

**1. The seeds of India's federal polity were sown during the British rule itself. Do you agree? Comment in the light of India's contemporary constitutional history.**

**Introduction**

Indian federalism is the product of an evolutionary process during the colonial rule. The centralization which began in regulatory act of 1773 continued till 1861 after which decentralization of power to provinces started and continued till GOI act 1935 from which the feature of federal scheme is borrowed into our constitution.

**Body**

**Background:**

Regulatory act of 1773 sowed the seeds of centralization by establishing the office of Governor general of Bengal who concentrated the power in the subsequent acts as the Governor general of India. As the British empire expanded, over-centralization proved counter-productive. After the Company rule ended under 1858 GOI act, decentralization started and seeds of Indian federalism were sowed.

**Evolution of Federalism during British:**

- Indian council act 1861 restored the legislative power of the Bombay and Madras provinces. It also created new legislative councils for Bengal, North-West Frontier province and Punjab – thus empowering provinces in legislative sphere.
- Through the subsequent Indian council acts, provinces were provided more powers like assured assistance by Centre to provinces, increased taxation powers etc.,
- Indian council act of 1909 –
  - Allowed provincial councils to have non-official majority and thus for the first time allowed the provincial democracy to prevail with provincial leaders.
  - It enlarged the independent deliberative functioning (like asking supplementary questions, moving resolutions) of provincial legislative council, thus increasing its power.
- GOI 1919 act –
  - Relaxed central control over provinces by separating central and provincial subjects.
  - Bicameralism was introduced with state representation in Centre. The majority of members were elected directly and thus were provincially elected popular leaders.
  - It separated, for the first time, provincial budgets from the Central budget and authorized the provincial government to enact their budgets.
- Simon commission recommended the responsible provincial government with clearly demarcated powers and functioning.
- GOI 1935 act –

- It envisaged to establish an All India federation consisting of provinces and princely states.
- It divided the powers between Centre and provinces in terms of 3 lists – Federal, Provincial and Concurrent.
- It introduced ‘provincial autonomy’ with responsible government acting as autonomous units of administration.
- Bicameralism is introduced in several provinces in lines of contemporary state legislative councils.
- A federal court was established with powers to adjudicate federal cases.
- Federal and provincial public service commissions were established in line of contemporary UPSC, SPSC’s.

**Additional information which can be incorporated in the answer also:**

However, in spite of the fact that Indian federal polity evolved during colonial rule, Indian federalism is more an upgradation over the federal feature existed during British for the reasons:

- There was permanent written constitution during the British period. Thus, the federal feature was itself contingent on the Centre’s wish unlike now, where Federalism is a basic feature.
- Indian Federation today is not formed by agreement as provided by GOI act 1935 and thus is indestructible union.
- A powerful independent judiciary was absent during the colonial rule. Though federal court was established, the Central legislature was supreme and had over-riding powers.

**Conclusion**

Thus, seeds of India’s federal polity were sown during the British rule itself. Though an All India federation did not come into existence as envisaged under GOI 1935 act, it became the blueprint in establishing the Indian federation with state representation in Rajyasabha.

**2. In what ways did the Nehru Committee Report and the Government of India Act, 1935 shape the Indian Constitution? Illustrate.**

**Introduction**

Indian constitution is shaped by several events during the Indian national movement and incorporation of best features from several acts and constitution. Nehru report and GOI act 1935 are two of them which influenced Indian constitution in a major way.

**Body**

**Background:**

Nehru report was prepared by INC sub-committee headed by Motilal Nehru as an answer to the Birkenhead's challenge for congress to prepare constitution. This was the first major attempt by the Indians to draft a constitutional framework for the country. The committee included Tej Bahadur Sapru, Subhash Bose and others. The report was submitted in 1928.

The Government of India Act was passed by the British Parliament in August 1935. It was an outcome of 3<sup>rd</sup> round table conference and was majorly influenced by Simon commission report.

#### **Nehru committee report shaping Indian constitution:**

- Secularism as fundamental feature was established when the report rejected separate electorate. The report was cited when the constituent assembly took upon the topic of separate electorate while framing the constitution. It is provided under different parts of Indian constitution like the preamble, fundamental rights etc.,
- It provided full protection to cultural and religious interests of Muslims which was extended by Indian constitution to all religions safeguarded under Article 25-30 as fundamental rights.
- It tried to allay the minority fears with the concept of reservation which was incorporated in the Indian constitution for Scheduled castes under article 334.
- Most of the 19 fundamental rights which was provided by the report was incorporated under Part-3 fundamental rights of Indian constitution.
- Universal adult suffrage was suggested by the report which, the Indian constitution provided under Article 326.
- Responsible government – both at the Centre and States was envisaged which is provided in the Indian constitution as per article 75 and article 164.

#### **GOI act 1935 shaping Indian constitution:**

- Federalism:
  - 3 lists provided under the act- Federal, provincial and concurrent is defined in the Indian constitution under 7<sup>th</sup> schedule as Union, State and Concurrent list.
  - State representation in the Centre in the council of states (an evolution over Bicameralism provided by GOI act 1919) which was provided as Rajyasabha under the Indian constitution.
  - Office of governor: as provincial head is also provided under Indian constitution as per article 153.
- Judiciary: Federal court was established as per the act in 1937. An integrated judiciary with supreme court as the apex federal court is provided in the Indian constitution.
- UPSC, state public service commissions and joint public service commissions – bulwarks of Indian democracy, merit watch dogs are established borrowing from bodies envisaged under GOI act 1935.

- Emergency provisions: in part 18 to safeguard sovereignty, national unity and integrity is provided as per the provisions under GOI act 1935.
- Administrative setup: with All India service as the fountain head of administration is envisaged by the GOI act 1935. Protection to All India service under article 311, Split and tenure system etc., of Indian bureaucratic setup is influenced by the act and incorporated in Indian constitution.

### Conclusion

Thus, GOI act provided the structure and as Ivor Jennings observed - it is the skeleton of Indian constitution. Nehru report upheld the ideals of Indian national movement and the same are seen in every part of the Indian constitution be it be socialistic nature of state, popular sovereignty and so on.

**3. Is it fair to conclude that the Indian Constitution was an outcome of the deliberations of a selected elite who were members of the Constituent Assembly? Was the Constituent Assembly even representative in the true sense? Critically comment.**

### Introduction

A modern state without a constitution is unimaginable. A constitution is a vital necessity as it determines the Power-relationship between the citizens of a country and between the governors and the governed. For the purpose of determining the form and nature of government and the nature of power relationship, the people set up a Constitution Assembly. Thus the establishment of a representative body for framing of a constitution is implicit in the very concept of democracy.

### Body

**The Indian Constitution was an outcome of the deliberations of not only distinguished personalities who were members of the Constituent Assembly but also and some nationalist Leaders and People from all parts of the country and from different walks of life**

- Constituent Assembly is not just a body of people or a gathering of able lawyers. Rather, it is a nation on the move, throwing away the shell of its past political and possibly social structure, and fashioning for itself a new garment of its own making. The Indian Constitution was designed to break the shackles of traditional social hierarchies and to usher in a new era of freedom, equality and justice.
- It is committed to freedom, equality, social justice, and some form of national unity. But underneath all this, there is a clear emphasis on peaceful and democratic measures for putting this philosophy into practice.
- The first point to note about the Constitution is its commitment to individual freedom. This commitment did not emerge miraculously out of calm deliberations around a table. Rather, it was the product of continuous

intellectual and political activity of well over a century. As early as the beginning of the nineteenth century, Rammohan Roy protested against curtailment of the freedom of the press by the British colonial state. Roy argued that a state responsive to the needs of individuals must provide them the means by which their needs are communicated.

- It is not surprising therefore that freedom of expression is an integral part of the Indian Constitution. So is the freedom from arbitrary arrest. After all, the infamous Rowlatt Act, which the national movement opposed so vehemently, sought to deny this basic freedom.
- Once the idea of a nation took root among the elite, the idea of democratic self-government followed. Thus, Indian nationalism always conceived of a political order based on the will of every single member of society. The idea of *universal franchise* lay securely within the heart of nationalism. As early as the Constitution of India Bill (1895), the first non-official attempt at drafting a constitution for India, the author declared that every citizen, i.e., anyone born in India, had a right to take part in the affairs of the country and be admitted to public office. The Motilal Nehru Report (1928) reaffirms this conception of citizenship.
- The Constitution constantly reinforces a common national identity. India strives to retain regional identities along with the national identity. Common national identity was not incompatible with distinct religious or linguistic identities. The Indian Constitution tried to balance these various identities. This is clarified in the debate over separate electorates based on religious identity which the Constitution rejects. Separate electorates were rejected not because they fostered difference between religious communities as such or because they endangered a simple notion of national unity but because they endangered a healthy national life. Rather than forced unity, our Constitution sought to evolve true fraternity, a goal dear to the heart of Dr. Ambedkar. As Sardar Patel put it, the main objective was to evolve 'one community'.

#### **In the true sense Constituent Assembly evenly represented.**

- Though the Constituent Assembly was constituted through indirect election, yet it can be emphatically said that its membership included almost all the distinguished personalities with the only exception of Mahatma Gandhi who preferred to stay out.
- At that time of Constituent Assembly formation, adult franchise was not yet granted and most members came from the advanced sections of the society. Does this make our Constitution unrepresentative? Here we must distinguish two components of representation, one that might be called voice and the other opinion. The voice component of representation is important. People must be recognized in their own language or voice, not in the language of the masters. If we look at the Indian Constitution from this dimension, it is indeed unrepresentative because members of the Constituent Assembly were chosen by a restricted franchise, not by universal suffrage. However, if we examine the other dimension, we may not find it altogether lacking in

representativeness. The claim that almost every shade of opinion was represented in the Constituent Assembly may be a trifle exaggerated but may have something to it. If we read the debates that took place in the Constituent Assembly, we find that a vast range of issues and opinions were mentioned, members raised matters not only based on their individual social concerns but based on the perceived interests and concerns of various social sections as well.

- It is not a coincidence that the central square of every other small town has a statue of Dr. Ambedkar with a copy of the Indian Constitution. Far from being a mere symbolic tribute to him, this expresses the feeling among various section of people that the Constitution reflects many of their aspirations.

### Conclusion

Constitution is a living document. Legal provisions and institutional arrangements depend upon the needs of the society and the philosophy adopted by the society. The Constitution gives expression to this philosophy. The institutional arrangements are based on a core and commonly agreed vision. That vision has historically emerged through our struggle for independence. The Constituent Assembly was the platform on which this vision was stated, refined and articulated in legal-institutional form.

**4. What were the views of Dr. Ambedkar regarding the Indian Constitution? Did in his views the mere existence of a constitution guaranteed the freedoms envisaged by it? Discuss.**

### Introduction

A pragmatist to the core, Ambedkar believed that in the absence of economic and social justice political independence would not bring about their social solidarity or, national integration. He advocated the abolition of privileges on the basis of caste or status and vigorously fought for the liberty and dignity of the individual. It the same time, he was equally force-full in his advocacy of the unity of the nation. Ambedkar sought to achieve these objectives through the constitution of India.

### Body

#### Views of Dr. Ambedkar regarding the Indian Constitution

- **Concept of Federalism:** His concept of federalism meant that the State was a federation in normalcy, but unitary in emergency.
- **Centre Was Made Strong:** In the Draft Constitution Dr. Ambedkar offered more powers to the Centre and made it strong. Some members of the constituent assembly criticized him on the ground that since Dr. Ambedkar postulated – the rights and values of each individual and the development of each province and each–village, it was contradictory of his part to make the Centre strong. Justifying the provisions for a strong Central authority Dr.

Ambedkar said that he made the Centre strong not only to 'save minorities from the misrule of majority' but also "for it is only the Centre which can work for a common end and for the general interests of the country as a whole."

- **Equality of Opportunity:** Of all the rights, Dr. Ambedkar observed "Equality of Opportunity" as the most important one. Regarding the constitutional remedies, he characterized Article 32 as the very soul of the Constitution and the very heart of it. To him, fundamental rights would mean establishment of equality and liberty in order to reform our social system, which is so full of inequalities, discriminations, and others which conflict with our fundamental rights.
- **Directive Principles of State Policy:** The Directive Principles of State Policy contained the positive obligations of the state towards its citizens. The Directives were meant to ensure social and economic democracy which was secured by the provisions of fundamental rights in a written Constitution. Dr. Ambedkar said: "What are called Directive Principles is simply another name for Instruments of instructions to the legislature and the executive...as to how they should exercise their power."
- **Constitution, A Dynamic Document:** The Constitution is a dynamic document it should grow with the growth of the nation and should suit the changing needs and circumstances. So Dr. Ambedkar urged the necessity of amendment.
- **Concept of Sovereignty and Suzerainty:** Dr. Ambedkar's concept of sovereignty and suzerainty and of the Indian States, i.e., integration of the native Indian Princely States which gave the shape to the map of India as it is today, has indeed been prophetic.
- **National Integration:** In the Draft Constitution Dr. Ambedkar prescribed single citizenship, a single judiciary and uniformity in fundamental Laws to integrate Indian society which was not only divided into caste and class, but also into regions, religions, languages, traditions and cultures. Therefore, a strong Centre was indispensable to maintain territorial integrity and administrative discipline.

#### **Only the mere existence of a constitution doesn't guarantee the freedoms**

- Ambedkar was a great visionary of new social order and eminent constitutionalist. In his view mere existence of Constitution will not guarantee the freedoms envisaged by it. To guarantee freedoms there should be strong institutional framework which envisages laws to safeguard these freedoms and punishments when these freedoms are breached.
- The responsibility of drafting the Fundamental Rights was on an Advisory committee to the Constituent Assembly, comprising of members like B.R. Ambedkar, Diwan Bahadur, Acharya J. B. Kripalani. The committee began discussions the biggest issue was dividing the Rights in two groups – justiciable and non-justiciable which was later taken up by the Constituent Assembly itself. Justiciable rights are those which can be enforced in the court of law.

- Dr Ambedkar said that the responsibility of the legislature is not just to provide fundamental rights but also and rather more importantly, to safeguard them. Fundamental Rights are indeed essential for the growth and development of individual and thus the nation. Following which the Constituent committee and Advisory committee outdid itself in forming a bundle of rights that one way or another reinforces every other right that the constitution confers. These rights have acted as a guarantor of justice, equity and civil freedom.
- Amdekar said that mere existence of Constitution will not guarantee political democracy. We must note that our political democracy cannot last unless there lies at the base of it social democracy. Social democracy means a way of life which recognizes liberty, equality and fraternity as the principles of life.

### Conclusion

The contribution of Dr. Ambedkar in Indian Democracy is not to be forgotten. As a chairman of the Constitutional Committee he gave a shape to our country of a complete Sovereign, Democratic and Republic based on adult franchise. Baba Saheb Ambedkar's name will be written in golden letters in the history of India as a creator of social justice.

### 5. How did the doctrine of separation of powers with particular reference to the legislature and the executive take place during the British period? Analyse.

#### Introduction

Separation of power (SOP) is a principle of constitutionalism wherein the power is distributed to different branches of the government (Legislature, Executive, Judiciary) to ensure independent functioning of each organ. SOP between legislature and executive during the colonial period was weak due to the parliamentary form of government that prevailed and also as a means to safeguard colonial interest.

#### Body

##### Separation of power during the British period:

- The regulating act of 1773 became the basis for government functioning until 1853 under which
  - The governor general acted as the supreme executive and along with his council acted as the legislative authority. At times, he also acted as judicial authority as well (Executive + Legislative).
  - Further, the company directors were required to submit all correspondence with respect to revenue and civil administration to British cabinet which acted as the final approval authority of the actions taken with veto power.



- Furthermore, the supreme court in Bengal provided redressal against governor general actions. However, in practice it had debatable jurisdiction vis-a-vis council which affected SOP.
- A Board of control was established under Pitt's India acting as the approval authority of executive (governor general) actions – a de-facto legislative authority.
- Under the charter act of 1833, the regulations made were to be laid before the British parliament which acted as the final legislative authority after the governor general council (Deliberative body).

Until 1853, there was no separation of power per-se between executive and legislature. Governor general council acted both as an executive and legislative body.

- 1853 Charter act established Imperial legislative council as a central legislative body with six members. However, a law to be promulgated needed the assent of the governor-general (executive), and the governor general could veto any Bill of the legislative council.
- Under 1858 act, Viceroy and his council along with Secretary of state and his council acted as the executive authority. The council acted as legislative body with powers including discussion of laws, budget and so on but with limited powers.
- The legislative power to hold the executive accountable evolved progressively in the subsequent council acts of 1861, 1892 and so on.
- The 1919 act introduced Bicameral system with additional powers to central legislature. However, even after the enactment of 1935 act, the executive was largely not responsible to the legislature and held veto powers in legislation and financial fields.
- The supreme court of Calcutta was established under 1935 GOI act which acted as a federal court upholding doctrine of diffused powers.
- At the provincial level, SOP was absent until the 1919 act.
  - The 1919 GOI act established partial separation of powers with responsible government under dyarchy.
  - Under 1935 GOI act, Autonomous and responsible provincial government was established with defined powers of legislature and executive
- At the district level, District magistrate was vested with all the powers including the judicial – without much separation of powers. District courts acted as appellate authority over DM's decisions.
- Further, the ordinance power was given to Governor-general/Viceroy which diluted the separation of powers in practice. For instance, Viceroy issued series of ordinances like Defence of India ordinance, public safety ordinance etc., which were opposed by the Indian legislative council.

### Conclusion

Thus, the doctrine of SOP remained as a means of occasional check and balance which could be over-ruled by the Governor/Viceroy. As Subhash Kashyap observes, The Indian legislative council remained a non-sovereign law-making body and was powerless before the executive. However, the doctrine evolved over time and

culminated under 1935 GOI act which became the basis of Indian constitution which incorporated the doctrine of separation of powers.

