

CLATAPULT

LEGAL

AWARENESS



IN THE CLAT YOU will primarily be dealing with questions which require application of a given principle to facts and selecting the most appropriate answer from the choices. Why then does Legal GK come into the picture? This is because, apart from CLAT, the other entrance papers (SET, NLU-D etc.) test you on legal GK. Also sound legal GK holds you in good stead in the principle based questions in the CLAT as many principles are based on articles from the constitution, the Indian Penal Code etc. and knowledge of these will help more than hurt. So with that in mind, let's get to it!

ABOUT THE MODULE

This module aims to be the answer to your Legal knowledge woes. Revere it. Gobble it up by the time exam season gets underway. This module contains the various aspects in which you will most probably be tested on. It's got the constitution; abridged alright, but from your point of view, in painful detail.

We deal with emergence of constitutional law, the features of the constitution, the government and its various features, the judiciary and some important IPC sections which may be of importance.

A word of caution here: While this module is detailed, it is incumbent on you to make sure that you keep up with the law in the news and are informed about the current developments in the field of law so as to supplement your knowledge along with this module.

Happy reading!

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PART 1- EMERGENCE OF CONSTITUTIONAL LAW IN INDIA

An Introduction

WE ARE ALL AWARE of our subjugation at the hands of the British. Yes, they robbed us, enslaved us in our own land and killed many of us. But one of the silver linings to emerge from the British rule (other than cricket, of course), was the democratic form of government that we adopted from them.

Winston Churchill had once said that if the British were to ever leave India, it would be run by the goons. Today however we stand in the world as its largest democracy. We've come a long way since our colonial days and Churchill's seemingly true statement. Today we are governed by many laws, and at their base like a guiding guardian, is the Constitution. But how did it emerge and come to be what it is today? Let's track the history.

A Brief History

The Constitution of a country lays down the political system under which the people are to be governed. India has a democratic form of government. While concepts of Democracy or representative institutions are not alien to India with the presence of texts like Rigveda and Atharvaveda, the emergence of the Constitution can be traced back to **the Charter of 1601** given to the East India Company by the Queen to make suitable laws and provisions for the smooth functioning of the company as traders. Although limited in scope, the legislative powers given to the company were affirmed by the charters of 1609, 1661 and later 1693.

The **charter of 1726** is a very significant one it established the Mayors' courts in India in

the Presidencies of Calcutta, Bombay and Madras for the first time, thereby introducing English laws in India.

In this Charter, Justice of Peace was created in India, just as it was England in order to govern criminal law in the country. The British criminal system and procedures were used for this purpose, and these were also codified later into the Indian Penal Code.

The Charter empowered the governor to make any kind of law or ordinance necessary for maintaining law and order. Records of the proceedings had to be maintained and sent to England.

This was the start of the British rule, with a codified Constitution describing the Executive and Judiciary and their various powers.

THE CONSTITUENT ASSEMBLY

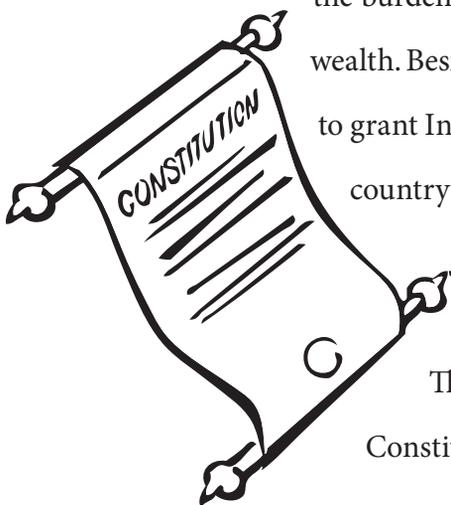
Everyone of us who has studied high school history knows that Indians wanted independence and self-rule and this demand had started as early as the revolt of 1857, and struggles for the same continued for nearly a century

By 1947, the Indians wanted nothing less than complete independence and *Swaraj* self-rule.

To sum it up, people wanted the Brits out! The Brits fought back and resisted, but eventually

the burden of two World Wars took their toll on the Empire and its wealth. Besides, there was a lot of pressure internationally on Britain to grant India its independence. There were constant revolts in the country which took a lot of manpower and other resources to suppress. All of this led them to ultimately accede to the long standing demand.

The Cabinet Mission Plan of 1946 entrusted the Constituent Assembly with the task of framing the Constitution



for the new nation that was to emerge.

These are some of the salient features of the Cabinet Mission Plan:

The Cabinet Mission proposed two-tiered federal plan which was expected to maintain national unity while conceding the largest measure of regional autonomy:

In other words, the nation was to be a federation of provinces and states and the states were also free to form regional unions within the nation as well.

The provinces were to be divided into three groups:

- a. Group 'A' was to include Madras, Bombay, U.P., Bihar, Central Province and Orissa
- b. Group 'B*' was to comprise Punjab, Sindh, N.W.F.P. and British Baluchistan (Muslim majority in most of the areas)
- c. Group 'C' was to include Bengal and Assam.

These groups could draft their own constitutions in consultation with all the provinces within the group.

A Constituent Assembly consisting of 389 members— 292 from provinces, 4 from territories governed by Chief Commissioners and 93 from Indian Princely States would draft the Constitution of India.



(v) An interim government at the Central consisting of representatives of all the communities, provinces would be installed on the basis of parity between the representatives of the Hindus and Muslims.

The members of the assembly were chosen through *indirect election* by members of the provisional legislative assemblies. There were 389 members who came to be there as follows:-

- 1) 292 were elected by provisional Legislative assemblies.
- 2) 93 represented the princely states
- 3) 4 from the chief commissioners' provinces.

But as per the Mountbatten Plan of June 3 1947, India was partitioned into India and Pakistan because of the irreconcilable differences between the Indian National Congress and the Muslim League. Due to this, the size of the Constituent Assembly came down to 299 eventually. Here are some important facts about the Constituent Assembly listed conveniently in bullet points:

- The first session of the assembly was on 9th December 1946.
- The first Chairman of the Assembly was Dr. Sachidanand Sinha was elected on 9th December 1946.
- In 11th December 1946, Dr. Rajendra Prasad was elected the first President of the assembly.
- On 13th December 1946 Pt. Jawaharlal Nehru signed the Objective Resolution
- The Assembly adopted the resolution on 22nd January 1947
- On 29th August 1947, the assembly set up a drafting committee under the Chairmanship of Dr. B.R. Ambedkar.
- The Constitution was greatly influenced by the Government of India Act, 1935.
- The Assembly held 11 sessions, the last being from 14th -26th November 1949.
- On 26th November 1949, the Constitution was adopted. This day is now celebrated as Law Day.
- The members met on 24th January 1950 to add their signatures.
- On 26th January 1950, the Constitution of India came into force and we became a republic!



AN INSPIRED DOCUMENT

India's Constitution is a unique blend of original concepts and derived ideals. To put it another way, we have borrowed a lot from various constitutions and other documents to add to our own ideas for our Constitution. These are the many sources we've borrowed from

- The framework – Government of India act, 1935
- Fundamental rights – Bill of Rights (US Constitution)
- Directive Principles of State Policy; method of election of members of Rajya Sabha; presidential elections - Irish Constitution
- Judicial review, independence of judiciary, removal of judges of HC and SC – US Constitution
- Parliamentary system, elections – Constitution of UK
- Concurrent list; trade and commerce – Australian Constitution
- Amendment procedure- South African Constitution
- Emergency provision - German constitution
- Republic - France
- Procedure established by law- Japan
- Fundamental duties – Former USSR
- Parliamentary privileges – UK and Australia
- Public Interest Litigation - Australia and USA

On 26th January 1950, India became a republic with the Constitution coming into force and becoming the supreme law of the land.

