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Chapter 1 – Historical Background

The British came to India in 1600

↳ As Traders → व्यापारी

in the form of **East India Company**

Exclusive **Trading Rights** in India.

↳ Charter given by Queen Elizabeth I.

165 yrs → Traders

In 1765, the Company obtained the '**diwani**'

Revenue rights of Bihar, Bengal & Orissa.

Started career as 'Territorial Power'

'-शैक्षणिक शक्ति'

In 1858, in the wake of the '**sepoy mutiny**'

Impossible to work as only being traders or territorial powers

[EIC was unable to control]

British Crown assumed **direct responsibility** for the governance of India.

This continued till 15 Aug 1947.

1773-1858: COMPANY RULE [85 yrs]

1858-1947: CROWN RULE [89 yrs]

With Independence, came the need of a Constitution.

→ संविधान

MN Roy [Communist Movement] →

suggested in 1934

Constituent Assembly was formed in 1946.

26 Jan 1950 came into effect.

Certain events in British India influenced our Constitution & Polity

↳ Chronological Order (क्रम वार)

The Company Rule (1773-1858)

Regulating Act of 1773

Significance:

- It was the **first step** taken by the British Government to control and regulate the affairs of the East India Company in India
- It recognised, for the first time, the **political and administrative functions** of the Company
- It laid the **foundations of central administration** in India.

Features: → more power subordinate to
Governors of Bombay & Madras →
Governor of Bengal → 'Governor-General of Bengal'
4-members executive council to assist

First such Governor: LORD WARREN HASTINGS

Establishment of a **Supreme Court at Calcutta** → in 1774
1 Chief Justice + 3 Other Judges

Prohibited the servants of the Company from engaging in any **private trade** or **accepting presents** or **bribes** from the natives.

Strengthened the **control of the British Government** over the Company

Court of Directors → to report on its revenue, civil & military affairs in India.

To rectify the defects of the **Regulating Act of 1773**, the British Parliament passed the **Amending Act of 1781**, also known as the **Act of Settlement**.

Circumstances that led to the passing of Act of Settlement

- Some serious issues with the **administration of the Warren Hastings** were there.

Patna Case [Criticism of Warren Hastings]
Cosijurah Case
Nand Kumar Case
→ was hanged

- There was a **big tussle** between the **Supreme Court and Governor-General** in Council which disturbed the balance of administration to a great extent.
- There was **interference in the personal laws** of the communities which had agitated the people.

1777 → Directors of Company complaint against Supreme Court → difficult to run the administration

TOUCHET COMMITTEE: To inquire about administration of Bihar, Bengal & Orissa.

Pitt's India Act of 1784

Significance:

- Company's territories in India were for the first time called the '**British possessions in India**'
- The British Government was given the **supreme control over Company's affairs** and its administration in India.

Features:

- **Distinguished** between the **commercial and political functions** of the Company.
- Allowed the **Court of Directors** to manage the **commercial affairs** but created a new body called **Board of Control** to manage the political affairs.

established a system of
'**DOUBLE GOVERNMENT**'

- Empowered the **Board of Control to supervise and direct** all operations of the **civil and military government or revenues** of the British possessions in India.

Act of 1786

Lord Cornwallis → Governor-General of Bengal.

He placed two demands to accept that post,

- He should be given **power to override** the decision of his **council** in special cases.
- He would also be the **Commander-in-Chief**.

Accordingly, the Act of 1786 was enacted to make both the provisions.

Charter Act of 1793

Features:

- It **extended the overriding power** given to Lord Cornwallis over his council, to all future Governor-Generals and Governors of Presidencies.
- It gave the Governor-General **more powers and control** over the governments of the subordinate Presidencies of Bombay and Madras.
- It **extended the trade monopoly** of the Company in India for another period of twenty years.
- It provided that **the Commander-in-Chief was not to be a member of the Governor-General's council**, unless he was so appointed.
- It laid down that the members of the Board of Control and their staff were, henceforth, to be **paid out of the Indian revenues**.

Charter Act of 1813

Features:

- It **abolished the trade monopoly** of the company in India i.e., the Indian trade was thrown open to all British merchants.

Company's monopoly over Trade in Tea & Trade with China continued.

- It allowed the **Christian missionaries** to come to India for the purpose of enlightening the people.
- It provided for the **spread of western education** among the inhabitants of the British territories in India.
- It authorised the Local Governments in India to **impose taxes** on persons.

Persons not paying the taxes could be punished.

Charter Act of 1833

Final step towards centralisation in British India

↳ First step → Regulating Act of 1773
↳ laid the foundations of centralisation.

Features:

- Governor-General of Bengal → Governor-General of India

↳ All civil & military powers

→ Centralisation
Govt. of India → authority over entire territorial area possessed by British in India.

LORD WILLIAM BENTINCK
(1st Governor General of India)

- Deprived the governor of Bombay and Madras of their legislative powers.

Governor General of India → exclusive legislative powers for entire British India.

Laws made under Previous Acts:
Regulations [नियामक कानून]

Laws made under This Act:
Acts [आधिनियम]

- Ended the activities of the East India Company as a **commercial body** pure administrative body

Company's Territories in India → 'in trust for His Majesty, his Heirs & successors.

- (Attempted) to introduce a system of open competition for selection of **civil servants**

Only attempted

Indians should not be debarred from holding any office.

This provision negated after opposition from 'Court of Directors'

Charter Act of 1853

Features:

- Separated, for the first time, the **legislative and executive functions** of the Governor-General's council.

added 6 new members to the Council.
Legislative Councillors

Separate Governor General's Legislative Council → Indian Legislative Council

- Introduced an **open competition system** of selection and recruitment of civil servants.

Macaulay Committee → Committee on Indian Civil Services → 1854.

- **Extended the Company's rule** and allowed it to retain the possession of Indian territories on trust for the British Crown.

Period of extension not specified

Company's rule can be terminated at any time

- Introduced, for the first time, **local representation** in the Indian (Central) Legislative Council.

Out of 6 new members,

4 were appointed by the local governments of Madras, Bombay, Bengal & Agra.

The Crown Rule (1858-1947)

Government of India Act, 1858

In the wake of 'Revolt of 1857' Act for the Good Government of India - भारत के शासन को अच्छे बनाने वाला अधिनियम

Abolished EIC.

Transferred powers of govt., territories & revenues to the British Crown.

Features:

- Provided that India henceforth was to be **governed by, and in the name of, Her Majesty.**

Governor General → Viceroy of India of India

LORD CANNING
(1st Viceroy)

Direct Representative of British Crown in India

- Ended the system of **double government**.

Abolished Board of Control & Court of Directors.

- Created a new office, **Secretary of State** for India, vested with complete authority and control over Indian administration.

Member of British Cabinet
Responsible to the British Parliament

- Established a **15-member Council** of India to assist the secretary of state for India.

Chairman of Council
advisory body

- Constituted the secretary of state-in-council as a **body corporate**.

निगमित निकाय

Capable of suing and being sued in India and England.

Limitations of the Act:

- Largely confined to the improvement of the administrative machinery.

by which Indian govt. was to be supervised and controlled in England

- **Did not alter in any substantial way** the system of government prevailing in India.

After the Revolt of 1857.

British govt. felt the necessity of seeking the cooperation of the Indians in the country's administration.

To pursue this policy,

3 acts were enacted

Indian Council Acts of 1861,

1892 and 1909.

Indian Councils Act, 1861

Features:

- **Beginning of representative institutions** by associating Indians with the law-making process.

Viceroy → nominate Indians to his council

- Lord Canning
- Raja of Benaras
- Maharaja of Patiala
- Sir Dinkar Rao

Indian politician from Bombay Presidency, remained loyal to British during 1857 revolt along with Jijaji Rao Sindhia of Gwalior.
1843-1886

- Initiated the process of **decentralisation** by restoring the legislative powers to the Bombay and Madras Presidencies.

reversed the Centralising tendency

Started from Regulating Act of 1773 and reached its climax under Charter Act of 1833.

- Provided for the establishment of **new legislative councils** for Bengal, North-Western Frontier Province (NWFP) and Punjab
1862 1886
1897

- Gave a recognition to the **'portfolio' system**.

Introduced by Lord Canning in 1859

Members of Viceroy's council → made in-charge of one or more dept. → final orders issue on behalf of Council.

- Empowered the Viceroy to issue ordinances, without the concurrence of the legislative council.
during emergency *life 6 months*

Indian Councils Act, 1892

Features:

- Increased the **number of additional (non-official)** members in the Central and provincial legislative councils.
official majority was maintained.
- Increased the **functions of legislative councils**.
power to discuss budget and address questions to the executive.
- Provided for the **nomination** of some non-official members of the
 - Central Legislative Council
by viceroy on recommendation of Provincial Legislative Councils and Bengal Chamber of Commerce.
 - Provincial legislative councils
by Governors on recommendation of district boards, municipalities, universities, trade associations, zamindars and chambers.

This act made a limited & indirect provision for the use of election. →
non-official seats
 ↓
 CLC & PLC *Word not used*
 'NOMINATION'

Indian Councils Act, 1909

also known as Morley-Minto Reforms

↓ ↓
 Secretary of State Viceroy of India

Features:

- Considerably **increased** the size of the legislative councils, both Central and provincial.
- From 16 to 60
- official majority
- not uniform*
- non-official majority*
 ↓
 enlarged deliberative functions
 ↓
ask supplementary questions, move resolution on budget
- Provided for the **association of Indians** with the executive Councils of the Viceroy and Governors.
Satyendra Prasad Sinha → 1st Indian Law member
- Introduced a system of **communal representation** for Muslims by accepting the concept of 'separate electorate'.
 ↓
Muslim members → elected only by Muslim voters.
 Lord Minto → 'Father of Communal Electorate'

Government of India Act, 1919

Aug 20, 1917 → British govt. declare its objective was gradual introduction of responsible govt. in India.

GoI Act 1919 → came into effect in 1921.

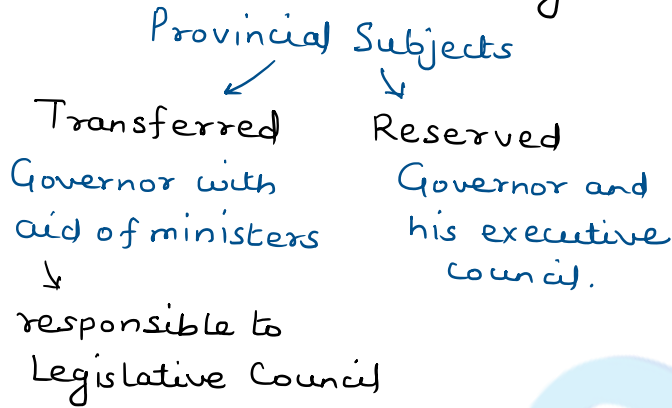
MONTAGU - CHELMSFORD Reforms
 ↓ ↓
 Secretary of State Viceroy of India

Features:

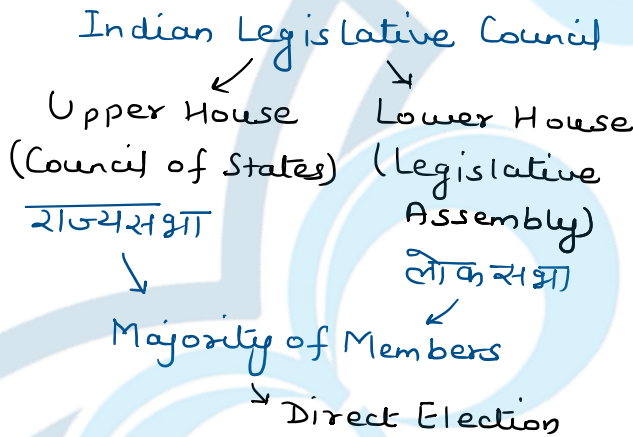
- **Relaxed the central control** over the provinces by demarcating and separating the central and provincial subjects. **'DYARCHY'**
↓
unsuccessful

Respective list of subjects → make laws

Structure of Govt. → Centralising & Unitary



- Introduced, for the first time, **bicameralism** and direct elections in the country.



- Required that the **three of the six members** of the Viceroy's executive Council were **to be Indian**.
- **Extended the principle of communal representation** by providing separate electorates.

Sikhs, Indian Christians, Anglo-Indians and Europeans

- Granted **franchise to a limited number** of people.
based on property, tax or education

- Provided for the **establishment of a public service commission**.

Central Public Service Commission in 1926 for recruiting Civil Servants

- Separated **provincial budgets** from the Central budget.
↓
provincial legislature

provided for appointment of a Statutory commission to inquire into and report its working after 10 years of coming into force.

Simon Commission

In November 1927, the British Government announced the appointment a **seven-member statutory commission** under the chairmanship of **Sir John Simon** to report on the condition of India under its new Constitutional reforms.

All members were British and hence all parties boycotted it.

The commission submitted its report in 1930 and recommended

- abolition of dyarchy
- extension of responsible government in the provinces
- establishment of a federation of British India and princely states
- continuation of communal electorate

3 Round Table Conferences were held.

- British Govt. Represent
- British India "
- Princely States "

Recommendations incorporated in GOI Act of 1935.

Communal Award *Ramsay McDonald*

In August 1932, the British Prime Minister announced a scheme of representation of the minorities. → Communal Awards

The award not only **continued separate electorates for the Muslims, Sikhs, Indian Christians, Anglo-Indians and Europeans** but also extended it to the **depressed classes** (scheduled castes).

Gandhiji opposed and took fast unto death in Yervada Jail (Poona) to get award modified.

At last, there was an agreement between the leaders of the Congress and the depressed classes.

Poona Pact

- Retained Hindu Joint Electorate
- Reserved seats → Depressed Classes

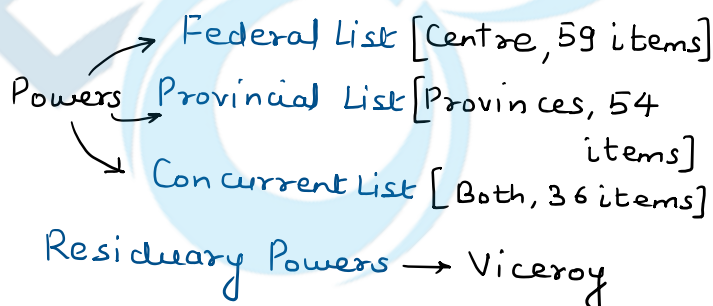
Government of India Act of 1935

Second Milestone towards completely responsible govt. in India.

It was a lengthy and detailed document having **321 Sections and 10 Schedules**.

Features:

- Provided for the establishment of an **All-India Federation** consisting of provinces and princely states as units.



Federation never came into being as the princely states did not join it.

- **Abolished dyarchy** in the provinces and introduced 'provincial autonomy'

allowed to act as autonomous units of administration in their defined spheres.

- Introduced **responsible governments in provinces**.

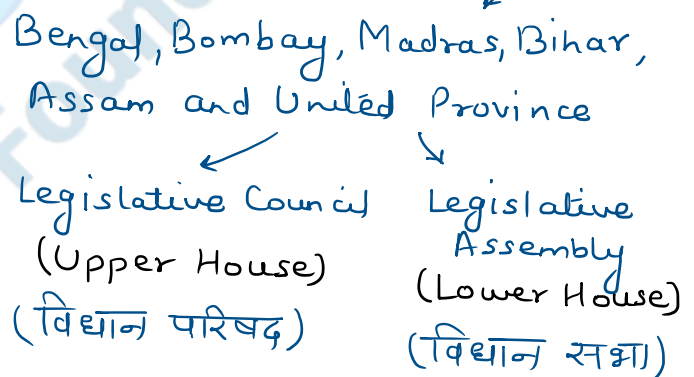
*Governor act with advice of ministers responsible to provincial legislature came into effect → 1937
Discontinue → 1939*

- Provided for the **adoption of dyarchy at the Centre**.

*Reserved Subjects
Federal Subjects
Transferred Subjects*

But, provision did not come into operation at all.

- Introduced **bicameralism** in six out of eleven provinces.



- Further **extended the principle of communal representation**.

Separate electorates for SCs, Women and Labourers [Workers]

- Abolished the Council of India. → 15 members

GoI Act 1858

- **Extended franchise**
10% of total population got voting rights

- Provided for the establishment of a **Reserve Bank of India**
to control currency and credit of the country

- Provided for the establishment of **Public Service Commissions**

Federal PSC, Provincial PSC, Joint PSC for two or more provinces.

- Provided for the establishment of a **Federal Court**

Setup in 1937. Clement Atlee

On February 20, 1947, the British **Prime Minister** declared that the British rule in India would end by June 30, 1948.

After this, power will be transferred to responsible Indian Hands.

Muslim League agitated after this announcement and demanded partition of the country.

On June 3, 1947, the British Government made it clear that any Constitution framed by the **Constituent Assembly of India (formed in 1946)** cannot apply to those parts of the country which were unwilling to accept it.

June 3, 1947, Viceroy → Partition Plan
↓
Mountbatten Plan

Plan accepted by Muslim League and Congress.

Indian Independence Act of 1947

Features:

- Ended the British rule in India. declared India as Independent and Sovereign State from Aug 15, 1947.

- Provided for the **partition of India** and creation of two independent dominions of India and Pakistan.

with right to secede from British Commonwealth.

- Abolished the **office of viceroy**.

For both dominions, Governor General

appointed by British King

on advice of Dominion Cabinet

- Empowered the Constituent Assemblies of the two dominions to frame and adopt any constitution for their respective nations.

and to repeal any act of British Parliament including Independence Act itself.

- Proclaimed the lapse of British paramountcy over the Indian princely states and granted them freedom.

Indian Dominion to join Pakistan Dominion or Remain Independent

- Provided for the governance of each of the dominions and the provinces by the Government of India Act of 1935, till the new Constitutions were framed.

Allowed to make modifications in it.

At midnight of 14-15 Aug 1947, British rule came to an end.

Power transferred to two new Independent Dominions of India and Pakistan.

India

First Governor-General: **Lord Mountbatten**

First PM: **Jawaharlal Nehru**

Constituent Assembly formed in **1946**

Later it became **Parliament**

Pakistan

First Governor-General: **MA Jinnah**

First PM: **Liaquat Ali Khan**



Chapter 9 – Fundamental Rights

The Fundamental Rights are enshrined in Part III of the Constitution.

→ USA Constitution
Articles 12 to 35 [BILL OF RIGHTS]

Part III of the Constitution is rightly described as the Magna Carta of India.

↓
Charter of Rights
↓
issued by King John of England in 1215.

→ First written document related to FRs

- The Fundamental Rights are guaranteed by the Constitution to all persons without any discrimination.
- They uphold the equality of all individuals, the dignity of the individual, the larger public interest and unity of the nation.
- The Fundamental Rights are meant for promoting the ideal of **political democracy**.
- They prevent the establishment of an authoritarian and despotic rule in the country, and protect the liberties and freedoms of the people against the invasion by the State.

Why Fundamental Rights are referred to as Fundamental?

* They are guaranteed and protected by the Constitution
↓
Fundamental Law

* They are essential for all round development of the individuals.

Originally, the Constitution provided for **seven** Fundamental Rights

1. Right to equality [Art. 14-18]
2. Right to freedom [Art. 19-22]
3. Right against exploitation [Art. 23-24]

4. Right to freedom of religion [Art. 25-28]
5. Cultural and educational rights [Art 29-30]
6. Right to property [Article 31]
7. Right to constitutional remedies [Article 32]

made a legal right
under Art. 300A

← deleted from FRs by 44th Amendment Act, 1978

Features of Fundamental Rights

- Some of them are available only to the citizens while others are available to all persons. → citizens, foreigners or legal persons like companies
- They are not absolute but qualified. The state can impose reasonable restrictions on them. decided by court
- Some of them are negative in character, that is, place limitations on the authority of the State, while others are positive in nature, conferring certain privileges on the persons.
- They are justiciable, allowing persons to move the courts for their enforcement, if and when they are violated.
- They are defended and guaranteed by the Supreme Court.

↓
Directly Supreme Court can be approached.

- They are not sacrosanct or permanent.

Parliament can curtail or repeal them but only by Constitutional Amendment Act.

BASIC STRUCTURE should not be affected.

- They can be suspended during the operation of a National Emergency. expect Articles 20 & 21.
Article 352

Rights under Article 19 can be suspended only when emergency is declared on the ground of war or external aggression and not on the ground of armed rebellion.

Definition of State

Article 12 has defined the term 'State' for the purposes of Part III.

According to it, the State includes the following:

- Government and Parliament of India, that is, executive and legislative organs of the Union government.
- Government and legislature of states, that is, executive and legislative organs of state government.
- All local authorities, that is, municipalities, panchayats, district boards, improvement trusts, etc.
- All other authorities, that is, statutory or non-statutory authorities like LIC, ONGC, SAIL, etc.

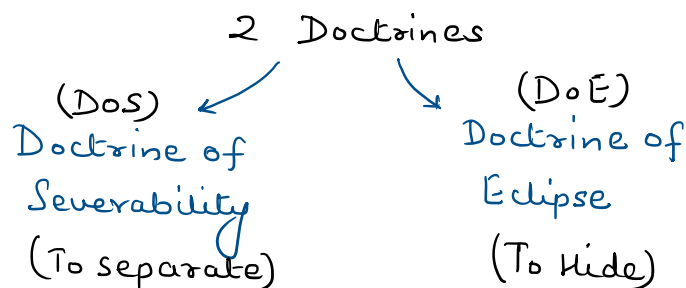
Laws inconsistent with Fundamental Rights

Article 13 declares that all laws that are inconsistent with or in derogation of any of the fundamental rights shall be void.

Article 13(1) deals with Pre-Constitutional Laws.

Laws which are not in line with Fundamental Rights will be treated void.

How to check validity of Law?

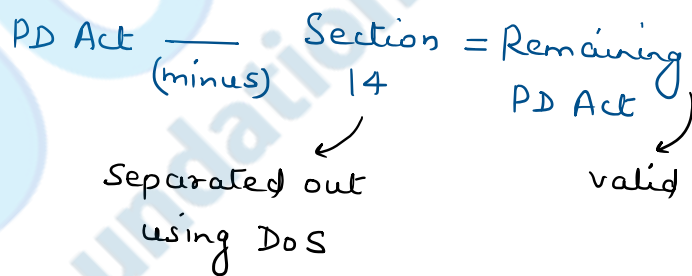


Doctrine of Severability

All those pre-constitutional laws which respect Fundamental Rights will be valid and rest all will be separated.

A K Gopalan v. State of Madras (1950)

Section 14 of PD Act was challenged.



Doctrine of Eclipse

Laws inconsistent with FRs will prevail. They will only become inoperative.

Bhikaji Narain Dhakras v. State of MP
Berar Motor Vehicle Act 1947 was challenged.

State govt. to take complete control of Motor Transport Business

First DoS was applied and inconsistent laws were separated, then separated laws were made inoperative, they can become operative later on.

Article 13(2) deals with Post-Constitutional Laws.

State is prohibited to make such laws which violates FRs.

State of Gujarat v. Ambica Mills
1974

Labour Welfare Fund was challenged.

Some sections were against FRs.

As in this case, the recipient was a company for which some FRs are non-existing.

SC said, laws violating FRs will be inoperative against only them for whom these FRs exist.

The term 'law' in Article 13 includes:

- Permanent laws enacted by the Parliament or the state legislatures
- Temporary laws like ordinances issued by the president or the state governors
- Statutory instruments in the nature of delegated legislation (executive legislation) like order, bye-law, rule, regulation or notification

Article 13(4) → 24th Amendment Act, 1971

Article 13 declares that a **constitutional amendment** is not a law and hence cannot be challenged.

Supreme Court in Kesavananda

Bharti v. State of Kerala (1973)

held that if amendments violates the 'BASIC STRUCTURE', then they can be challenged and declared as void.

Right to Equality

Rule of Law → A.V. Dicey [British Jurist]

- Absence of arbitrary power, that is, no man can be punished except for a breach of law.
- No man is above the law, but every man, whatever be his rank or condition, is subject to the ordinary law of the realm and amenable to the jurisdiction of the ordinary tribunals.
- Every official from the Prime Minister down to a constable or a collector of taxes, is under the same responsibility for every act done without legal justification as any other citizen.

Rule of Law → Supremacy of Law

Equality before Law and Equal Protection of Laws

State shall not deny to any person **equality before the law** or the **equal protection of the laws** within the territory of India.

Available to citizens as well as foreigners.

'Person' includes Legal Persons

- * Statutory Corporations
- * Companies
- * Registered Societies

'Equality before law' → English Law Concept

- absence of any special privileges in favour of any person.
- equal subjection of all persons to the ordinary law of the land administered by ordinary law courts.
- no person (whether rich or poor, high or low, official or non-official) is above the law.

Lady Justice → blindfolded
All are Equal

'Equal protection of the laws' ^{American Law Concept}

- equality of treatment under equal circumstances.
- similar application of the same laws to all persons who are similarly situated.
- like should be treated alike without any discrimination.

Intelligible Differentia

Classification should be based on logic.

Rational Nexus

Nexus between classification and

End Result must be based on reason or logic.

Exceptions to Equality

The rule of equality before law is not absolute and there are constitutional and other exceptions to it.

- The President of India and the Governor of States enjoy the following immunities. ^{Article 361}
 - The President or the Governor is not answerable to any court for the exercise and performance of the powers and duties of his office.
 - No criminal proceedings shall be instituted or continued against the President or the Governor in any court during his term of office.
 - No process for the arrest or imprisonment of the President or the Governor shall be issued from any court during his term of office.
 - No civil proceedings in which relief is claimed against the President, or the Governor of a State, shall be instituted during his term of office in any court in respect of any act done by him in his personal capacity, whether before or after he entered upon his office as President, or as Governor of such State, until the expiration of two months next after notice in writing has been delivered

to the President or the Governor, or left at his office stating the nature of the proceedings, the cause of action therefore, the name, description and place of residence of the party by whom such proceedings are to be instituted and the relief which he claims.

- No person shall be liable to any civil or criminal proceedings in any court in respect of the publication in a newspaper (or by radio or television) of a substantially true report of any proceedings of either House of Parliament or either House of the Legislature of a State. ^{Article 361 A}
- No member of Parliament shall be liable to any proceedings in any court in respect of anything said or any vote given by him in Parliament or any committee thereof. ^{Article 105}
- No member of the Legislature of a state shall be liable to any proceedings in any court in respect of anything said or any vote given by him in the Legislature or any committee thereof. ^{Article 194}
- The foreign sovereigns (rulers), ambassadors and diplomats enjoy immunity from criminal and civil proceedings.
- The UNO and its agencies enjoy the diplomatic immunity.

Prohibition of Discrimination on Certain Grounds

- ^{Article 15(1)} Article 15 provides that the State shall not discriminate against any citizen on grounds only of religion, race, caste, sex or place of birth.

Discrimination only on these grounds is invalid.

^{Article 15(2)}
- Article 15 says that no citizen shall be subjected to any disability, liability, restriction or condition on grounds only of religion, race, caste, sex, or place of birth with regard to

→ Article 16(2)
No citizen can be discriminated against or be ineligible for any employment or office under the State on grounds of only religion, race, caste, sex, descent, place of birth or residence.

→ Article 16(3)
Parliament can prescribe residence as a condition for certain employment or appointment in a state or union territory or local authority or other authority.

Andhra Pradesh, Himachal Pradesh,
→ Manipur, Tripura, Telangana

As the Public Employment (Requirement as to Residence) Act of 1957 expired in 1974, there is no such provision for any state except Andhra Pradesh and Telangana.

→ Article 16(4)
The State can provide for reservation of appointments or posts in favour of any backward class that is not adequately represented in the state services.

Reservation under Article 16(4) applies to ?

M R Balaji v. State of Mysore (1963)

16(4) will be applicable on those who fulfil 2 conditions

* person should be socially and educationally backward

* Inadequate representation of this backward class in State's services.

T. Devadasan v. Union of India (1964)
[Carry Forward Rule Case]
Government's memorandum of Instruction [1955]

In a particular year, Total seats = 100
Reserve for Class A = 25, but only 15 seats get filled, remaining

10 seats → unreserved

10 seats added to next year quota of reservation.

77th Amendment Act, 1995

16(4A)

Enables to continue reservation in Promotions for SC & ST.

81st Amendment Act, 2000

16(4B)

Ended 50% ceiling on reservation for SC and ST (Backlog vacancy)

In 1961,

UPSC → Asst. Superintendant of Central Secretariat Services

Out of 45 seats, on 29 seats SCs and STs were selected.

$\frac{29}{45} \rightarrow 65\%$ Prescribed

(SC → 12%
ST → 5%

8 out of 45

Carry Forward Rule exceeding 50% ceiling limit would be

invalid.

Indra Sawhney v. Union of India (1993)

In 1979, Mandal Commission under

B.P. Mandal to figure out how many SEBC in India.

Submitted

Report in 1980
 ↘
 3743 SEBC
 ↙
 27% reservation

In 1990, VP Singh govt. implemented this recommendation.

In Indira Sawhney case,

- * 27% Reservation → SEBC ✓
 - * Confined to appointment ✓ Promotion X
 - * Ceiling limit of 50% ✓
- ↓
 Can be relaxed under extra ordinary situations

→ Article 16(5)

A law can provide that the incumbent of an office related to religious or denominational institution or a member of its governing body should belong to the particular religion or denomination.

Abolition of Untouchability

Article 17 abolishes 'untouchability' and forbids its practice in any form.

The enforcement of any disability arising out of untouchability shall be an offence punishable in accordance with law.

↓
 Article 35

'Untouchability' is not defined in Constitution and in the Act.

Jai Singh v. Union of India (1977)

→ Raj. HC

Devrajiah v. Padmanab (1958)

↓
 Mysore HC

Not 'Literal and Grammatical Sense'
 'practice as it has developed historically in India'

1955 → Untouchability (Offences) Act

↓
 1965 → Committee on Untouchability
 Economic and Educational Development of SC
 recommendations rename

↓
 1976 → Protection of Civil Rights Act 1955

The act declares the following acts as offences:

- preventing any person from entering any place of public worship or from worshipping therein;
- justifying untouchability on traditional, religious, philosophical or other grounds;
- denying access to any shop, hotel or places of public entertainment;
- insulting a person belonging to scheduled caste on the ground of untouchability;
- refusing to admit persons in hospitals, educational institutions or hostels established for public benefit;
- preaching untouchability directly or indirectly; and
- refusing to sell goods or render services to any person.

The Supreme Court held that the right under Article 17 is available against private individuals and it is the constitutional obligation of the State to take necessary action to ensure that this right is not violated.

People's Union for Democratic Rights v. Union of India (1982)

Chapter 24 – Central Council of Ministers

As the Constitution of India provides for a parliamentary system of government modelled on the British pattern, the council of ministers headed by the prime minister is the real executive authority in our politico-administrative system.

The principles of parliamentary system of government are not detailed in the Constitution, but two Articles (74 and 75) deal with them in a broad, sketchy and general manner.

Article 74 deals with the status of the council of ministers while Article 75 deals with the appointment, tenure, responsibility, qualification, oath and salaries and allowances of the ministers.

Constitutional Provisions

Council of Ministers to aid and advise President

- There shall be a Council of Ministers with the Prime Minister at the head to aid and advise the President who shall, in the exercise of his functions, act in accordance with such advice. However, the President may require the Council of Ministers to reconsider such advice and the President shall act in accordance with the advice tendered after such reconsideration.

Added by 44th AA 1978

- The advice tendered by Ministers to the President shall not be inquired into in any court.

Other Provisions as to Ministers

- The Prime Minister shall be appointed by the President and the other Ministers shall be appointed by the President on the advice of the Prime Minister.

- The total number of ministers, including the Prime Minister, in the Council of Ministers shall not exceed 15% of the total strength of the Lok Sabha. This provision was added by the 91st Amendment Act of 2003.

wef 1-1-2004

- A member of either house of Parliament belonging to any political party who is disqualified on the ground of defection shall also be disqualified to be appointed as a minister. This provision was also added by the 91st Amendment Act of 2003.
- The ministers shall hold office during the pleasure of the President.
- The council of ministers shall be collectively responsible to the Lok Sabha.
- The President shall administer the oaths of office and secrecy to a minister.
- A minister who is not a member of the Parliament (either house) for any period of six consecutive months shall cease to be a minister.
- The salaries and allowances of ministers shall be determined by the Parliament.

Conduct of Business of the Government of India

- All executive action of the Government of India shall be expressed to be taken in the name of the President.
- Orders and other instruments made and executed in the name of the President shall be authenticated in such manner as may be specified in rules to be made by the President.
- Further, the validity of an order or instrument which is so authenticated shall not be called in question on the ground that it is not an order or instrument made or executed by the President.
- The President shall make rules for the more convenient transaction of the business of the Government of India, and for the allocation among Ministers of the said business.

Duties of Prime Minister

It shall be the duty of the Prime Minister

- To communicate to the President all decisions of the Council of Ministers relating

to the administration of the affairs of the Union and proposals for legislation

Article 78(a)

- To furnish such information relating to the administration of the affairs of the Union and proposals for legislation as the President may call for. → Article 78(b)
- If the President so requires, to submit for the consideration of the Council of Ministers any matter on which a decision has been taken by a Minister but which has not been considered by the Council. → Art. 78(c)

Article 88

Rights of Ministers as Respects the Houses

Every minister shall have the right to speak and take part in the proceedings of either House, any joint sitting of the Houses and any Committee of Parliament of which he may be named a member.

But he shall not be entitled to vote.

Nature of Advice by Ministers

Article 74 provides for a council of ministers with the Prime Minister at the head to aid and advise the President in the exercise of his functions.

The 42nd and 44th Constitutional Amendment Acts have made the advice binding on the President.

Further, the nature of advice tendered by ministers to the President cannot be enquired by any court. This provision emphasises the intimate and the confidential relationship between the President and the ministers.

In 1971, the Supreme Court held that 'even after the dissolution of the Lok Sabha, the council of ministers does not cease to hold office. Article 74 is mandatory and, therefore, the president cannot exercise the executive power without the aid and advice of the council of ministers. Any exercise of executive power without the aid and advice will be unconstitutional as being violative of Article 74'.

Again in 1974, the court held that 'wherever the Constitution requires the satisfaction of the President, the satisfaction is not the personal

satisfaction of the President but it is the satisfaction of the council of ministers with whose aid and on whose advice the President exercises his powers and functions.'

Appointment of Ministers

The Prime Minister is appointed by the President, while the other ministers are appointed by the President on the advice of the Prime Minister. This means that the President can appoint only those persons as ministers who are recommended by the Prime minister.

Usually, the members of Parliament, either Lok Sabha or Rajya Sabha, are appointed as ministers. A person who is not a member of either House of Parliament can also be appointed as a minister. But, within six months, he must become a member (either by election or by nomination) of either House of Parliament, otherwise, he ceases to be a minister.

A minister who is a member of one House of Parliament has the right to speak and to take part in the proceedings of the other House also, but he can vote only in the House of which he is a member.

Oath and Salary of Ministers

Before a minister enters upon his office, the president administers to him the oaths of office and secrecy. In his oath of office, the minister swears:

- to bear true faith and allegiance to the Constitution of India,
- to uphold the sovereignty and integrity of India,
- to faithfully and conscientiously discharge the duties of his office, and
- to do right to all manner of people in accordance with the Constitution and the law, without fear or favour, affection or ill will.

In his oath of secrecy, the minister swears that he will not directly or indirectly communicate or reveal to any person(s) any matter that is brought under his consideration or becomes known to him as a Union minister except as may be required for the due discharge of his duties as such minister.

The salaries and allowances of ministers are determined by Parliament from time to time.

The Salaries and Allowances of Ministers Act, 1952, has been passed for this purpose.

A minister gets the salary and allowances that are payable to a member of Parliament.

Additionally, he gets a sumptuary allowance (according to his rank), free accommodation, travelling allowance, medical facilities, etc.

In 2001, the sumptuary allowance for the prime minister was raised from ₹1,500 to ₹3,000 per month, for a cabinet minister from ₹1,000 to ₹2,000 per month, for a minister of state from ₹500 to ₹1,000 per month and for a deputy minister from ₹300 to ₹600 per month.

Responsibility of Ministers

Collective Responsibility

The fundamental principle underlying the working of parliamentary system of government is the principle of collective responsibility.

Article 75 clearly states that the council of ministers is collectively responsible to the Lok Sabha. This means that all the ministers own joint responsibility to the Lok Sabha for all their acts of omission and commission. They work as a team and swim or sink together.

When the Lok Sabha passes a no-confidence motion against the council of ministers, all the ministers have to resign including those ministers who are from the Rajya Sabha.

Alternatively, the council of ministers can advise the president to dissolve the Lok Sabha on the ground that the House does not represent the views of the electorate faithfully and call for fresh elections.

The President may not oblige the council of ministers that has lost the confidence of the Lok Sabha.

The principle of collective responsibility also means that the Cabinet decisions bind all cabinet ministers (and other ministers) even if they differed in the cabinet meeting.

It is the duty of every minister to stand by cabinet decisions and support them both within and outside the Parliament.

If any minister disagrees with a cabinet decision and is not prepared to defend it, he must resign.

Several ministers have resigned in the past owing to their differences with the cabinet.

For example, Dr B.R. Ambedkar resigned because of his differences with his colleagues on the Hindu Code Bill in 1951.

C.D. Deshmukh resigned due to his differences on the policy of reorganisation of states.

Arif Mohammed Khan resigned due to his opposition to the Muslim Women (Protection of Rights on Divorce) Act, 1986.

Individual Responsibility

Article 75 also contains the principle of individual responsibility.

It states that the ministers hold office during the pleasure of the president, which means that the President can remove a minister even at a time when the council of ministers enjoys the confidence of the Lok Sabha.

However, the President removes a minister only on the advice of the Prime Minister.

In case of a difference of opinion or dissatisfaction with the performance of a minister, the Prime Minister can ask him to resign or advise the President to dismiss him.

By exercising this power, the Prime Minister can ensure the realisation of the rule of collective responsibility.

In this context, Dr B.R. Ambedkar observed:

“Collective responsibility can be achieved only through the instrumentality of the Prime Minister. Therefore, unless and until we create that office and endow that office with statutory authority to nominate and dismiss ministers, there can be no collective responsibility.”

No Legal Responsibility

In Britain, every order of the King for any public act is countersigned by a minister. If the order is in violation of any law, the minister would be

held responsible and would be liable in the court. The legally accepted phrase in Britain is, "The king can do no wrong." Hence, he cannot be sued in any court.

In India, on the other hand, there is no provision in the Constitution for the system of legal responsibility of a minister. It is not required that an order of the President for a public act should be countersigned by a minister. Moreover, the courts are barred from enquiring into the nature of advice rendered by the ministers to the president.

Composition of the Council of Ministers

The council of ministers consists of three categories of ministers, namely, cabinet ministers, ministers of state, and deputy ministers.

The difference between them lies in their respective ranks, emoluments, and political importance.

At the top of all these ministers stands the Prime Minister—the supreme governing authority of the country.

The cabinet ministers head the important ministries of the Central government like home, defence, finance, external affairs and so forth.

They are members of the cabinet, attend its meetings and play an important role in deciding policies. Thus, their responsibilities extend over the entire gamut of Central government.

The ministers of state can either be given independent charge of ministries/ departments or can be attached to cabinet ministers.

In case of attachment, they may either be given the charge of departments of the ministries headed by the cabinet ministers or allotted specific items of work related to the ministries headed by cabinet ministers. In both the cases, they work under the supervision and guidance as well as under the overall charge and responsibility of the cabinet ministers.

In case of independent charge, they perform the same functions and exercise the same powers in relation to their ministries/departments as

cabinet ministers do. However, they are not members of the cabinet and do not attend the cabinet meetings unless specially invited when something related to their ministries/ departments are considered by the cabinet.

Next in rank are the deputy ministers. They are not given independent charge of ministries/departments. They are attached to the cabinet ministers or ministers of state and assist them in their administrative, political, and parliamentary duties. They are not members of the cabinet and do not attend cabinet meetings.

At times, the council of ministers may also include a deputy prime minister. The deputy prime ministers are appointed mostly for political reasons.

The first deputy prime minister was Vallabhbhai Patel, who was also home minister in Jawaharlal Nehru's cabinet. He occupied the post for 3 years until his death in 1950.

The post was vacant until Morarji Desai became the second deputy prime minister in 1967.

L. K. Advani served as the seventh deputy prime minister in Atal Bihari Vajpayee's cabinet from 2002 to 2004.

The post has been vacant since 2004.

Council of Ministers vs Cabinet

The words 'council of ministers' and 'cabinet' are often used interchangeably though there is a definite distinction between them.

They differ from each other in respects of composition, functions, and role.

Council of ministers	Cabinet
It is a wider body consisting of 60 to 70 ministers.	It is a smaller body consisting of 15 to 20 ministers.
It includes all the three categories of ministers, that is, cabinet ministers, ministers of state, and deputy ministers.	It includes the cabinet ministers only. Thus, it is a part of the council of ministers.
It does not meet, as a body, to transact	It meets, as a body, frequently and usually

government business. It has no collective functions.	once in a week to deliberate and take decisions regarding the transaction of government business.
It is vested with all powers but in theory.	It exercises, in practice, the powers of the council of ministers and thus, acts for the latter.
Its functions are determined by the cabinet.	It directs the council of ministers by taking policy decisions which are binding on all ministers.
It implements the decisions taken by the cabinet.	It supervises the implementation of its decisions by the council of ministers.
It is a constitutional body, dealt in detail by the Articles 74 and 75 of the Constitution. Its size and classification are, however, not mentioned in the Constitution. Its size is determined by the prime minister according to the exigencies of the time and requirements of the situation. Its classification into a three-tier body is based on the conventions of parliamentary government as developed in Britain. It has, however, got a legislative sanction. Thus, the Salaries and Allowances Act of 1952 defines a 'minister' as a 'member of the council of ministers, by whatever name called, and includes a deputy minister'.	It was inserted in Article 352 of the Constitution in 1978 by the 44 th Constitutional Amendment Act. Thus, it did not find a place in the original text of the Constitution. Now also, Article 352 only defines the cabinet saying that it is 'the council consisting of the prime minister and other ministers of cabinet rank appointed under Article 75' and does not describe its powers and functions. In other words, its role in our politico-administrative system is based on the conventions of parliamentary government as developed in Britain.

It is collectively responsible to the Lower House of the Parliament.	It enforces the collective responsibility of the council of ministers to the Lower House of Parliament.
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Role of Cabinet

- It is the highest decision-making authority in our politico-administrative system.
- It is the chief policy formulating body of the Central government.
- It is the supreme executive authority of the Central government.
- It is chief coordinator of Central administration.
- It is an advisory body to the president and its advice is binding on him.
- It is the chief crisis manager and thus deals with all emergency situations.
- It deals with all major legislative and financial matters.
- It exercises control over higher appointments like constitutional authorities and senior secretariat administrators.

Kitchen Cabinet

The cabinet, a small body consisting of the prime minister as its head and some 15 to 20 most important ministers, is the highest decision-making body in the formal sense.

However, a still smaller body called the '**Inner Cabinet**' or '**Kitchen Cabinet**' has become the real centre of power.

This informal body consists of the Prime Minister and two to four influential colleagues in whom he has faith and with whom he can discuss every problem.

It advises the prime minister on important political and administrative issues and assists him in making crucial decisions.

It is composed of not only cabinet ministers but also outsiders like friends and family members of the prime minister.

Every prime minister in India has had his 'Inner Cabinet'—a circle within a circle. During the era of Indira Gandhi, the 'Inner Cabinet' which came to be called the 'Kitchen Cabinet' was particularly powerful.

The prime ministers have resorted to the device of 'inner cabinet' (extra-constitutional body) due to its merits, namely:

- It being a small unit, is much more efficient decision-making body than a large cabinet.
- It can meet more often and deal with business much more expeditiously than the large cabinet.
- It helps the Prime Minister in maintaining secrecy in making decisions on important political issues.

However, it has many demerits also. Thus,

- It reduces the authority and status of the cabinet as the highest decision-making body.
- It circumvents the legal process by allowing outside persons to play an influential role in the government functioning.

The phenomenon of 'kitchen cabinet' (where decisions are cooked and placed before the cabinet for formal approval) is not unique to India.

It also exists in USA and Britain and is quite powerful in influencing government decisions there.
