

# Indian Council Act 1861 UPSC Notes PDF

The Indian Councils Act 1861 was an act of the British Parliament and passed on August 1, 1861, that made significant changes in the Governor-General's Council for administrative and legislative purposes. This Act is an important landmark in the constitutional history of India. The most significant feature of this Act was Indian participation in the legislative process.

This Act is also known as Charter Act 1861 or Indian Civil Service Act 1861. The assessment of this act caused the potentiality of British crown to be make use of by the Secretary of state of India. Also this act is a watershed moment in India's constitutional and political history. It changed the structure of the Governor General's council for the executive and legislative purposes. By involving Indians in the legislative process, a new beginning for representative institutions was established.

The Indian Councils Act 1861 restored the power of legislation to the governor-in-councils of Madras and Bombay in corresponding motive. The act also laid down the provision for the formation of legislative councils in other provinces. For the first time the Portfolio system started with the Indian Councils Act 1861.

## Historical Background of Indian Council Act 1861

- After the great Indian rebellion of 1857, the British Crown felt the necessity of seeking the participation of its Indian subjects in the administration of India. Following the revolt in 1857 there was an opinion in England that it would be difficult to establish the government in India without the cooperation of Indians in the administration.
- In pursuing of this policy of association, three acts were sanctioned in 1861, 1892, and 1909.
- The Indian Councils Act of 1861 is an important landmark in the constitutional and political history of India.

## Key Features of Indian Council Act 1861

- The three independent presidencies (Madras, Bombay and Bengal) were put forward into a common system.
- By this Indian Council Act 1861 system of legislation declined.

- Lord Canning had introduced the Portfolio system in 1859 that divided into several branches, which entrusted to different members of the Governor General's council. It also envisages that the member in-charge of his department could issue final orders with regard to circumstance which concerned his department.
- The Act append to the Viceroy's Executive Council a fifth member - a jurist.
- The total membership in this act were increased to 17. Because, Viceroy's Executive Council was expanded by the addition of not less than six and not more than 12 additional members for the purposes of legislation, who would be nominated by the Governor-General and would hold office for two years.
- Not less than half of the legislative members were to be non-official Indians.
- The legislative power was to be restored to the Council of Bombay and Madras, while Councils were allowed to be established in other Provinces in Bengal in 1862 and North West Frontier Province (NWFP) in 1886, Burma and Punjab in 1897.
- In 1962 Lord Canning nominated three Indians to his legislative council-the Raja of Banaras, the Maharaja of Patiala and Sir Dinkar Rao.

## **Provisions of Indian Council Act 1861**

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

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

### **Expansion of executive Governor General Council**

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.

### **Associate Indians with law making process**

- The Indian Council Act 1861 made a beginning of delegate institutions by associating Indians with the legislative work field.
- Lord Canning, The Governor General nominated three Indians to his legislative councils in 1862. They are Raja of Banaras, Maharaja of Patiala, Sir Dinkar Rao.
- The Indian Council Act 1861 provided that Viceroy of India should nominate some Indians as non-official members in the expanded legislative council.

### **Introduction to Portfolio System**

- The Indian Council Act 1861 make remembrance to the Portfolio System introduced by Lord Canning in 1859.
- The Act empowered the Governor-General to delegate special activity to individual members of the legislative council.
- Hence all members have their own portfolio and death with their own initiative with all but the most important matters. This was the first beginning of Portfolio system in India.

### **Process of Decentralization Initiated**

The Indian Council Act 1861 initiated the process of decentralization by restoring the Legislative powers to Madras and Bombay presidencies.

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.

### **Establishment of new legislative Council**

- The new legislative council were formed in Bengal in 1862 and the North Western provinces in 1886 and also Punjab in 1897.
- The Lieutenant Governor was appointment for the new provinces and also it could be created for the legislative purposes.
- In other provinces there was a provisions made for the establishment of legislative councils.

### **Powers of Indian Viceroy**

- The Indian Council Act 1861 empowered the viceroy of India to make decisions and orders for the better activities of the legislative council.
- The viceroy had the power to overrule the legislative council.
- Also the viceroy had the power to issue enactment without the agreement of the legislative council, during an emergency.
- This agreement or ordinance power of viceroy will valid for six months.

### **Significance of Indian Council Act 1861**

- The Indian Councils Act of 1861 is a watershed moment in India's constitutional and political history. Because of it Involves Governor general associate with Indians in legislative works.
- For executive and legislative purposes, it changed the structure of the Governor General's council.
- By involving Indians in the legislative process, a fresh beginning for representative institutions was established.

- The Indian Council Act initiated the process of decentralization by legislative devolution policy by restoring the legislative powers of Bombay and Madras Presidencies.

## **Defects of Indian Council Act 1861**

- The Legislative Council had a limited role and it was established by Indian Council Act 1861. It was mainly advisory.
- No financial decisions were allowed and they have no control over the budget. These council had many weakness so could not discuss about important matters.
- Although the Indians were elected, there were no official conditions for the inclusion of Indians in them.
- In this act need the approval of Viceroy of India to pass a final bill.
- It allowed for the allocation of administrative positions by delegating legislative powers to the presidents of Bombay and Madras.
- The Governor-General had absolute power of ordinance.

## **Reasons for Enactment of Indian Council Act 1861**

The Government of India Act 1858 had introduced notable changes in the procedure in which India was governed from England, however, it did not changed in any substantial way the system of government that prevailed in India. To a greater extent, in the aftereffect 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 maintain the system of administration in India. Some of the other reasons for enactment were mentioned below,

### **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.

### **Overburdened of the Governor General in Legislative Council**

The Governor General in Council was collapsed in its legislative functions and was not able to work sufficiently due to inconvenient procedures leading to delay in enactments.

## **Absence of representation in Legislative Council**

In Indian Council Act 1861 the legislative council had no representation of the people in it. There was a growing demand that some representative element should be introduced in legislative council.

## **Merits and Demerits of Indian Councils Act 1861**

### **Merits**

- Empowers citizens: Fundamental rights are empowering.
- Representative Legislature: A properly elected Legislature represents citizens.
- Independent Judiciary: Keeping the judiciary away from executive influence assure independence.
- Certainty: The Constitution specifies the powers, functions and composition of the organs of the State thereby bringing certainty.
- Checks-and-balances: Suitable mechanisms to make one organ accountable to the other helps in checking powers.

### **Demerits**

- A Constitution not implemented in spirit would render it theoretical.
- A non-democratic Constitution may constraint individual freedoms, favour the State and allowance autocracy.
- A partial judiciary may make its implementation lopsided.

## **Conclusion**

- The Indian Councils Act 1861 is an essential landmark in the constitutional and political history of India.
- By consociating Indians with the law-making process, a fresh beginning was done for the representative institutions.
- The association of Indians in the legislative process was the most significant feature of this Act.
- The Indian Councils Act 1861 changed the formation of the Governor General's council for executive and legislative purposes.
- It prepared for the establishment of legislative councils for Bengal, North-Western Frontier Province and Punjab.