence in June 1948, but this event led to an early independence on August 15, 1947.

✍ The **Cabinet assembly** which was elected for an undivided India met for the first time on June 9, 1946.

✍ It reassembled on 14 August 1947 as a sovereign body and successor to the British parliament's plenary authority and power in India.

✍ As a result of the partition, under the Mountbatten plan a separate constituent assembly was set up for Pakistan on June 3, 1947.

✍ The representatives of the members which were from the areas of the Pakistan ceased to be members of the Constituent assembly of India

✍ Fresh elections were held for west Punjab and east Bengal which were now in Pakistan.

✍ The membership of the Constituent assembly became 299 after this reorganization and it met on December 31, 1947.

✍ The Constituent assembly was the First parliament of Independent India.

✍ **Dr. Sachchidananda Sinha** was the first president (temporary Chairman of the Assembly) of the Constituent Assembly when it met on December 9, 1946.

✍ Dr. Rajendra Prasad then became the President of the Constituent Assembly, and who later become the first President of India.

✍ The Vice President of the Constituent Assembly was Professor Harendra Coomar Mookerjee, former Vice-Chancellor of Calcutta University and a prominent Christian from Bengal who also served as the Chairman of the Minorities Committee of the Constituent Assembly. He was appointed Governor of West Bengal after India became a republic.

Objectives Resolution

The historic Objectives Resolution was moved by Jawahar Lal Nehru on 13 December 1946 and was adopted on 22 January 1947.

It reads as follows:

This Constituent Assembly declares its firm and solemn resolve to proclaim India as an Independent Sovereign Republic and to draw up for her future governance a Constitution;

- 2.WHEREIN the territories that now comprise British India, the territories that now form the Indian States, and such other parts for India as are outside British India and the States as well as such other territories as are willing to be constituted into the Independent Sovereign India, shall be a Union of them all; and
- 3.WHEREIN the said territories, whether with their present boundaries or with such others as may be determined by the Constituent Assembly and thereafter according to the law of the Constitution, shall possess and retain the status of autonomous Units, together with residuary powers and exercise all powers and functions of government and administration, save and except such powers and functions as are vested in or assigned to the Union, or as are inherent or implied in the Union or resulting therefrom; and
- 4.WHEREIN all power and authority of the Sovereign Independent India, its constituent parts and organs of government, are derived from the people; and
- 5.WHEREIN shall be guaranteed and secured to all the people of India justice, social economic and political : equality of status, of opportunity, and before the law; freedom of thought, expression, belief, faith, worship, vocation, association and action, subject to law and public morality; and
- 6.WHEREIN adequate safeguards shall be provided for minorities, backward and tribal areas, and depressed and other backward classes; and
- 7.WHEREBY shall be maintained the integrity of the territory of the Republic and its sovereign rights on land, sea, and air according to justice and the law of civilized nations; and
- 8.this ancient land attains its rightful and honored placed in the world and make its full and willing contribution to the promotion of world peace and the welfare of mankind.

✍ This Resolution was unanimously adopted by the Constituent Assembly on 22 January 1947.

✍ Late in the evening of 14 August, 1947 the Assembly met in the Constitution Hall and at the stroke of midnight, took over as the Legislative Assembly of an Independent India.

On 29 August, 1947, the Constituent Assembly set up a Drafting Committee under the Chairmanship of Dr. B.R. Ambedkar to prepare a Draft Constitution for India.

While deliberating upon the draft Constitution, the Assembly moved, discussed and disposed of as many as 2,473 amendments out of a total of 7,635 tabled.

✍ The Constitution of India was adopted on 26 November, 1949 and the members appended their signatures to it on 24 January, 1950.

✍ In all, 284 members actually signed the Constitution. On that day when the Constitution was being signed, it was drizzling outside and it was interpreted as a sign of a good omen.

The Constitution of India came into force on 26 January, 1950. On that day, the Assembly ceased to exist, transforming itself into the Provisional Parliament of India until a new Parliament was constituted in 1952.

Sessions of the Constituent assembly

There were 11 sessions of the Constituent assembly. (Don't cram these dates)

1. First Session: 9-23 December, 1946
2. Second Session: 20-25 January, 1947
3. Third Session: 28 April - 2 May, 1947
4. Fourth Session: 14-31 July, 1947
5. Fifth Session: 14-30 August, 1947
6. Sixth Session: 27 January, 1948

7. Seventh Session: 4 November, 1948 - 8 January, 1949
8. Eighth Session: 16 May - 16 June, 1949
9. Ninth Session: 30 July - 18 September, 1949
10. Tenth Session: 6-17 October, 1949
11. Eleventh Session: 14-26 November, 1949
12. The Assembly met once again on 24 January, 1950, when the members appended their signatures to the Constitution of India

Important Committees of the Constituent Assembly (and their Chairmen)

- ✍ Committee on the Rules of Procedure : Rajendra Prasad
- ✍ Steering Committee : Rajendra Prasad
- ✍ Finance and Staff Committee: Rajendra Prasad
- ✍ Credential Committee : Alladi Krishnaswami Ayyar
- ✍ House Committee : B. Pattabhi Sitaramayya
- ✍ Order of Business Committee: K.M. Munsi
- ✍ Ad hoc Committee on the National Flag: Rajendra Prasad
- ✍ Committee on the Functions of the Constituent Assembly : G.V. Mavalankar
- ✍ States Committee : Jawaharlal Nehru
- ✍ Advisory Committee on Fundamental Rights, Minorities and Tribal and Excluded Areas : Vallabhbai Patel
- ✍ Minorities Sub-Committee: H.C. Mookherjee
- ✍ Fundamental Rights : Sub-Committee J.B. Kripalani
- ✍ North-East Frontier Tribal Areas and Assam Excluded & Partially Excluded Areas Sub-Committee: Gopinath Bardoloi
- ✍ Excluded and Partially Excluded Areas (Other than those in Assam) Sub-Committee : A.V. Thakkar
- ✍ Union Powers Committee : Jawaharlal Nehru
- ✍ Union Constitution Committee : Jawaharlal Nehru
- ✍ Drafting Committee: B.R. Ambedkar

Breakup of Constituent assembly

The breakup of the Total 299 members was as follows:

- Indian Provinces : 229
- Princely States : 70
- **Total : 299**

The members of the Indian Provinces were as follows:

- | | |
|---------------------|--------------|
| 1. Madras | 49 |
| 2. Bombay | 21 |
| 3. West Bengal | 19 |
| 4. United Provinces | 55 (Maximum) |
| 5. East Punjab | 12 |
| 6. Bihar | 36 |
| 7. C.P. and Berar | 17 |

8.	Assam	8
9.	Orissa	9
10.	Delhi	1
11.	Ajmer-Merwara	1
12.	Coorg	1

Total =229

Draft Constitution

The drafting committee was entrusted with the responsibility to prepare the Draft constitution.

- ✍ Drafting committee was set up on 29 August 1947 under the chairmanship of Dr. B R Ambedkar.
- ✍ The constituent assembly took 2 years , 11 months and 17 days to frame the constitution.
- ✍ It spent 6.4 crore Rupees in the preparation.
- ✍ There were 22 parts, 395 articles and 8 schedules.
- ✍ The constitution had got ready on 26th November 1949 and some provisions relating to Citizenship, Elections, provisional parliament, temporary & transitional provisions were given immediate effect.
- ✍ Rest of the constitution came into force on 26 January 1950.
- ✍ 26 January 1929 marked the “Poorna Swarajya “resolution of Indian National Congress under Jawahar lal Nehru and so the date was chosen in 1950 to be our republic day.

Our constitution is unique. It is unique in many ways. We know that our constitution was framed by the constituent assembly in a long time of 2 years, 11 months and 18 days. It must be noted that the idea of the constituent assembly was not of congress. The idea was put forward by MN Roy in 1934.

- ✍ MN Roy or Manabendra Nath Roy was a Bengali Indian revolutionary, internationally known political theorist and activist. He is the pioneer of communist movement in India.

The idea put forward by MN Roy was officially raised by Congress in 1935 and the British Government accepted this demand. This demand of constituent assembly was accepted in the August offer of 1940.

Salient features of Indian Constitution

Most Exhaustive Constitution:

Originally our constitution contained 395 article divided in 22 parts and 8 schedules. Right from the beginning our constitution is most comprehensive constitution in the world.

The British have no written constitution and Constitution of USA had originally only 7 articles.

- ✍ This 7 article Constitution of United States has been amended for 27 times up till now. The first 10 amendments are called Bill of Rights.

The constitution of Canada had 147 articles; Constitution of Australia had 128 articles.

Today, our constitution has grown more. Now it has 444 articles divided into 22 parts and 12 schedules.

- ✍ Please note that British constitution is not written. It is also called de facto or uncodified constitution.

But how an unwritten constitution would work?

- ✍ This is because, “unwritten” is a misnomer. The British constitution does not have document which can be called a “Constitution’ but it is embodied in the written form, within statutes, court judgments, and treaties. Besides, parliamentary constitutional conventions and royal prerogatives are other written sources.

Preamble:

Indian Constitution has a preamble which gives an insight into the Philosophy of the Constitution. It is a Part of Indian Constitution.

✍ Initially the Preamble was not considered a part of the Constitution and its amendment was not accepted. In Kesavanand Bharti v/s State of Kerala 1973 case the Supreme Court ruled that it is a part of the constitution and can be amended.

Drawn from different sources:

Our constitution has borrowed many things from many constitutions. Can we call it Plagiarism?

BR Ambedkar, The chairman of the Drafting Committee of the Constitutional Assembly said:

"As to the accusation that the Draft Constitution has [re]produced a good part of the provisions of the Government of India Act, 1935," I make no apologies. There is nothing to be ashamed of in borrowing. It involves no plagiarism. **Nobody holds any patent rights in the fundamental ideas of a Constitution...."**

Yes, our constitution has borrowed good things from the Government of India Act 1935 and other contemporary constitutions of the world. The best provisions were selected from different sources and we should not be ashamed of that.

Rigidity vs. Flexibility:

Our constitution is rigid as well as flexible. While we shall study in the due course of time that Making Law is quite flexible and easy in comparison to amending a law. The amendment requires some more efforts. However, some parts can be amended with a simple majority while other can be amended by a special majority.

✍ **Article 368 provides the procedure for amendment of the constitution.**

Sovereignty of the Country:

The Preamble of the constitution declares that India is a sovereign state. It manages its internal and external affairs freely without any external forces.

✍ The policy of Nonalignment is a culmination of India's freedom in foreign policy.

Democratic state:

India is a democratic country where governing power is derived from the people by means of elected representatives of the people. The political authority is responsible to the people. This democracy is based upon the socioeconomic justice and equality of the opportunity.

- People can kick out the representatives who don't listen to them.

Republic:

India has adopted the "British" pattern of the parliamentary democracy.

✍ But India does not have a hereditary post of Head of the State. The Head of the state of President and he / she is elected.

✍ Indian President is indirectly elected by the people, because he is directly elected by the elected representatives.

✍ Any Indian without any discrimination to the caste / creed / religion can contest for Presidential elections and can occupy the office provided he fulfills the eligibility conditions as prescribed by the constitution.

The meaning of the Republic is that Head of the state is elected by the people. The head of the state is NOT a monarch in India.

Parliamentary Form of Government:

India has a parliamentary system of democracy. The council of ministers is responsible to the Lok Sabha here. The Council of Ministers is called Real executive. India has two types of executives. Real and nominal.

- ✍ President is the Nominal executive and Councils of Ministers is real executive,
- ✍ The council of Ministers is collectively responsible to the house of people. It means that they can remain in office so long as it enjoys the confidence of the house.
- ✍ Theoretically, parliament controls the functioning of the council of ministers, hence it is called parliamentary system

Socialist State:

Indian socialism is democratic socialism. The goals of the socialism are to be realized through democratic means.

- ✍ In the original constitution the term "Socialist" was not in the Preamble. It was added by the 42nd amendment in 1976.

Secular:

India is a secular country. Here No religion is a state religion. The constitution provides equality treatment of all religions by the government and equal opportunities for all religions.

- ✍ The term "secular" was not in the Preamble. It was added by the 42nd amendment in 1976.

A blend of Federal and Unitary System:

The constitution of India establishes the country a partly federal and partly unitary government. There are separate governments in the Union and States and there is division of power. But, there are constitutional provisions and practices which have imparted unitary features by giving more powers to the centre. It provides Single Citizenship to all the citizens of the country, It has single constitution for both the centre and states.

- ✍ Jammu & Kashmir has a separate constitution

The parliament has power to legislate on the matters included in the state list. There are emergency provisions which make the system virtually a unitary system. The Change in the names and boundaries of the states can be done by the parliament of India. There is an integral judiciary system. There are all India services such as IAS, IFS and IPS. The Governors of the states are agents of the President. There is an election commission which is central agency for elections at all levels. There is unequal representation of the states in council of States (Rajya Sabha), The Planned development of the whole country is responsibility of the planning Commission. The states are dependent on center for economic assistance and grants.

Integrated Judiciary:

In United states there are separate Judicial systems for the Union and the states. In India the Judiciary is integrated. The supreme judicial courts are not in states. The states have high courts but the verdicts of these courts are subject to appeal to the Supreme Court. The Constitution has made the High Court's subordinate to the Supreme Court.

Universal Franchise:

Our constitution provides adult and universal franchise to all citizens. Every citizen who is above 18 years has a Voting Right without any discrimination.

- ✍ 61st constitutional amendment 1989 reduced the age of voting eligibility from 21 years to 18 years.

- ✍ Another term used for universal franchise is “common suffrage”.
- ✍ France was the first country which provided Universal male suffrage in 1792, for the National Convention, enacted by law in 1793.

Sources of the Indian Constitution

From Russia Revolution 1917

- ✓ Ideal Of Justice In Social, Education, Economic And Political

From French Revolution 1789-1799:

- ✓ Ideal of Liberty, Equality and fraternity
- ✓ **Ideal of Republic**

Ideal of Republic

Here, we should make it clear that Constitution Declares the Indian State to be sovereign, democratic, republic and from 1977 secular and socialist. Each of these concepts is intertwined with the social and political history of civilization, battle of ideas and system of Governance. The American Revolution, The French Revolution, The Russian Revolution and India's own freedom struggle contributed to these concepts. The ideal of Republic cannot be said to be borrowed from French Constitution alone.

The Declaration of the Rights of Man and of the Citizen from which the ideal of "*Liberté, égalité, fraternité*" has been taken was the motto inspired by the French Revolution and following the Liberation, the Provisional Government of the French Republic (GPRF) re-established the Republican motto *Liberté, égalité, fraternité*, which is incorporated into both the 1946 and the 1958 French constitutions. French slogan of "Liberty, Equality and Fraternity" as an ideal has been borrowed from French Revolution to Indian constitution.

Immediately before the Indian Constitution, amendments to the 1936 Constitution established separate branches of the Red Army for each Soviet Republic. Decision to Become a Republic was taken in May 1949.

From Govt. of India Act 1935


- ✓ Federal Scheme (also from constitution of Canada)
- ✓ Office of Governor
- ✓ Judiciary
- ✓ Public Service Commission
- ✓ Emergency
- ✓ Administrative Details

From British Constitution

- ✓ Parliamentary Form of Government.
- ✓ Rule of Law
- ✓ Legislation
- ✓ Single Citizenship
- ✓ Cabinet Form of Government
- ✓ Prerogative Writs
- ✓ Bicameralism
- ✓ Parliamentary privileges
- ✓ Legislative Procedure

From the Constitution of United States:

- ✓ Fundamental Rights
- ✓ Independent Judiciary
- ✓ Judicial Review

- ✓ Impeachment of President
- ✓ Removal of Supreme Court Judges 
- ✓ Vice Presidential Ship

From Constitution of Ireland

- ✓ Directive Principles of State Policy
- ✓ Nomination of Members to Rajya Sabha
- ✓ Electoral Office And Method of President Election

From Canada Constitution

- ✗ Canada is a pure federal country.
- ✓ Federation with strong center
- ✓ Residuary power with center
- ✓ Appointment of state governors by center
- ✓ Advisory/review of supreme court

From Constitution of Australia

- ✓ Concurrent List
- ✓ Freedom of Trade
- ✓ Commerce And Inter State Trade
- ✓ Joint Sitting In The Parliament

From Constitution of USSR

- ✓ ~~Fundamental Duties~~
- ✓ Preamble

From Constitution of South Africa

- ✓ Procedure for Amendment of the Constitution.
- ✓ Election to the Rajya Sabha Members

From Constitution of Japan

- ✓ Procedures Established By Law

From Weimer constitution of Germany

- ✓ Suspension of fundamental rights during emergency

Constitution Review Commission

The topic of the Constitution Review Commission is recent. **It was set up in 2000.** The basic idea was that constitution, one the **one had should not be amended too frequently** and on the other hand it **should reflect the changing dynamisms of the society.** It should not be static.

The National Commission to Review the Working of the Constitution was set up vide Government Resolution dated 22 February, 2000 to examine, **in the light of the experience of the past 50 years,** as to **how best the Constitution can respond** to the **changing needs** of efficient, smooth and effective system of governance and socio-economic development of modern India **within the framework of Parliamentary democracy, and to recommend changes,** if any, that are required in the provisions of the Constitution **without interfering with its basic structure** or features.

✗ On 23 February 2000, the President of India appointed Justice Shri M.N. Venkatachaliah, former Chief Justice of India as the Chairperson of the Commission.

Following persons as the other Members of the Commission:

1. Justice Shri B.P. Jeevan Reddy, Chairman, Law Commission of India
2. Justice Shri R.S. Sarkaria, former Judge, Supreme Court of India
3. Justice Shri Kottapalli Punnayya, former Judge, Andhra Pradesh High Court
4. Shri P.A.Sangma, former Speaker, Lok Sabha; and Member of Parliament
5. Shri Soli J. Sorabjee, Attorney General for India
6. Shri K. Parasaran, Senior Advocate and former Attorney General for India
7. Dr.Subhash C. Kashyap, former Secretary General, Lok Sabha
8. Shri C.R. Irani, Chief Editor and Managing Director, The Statesman
9. Dr. Abid Hussain, former Ambassador of India in the USA
10. Smt. Sumitra G. Kulkarni, former Member of Parliament, (Rajya Sabha)

Dr. Raghbir Singh, Secretary to the Government of India in the Ministry of Law, Justice and Company Affairs (Legislative Department) was asked to look after the work of the Secretary to the Commission immediately and on his superannuation, he was appointed as the Secretary to the Commission with effect from 1 April 2000.

Terms of Reference:

The terms of reference was approved by the cabinet through a resolution. It read as follows:

“The Commission shall examine, in the light of the experience of the past 50 years, as to how best the Constitution can respond to the changing needs of efficient, smooth and effective system of governance and socio-economic development of modern India within the framework of parliamentary democracy and to recommend changes, if any, that are required in the provisions of the Constitution without interfering with its basic structure or features.”

Tenure:

The Commission was required to complete its work and make recommendations within one year. The tenure of the Commission was extended from time to time up to 31st March, 2002.

✍ The Commission submitted its report in two volumes to the Government on 31st March, 2002.

Recommendations:

This commission recommended a long list of amendments and tried to touch almost all the issues. It recommended on Fundamental Rights, Directive principles, Fundamental Duties, legislatures, Electoral process, political parties, Executive and Public Administration, The judiciary, center state relations, Trade commerce and intercourse, Resolution of disputes & the Executive.

Preamble of Indian Constitution

A preamble is an introductory and explanatory statement in a document that explains the document's purpose and underlying philosophy. The Preamble of our constitution is the introductory statement sets out the guiding purpose and principles of the Constitution.

The Preamble Reads: (The underlined words in red were inserted by 42nd amendment act 1976)

WE, THE PEOPLE OF INDIA, have solemnly resolved to constitute India into a SOVEREIGN **SOCIALIST**
SECULAR DEMOCRATIC REPUBLIC and to secure to all its citizens:
JUSTICE, social, economic and political;
LIBERTY of thought, expression, belief, faith and worship;

EQUALITY of status and of opportunity;

and to promote among them all

FRATERNITY assuring the dignity of the individual and the unity and **integrity** of the Nation;

IN OUR CONSTITUENT ASSEMBLY this twenty-sixth day of November, 1949, do HERE BY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION.

✍ For the first time, the Government of India Act 1919 (Montague Chelmsford Reforms) had a separate preamble.

✍ Government of India Act 1935 had NO preamble

✍ The idea of the Preamble was borrowed from the Constitution of USA

✍ The Preamble of our constitution is part of the Constitution but is NOT enforceable by courts.

The courts can take recourse to the Preamble in order to explain and clarify other provisions of the constitution. This view was given by the Supreme Court in the Berubari Union Case 1960 and Kesavand Bharti Case 1973.

✍ “HERE BY ADOPT, ENACT AND GIVE TO OURSELVES THIS CONSTITUTION” this phrase underlines the **supremacy of the Indian People**.

✍ Preamble is **NON-Justifiable**. This means that courts cannot pass orders against the government in India to implement the ideas in the Preamble.

✍ Preamble enshrines the ideas and philosophy of the constitution and NOT the narrow objectives of the governments.

✍ The preamble of the constitution has been amended only once so far through the 42nd Constitution Amendment Act 1976. The words Secular, Socialist and Integrity were added to the constitution.

✍ KM Munshi quoted Preamble as “Political Hosrocope”

✍ Thakurdas Bhargav quoted Preamble as “Soul of the Constitution”

✍ NA Palkhiwala calls it the identity card of the constitution.

Preamble was passed finally by the Constituent assembly on November 26, 1949.

✍ The Objective resolution which was moved in the constituent assembly by Jawahar Lal Nehru on December 13, 1946 and unanimously adopted on January 22, 1947 was the basis of Preamble.

✍ The Preamble seeks to established what mahatma Gandhi described as “The India of my Dreams”

✍ By itself Constitution does not restrict or expand any law of the constitution.

Constitutions that begin with a Preamble

1. American Constitution of 1784
2. Swiss Constitution of 1874
3. Irish Constitution of 1937
4. Japanese Constitution of 1946
5. West German Constitution of 1949
6. Communist China’s Constituting 1954
7. French Constitution of 1958
8. Constitution of Bangladesh 1973

Understanding the Preamble

WE, THE PEOPLE OF INDIA, have solemnly resolved to constitute India

✓ Pakistan remained a British Dominion till 1956, but India declared itself Republic in 1949 and the Preamble enshrines the philosophy that the government is by the people and for the people.

SOCIALIST:

✓ It was **implicit in the original constitution** but was made **explicit** by the **42nd Constitutional Amendment Act of 1976**.

✓ By inserting this word, it set a **positive direction** to the Government in formulating its policies.

SECULAR:

✓ It signifies that **India has respect for all religions**. All religions have the same status.

✗ The word secular appeared at only one article that is Article 25 (2-a) before it was inserted into the Constitution's Preamble.

✓ State will protect every religion equally but the **state will not have any foundation on religion**.

DEMOCRATIC:

✓ Vaishali was the first democratic of the world. However, India has borrowed its democracy from the western world.

✓ **It means the Government is responsible to the people of India.**

✓ **Elections held every 5th year (or before) serve this purpose** of the Preamble.

JUSTICE:

✓ Justice in the Preamble means social, political and economical justice

LIBERTY:

✓ Liberty is the essential requirement of democratic and free society.

EQUALITY:

✓ Equality implies to equality of opportunities.

✓ This objective is made more **explicit by Article 15** which forbids the state to discriminate on any basis such as caste, creed, sex or place of birth

✓ Article 15(2) throws all public places to all citizens

✓ Article 17 abolishes the untouchability

FRATERNITY:

✓ The term Fraternity is (perhaps) incorporated from the article 1 of **Universal Declaration of Human Rights 1948**.

✓ Articles 1 and 2 are the foundation blocks of the Universal Declaration of Human rights, with their principles of dignity, liberty, equality and brotherhood.

Article 1 & 2 of Universal Declaration of Human Rights read as follows:

Article 1

All human beings are born free and equal in dignity and rights. They are endowed with reason and conscience and should act towards one another in a spirit of brotherhood.

Article 2

Everyone is entitled to all the rights and freedoms set forth in this Declaration, without distinction of any kind, such as race, color, sex, language, religion, political or other opinion, national or social origin, property,

birth or other status. Furthermore, no distinction shall be made on the basis of the political, jurisdictional or international status of the country or territory to which a person belongs, whether it be independent, trust, non-self-governing or under any other limitation of sovereignty.

Kesavanand Bharti v/s State of Kerala (1973) Case:

Preamble is part of the Constitution and is subject to the amending power of the parliament as any other provisions of the Constitution, provided the basic structure of the constitution is not destroyed.

Outcome of the Berubari Case: 1960

A bench consisting of eight judges headed by B.P.Sinha, C.J. Justice Gajendragadkar delivered the unanimous opinion of the court.

“The court held that the Preamble to the Constitution containing the declaration made by the people of India in exercise of their sovereign will, no doubt is “a key to open the minds of framers of the Constitution” which may show the general purposes for which they made the several provisions in the Constitution but nevertheless the Preamble is not a part of the Constitution.”

Outcome of Kesavanand Bharti Case:

Kesavanada Bharati Case has created a history. For the first time, a bench of 13 Judges assembled and sat in its original jurisdiction hearing the writ petition. 13 Judges placed on record 11 separate opinions. It held:

- ✍ Preamble to the Constitution of India is a part of Constitution
- ✍ Preamble is not a source of power nor a source of limitations
- ✍ Preamble has a significant role to play in the interpretation of statues, also in the interpretation of provisions of the Constitution.
- ✍ In SR Bommai Case the supreme court held that Preamble Indicates basic structure of the Constitution.

Parts of Indian Constitution

Parts:

The 12 parts of our Constitution are as follows:

✓ Part I	The Union And Its Territory	Art.(1-4)
✓ Part II	Citizenship	Art.(5-11)
✓ Part III	Fundamental Rights	Art.(12-35)
✓ Part IV	Directive Principles Of State Policy	Art.(36-51)
✓ Part IVA	Fundamental Duties	Art.(51a)

Please note that Part IVA was not in Indian Constitution Originally. It was incorporated in the constitution by 42nd Amendment Act 1976.

This Article 51A incorporates the 10 fundamental duties of the citizens.

Further, by the 86th Amendment Act , Right to Education has been added as 11th Fundamental duty in the constitution

✓ Part V	The Union	Art.(52-151)
✓ Part VI	The States	Art.(152-237)
✓ Part VII	The States In Part B Of The First Schedule	Art.(238)
✓ Part VIII	The Union Territories	Art.(239-243)
✓ Part IX	Panchayats	Art.(243-243-0)
✓ Part IXA	Municipalities	Art.(243P-243ZG)

Please Note that Part IX and IXA were inserted in the Constitution by 73rd and 74th amendment acts.

✓	Part X	The Scheduled And Tribal Areas	Art.(244-244a)
✓	Part XI	Relations Between The Union And The States	Art.(245-263)
✓	Part XII	Finance, Property, Contracts And Suits	Art.(264-300a)
✓	Part XIII	Trade, Commerce And Intercourse Within The Territory Of India	Art.(301-307)
✓	Part XIV	Services Under The Union And The States	Art.(308-323)
✓	Part XIVA	Tribunals	Art.(323a-323b)

Please note that Part XIVA was incorporated in the Constitution by 42nd Amendment Act 1976, to empower the parliament and state legislatures to set up by law administrative tribunals for the adjudication of the disputes and complaints in all service matters relating to recruitment and conditions of service of Public Employees.

✓	Part XV	Elections	Art.(324-329a)
✓	Part XVI	Special Provisions Relating To Certain Classes	Art.(330-342)
✓	Part XVII	Official Language	Art.(343-351)
✓	Part XVIII	Emergency Provisions	Art.(352-360)
✓	Part XIX	Miscellaneous	Art.(361-367)
✓	Part XX	Amendment Of The Constitution	Art.(368)
✓	Part XXI	Temporary, Transitional And Special Provisions	Art.(369-392)
✓	Part XXII	Short Title, Commencement, Authoritative Text In Hindi And Repeals	Art.(393-395)

Schedules

Schedules are lists in the Constitution that categorizes and tabulates bureaucratic activity and policy of the Government. Our constitution had 8 Schedules originally.

✍ The First Amendment Act added the 9th schedule in the constitution.

35th Amendment Act added the 10th schedule in the constitution in 1974 regarding the “associate Status” of the Sikkim. Later 36th amendment act admitted Sikkim as state of India. A New 10th schedule was added by 52th amendment act 1985 in context with the “Anti-defection” law.

- **First Schedule:** This lists the states and territories on of India, lists any changes to their borders and the laws used to make that change.
- **Second Schedule:** Emoluments for High-Level Officials – This lists the salaries of officials holding public office, judges, and Controller and Auditor-General of India.
- **Third Schedule:** Forms of Oaths – This lists the oaths of offices for elected officials and judges.
- **Fourth Schedule:** Allocation of seats in the Rajya Sabha (the upper house of Parliament) per State or Union Territory.
- **Fifth Schedule:** Administration and control of Scheduled Areas and Scheduled Tribes(areas and tribes needing special protection due to disadvantageous conditions).

Scheduled Areas are autonomous areas within a state, administered federally, usually populated by a predominant Scheduled Tribe.

Scheduled Tribes are groups of indigenous people, identified in the Constitution, struggling socio-economically



- **Sixth Schedule:** Provisions for the administration of tribal areas in Assam, Meghalaya, Tripura, Mizoram.
- **Seventh Schedule:** The union (central government), state, and concurrent lists of responsibilities.
- **Eighth Schedule:** The official languages.
- **Ninth Schedule:** Land and tenure reforms; the accession of Sikkim with India.

Please note that 9th schedule comes under Judicial Review.

- **Tenth Schedule:** "Anti-defection" provisions for Members of Parliament and Members of the State Legislatures.
- **Eleventh Schedule:** Panchayat Raj (rural local government).
- **Twelfth Schedule:** Municipalities (urban local government).

Background information on 10th Schedule

Sikkim was being ruled for more than 300 years by Chogyals. In 1947 when India became independent, a popular vote in Sikkim rejected joining Indian Union. However, Chogyal Tashi Namgyal was successful in getting a special status of protectorate for Sikkim. This was in face of stiff resistance from local parties like Sikkim State Congress who wanted a democratic setup and accession of Sikkim to the Union of India

The treaty signed between India and Sikkim ratified the status of Sikkim as a protectorate with Chogyal as the Monarch. Chogyal Tashi Namgyal died in 1963 and was succeeded by his son Palden Thondup Namgyal. By the beginning of 1970 there were rumbling in the political ranks and file of the State, which demanded the removal of Monarchy and the establishment of a democratic setup. This finally culminated in wide spread agitation against Sikkim Durbar in 1973.

✍ On 8th May, 1973, there was a historic agreement between the Chogyal, the leaders of the political parties representing the people of Sikkim and the Government of India.

✍ The Government of Sikkim Bill was passed on May 11, 1974. Chogyal promulgated this Bill on the 4th July, 1974 as the Government of Sikkim Act, 1974

By Constitution 35th Amendment Bill on 22nd February, 1975 a Tenth Schedule was added in the constitution. This amendment act was called Constitution (Thirty-fifth Amendment) Act, 1974.

Also, a new article 2A was inserted after article 2 of the constitution of India.

Article 2A read as follows:

Sikkim to be associated with the Union

Part A of The Tenth Schedule read as follows:

TERRITORIES OF SIKKIM

1. Sikkim. ---Sikkim comprises the following territories, namely:-

The territories which, immediately before the coming into force of the Government of Sikkim Act, 1974, were comprised in Sikkim.

Accordingly Government of India became solely **responsible for the defense** and **territorial integrity** of Sikkim and for the conduct and regulation of the **external relations** of Sikkim, whether political, economic or financial.

However, there was a complete collapse in the administration in Sikkim. The Chogyal was proving to be extremely unpopular with the people. In 1975, the Kazi (Prime Minister in Sikkim) appealed to the Indian Parliament for a change in Sikkim's status so that it could become a state of India.

In April, the Indian Army took over the city of Gangtok and disarmed the Palace Guards. A referendum was held in which 97.5% of the voting people (59% of the people entitled to vote) voted to join the Indian Union. A few weeks later, on 16 May 1975, Sikkim officially became the 22nd state of the Indian Union through Constitution 36th Amendment Act and the monarchy was abolished.

Constitution 36th Amendment act was passed on 16th May, 1975. Through this act First Schedule (which lists the states and territories on of India, lists any changes to their borders and the laws used to make that change) was amended and Sikkim was entered on entry 22. A new article 371 F was also added in the Constitution which provided for some special provisions with respect to State of Sikkim.

In the same act, 4th schedule was also amended and after entry 21, Sikkim was added at entry 22.

The Article 2A, which was added by 35th amendment act was repealed by this 36th amendment act and Schedule 10 was also omitted.

Since 10th Schedule was omitted as Sikkim became India's fully fledged state, the Constitution (Fifty-second Amendment) Bill, 1985 again added a New 10th Schedule which was related to Anti Defection Law.

Constitution of India: **Part I (Union & Its Territory): Article 1 to 4**

We know that Indian Constitution has 22 parts. Part I of the constitution deals with the Union & Its territory.

The articles in Part I are article 1 to article 4 as follows:

Article 1. Name and territory of the union

Article 2. Admission or establishment of new States.

2A. [Repealed.]

Article 3. Formation of new States and alteration of areas, boundaries or names of existing States.

Article 4. Laws made under article 2 and 3 to provide for the amendment of the First and the Fourth Schedules and supplemental incidental and consequential matters.

Article 1: Name & Territory of the Union

Article 1 reads as follows:

Article 1 (1) India, that is Bharat, shall be a Union of States.

Article 1 (2) The States and the territories thereof shall be as specified in the First Schedule.

Article 1 (3) The territory of India shall comprise— (a) the territories of the States; (b) the Union territories specified in the First Schedule; and (c) such other territories as may be acquired.

Article 1(1) says that "India, that is Bharat, shall be **Union of States**".

Explanation and States Reorganization Act:

We know that our country got independence on August 15, 1947 as a result of Mountbatten Plan which is also known as 3 June Plan.

Pakistan came into being with two non-contiguous enclaves, East Pakistan and West Pakistan, separated geographically by India. India was formed out of the majority Hindu regions of the colony, and Pakistan from the majority Muslim areas.

The border between India and Pakistan was determined by a British Government-commissioned report usually referred to as the **Radcliffe Line**. It was written by a London lawyer, Sir Cyril Radcliffe.

When the British left India in 1947, our country was divided into **British India** and **Indian India**. There were 9 Governor's provinces, 5 chief Commissioner's provinces and some other areas such as tribal areas and frontier regions.

The Indian India was comprised of 562 princely states. Some of them were big, some of the medium and some of them were very small in size and poor in resources. But on 15 August 1947, all of them became independent. They were **technically sovereign**, because paramourncy¹ of the British Crown had lapsed on that date under **Article 7(1) of the Indian Independence Act 1947**. These states were completely independent and **free to join either India or Pakistan or remain Free**.

Apart from the princely states, there were some territories in the control of France such as Pondicherry and Portugal such as Goa.

The following map shows India before partition. ²



So next herculean task for our leaders was the “Political Unification” of the country. Some of the princely states were happy and uniformly enthusiastic to join the Union, but some of them such as Hyderabad, Travancore, and Junagarh etc. said they would neither join India nor Pakistan. They opted for their independence. Out of them Hyderabad was one step ahead. The state of Hyderabad started sending trade representatives in European countries and started negotiating with Portugal to buy or lease Goa or to

¹ Paramourncy means rule or dominion
² Map from British Library

access its sea, as it was Landlocked³. Travancore was also not behind. The Travancore states started approaching west to show importance to its Thorium Reserves.

The problem was handled by Sardar Vallabh Bhai Patel & V. P. Menon, the resourceful ICS officer of the British India. VP Menon was secretary, States Ministry. An elaborate plan was made and the states were merged in India one by one, acquiring *de facto* or *de jure*⁴ control over them.

The Nawab of Junagarh Mohammad Mahabat Khanji III, wanted to accede to Pakistan despite having no common border with Pakistan. Two states in suzerainty of Junagarh viz. Mangrol and Babariawad rebelled and Nawab acquired them militarily. Some other states reacted and they asked the Government of India to intervene. A government in exile was formed by Samaldas Gandhi. A referendum was held which favored its merger with India. Indian forces cut off supplies to Junagarh and acquired the territories which had acceded to India. The Nawab fled to Pakistan, after emptying the state treasury and later the court of Junagarh requested Government of India to take over.

The Hyderabad state was merged by use of Force in 1948. The ruler of Jammu & Kashmir Raja Hari Singh

Integration & Merger

Two processes integration & merger of states was used for territorial adjustments. The integration involved merger of two or more princely states, while merger involved merging small states with neighboring British Indian Provinces so that a viable size can be created

signed instruments of accession in 1947, as he faced tribal infiltration sponsored by Pakistan.

The following was the result of the Integration and Merger

- ✍ 216 states were merged with the neighboring British Indian provinces and they were called Part A states.
- ✍ 275 states were integrated and made new viable units and they were called Part B states
- ✍ 61 princely states which were not covered by any of the above categories due to circumstances were constituted as part C states
- ✍ The islands of Andaman and Nicobar were placed in a separate category part D.

This process took place before constitution of India came into effect. When the constitution of India was adopted by the constituent assembly, the states in 4 parts were as follows:

Part A States:

1. Assam
2. Bihar
3. Bombay
4. Madhya Pradesh
5. Madras
6. Orissa
7. Punjab
8. United Provinces

³ Morris-Jones, W.H. (1983), "Thirty-Six Years Later: The Mixed Legacies of Mountbatten's Transfer of Power", *International Affairs* 59 (4): 621–628

⁴ *de facto* means without officially established and *de jure* means by law. *De jure* is used when something is done as per what the law says and *de facto* is used when something is done practically. Simply we can put "By hook or by crook" as meaning of acquiring *de facto* or *de jure*

9. West Bengal

Part B States:

1. Hyderabad
2. Jammu & Kashmir
3. Madhya Bharat
4. Mysore
5. PEPSU (Patiala & East Punjab States Union)
6. Rajasthan
7. Saurashtra
8. Travancore-Cochin

Part C States:

1. Ajmer
2. Bilaspur
3. Bhopal
4. Coorg
5. Delhi
6. Himachal Pradesh
7. Kutch
8. Manipur
9. Tripura
10. Vindhya Pradesh

Part D states

1. Andaman & Nicobar Islands.

We can see that this organization momentarily solved the problem of political integration. But, there was an increasing feeling for states on linguistic basis.

The demand for states on linguistic basis was not new. Here are some important points which you must note down regarding the origin of demand for linguistic states:

- ✍ The Montague-Chelmsford Reform had favored the formation of linguistic based provinces.
- ✍ The chairperson of Indian National Congress of Calcutta Session, Annie Besant opposed the idea of formation of linguistic states; however Bal Gangadhar Tilak and Mahatma Gandhi favored it.
- ✍ Gandhi ji favored it because he believed that use of linguistic sensibilities of the people would help in better mass organization.
- ✍ The All India Congress Committee officially accepted the principle of the "Linguistic Reorganization of States" in its Nagpur Session in 1920.
- ✍ The same was reiterated by the leadership of Congress before the Indian Statutory Commission of 1927 and had suggested the creation of Utkal, Andhra, Karnataka on this basis.
- ✍ The same was supported by the Nehru Committee in 1928.
- ✍ The election manifesto of the Congress promised in 1946, to create provinces on linguistic basis.

The division of the country in Part A, B, C & D was cumbersome and it had to be done with.

The problem was immense and the leaders knew the magnitude of the problem. However at this juncture (independence onwards), Mahatma Gandhi and B R Ambedkar opposed the creation of states on linguistic basis. The JVP Committee (Jawaharlal-Vallabhbhai Patel – Pattabhi Sitaramaiya) committee was formed in 1948. This committee also came out with opposition to formation of linguistic states.

Later the Linguistic Provinces Commission was appointed to study the problem by Dr. Rajendra Prasad, on June 17, 1948 under the chairmanship of Justice S N Dhar and it was called Dhar Commission also. Justice SN Dhar was a judge of Allahabad High Court.

Dhar Committee found it “inadvisable to reorganize the states on linguistic basis”. This recommendation was accepted by the cabinet.

Creation of First Linguistic states of India

In 1912, State of Bihar and Orissa was formed. The Telugu speaking people wanted to have their own Telugu state, soon after the creation of Bihar and Orissa. The Andhra Mahasabha was formed in 1913, but the dream of having own language state remained a dream for the Telugu speaking people for 50 years. A veteran congressman Potti Sriramulu, went on fast unto death on October 19, 1952, After 56 days of fast, he succumbed to the fasting and died on December 15, 1952. His death triggered large scale violence in the state and this led to Government of India to create India’s first state on Linguistic Basis that is Andhra Pradesh on October 1, 1953. The first linguistic state was formed under pressure.

This was the first fission of a Chain reaction.

The demand for linguistic states rose particularly in South India. The political leadership was not in a position to resist the demand and this culminated in “States Reorganization Commission “on December 22, 1953 by Jawahar Lal Nehru. The States Reorganization Commission was headed by Justice Fazal Ali. This Fazal Ali Commission submitted its recommendations on September 30, 1955. The commission recommended the reorganization of the country in 16 states and 3 centrally administered areas.

Not all the recommendations were accepted. But the recommendations were accepted to have done with the cumbersome division of country in part A, B C & D states, and instead have two categories viz. States and Union territories.

The States Reorganization Act was passed on 1 November 1956.

The important Reorganization was as follows: (everything is important, please read carefully)

States of India: 14

1. **Andhra Pradesh:** Andhra was renamed Andhra Pradesh, and enlarged by the addition of the Telangana region of erstwhile Hyderabad State.
2. **Assam:** No change of boundary in 1956.
3. **Bihar:** No change of boundary in 1956.
4. **Bombay State:** The state was enlarged by the addition of Saurashtra and Kutch, the Marathi-speaking districts of Nagpur Division of Madhya Pradesh, and the Marathwada region of Hyderabad. The southernmost districts of Bombay were transferred to Mysore State. (In 1960, the state was split into the modern states of Maharashtra and Gujarat.)
5. **Jammu and Kashmir:** No change of boundary in 1956.

6. **Kerala:** Formed by the merger of Travancore-Cochin state with the Malabar District of Madras State and adding southern part of Travancore (kanyakumari) to Madras state.
7. **Madhya Pradesh:** **Madhya Bharat, Vindhya Pradesh, and Bhopal** were merged into Madhya Pradesh, and the Marathi-speaking districts of Nagpur Division were transferred to Bombay State.
8. **Madras State:** The state was reduced to its present boundaries by the transfer of Malabar District to the new state of Kerala. The southern part of Travancore (kanyakumari district) was added to the state. (The state was renamed Tamil Nadu in 1969.)
9. **Mysore State:** Enlarged by the addition of Coorg state and the Kannada speaking districts from southern Bombay state and western Hyderabad state. (The state was renamed Karnataka in 1973.)
10. **Orissa:** No change of boundary in 1956.
11. **Punjab:** The Patiala and East Punjab States Union (PEPSU) was merged into Punjab.
12. **Rajasthan:** Rajputana was renamed Rajasthan, and enlarged by the addition of Ajmer-Mewara state.
13. **Uttar Pradesh:** No change of boundary in 1956.
14. **West Bengal:** No change of boundary in 1956.

✍ Andhra Pradesh was enlarged. Bombay state was enlarged, Madras State was reduced, Mysore State was enlarged and Rajasthan was enlarged.

Union Territories

1. Andaman and Nicobar Islands
2. Delhi
3. Himachal Pradesh
4. Lakshadweep
5. Pondicherry
6. Tripura
7. Manipur

Now let's come back to our topic:

Article 1(1) says that "**India, that is Bharat, shall be Union of States**".

India is a "Union of States" and NOT a "Federation of States".

This means that

1. Indian federation is *NOT a result of agreement* between the states.
2. The state once acceded has NO freedom to secede from the Union.

Some people were not happy with the term "Union". They wanted the constituent assembly to use the word "federation". But, it's worth note that **most of the British Indian provinces were NOT sovereign (they were not more than being Autonomous Units)**. Constitution derives its power from the Public of India so Federal system is a result of Indian people's wish and so no state once acceded had the freedom to secede.

Article 1 (2) The States and the territories thereof shall be as specified in the First Schedule

Article 1(2) Explanation

Ours is a written and largest constitution of the world. Each and every word and phrase in our constitution has a meaning. We know that First schedule comprises the states and Union Territories.

Before the States Reorganization Act came into effect, the states were divided into 4 categories viz. Part A, Part B, Part C and Part D. Now after the act, India had 14 states and 6 Union Territories i.e. in 2 units. Accordingly, the constitution needed to be amended.

Article 1(2) was substituted by **Constitution 7th Amendment Act** and it specifies the states and the territories of each state and union territories.

Article 1 (3) The territory of India shall comprise— (a) the territories of the States; (b) the Union territories specified in the First Schedule; and (c) such other territories as may be acquired.

This article means that instead of 4 parts A, B, C & D, the territories of the Indian Union are in two categories viz. States and Union territories.

Article 2: Admission or establishment of new States.-Parliament may by law admit into the Union, or establish, new States on such terms and conditions as it thinks fit.

Union. Parliament after making a law can establish the new states.

Now here we must note the following points:

✓ Whenever India acquired a new territory such as Hyderabad or Goa on 12 December 1961, through Operation Vijay, it was made either a state or a Union territory. The article 2 empowers the Parliament to admit new states.

Is parliament empowered to make a law and give independence to any territory?

NO. India is a "Union of States" and parliament can "ONLY" admit new states.

But again, we suppose that a border dispute is solved and it is required to exchange some territories from neighboring countries then what?

This will be discussed in Article 3.

Article 2A: Repealed

We should know that our constitution is subject to amendment including the preamble. An article may be changed / substituted and repealed as per the requirements and the conditions fulfilling to amend the constitution.

Article 2A is related to Sikkim.

Last week we had discussed about the 10th schedule. I would like you to read this article again and focus on article 2A. (I have highlighted)

Sikkim was being ruled for more than 300 years by Chogyals. In 1947 when India became independent, a popular vote in Sikkim rejected joining Indian Union. However, Chogyal Tashi Namgyal was successful in getting a special status of protectorate for Sikkim. This was in face of stiff resistance from local parties like Sikkim State Congress who wanted a democratic setup and accession of Sikkim to the Union of India

The treaty signed between India and Sikkim ratified the status of Sikkim as a protectorate with Chogyal as the Monarch. Chogyal Tashi Namgyal died in 1963 and was succeeded by his son Palden Thondup Namgyal.

By the beginning of 1970 there were rumbling in the political ranks and file of the State, which demanded the removal of Monarchy and the establishment of a democratic setup. This finally culminated in wide spread agitation against Sikkim Durbar in 1973.

✓ On 8th May, 1973, there was a historic agreement between the Chogyal, the leaders of the political parties representing the people of Sikkim and the Government of India.

✓ The Government of Sikkim Bill was passed on May 11, 1974. Chogyal promulgated this Bill on the 4th July, 1974 as the Government of Sikkim Act, 1974

By Constitution 35th Amendment Bill on 22nd February, 1975 a Tenth Schedule was added in the constitution. This amendment act was called Constitution (Thirty-fifth Amendment) Act, 1974.

Also, a new article 2A was inserted after article 2 of the constitution of India.

Article 2A read as follows:

Sikkim to be associated with the Union

Part A of The Tenth Schedule read as follows:

TERRITORIES OF SIKKIM

1. Sikkim. ---Sikkim comprises the following territories, namely:-

The territories which, immediately before the coming into force of the Government of Sikkim Act, 1974, were comprised in Sikkim.

Accordingly Government of India became solely responsible for the defense and territorial integrity of Sikkim and for the conduct and regulation of the external relations of Sikkim, whether political, economic or financial.

However, there was a complete collapse in the administration in Sikkim. The Chogyal was proving to be extremely unpopular with the people. In 1975, the Kazi (Prime Minister in Sikkim) appealed to the Indian Parliament for a change in Sikkim's status so that it could become a state of India.

In April, the Indian Army took over the city of Gangtok and disarmed the Palace Guards. A referendum was held in which 97.5% of the voting people (59% of the people entitled to vote) voted to join the Indian Union. A few weeks later, on 16 May 1975, Sikkim officially became the 22nd state of the Indian Union through Constitution 36th Amendment Act and the monarchy was abolished.

Constitution 36th Amendment act was passed on 16th May, 1975. Through this act First Schedule (which lists the states and territories on of India, lists any changes to their borders and the laws used to make that change) was amended and Sikkim was entered on entry 22. A new article 371 F was also added in the Constitution which provided for some special provisions with respect to State of Sikkim.

In the same act, 4th schedule was also amended and after entry 21, Sikkim was added at entry 22.

The Article 2A, which was added by 35th amendment act was repealed by this 36th amendment act and Schedule 10 was also omitted.

Since 10th Schedule was omitted as Sikkim became India's fully fledged state, the Constitution (Fifty-second Amendment) Bill, 1985 again added a New 10th Schedule which was related to Anti Defection Law.

Article 3 and Formation of New States

Article 3: Formation of new States and alteration of areas, boundaries or names of existing States.-

Parliament may by law-

- (a) form a new State by separation of territory from any State or by uniting two or more States or parts of States or by uniting any territory to a part of any State;
- (b) increase the area of any State;
- (c) diminish the area of any State;
- (d) alter the boundaries of any State;
- (e) alter the name of any State:

This article says that Parliament of India can form new states by separation of a territory from any state. For example State of Bombay was bifurcated in Gujarat and Maharashtra on May 1, 1960. The parliament has power to increase or decrease the area of a state. It can diminish the area of the state and alter the boundaries. The name of the state can also be changed using powers given by article 3.

For example, Uttaranchal became Uttarakhand, and Orissa is becoming Odisha soon.

But here are a few questions, which must be solved.

1. What is the procedure of changing a name of a state?
2. Can central government change the name of a state without discussion with the state government or its people?

What is the procedure of changing a name of a state?

First of all a resolution is passed in the state assembly. This resolution once passed is forwarded to the central Government. By this, the state assembly (this means that the people of the state) authorizes the state government to place the matter before the Government of India for change of the name of the state. This change may also include the Hindi Translations of the name of the state.

Article 3 has a proviso, which reads as follows:

Provided that no Bill for the purpose shall be introduced in either House of Parliament except on the recommendation of the President and unless, where the proposal contained in the Bill affects the area, boundaries or name of any of the States, the Bill has been referred by the President to the Legislature of that State for expressing its views thereon within such period as may be specified in the reference or within such further period as the President may allow and the period so specified or allowed has expired.

As per this proviso,

1. President refers the Bill to the Legislature of the State for expressing its views regarding the resolution. The Legislative Assembly of State after considering passed the Bill in context with the changing the name of the state and adopts the resolution agreeing with the Bill.
2. After this has been done, a bill is introduced in the Parliament of India. When this bill is passed and gets president's assent, it becomes a law and accordingly the following (some have been mentioned for your easiness with example of Orissa.) changes are required in the Constitution of India:

1. The Schedule 1 will be changed. For example if Orissa becomes Odisha, the entry 10 in schedule 1 will be changed from Orissa to Odisha.

2. Wherever the term "Orissa" has been used in the constitution, it will be changed for example Article 164.
3. Entry in the Fourth Schedule is changed.

Question two is also solved. The people are represented by the assembly.

Now let's discuss one more important question?

Is our parliament competent to make a law, so that it can transfer its territory to another country, if a border dispute is solved and it is agreed that some territories are to be given to that country?

Every country in the world has some or other border disputes. Some of them are solved by diplomacy, some by political bargaining and some by a war.

One such dispute between India and Pakistan was Berubari Dispute:

We know that India and Pakistan boundary was fixed by Sir Radcliffe and the line was called Radcliffe Line. However, some disputes arose because of the erroneous depiction of the maps by the Radcliffe Award. One of such disputes was Berubari Dispute. This dispute raised due to omission in the written text.

Radcliffe had divided the district of Jalpaigudi between India and Pakistan by awarding some thanas to one country and others to the other country. The boundary line was determined on the basis of the boundaries of the thanas.

In describing this boundary, Radcliffe omitted to mention one Thana. Berubari Union No. 12 lies within Jalpaigudi thana which was awarded to India. However, the omission of the Thana Boda and the erroneous depiction on the map, enabled Pakistan to claim that a part of Berubari belonged to it.

This dispute was resolved by **Nehru-Noon Agreement of 1958**, whereby half of Berubari Union No. 12 was to be given to Pakistan and the other half adjacent to India was to be retained by India. In addition, four Cooch Behar enclaves contiguous of this part would also have gone to Pakistan.

Now the question arose, regarding the power of the parliament to transfer the territory of Berubari to Pakistan.

The detailed examination of article 3 was done by the Supreme Court on a reference made by the President in 1960.

The Supreme Court held the following:

"Parliament of India is not competent to make a law under article 3 for the implementation of the Nehru-Noon Agreement".

So, **the need to amend the constitution was felt. Our constitution can be amended by article 368. Using the power of article 368 Constitution (9th Amendment Act 1960 was passed.**

Objects of this amendment read as follows:

Agreements between the Governments of India and Pakistan dated 10th September, 1958, 23rd October, 1959, and 11th January, 1960, settled certain boundary disputes between the Governments of India and Pakistan relating to the borders of the States of Assam, Punjab and West Bengal, and the Union territory of Tripura.

Article 4

4. (1) Any law referred to in article 2 or article 3 shall contain such provisions for the amendment of the First Schedule and the Fourth Schedule as may be necessary to give effect to the provisions of the law and may also contain such supplemental, incidental and consequential provisions (including provisions as to representation in Parliament and in the Legislature or Legislatures of the State or States affected by such law) as Parliament may deem necessary.

(2) No such law as aforesaid shall be deemed to be an amendment of this Constitution for the purposes of article 368.

Explanation: Article 4 is self explanatory. The only thing expected from you is to remember that **Whenever any change is made in the name, boundary, area etc. The article 2 & 3 has provisions to make changes in First and Fourth schedules. ~~Constitution is amended by article 368.~~**

Constitution of India: PART II CITIZENSHIP Article (5-11)

Now, we are discussing one more important issue that is Citizenship. The dictionary meaning of a citizen is a native or naturalized member of a state or other political community. The citizenship is a state of being a citizen of a particular social, political, or national community.

The Problem of Citizenship

For the constitution assembly, to arrive at a final draft for Citizenship was one of the most arduous tasks while framing the constitution. The problem was partition of India on one hand and India being recreated by uniting the princely states on the other.

India's partition into India and Pakistan caused millions of people cross the border. The Hindus and Sikhs who were born in Pakistan side came to India and Muslims who were born in India migrated to Pakistan. Apart from that, there were people who had left their homeland India and started living abroad and now wanted to come back as the country was a free nation.

The assembly created and destroyed many drafts regarding the citizenship and even the final draft was amended for more than 100 times before it was finally incorporated in the Constitution as Part II.

The problem was basically as follows:

1. The people who were born and living in Pakistan and migrated to India were to be provided Indian Citizenship.
2. The people who were born and living in India and migrated to Pakistan were to be excluded and debarred from Indian Citizenship.
3. People who migrated to Pakistan in 1947 but returned back to live in India permanently had to be provided Citizenship.
4. The people who were born in India, but living abroad but came back, had to be provided citizenship.

The Part II of the constitution has the following articles, which deal with the above problems:

Constitution Part II

Article 5. Citizenship at the commencement of the Constitution.

Article 6. Rights of citizenship of certain persons who have migrated to India from Pakistan.

Article 7. Rights of citizenship of certain migrants to Pakistan.

Article 8. Rights of citizenship of certain persons of Indian origin residing outside India.

Article 9. Persons voluntarily acquiring citizenship of a foreign State not to be citizens.

Article 10. Continuance of the rights of citizenship.

Article 11. Parliament to regulate the right of citizenship by law.

Please note that any **formatting**, **highlighting**, **underlining** & references done in the articles reproduced in boxes are **mine** to attract your attention to particular words and phrases and not in the constitution. Before you read explanation, do focus on these words and phrases.

Article 5 : Citizenship at the commencement of the Constitution.**Article 5. Citizenship at the commencement of the Constitution.**

At the commencement of this Constitution, every person who has his domicile in the territory of India and-

- (a) who was born in the territory of India; or
- (b) either of whose parents was born in the territory of India; or
- (c) who has been ordinarily resident in the territory of India **for not less than five years** immediately preceding such commencement, shall be a citizen of India.

-: About this document:-

Explanation: The above article refers to the Citizenship on January 26, 1950. This article provided that the ordinary resident in the territory of India since or before January 26, 1945 were deemed to be Indian Citizens.

But what about the people who came from Pakistan after 1947 partition? This is clarified in Article 6.

Article 6 : Rights of citizenship of certain persons who have migrated to India from Pakistan.

Article 6. Rights of citizenship of certain persons who have migrated to India from Pakistan.

Notwithstanding anything in article 5, a person who has migrated to the territory of India from the territory now included in Pakistan shall be **deemed to be a citizen of India** at the commencement of this Constitution if-

(a) he or either of his parents or any of his grand-parents was born in **India as defined** in the Government of India Act, 1935 (as originally enacted); and

(b) (i) in the case where such person has so migrated **before** the nineteenth day of July, 1948, he has been ordinarily resident in the territory of India since the date of his migration, or

(ii) in the case where such person has so migrated on or **after** the nineteenth day of July, 1948, he has been registered as a citizen of India by an officer appointed in that behalf by the Government of the Dominion of India on an application made by him there for to such officer before the commencement of this Constitution in the form and manner prescribed by that Government:

Provided that no person shall be so registered unless he has been resident in the territory of India for **at least six months** immediately preceding the date of his application.

Article 6 deals with those persons who migrated to India from Pakistan. **India as defined** in the Government of India Act, 1935 means **undivided India**. These persons were divided into two categories.

Category 1: Those who came before July 19, 1948

Category 2: Those who came after July 19, 1948

Those who came from Pakistan to India before July 19, 1948 would automatically become Indian Citizens.

Those who came after July 19, 1948 would become Indian Citizens provided they had been registered in the form and manner as prescribed by the Government of India.

Article 7: Rights of citizenship of certain migrants to Pakistan

Article 7: Rights of citizenship of certain migrants to Pakistan.

Notwithstanding anything in articles 5 and 6, a person who has after the **first day of March, 1947**, migrated from the territory of India to the territory now included in Pakistan **shall not be deemed to be a citizen** of India:

Provided that nothing in this article shall apply to a person who, after having so migrated to the territory now included in Pakistan, **has returned to the territory of India** under a permit for resettlement or permanent return issued by or under the authority of any law and every such person shall for the purposes of clause (b) of article 6 be deemed to have migrated to the territory of India after the **nineteenth day of July, 1948**.

Explanation: Article 7 deals with those persons who had migrated to Pakistan but returned to India from Pakistan with intention to live here permanently. Please note that this article deals with the “**permit system**”.

The permit system was introduced in July 19, 1948. This system provided that a person who is desiring to return back to India with an intention to permanently reside was required to get a separate permit.

Article 8: Rights of citizenship of certain persons of Indian origin residing outside India**Article 8: Rights of citizenship of certain persons of Indian origin residing outside India.**

Notwithstanding anything in article 5, any person who or either of whose parents or any of whose grand-parents was born in India as defined in the Government of India Act, 1935 (as originally enacted), and who is ordinarily residing in any country outside India as so defined shall be deemed to be a citizen of India **if he has been registered as a citizen of India by the diplomatic or consular representative of India in the country** where he is for the time being residing on an application made by him therefor to such diplomatic or consular representative, whether before or after the commencement of this Constitution, in the form and manner prescribed by the Government of the Dominion of India or the Government of India.

Explanation: Article 8 deals with those persons who were living abroad. The article provides that any person who was born or his parents /grandparents were born in undivided India but living abroad and wants to return to India would need to be **registered** at the as **Citizen of India by the diplomatic or consular representative of India** in that country.

Article 9: Persons voluntarily acquiring citizenship of a foreign State not to be citizens**Article 9: Persons voluntarily acquiring citizenship of a foreign State not to be citizens.**

No person shall be a citizen of India by virtue of article 5, or be deemed to be a citizen of India by virtue of article 6 or article 8, if he has voluntarily acquired the citizenship of any foreign State.

Explanation: Under article 9 of the constitution, any person who has voluntarily acquired the citizenship of a foreign country, even if qualified for Indian Citizenship under any of the provisions of the constitution will not be a Citizen of India.

Article 10 & 11**Article 10: Continuance of the rights of citizenship.**

Every person who is or is deemed to be a citizen of India under any of the foregoing provisions of this Part shall, **subject to the provisions of any law that may be made by Parliament**, continue to be such citizen.

Article 11: Parliament to regulate the right of citizenship by law.

Nothing in the **foregoing provisions of this Part shall derogate from the power of Parliament to make any provision with respect to the acquisition and termination of citizenship** and all other matters relating to citizenship.

Explanation of Article 10 & 11

The Constitution of India opens with the Preamble

WE, THE PEOPLE OF INDIA, having solemnly resolved to constitute India into a SOVEREIGN SOCIALIST SECULAR DEMOCRATIC REPUBLIC and **to secure to all its citizens**.....

Did Constitution lay any permanent law of the Citizenship for the country? No, The nature of provision from Article 5 to 9 show that the objective of the constituent assembly was not to make a permanent law for citizenship.

Ours is a Republic Country and various offices are to be occupied by the persons who are elected by the citizens. So, keeping this in view, it was necessary for the Constituent Assembly to make some provisions which could precisely determine that **who is a Citizen of Independent Indian Dominion and who is not**, at the time of the commencement of the constitution.

Further, the constituent also gave plenary power to the parliament of India to deal with the question of nationality. **Article 10 and more precisely Article 11 give the power to the parliament to make law** in this

-: About this document:-

connection as and when it suits to the demands of the circumstances. The power in parliament vested by Article 11 embraced not only acquisition but also the termination or any other matter related to Citizenship.

Using the power vested in parliament by Article 11 of the Constitution of India, a comprehensive law "The Citizenship Act, 1955" was passed by the parliament. This act has been amended from time to time to make space for provisions as and when required.


In which year Indian Citizenship Act was passed?

1. 1924
2. 1936
3. 1955
4. 1960

The above question is a tricky one. We all know that The Citizenship Act was passed in 1955. However this question refers to the Snyder Act. Snyder Act is related to United States and it was passed in 1924. This act granted full U.S. citizenship to America's indigenous peoples, called "Indians" in this Act. Please note this.

Citizenship Act 1955

Now before we start studying the Citizen Ship Act 1955, please note the following points.

- ✓ The Citizenship Act. 1955 was first enacted on 30th December 1955.
- ✓ It was amended by Citizenship (Amendment) Act 1986, the Citizenship (Amendment) Act 1992, the Citizenship (Amendment) Act 2003, and the Citizenship (Amendment) Ordinance 2005. 

The Citizenship Act 1955 contains the rules for acquisition and termination of Indian Citizenship.

A person can be an Indian Citizen in 5 ways:

Types of Citizenship

The Citizenship by birth and Descent are called natural citizens.

1. Citizenship by Birth:

☞ Any person born in India, on or after 26 January 1950 but prior to the commencement of the 1986 Act on 1 July 1987 was a citizen of India by birth.

☞ A person born in India on or after 1 July 1987 was a citizen of India if either parent (father or mother) was a citizen of India at the time of the birth.

☞ Those born in India on or after 3 December 2004 are considered citizens of India only if both of their parents are citizens of India or if one parent is a citizen of India and the other is not an illegal migrant at the time of their birth.

2. Citizenship by Descent:

☞ Any person who is born outside India on or after 26 January 1950 but before 10 December 1992 are citizens of India by descent if his / her father was a citizen of India at the time of their birth.

☞ Any person born outside India on or after 10 December 1992 is considered as citizens of India if either of their parents is a citizen of India at the time of their birth.

☞ Persons born outside of India, from 3 December 2004 onwards shall not be considered citizens of India unless their birth is registered at an Indian consulate within one year of the date of birth, however registration can be done in some circumstances after 1 year (permission of the Central Government required in such case).

The application for registration of the birth of a minor child must be made to an Indian consulate and must be accompanied by an undertaking in writing from the parents of such minor child that he or she does not hold the passport of another country.

3. **Citizenship by Registration:**

Following categories of the persons can be registered as citizens of India on application by the prescribed authorities.

(Central Government may, on an application, register as a citizen of India under section 5 of the Citizenship Act 1955 any person (not being an illegal migrant) if he belongs to following categories)

- ✓ A person of Indian origin who is ordinarily resident in India for **seven years** before making an application for registration;
- ✓ A person of Indian origin who is ordinarily resident in any country or place outside undivided India;
- ✓ A person who is married to a citizen of India and is ordinarily resident in India for seven years before making an application for registration;
- ✓ Minor children of persons who are citizens of India;
- ✓ A person of full age and capacity whose parents are registered as citizens of India by ordinary residence in India for seven years;
- ✓ A person of full age and capacity who, or either of his parents, was earlier citizen of independent India, and has been residing in India for one year immediately before making an application for registration;
- ✓ A person of full age and capacity who has been registered as an overseas citizen of India for five years, and who has been residing in India for **one year** before making an application for registration.
- ✓ Person of full age and capacity who are citizen of commonwealth country or republic of Ireland.

4. **Citizenship by Naturalization:**

A person can acquire the citizenship of India, through naturalization if

- ✓ Belongs to a country where the citizens of India are allowed to become subjects or citizens of that country by naturalization.
- ✓ Renounces the citizenship of his country and intimates the renunciation to the Government of India.
- ✓ Has been residing in India or serving the government for 12 months before the date of making application for naturalization.
- ✓ Possess a good character
- ✓ Posses working knowledge of Indian Languages
- ✓ Intends to reside in India after naturalization.

Please note that the Government of India can waive any or all of the above conditions in case of a person who has rendered distinguished service in the cause of Philosophy, science, literature, arts, world peace etc.

5. **Citizenship by incorporating a new territory:**

If a new territory becomes a part of India, the government of India specifies the persons of that territory who shall be citizens of India.

6. **Commonwealth Citizenship:**

Every person who is born in commonwealth country, by virtue of that citizenship enjoys the status of **Commonwealth Citizenship in India**. The act empowers the government of India to make provisions of

reciprocity for the enforcement of all or any rights of Citizens of India on citizens of commonwealth countries.

Losing Nationality

The Citizenship Act envisages three situations under which a citizen of India may lose his Indian nationality. Section 9 deals with the automatic termination of citizenship and Section 10 deals with the deprivation of citizenship.

1. **By Renunciation:** If any citizen of India who is also a national of another country renounces his citizenship through declaration of in the prescribed manner, he ceases to be Indian Citizen.
2. **By Termination:** Any person who acquired Indian Citizenship by naturalization, registration or otherwise, has voluntarily acquired citizenship of another country at anytime between January 26, 1950 to December 30, 1955, shall have ceased to be an Indian Citizen.
3. **Deprivation:** Section 10 of the Citizenship Act 1955 empowers the government to deprive a citizen of his citizenship by issuing an order. However please note:

This power may not be used in case of every citizen. It applies only to those, who acquired Indian Citizenship. This might be because of obtaining citizenship on false documentations etc.

Single Citizenship

The Provision of Single Citizenship strengthens the following feature of Indian Constitution?

- A. Federal
- B. Unitary
- C. Both Federal & Unitary
- D. Neither Federal nor Unitary

Please note that the constitution of India has provided for a **single citizenship for the whole country**. Despite of having concepts such as OCI and PIO, which have been merged now, there is NO Dual Citizenship in India. The persons who are in these categories cannot exercise voting rights.

A citizen of India is a citizen of all Indian territories. **This feature is a unitary feature in contrast with the double citizenship prevailing in several countries.** For example in USA, a citizen of US at the same time is also a citizen of California or other states.

Non Resident Indians (NRIs)

A Non Resident Indian is an Indian Citizen, who stays abroad for employment / carrying on business or vacation abroad or stays abroad under circumstances which indicate an uncertain duration of stay abroad are Non Resident Indians.

Persons posted in United Nations and its organizations / offices or deputed abroad by the central or states governments and PSUs (Public Sector Undertakings) on temporary assignments are **also NRIs**.

How a Resident Indian Becomes an NRI?

India citizens who take up **jobs**, sent on **deputation**, take up **higher studies** abroad are regarded Non Resident Indians from the time they take up the job / study / appointment / assignment / deputation abroad.

How an NRI becomes a Resident Indian?

The NRI become resident Indians only when they come back to country for employment / business / vacation / any other purpose indicating indefinite stay.

Are NRIs eligible to Vote?

Yes. There has been a long standing demand for voting rights in India by millions of NRIs. The Government had moved the “Representation of People's (Amendment) Bill” in Rajya Sabha in 2006 proposing amendments to the Representation of People's Act to make provision for voting rights to non-resident Indians. The aims and object of this act was:

There are a large number of citizens of India residing outside India due to their employment, education, etc. They have been persistently demanding for conferring them voting rights. Though the issue of conferring voting rights to the citizens of the absenting from their place of ordinary residence in India owing to their employment, education or otherwise outside India has been receiving the attention of the Government for quite some time, yet the same could not be acceded to owing to the **practical difficulties in enrolling** them in the electoral rolls of the concerned constituency and allowing them to cast their votes outside India within the short span of time available in the election process.

The bill was then sent to a Parliamentary Standing Committee and later it was referred to the GoM (Group of Ministers). On June 23, 2010, Group of Ministers (GoM) cleared the draft bill on the issue, paving way for its consideration by the Union Cabinet. This GoM is headed by Defense Minister A K Antony and the bill is likely to be presented soon before the Cabinet.

What are other rights of NRIs?

The NRI's have been granted the following facilities.

- A. Maintenance of banking accounts in India.
- B. Investments in securities / shares of Indian firms and companies.
- C. Deposits with Indian firms and companies.
- D. Investments in Immovable properties in India (certain rules are their prescribed by RBI).

What is FEMA Definition of an NRI?

Under the FEMA (Foreign Exchange Management Act) 1999, w.e.f. June 1, 2000, an NRI is an Indian Passport Holder who stays outside India on employment, business of vacation or for any other purpose for more than total 182 days (this means not necessarily continued 182 days) in a financial year. The same definition is applicable for Indian Income Tax Act.

Person of Indian Origin PIO

An NRI and PIO are two different terms. NRI means an Indian Citizen who has migrated to another country or a person of Indian Origin who is born outside India or a person of Indian origin who resides outside India permanently. **A person of Indian Origin is NOT a citizen of India.** Anyone who hold passport of **any other country** (with certain exceptions) are **eligible to be PIO** if he / she, at any time held Indian passport or he/she or either of his/her parents or grandparents or great grandparents (**this means 4 generations**) was born in and permanently resident in Undivided India and other territories that became part of India thereafter, provided neither **was at any time a citizen of any of the specified countries.** The PIO came into effect from 15 September 2002.

Following are benefits of PIO Card Holders:

The PIO Cardholders **don't require a Visa as long as PIO Card is valid.** Their stay in India, if extends beyond 6 months requires registration within 30 days. No registration required within 6 months. They get

the same facilities as NRIs in economic, financial and educational fields, they are given all facilities as NRIs in acquiring, holding, transferring and disposal of immovable properties in India (except agricultural fields), they can avail some facilities in banking, housing, education etc.

Are PIOs eligible to Vote?

PIO Card Holders are not eligible to vote and their stay beyond 6 months requires registration.

Comparing NRI and PIO

'NRI' and 'PIO' are the two words used interchangeably, though it is incorrect to do so. A Non- Resident Indian (NRI; Pravasi Bharatiya) is an Indian citizen who has migrated to another country, whereas, a Person of Indian Origin (PIO) is one who is born outside India, or a person of Indian origin who resides permanently outside India.


Other terms with the same meaning are overseas Indian and expatriate Indian. In common usage, this often includes Indian-born individuals (and also people of other nations with Indian ancestry) who have taken the citizenship of other countries. A PIO is usually a person of Indian origin who is not a citizen of India. For the purposes of issuing a PIO Card, the Indian government considers anyone of Indian origin up to four generations removed from India to be a PIO. Spouses of people entitled to a PIO card in their own right can also carry PIO cards. This latter category includes foreign spouses of Indian nationals, regardless of ethnic origin.

PIO Cards exempt holders from many restrictions applying to foreign nationals, such as visa and work permit requirements, along with certain other economic limitations. The Indian government has introduced the Overseas Citizenship of India (OCI) scheme also known as Dual Citizenship operational from 2nd of December, 2005 to allow a limited form of dual citizenship to PIOs for the first time since independence in 1947. Persons of Indian Origin (PIOs) of certain category as has been specified in the rule book who migrated from India and acquired citizenship of a foreign country other than Pakistan and Bangladesh, are eligible for grant of OCI as long as their home countries allow dual citizenship in some form or the other under their local laws. Persons registered as OCI have however not been given any voting rights, or right to contest elections or right to hold Constitutional Posts.

Overseas Corporate Bodies

These are the overseas companies, partnership firms, trusts, societies and other corporate bodies which are owned by the persons of Indian Nationality or a Non Resident Indian , to the extent of 60%.

Overseas Citizens of India

As we know that Constitution of India under article 11 has vested the power in the parliament to legislate on the matters related to Citizenship. The Citizenship (Amendment) Act 2003 was passed on December 23, 2003. This law permits the People of Indian Origin (PIOs) residing in 16 countries viz. **Australia, Canada, Finland, France, Greece, Ireland, Israel, Italy, The Netherlands, New Zealand, Portugal, Cyprus, Sweden, Switzerland, UK and United states** to have full dual citizenship status. 

The Dual Citizenship allows the person to live in **India indefinitely**. However, dual citizens **have NO voting rights**. They cannot be elected to public Offices. Thus, India does not provide dual citizenship exactly. Please note that they are **NOT entitled to get an Indian passport**.

What are other benefits of Overseas Citizens of India?

1. The registered OCIs have the benefit of **multipurpose lifelong visa** to visit India.
2. They are exempted for reporting the police authorities for any length of stay in India.
3. They have **parity with the NRI's** in financial and economic fields **except in acquisition of Agricultural properties**.

What are the main differences between PIO and OCI?

1. The OCI are entitled to lifelong VISA with free travel to India, the **PIO card is valid for 15 years**.
2. A PIO cardholder is required to register to the Police Authorities if his / her stay extends beyond 6 months (180 days), no requirement for OCI.
3. Under certain conditions, the OCI has right to become Indian Citizen.

Representation of the People (Amendment) Bill, 2010

Parliament on the 30th of August, 2010 approved voting rights for non-resident Indians in elections, with the Lok Sabha adopting the Representation of the People (Amendment) Bill, 2010 and the Rajya Sabha later passing it with a voice vote.

The modalities of bringing the scheme into operation will however be decided in course of time in consultation with the **Election Commission of India**.

There has been a hot debate in the country regarding the usefulness of conferring voting rights in the Indian elections to NRIs.

The Objectives of the Act

Representation of the People (Amendment) Bill, 2010 is a Bill to amend Section 20 of the Representation of the People Act, 1950. It was introduced in Indian Parliament (Rajya Sabha) in 2006. The Bill sought to extend voting rights to NRIs by treating them as ordinarily resident in India for voting purposes. It also sought to provide NRIs the right to contest in elections and become public representatives. After some considerable debates and negotiations on the issue on June 10, 2010 the modified draft of The Representation of the People (Amendment) Bill, 2006 was approved by the Group of Ministers (GoM), Government of India and subsequently cleared by the Union Cabinet for introduction in the monsoon session of the Parliament. The modified 2010 'version' bill was moved by Law Minister M. Veerappa Moily in the Lok Sabha on behalf of the Government to fulfill a long standing demand of NRIs and an assurance by the government earlier to provide voting rights to Indian citizens living abroad.

The bill was passed by the Parliament on the 30th of August, 2010 by the Rajya Sabha approving the bill with a voice vote. The Representation of the People (Amendment) Bill, 2010 *seeks to provide that every citizen of India whose name is not included in the electoral roll and who has not acquired the citizenship of any other country and who is absenting from his place of ordinary residence in India owing to his conditions such as employment, education, shall be entitled to have his name registered in the electoral roll in the constituency in which his place of residence is mentioned in his passport.*

- Earlier the NRIs were barred under Section 19 of the Representation of the People's Act, 1950, if they remained outside India for six months for whatever reasons.
- The government has through the Amendment Bill inserted sub-section 1AA under Section 20 to confer voting rights on the NRIs.
- The bill says that the central government, after consulting with the Election Commission of India, will specify the time within which nonresident Indians shall be registered in the electoral rolls and the procedure to do so.
- The bill is silent on the rights of these NRIs to contest elections.
- As of now, a candidate has to be registered as a voter in a constituency to be able to stand for elections.
- The Law Minister however, was himself quoted to clarify that no such right is being intended to be conferred on the NRIs through the bill.

No provision for Absentee Voting.

- It is reported widely in the media that the Government is contemplating that the NRIs be allowed to exercise their vote only if they are physically present in their respective constituencies at the time of elections. This does not offer a practical solution to the manner of affecting the voting rights of NRIs.
- In effect, it would practically serve as a deterrent against the exercise of the right to vote by the NRIs

- Government had expressed optimism that the NRIs could in all probability vote in the general elections to be held in 2014.

Points In Favor of granting Voting Rights to NRI's

- ✓ There is a strong aspiration among the NRIs to come closer to their mother land by being able to exercise voting rights.
- ✓ The Government establishment, many of the political parties and the people too support the move. The reasons forwarded in support of granting of voting rights to NRIs are: It is the inherent and sovereign right and duty of every citizen to choose his / her representatives to serve the public. In a changing world, political participation is increasingly delinked from territorial location.
- ✓ Most countries extend franchise to its citizens residing abroad. Several countries facilitate exercise of franchise through postal ballots (US, Spain, Italy, Portugal, Canada and UK) or at embassies and consulates (Poland, Lithuania, Ukraine, Colombia, Venezuela, Peru, France, Russia, Sweden, Philippines, Japan, Dominican Republic and Spain), or through internet voting (France).
- ✓ A whole lot of the NRI community is seriously concerned about the state of affairs in India. Regardless of which country they may be residing in now, they may one day have to return to their homeland. They also have several members of family who reside in India. They have investments in India. It is their homeland, just because they don't live in India does not make them non- Indians. NRIs have always played a pivotal role in shaping modern India.
- ✓ Great leaders and freedom fighters like Gandhi, Nehru and Ambedkar were NRIs, at some point of their lives, who've led their country towards freedom and beyond.
- ✓ NRI scholars have been bringing accolade to their home country over and over again. Every one of these people have something in common - love for their motherland. They've always aspired to see India as a great nation with every citizen realizing their dream taking our nation ahead globally by leaps and bounds. Also, their important economic contribution to the nation cannot be ignored.
- ✓ The NRIs put forward the argument that, a whole lot of resident Indians who have the voting right don't use it. That's the reason why voter turnout during general elections is so poor compared to developed countries.
- ✓ The government is chosen by resident Indians so the blame of choosing corrupt leaders falls on their shoulders. Resident Indians, it can be said, enjoy the so called 'benefits' of citizenship, have all the rights and still shy away from their duties. They are now being popularly described as RNIs, 'Resident Non-Indians', because though they live in India, they don't fulfill their duties as an Indian.
- ✓ NRIs are also citizens of India and should therefore be treated as equals to resident Indians. The political scene of the nation affects them too and they have a right to decide which party, according to them, would serve the nation better.
- ✓ There will always be people in both the resident as well as NRI groups who will not fulfill their duties as Indians (voting) but we cannot and should not deny this right to those who are true patriots and care for their country, regardless of their residential status. There are already plenty of religions and castes and states dividing our country, we do not need differences in rights based on residential status to take further toll on national unity.

Points Against granting voting rights to NRIs

- ✓ When someone isn't even staying in the country, why they should be able to sway election results. NRIs don't face the issues that common resident Indians face on a day to day basis and they don't have to suffer the power outages, water crisis, bad roads and poor infrastructure, corruption, riots and many such social illnesses that haunt the resident Indians.
- ✓ NRIs don't even pay tax. They are the ones who have left the country for the sake of a hefty paycheck. They are the 'deserters' who would rather serve another country than stay in their own and face its problems head on.
- ✓ So why should it matter which political party the NRIs want to vote into power. Besides, they are barely aware of the political scenario in India and depend on skewed, second hand reports to formulate their opinions, so their voting judgment cannot be relied upon anyway.

- ✓ There are also doubts expressed regarding the actual turnout of the NRIs in general elections need they come to India and vote. If the NRI voter turnout is dismally low, it will entirely defeat the motives behind the move.
- ✓ Supreme Court's Stand The apex Court in July, 2010 refused to entertain a petition seeking conferment of voting rights on the NRIs. The Court categorically said that it will not entertain PILs regarding policy matters.
- ✓ This was more so because the 2006 Bill was still pending with the Government and the Court stated that it is for the Government to decide whether to confer such rights upon the NRIs or not.

OCI and PIO cards merged

On the eve of the 9th Pravasi Bharatiya Diwas 2011, the Government has announced to merge the Overseas Citizen of India (OCI) and the Persons of Indian Origin (PIO) cards into a single facility to simplify visa-free entry and participation of Indian diaspora in business and other activities in India. Further, the Government has also decided to extend the facility of the Indian Community Welfare Fund to all the Indian Missions from the current 42. The Government has decided to establish new Indian cultural centres in the US, anada, Saudi Arabia, France and Australia.

Reason:

OCI and PIO cards to facilitate visa-free travel of NRIs and Indian Origin people to India as well as to provide them rights of residency and participation in business and educational activities. A PIO card holder does not require a visa to visit India and the card is valid for 15 years. A PIO card holder enjoys several economic and educational benefits. On the other hand, the OCI card is a kind of lifelong visa and any India origin person can apply for it if his host country allows dual citizenship.

Implications:

This will encourage the investment of the PIOs (Indians who have shifted migrated permanently to other countries over centuries) and definitely aid in the development of India. Making visits easier, the single facility will also ensure those certain groups of people find their participation in various activities in India, including investment in business more accessible.

Background of the Illegal Bangladeshi Issue in Assam

We understand that Article 6, the Constitution of India has made a provision that a person, who came to the India from the territory then included in Pakistan and whose parents or grandparents were born in Undivided India, would be treated as an Indian citizen.

- ✓ However, to acquire citizenship such a person should migrate to India before July 19, 1948.

The article gives a rider. If any other person had come to India before six months of the commencement of the Constitution, in order to be treated as Indian citizen, he or she must get himself/herself registered as an Indian citizen with the prescribed authorities in the manner. Since, the Constitution was enforced with effect from January 26, 1950; any person who came to India, the last date should be before July 26, 1949 at the latest. So there are two cut-off dates, July 19, 1948 without application and July 26, 1949 with application, for acquiring Indian citizenship.

The Illegal Migrants (Determination by Tribunal) (IMDT) Act 1983 which was enacted during Indira Gandhi's time, described the procedures to detect illegal immigrants (from Bangladesh) and expel them from Assam. The Act was pushed through mainly on the grounds that it provided special protections against undue harassment to the "minorities" that were affected by the Assam Agitation.

It was applicable to state of Assam only whereas in other states, detection of foreigners is done under The Foreigners Act, 1946. It was struck down by the Supreme Court of India in 2005, this infamous Act indirectly helped the unabated illegal influx from Bangladesh resulting in abnormal rise in the number of voters.

In 2004, the Citizenship Act was amended. By this act Section 6-A was incorporated to the act. This section is only applicable to Assam.

The basis of this amendment was Assam Accord which was a tripartite agreement between All Assam Students' Union (AASU) and the All Assam Gana Sangram Parishad with the Union Government and the Assam Government on August 15, 1985 in New Delhi. It was signed in the presence of the then prime minister Late Sh. Rajiv Gandhi.

The Assam Accord states that people whose names have appeared in the electoral lists from the period of 1952 to 1971 are Indian citizens. People who have come to India after 1971 should leave the country.

Thus, Assam Accord overrode Article 6 of the Constitution and made the cut-off year for migrants from erstwhile Pakistan to Assam March 25, 1971.

The Citizenship (Amendment) Act 2004 provided via section 6A (3) that every person of Indian Origin who came to Assam on or after the last day of January 1966, but before the 25th March 1971 (Please note that Bangladesh was created on March 26, 1971) from the specified territory (means the territories in Bangladesh before commencement of Citizenship (Amendment) Act 1985) and has since date of his / her entry into Assam been ordinary resident of Assam and has been detected as a Foreigner shall register himself in accordance with the rules made by the Central Government in this behalf with such an authority.

Its worth note that Lakhs of people have migrated from Bangladesh (then Pakistan) to Assam during more than 2 decades (1948 till 1971) and all that is done by the government is looked as a Bangladeshi Appeasement Policy of the Government. This has raised a danger for the residents of Assam to be minority in their own land because of these Lakhs of Bangladeshi Immigrants.

The Assamese people facing this threat even accepted the 1971 deadline.

A GoM led by Assam Accord implementation minister Bhumidhar Barman, decided in 2007 that the NRC (National Register of Citizens) of 1950 and voters' list of 1971 would be the basis for the updating process.

The legal experts say that there are serious complications in updating the NRC as per the Citizenship Act. But still the people of Assam have welcomed this decision. The general feeling is that something should be done instead of doing nothing.

A revision of the NRC of 1951 was absolutely essential to clean up the electoral roll of the State. However on August 2, 2010, the All Assam Minority Students Union (AAMSU) resorted to vandalism to stop the pilot project for revision of the NRC being carried out in Barpeta revenue circle in Barpeta district and Chayagaon revenue circle in Kamrup district. The protestors said they wanted the 1951 NRC to be revised only in terms of the electoral roll of 1971.

The state government scrapped the pilot project on following days.

Some Questions Related to Citizenship**1. What is illegal migrant?**

Illegal migrant is a foreigner who has entered India without a valid passport or other travel documents. A foreigner who enters India with valid passport and other documents but lives in India beyond the permitted time is also an illegal migrant.

2. Which section of the Citizenship act 1955 defines OCI?

Section 7A

3. What was the objective of Citizenship (Amendment) Act 2005?

To expand the scope of grant of Overseas Citizenship of India to persons of Indian Origin of all countries except Pakistan and Bangladesh.

4. Are Nationality and Citizenship interchangeable words?

In general sense Yes, but in legal sense No. The nationality and Citizenship are not interchangeable words and this was held by the Supreme Court in State Trading Corporation of India v/s Commercial Tax officer (1963) Case. The citizenship act and constitution are completely exhaustive of the citizenship of India and these citizens can be only Natural Persons. A corporation may be a national of the country for the purposes of international law but it does not make them Citizens of the country for the purposes of Municipal law and Constitution. Citizenship also has nothing to do with a juristic person. Person means a natural person and not a legalistic entity.

5. By which act, the period of minimum residence in India for the persons registered as Overseas Citizens of India to acquire Citizenship was reduced from 2 years to 1 year?

The Citizenship (Amendment) Act 2005