Evolution of Indian Constitution

Although the systems of ancient India do have their reflections in the Constitutions of India, the direct sources of the Constitution lie in the administrative and legislative developments of the British period.

Regulating Act of 1773

- This Act was based on the report of a committee headed by the British Prime Minister Lord North.
- Governance of the East India Company was put under the British Parliamentary control.
- The Governor of Bengal was nominated as Governor General for all the three Presidencies of Calcutta Bombay and Madras. Warren Hastings was the first such Governor General.
- A Supreme Court was established in Calcutta (now Kolkata)
- Governor General was empowered to make laws, regulations and ordinances with the consent of the Supreme Court.

Pitts India Act of 1784

- It was enacted to improve upon the provisions of Regulating Act of 1773 to bring about better discipline in the Company's system of administration.
- A 6 member Board of Coordinators was set up which was headed by a minister of the British Government. All political responsibilities were given to this board.
- Trade and commerce related issues were under the purview of the Court of the Directors of the company.
- Provinces had to follow the instructions of the Central Government and Governor General was empowered to dismiss the failing provincial government.

Charter Act of 1793

- Main provisions of the previous Acts were consolidated in this Act.
- Provided for the payment of salaries of the members of the Board of Controllers from Indian revenue.
- Courts were given the power to interpret rules and regulations

Charter Act of 1813

- Trade monopoly of the East India Company came to an end.
- Powers of the three Councils of Madras, Bombay and Calcutta were enlarged; they were also subjected to greater control of the British Parliament.
- The Christian Missionaries were allowed to spread their religion in India.
- Local autonomous bodies were empowered to levy taxes.

Charter Act of 1833

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- The Governor General and his Council were given vast powers. This Council could legislate for the whole of India subject to the approval of the Board of Controllers.
- The Council got full powers regarding revenue, and a single budget for the country was prepared by the Governor General.
- The East India Company was reduced to an administrative and political entity and several Lords and Ministers were nominated as ex-officio members of the Board of Controllers.
- For the first time the Governor-General's Government was known as the 'Government of India' and his Council as the 'Indian Council'.

Charter Act of 1853

- This was the last of the Charter Acts and it made important changes in the system of Indian legislation.
- This Act followed a report of then Governor General Dalhousie for improving the administration of the company.
- A separate Governor for Bengal was to be appointed.
- Legislative and administrative functions of the Council were separately identified.
- Recruitment of the Company's employees was to be done through competitive exams.
- British Parliament was empowered to put Company's governance of India to an end at any suitable time.

Government of India Act, 1858

- British Crown decided to assume sovereignty over India from the East India Company in an apparent consequence of the Revolt of 1857, described as an armed sepoy mutiny by the British historians and remembered as the First War of Independence by the Indians.
- The first statute for the governance of India, under the direct rule of the British Government, was the Government of India Act, 1858.
- It Provide for absolute (British) imperial control over India without any popular participation in the administration of the country.
- The powers of the crown were to be exercised by the Secretary of State for India, assisted by a council of fifteen members, known as the Council of India.
- The country was divided into provinces headed by a Governor or Lieutenant-Governor aided by his Executive Council.
- The Provincial Governments had to function under the superintendence, direction and control of the Governor- General in all matters.
- All authority for the governance of India was vested in the Governor- General in Council who was responsible to the Secretary of State.
- The Secretary of State was ultimately responsible to the British Parliament.

Indian Councils Act, 1861

- This is an important landmark in the constitutional history of India. By this Act, the powers of the Crown were to be exercised by the Secretary of State for India, assisted by a council of fifteen members (known as the Council of India). The Secretary of State, who was responsible

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to the British Parliament, governed India through the Governor General, assisted by an Executive council.

- This Act enabled the Governor General to associate representatives of the Indian people with the work of legislation by nominating them to his expanded council.
- This Act provided that the Governor General's Executive Council should include certain additional non-official members also while transacting legislative business as a Legislative Council. But this Legislative Council was neither representative nor deliberative in any sense.
- It decentralized the legislative powers of the Governor General's Council and vested them in the Governments of Bombay and Madras.

Indian Councils Act, 1892

- The non-official members of the Indian Legislative Council were to be nominated by the Bengal Chamber of Commerce and Provincial Legislatives Council while the non-official members of the Provincial Councils were to be nominated by certain local bodies such as universities, districts boards, municipalities, zamindars etc.
- The Councils were to have the power of discussing the Budget and addressing questions to the Executive.

Morley-Minto Reforms and the Indian Councils Act, 1909

- Reforms recommended by the then Secretary of States for India (Lord Morley) and the Viceroy (Lord Minto) were implemented by the Indian Councils Act, 1909.
- The maximum number of additional members of the Indian Legislative Council (Governor-General's Council) was raised from 16 (under the Act of 1892) to 60 (excluding the Executive Councilors).
- The size of Provincial Legislative Councils was enlarged by including elected non-official members so that the official majority was gone.
- An element of election was introduced in the Legislative Council at the centre also but here the official majority was maintained.
- The Legislative Councils were empowered to move resolutions on the Budget, and on any matter of public interest except certain specified subjects such as the Armed forces, Foreign Affairs and the Indian States.
- It provided, for the first time, for separate representation of the Muslim community and thus sowed the seeds of separatism.

The Government of India Act, 1915

- This act was passed to consolidate the provisions of the preceding Government of India Acts.

Montague-Chelmsford Report and the Government of India Act, 1919

- The then Secretary of State for India Mr. E.S. Montague and the Governor General Lord Chelmsford formulated proposals for the Government of India Act, 1919.

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- Responsible Government in the Provinces was to be introduced, without impairing the responsibility of the Governor (through Governor General), for the administration of the province, by resorting to device known as 'Diarchy' or dual government.
- The subjects of administration were to be divided into two categories Central and Provincial.
- Central subjects were those which were exclusively kept under the control of the Central Government.
- The provincial subjects were sub-divided into 'transferred' and 'reserved' subjects.
- The 'transferred subjects' were to be administered by the Governor with the aid of Ministers responsible to the Legislative Council in which the proportion of elected members was raised to 70 percent.
- The ' reserved subjects' were to be administered by the Governor and his Executive Council with no responsibility to the Legislature.
- The previous Central control over the provinces in the administrative, legislative and financial matters was relaxed. Sources of revenue were divided into two categories so that the provinces could run the administration with the revenue raised y the provinces themselves.
- The provincial budget was separated from the central budget.
- The provincial legislature was empowered to present its own budget and levy its own taxes relating to the provincial sources of revenue.
- The Central Legislature, retained power to legislate for the whole country on any subject.
- The control of the Governor General over provincial legislature was retained by providing that a Provincial Bill, even though assented to by the Governor, would become law only when assented to also by the Governor General.
- The Governor was empowered to reserve a Bill for the consideration of the Governor General if it was related to some specified matters.
- The Governor General in Council continued to remain responsible to the British Parliament through the Secretary of State for India.
- The Indian Legislature was made more representative and, for the first time 'bi-cameral.'
- The Upper House was named the Council of State. This composed of 60 members of whom 34 were elected.
- The Lower House was named the Legislative Assembly. This was composed of about 144 members of whom 104 were elected.
- The electorates were arranged on a communal and sectional basis, developing the Morley-Minto device further.
- The Governor General's overriding powers in respect of Central legislation were retained as follows:
- His prior sanction was required to introduce Bills relating to certain matters;
- He had the power to veto or reserve for consideration of the Crown any Bill passed by the Indian Legislature;
- He had the converse power of certifying Bill or any grant refused by the Legislature;
- He could make Ordinances, in case of emergency.

Simon Commission

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- This commission, headed by Sir John Simon, constituted in 1927 to inquire into the working of the Act of 1919, placed its report in 1930. The report was examined by the British Parliament and the Government of India Bill was drafted accordingly.

The Government of India Act, 1935

- The Act of 1935 prescribed a federation, taking the Provinces and the Indian States (native states) as units.
- It was optional for the Indian States to join the Federation, and since they never joined, the Federation never came into being.
- The Act divided legislative powers between the Centre and Provinces.
- The executive authority of a Province was also exercised by a Governor on the behalf of the Crown and not as a subordinate of the Governor General.
- The Governor was required to act with the advice of Ministers responsible to the legislature.
- In certain matters, the Governor was required to act 'in his discretion' without ministerial advice and under the control and directions of the Governor General, and, through him, of the Secretary of State.
- The executive authority of the Centre was vested in the Governor General (on behalf of the Crown).
- The councilors of Council of Ministers responsible to the Legislature were not appointed although such provisions existed in the Act of 1935.
- The Central Legislature was bi-cameral, comprising a Legislative Assembly and a Legislative Council. In other provinces, the Legislature was uni-cameral.
- Apart from the Governor General's power of veto, a Bill passed by the Central Legislature was also subject to veto by the Crown.
- The Governor General could prevent discussion in the Legislature and suspend the proceedings on any Bill if he was satisfied that it would affect the discharge of his special responsibilities.
- The Governor General had independent powers of legislatures, concurrently with those of the Legislature.
- On some subjects no bill or amendment could be introduced in the Legislature without the Governor General's previous sanction.
- A three-fold division in the Act of 1935 –There was Federal List over which the Federal Legislature had exclusive jurisdiction. There was a Concurrent List also over which both the Federal and the Provincial had competence.
- The Governor General was empowered to authorize either the Federal or the Provincial Legislature to enact a law with respect to any matter which was not enumerated in the above noted Legislative Lists.
- Dominion Status, which was promised by the Simon Commission in 1929, was not conferred by the Government of India Act, 1935.

Cripps Mission

- In March, 1942 Sir Stafford Cripps, a member of the British cabinet came with a draft declaration on the proposals of the British Government.

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