

Course Name- B.A.L.L.B. IVth Sem.

Subject- History

Teacher- Dr. Niru Jain

Topic Indian Council Act

1861, 1892, 1909

Indian Councils Act 1861

Reasons for Enactment of Indian Councils Act

The Government of India Act 1858 had introduced significant changes in the manner in which India was governed from England, however, it did not alter in any substantial way the system of government that prevailed in India. Further, in the aftermath of the Mutiny of 1857, there was a general perception in England that it would be very difficult to secure the government in India without the cooperation of Indians in administration. These were the main reasons behind enacting some legislation which could overhaul the system of administration in India. Some other reasons were as follows:

Centralized law making was defective

The Charter act of 1833 had centralized the legislative procedures and deprived the governments of Madras and Bombay of their power of legislation. The idea behind centralizing the law making was secure uniformity of laws in the whole territory of East India Company but this system proved to be defective. It had only one representative each of the four provinces and it failed to make laws suiting to local conditions. Thus, there was need to allow the provinces to make laws for themselves.

Governor General in Council was overburdened

The Governor General in Council was failing in its legislative functions and was not able to work satisfactorily due to cumbersome procedures leading to delay in enactments.

Absence of representation

It also had no representation of the people in it. There was a growing demand that some representative element should be introduced in legislative council.

Key Provisions

Expansion of executive council of Governor General / Viceroy

The executive council of Governor General was added a fifth finance member. For legislative purpose, a provision was made for an addition of 6 to 12 members to the central executive. At least half of the additional members were to be non-officials. These members were nominated by the Viceroy for the period of two years. Further, the Governor General / Viceroy had been given some more powers such as:

- He was authorized to nominate a president to preside over the meetings of the Executive council in his absence.
- He had the power of making rules and regulations for the conduct of business of executive council.
- He could create new provinces for legislative purposes and to appoint Lieutenant Governors for them. He was also empowered to alter, modify or adjust the limits of the provinces.
- He could promulgate ordinances, without the concurrence of the legislative council, during and emergency.
- Though the central council was empowered to legislate on all subjects concerning all persons and courts in British India but every bill passed required the assent of viceroy.
- He could withhold his assent or exercise his veto power if he felt that the bill affected the safety, peace and interest of British India.
- He had to communicate all laws to secretary of state for India who could disallow them with the assent of the crown.
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Introduction of Portfolio System

The Act empowered the Governor-General to delegate special task to individual members of the Executive council and hence all members have their own portfolio and deal with their own initiative with all but the most important matters. This was the first beginning of Portfolio system in India.

Process of Decentralization

The Governments of Bombay and Madras were given the power of nominating Advocate-General and not less than 4 and not more than 8 additional members of the Executive council for purpose of legislation. These additional members were to hold office for two years. The consent of the Governor and the Governor-General was made necessary for all legislation passed or amended by the Governments of Madras and Bombay. Further, the act provided for the establishment of new legislative councils for Bengal, North-Western Frontier Province and Punjab, which were established in 1862, 1866, and 1897 respectively.

No distinction between Central and Provincial subjects

No distinction was made between the central and provincial subject. But measures concerning public debt, finances, currency, post-office, telegraph, religion, patents and copyrights were to be ordinarily considered by the Central Government.

Critical Examination of the Indian Councils Act 1861

The Act of 1861 was important in the constitutional history because it enabled the Governor-General to associate the people of the land with work of legislation. And by vesting legislative powers in the Governments of Bombay and Madras which ultimately culminated in grant of almost complete internal autonomy to the provinces in the 1937.

However, the legislative councils were merely talk shops with no power to criticize the administration or ask for some information. Their scope was fixed in legislation purpose alone; they had no right to move some kind of vote of no confidence. Further, there was no statutory / specific provision for the nomination of Indians.

This nomination power of the Viceroy could be used only to placate the princes who could help the British to keep their stronghold. Further, the ordinance making power of the Governor General allowed him to make laws at his own whim. In summary, the Indian

Councils Act 1861 failed to satisfy the aspirations of the people of India.

Indian Councils Act 1892

Background

Indians were gradually becoming aware of their rights with the growth of nationalism. Indian National Congress had adopted some resolutions in its sessions in 1885 and 1889 and put its demand. The major demands placed were as follows:

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

The second demand mentioned above reflected the dissatisfaction of the Indians over the existing system of governance. The Indian leaders wanted admission of a considerable number of the elected members. They also wanted a right to discussion on budget matters. Viceroy Lord Dufferin set up a committee. The committee was given the responsibility to draw a plan for the enlargement of the provincial councils and enhancement of their status. The plan was drawn, but when it was referred to the Secretary of State for India, he did not agree to introduction of the Principle of direct election. However, principle of representation by way of indirect election was accepted with some limitations.

Salient Provisions

- The act provided for additional members in the central as well as provincial legislative councils.
- Central Legislative Council → minimum 10, maximum 16
- Bombay → 8
- Madras → 20
- Bengal → 20
- North Western province → 15

- Oudh →15
- The powers of the legislative councils was increased. The members could now discuss the budget without right to vote on it. They were also not allowed to ask supplementary questions.
- They could ask questions on domestic matters with prior permission of the Governor General. They were also allowed to ask questions on public interest.
- The Governor General in Council was empowered to make rules for nomination of the members subject to approval of Secretary of State for India.
- A system of indirect elections was introduced to elect the members of the councils. The universities, district board, municipalities, zamindars and chambers of commerce were empowered to recommend members to provincial councils.
- Functions of the provincial legislative councils were enlarged and they were empowered to make new laws or repeal the old ones with the prior permission of Governor General.
- Governor General was empowered to fill the seat in the case of Central legislative and by the Governor in the case of provincial legislature.

Critical Appraisal of the Act

The act of 1892 can be said to be a first step towards the beginning of the representative government in India. However such representation was via only indirect elections and there was nothing for a common Indian. The system of indirect election prevented direct contact between the public and the representatives. In many ways, this act also served as a reason behind rise of militant nationalism in coming times. The Congress policy of petition, prayer and protest was seen as a weakness by the British Government. This was evident from the following note by BG Tilak: “.....*political rights will have to be fought for. The moderates think that these can be won by persuasion. We Think that they can only be obtained by strong Pressure...*”

Never the less, the act at least provided the Indians an opportunity to share councils at the highest levels and thus laid down the foundations of the representative government. The number of Indians was increased in the legislative councils. The Act was an

important milestone that led to the establishment of parliamentary government at a larger stage.

Indian Councils Act 1909 (Morley Minto reforms)

Background

Though the Indian Councils Act of 1892 had introduced limited representation with indirect elections, it failed to placate the Indians who were much more conscious of their rights by now. There was a lot of resentment against reign of Lord Curzon, who had already irked the public by the foolish idea of partition of Bengal. There was a rise of extremism in the congress. Government, on one hand wanted to suppress the extremists but on other hand wanted to pacify the moderates. Meanwhile, Gopal Krishna Gokhale went to England and met Mr. Morley, the Secretary of State for India. Viceroy Lord Minto also emphasised the need of making some reforms. Both the Viceroy and the Secretary of State for India decided to work out some scheme to reform the Legislative councils. This culminated as Indian Councils act 1909. The idea was to give locals some more power in the legislative affairs. A provision was made for the expansion of legislative councils at the both the levels viz. central as well as provincial.

Salient Provisions

Expansion of the Legislative Councils

The act enlarged the size of the legislative council both Central and Provincial. The number of members in the Central Legislative Council was raised from 16 to 60. The number in Provincial legislative council was not uniform. Legislative councils of Bengal , Bombay and Madras was increased to 50 members each. The provincial legislature of U.P. was to have 50, of Assam, Burma and Punjab 30 each.

Communal Representation

For the first time, the Indian Councils act gave recognition to elective principle for the appointment of nonofficial members to the councils. However, it introduced separate and discriminatory electorate. The electorate was decided on the basis of class & community. For the provincial councils a provision of three categories was made viz. general, special and chambers of commerce. However, for the central council, a fourth category Muslims was added. This was for the first time that, the seats in the legislative bodies were reserved on the basis of religion for Muslims. Separate constituencies were marked for the Muslims and only Muslim community members were given the right to elect their representatives.

The separate electorate for Muslims had a long lasting impact on India's polity. It recognized the Muslim community as a separate section of the India and triggered the cancer of Hindu-Muslim disharmony which ultimately culminated in the partition.

Under the separate electorates, Muslims could vote exclusively for the Muslim candidates in constituencies specially reserved for them. The idea was to establish that the political, economic and cultural interests of the Hindus and Muslims were distinct. The unity between Hindus and Muslims is a illusion and this act sowed the seeds of the Muslim Communism.

Other Features

- The act empowered the members to discuss the budget and move resolutions before it was approved finally. They were given rights to ask supplementary questions and move resolutions to on matters related to loans to the local bodies.
- The members given right to discuss matters of the public interest however, the house was not binding on the government. Rules were also framed under the act for the discussion of matters of general public interest in the legislative councils.
- No discussion was permitted on any subject not within legislative competence of the particular legislature any matter affecting the

relations of the Government of India with a foreign power or a native state, and any matter under adjudication by a court of law.

Critical Analysis of the Act

The Minto-Morley Reforms of 1909 could not come up to the expectations of the Indians. What the people of India demanded was that there should be set up a responsible government in the country. But the sacred heart of the reforms of 1909 was “benevolent despotism” and it was basically a subtle attempt to create a “constitutional autocracy”.

Further, though non-official majority was given in the Provincial Councils, the practical result was nothing. The non-official majority was nullified by the fact that it included nominated members. There was no real majority of those who represented the people.

A shadow rather than substance

The reforms of 1909 afforded no answer and could afford no answer to the Indian political problem. The real political solution was lying in complete self-rule and accountable governance but the 1909 Act was only a face saving device. The position of the Governor- General remained unchanged and his veto power remained undiluted and the Act was successfully maintained relentless constitutional autocracy. Under such circumstances narrow franchises, indirect elections, limited powers of the Legislative Councils ushered a complete irresponsible government. The Act rather added new political problem with the introduction of the separate electorate system. While the parliamentary forms were introduced, no responsibility was conceded. At the same time there were no connection between the supposed primary voter and a man who sits as his representative on the Legislative Council. In such a situation, the political participation, awareness and education remained a distant dream. In nutshell, it can be said that 1909 Act was ‘*the shadow rather than the substance*’.

Merits of Minto-Morley Reforms

Nevertheless, the *Minto-Morley Reforms* had some of their merits. They mark an important stage in the growth of representative

institution, and one step ahead towards the responsible association of elected Indians with the administration. Further, it also gave recognition to the *elective principle as the basis of the composition of legislative council* for the first time. It gave some further avenues to Indians to ventilate their grievances. They also got opportunity to criticise the executives and make suggestions for better administration. The enlargement of the legislatures furthered the demand of complete indianization of the legislature.