

Constitutional Experiments Under the British Crown (1857-1947)

Constitutional experiments during the British Raj and the evolution of the Indian Constitution are important topics from which questions can be asked in the IAS Exam. They form a part of both polity and history in the UPSC exam. This article gives a brief of all the important Acts that were passed by the British Parliament for India's governance.

During this phase, the major constitutional experiment was incorporated in the following acts and regulations. They are discussed briefly below.

Government of India Act, 1858

The Government of India Act 1858 was an Act of the British parliament that transferred the government and territories of the East India Company to the British Crown. The company's rule over British territories in India came to an end and it was passed directly to the British government.

Features of Government of India Act 1858

- East India Company was liquidated.
- Indian territories of Britain were to be governed in the name of the British Queen.
- The Court of Directors and the Board of Control were scrapped.
- The powers of the Company's Court of Directors were vested with the Secretary of State for India.
- This Secretary of State was to be a British MP and a member of the Prime Minister's cabinet. He was to be assisted by a council of 15 members.
- He was also the channel of communication between the British government in Britain and the Indian administration. He also had the power to send secret despatches to India without consulting his council.
- Via the Secretary of State, the British parliament could ask questions regarding Indian affairs.
- The representative of the British government in India was the Governor-General and Viceroy (both the same person to avoid conflict).
- The Viceroy and the governors of the various presidencies were appointed by the Crown.
- The Viceroy was to be assisted by an Executive Council.
- This act made India a direct British colony.
- This act abolished the dual government of the Pitt's India Act.
- This act also ended the doctrine of lapse.

- The Indian Civil Services was to be instituted for the administration of the country. There was provision for Indians to be admitted to the service.
- It was decided that the remaining Indian princes and chiefs (more than 560 in number) would have their independent status provided they accept British suzerainty.

Indian Councils Act, 1861

- The Indian Councils Act of 1861 made major changes to the Governor-General's Council.
- For the executive functions of the Council, a fifth member was added. Now there were five members for home, military, law, revenue and finance. (A sixth member for public works was added in 1874.)
- Lord Canning, who was the Governor-General and Viceroy at the time, introduced the portfolio system. In this system, each member was assigned a portfolio of a particular department.
- For legislative purposes, the Governor-General's Council was enlarged. Now, there were to be between 6 and 12 additional members (nominated by the Governor-General).
- They were appointed for a period of 2 years. Out of these, at least half of the additional members were to be non-official (British or Indian).
- Their functions were confined to legislative measures.
- Lord Canning nominated three Indians to the Council in 1862 namely, the Raja of Benares, the Maharaja of Patiala and Sir Dinkar Rao.
- Any bill related to public revenue or debt, military, religion or foreign affairs could not be passed without the Governor-General's assent.
- The Viceroy had the power to overrule the council if necessary.
- The Governor-General also had the power to promulgate ordinances without the council's concurrence during emergencies.
- The Secretary of State for India in Britain could also dissolve any act passed by the Governor-General's Council.
- This Act restored the legislative powers of the Governor-in-Councils of the Presidencies of Madras and Bombay (which was taken away by the Charter Act of 1833).
- The legislative council of Calcutta had extensive power to pass laws for the whole of British India.
- There was provision made for the formation of legislative councils in other provinces. New provinces could also be created for legislative purposes and Lieutenant Governors be appointed for them. Legislative councils were formed in other provinces in Bengal in 1862, North-West Frontier Province in 1886 and Punjab and Burma in 1897.

Indian Councils Act, 1892

After the establishment of the Indian National Congress in 1885, there were increased demands for reforms in the British Indian administration. One of the demands of the INC was reforms to

the legislative councils. Lord Dufferin agreed to look into the matter and set up a committee. The act was a result of these deliberations.

Indian Councils Act 1892 Features

- The act increased the number of additional or non-official members in the legislative councils as follows:
 - Central Legislative Council: 10 – 16 members
 - Bengal: 20 members
 - Madras: 20 members
 - Bombay: 8 members
 - Oudh: 15 members
 - North Western Province: 15
- In 1892, out of 24 members, only 5 were Indians.
- The members were given the right to ask questions on the budget (which was barred in the Indian Councils Act 1861) or matters of public interest but had to give notice of 6 days for it.
- They could not ask supplementary questions.
- The principle of representation was initiated through this act. The district boards, universities, municipalities, chambers of commerce and zamindars were authorised to recommend members to the provincial councils.
- The legislative councils were empowered to make new laws and repeal old laws with the permission of the Governor-General.
- **It was the first step towards a representative form of government in modern India** although there was nothing in it for the common man.

Indian Councils Act, 1909

This act of the British Parliament is more commonly called the Morley-Minto Reforms.

Morley-Minto Reforms

- The legislative councils at the Centre and the provinces increased in size.
 - Central Legislative Council – from 16 to 60 members
 - Legislative Councils of Bengal, Madras, Bombay and United Provinces – 50 members each
 - Legislative Councils of Punjab, Burma and Assam – 30 members each
- The legislative councils at the centre and the provinces were to have four categories of members as follows:
 - Ex officio members: Governor-General and members of the executive council.
 - Nominated official members: Government officials who were nominated by the Governor-General.

- Nominated non-official members: nominated by the Governor-General but were not government officials.
- Elected members: elected by different categories of Indians.
- The elected members were elected indirectly. The local bodies elected an electoral college who would elect members of the provincial legislative councils. These members would, in turn, elect the members of the Central legislative council.
- The elected members were from the local bodies, the chambers of commerce, landlords, universities, traders' communities and Muslims.
- In the provincial councils, non-official members were in a majority. However, since some of the non-official members were nominated, in total, a non-elected majority was there.
- Indians were given membership to the Imperial Legislative Council for the first time.
- It introduced separate electorates for the Muslims. Some constituencies were earmarked for Muslims and only Muslims could vote for their representatives.
- The members could discuss the budget and move resolutions. They could also discuss matters of public interest.
- They could also ask supplementary questions.
- No discussions on foreign policy or on relations with the princely states were permitted.
- Lord Minto appointed (on much persuasion by Morley) Satyendra P Sinha as the first Indian member of the Viceroy's Executive Council.
- Two Indians were nominated to the Council of the Secretary of State for Indian affairs.

Government of India Act, 1919

- With the passing of the Government of India Act of 1919, the Dyarchy was introduced at the provincial government - there were executive councillors and ministers.
- Governor was the executive head of the province.
- There were two lists:
 - Reserved list: Governor and councillors were in charge of this list. It included subjects like law and order, irrigation, finance, land revenue, etc.
 - Transferred list: Ministers were in charge of subjects here, such as education, local government, health, excise, industry, public works, religious endowments, etc.
- These ministers were nominated from among the elected members of the legislative council. They were responsible to the people who elected them through the legislature.
- The size of the provincial legislative assemblies was increased. Now about 70% of the members were elected.
- The governor's assent was required to pass any bill. He also had veto power and could issue ordinances also.
- The central government consisted of the Executive and the Legislature.
 - Executive:
 - The chief executive authority was the Governor-General.
 - There were two lists for administration – central and provincial.

- Out of the 6 members of the Viceroy's executive council, 3 were to be Indian members.
 - Legislature:
 - A bicameral legislature was set up with two houses – Legislative Assembly (forerunner of the Lok Sabha) and the Council of State (forerunner of the Rajya Sabha).
 - The legislators could ask questions and also vote a part of the budget.
 - Only 25% of the budget was subject to vote.
 - Rest was non-votable.
 - A bill had to pass in both houses before it became a law.
- Franchise was restricted and there was no universal adult suffrage. It was restricted to people with huge property, or hold some high office in universities, local bodies, hold titles, etc.
- There were communal and class electorates in the provincial government.
- This act provided for the first time, the establishment of a public service commission in India.
- It also created an office of the High Commissioner for India in London.

Simon Commission

- The Simon Commission's report was published in 1930. Before the publication, the government assured that henceforth, Indian opinion would be considered and that the natural outcome of constitutional reforms would be dominion status for India.
- It recommended the abolition of diarchy and the setting-up of representative governments in the provinces.
- It also recommended the retention of separate communal electorates until the communal tensions had died down.
- The Simon Commission led to the Government of India Act 1935.
- This commission was widely boycotted by Indians who were outraged at their exclusion from the commission.

Government of India Act, 1935

This Government of India Act 1935 was passed on the recommendations of the Simon Commission and the Round Table Conferences.

Government of India Act 1935 Features

- An All India Federation was to be created comprising of British Indian provinces and the princely states. This never materialised.
- Power was divided between the centre and the provinces. There were three lists which gave the subjects under each government.

- Federal List (Centre)
- Provincial List (Provinces)
- Concurrent List (Both)
- The Act gave more autonomy to the provinces. Dyarchy was abolished at the provincial level.
- There was diarchy at the centre with two lists - Reserved and Transferred.
- A bicameral federal legislature would be established.
 - The two houses were the Federal Assembly (lower house) and the Council of States (upper house).
- There were to be separate electorates for the minority communities, women and the depressed classes.
- A federal court was established at Delhi for the resolution of disputes between provinces and also between the centre and the provinces.
- This Act introduced direct elections in India for the first time. About 10% of the whole population acquired voting rights.
- There was some reorganisation of the provinces.
 - Sindh was carved out of the Bombay Presidency.
 - Bihar and Orissa were split.
 - Burma was severed off from India.
 - Aden was also separated from India and made into a Crown colony.
- The British Parliament retained its supremacy over the Indian legislatures both provincial and federal.
- A Federal Railway Authority was set up to control Indian railways.
- The Reserve Bank of India was established as per this Act.
- The Act also provided for the establishment of federal, provincial and joint Public Service Commissions.
- The Act was a milestone in the development of a responsible constitutional government in India.
- The Government of India Act 1935 was replaced by the Constitution of India after independence.

Indian Independence Act of 1947

This was also called the Mountbatten Plan since it was envisaged by Lord Mountbatten, the last viceroy of India.

Provisions of the Mountbatten Plan

- British India was to be partitioned into two dominions – India and Pakistan.
- As per the plan, the legislative assemblies of Bengal and Punjab met and voted for the partition. Accordingly, it was decided to partition these two provinces along religious lines.

- The date for the transfer of power was to be August 15, 1947.
- To fix the international boundaries between the two countries, the Boundary Commission was established chaired by Sir Cyril Radcliffe. The commission was to demarcate Bengal and Punjab into the two new countries.
- The princely states were given the choice to either remain independent or accede to India or Pakistan. The British suzerainty over these kingdoms was terminated.
- The British monarch would no longer use the title 'Emperor of India'.
- After the dominions were created, the British Parliament could not enact any law in the territories of the new dominions.
- The Governor-General was made a constitutional head.

On the midnight of 15 August 1947, the dominions of India and Pakistan came into existence. Lord Mountbatten was appointed the first Governor-General of independent India and M A Jinnah became the Governor-General of Pakistan.

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