

The Secretary of State was to be aided by a Council of 15 members, of whom 8 were to be appointed by the Crown, and 7 elected by the Directors of the East India Company. By later legislation this number was changed to "not less than 10 and not more than 14." The Secretary of State was to be the President of the Council, with power to overrule the Council except in regard to certain matters which required the concurrence of a majority of the Council. The Council need not be consulted in those cases in which, under the earlier Act of 1786, the Secret Committee of the Court of Directors acted. The functions and constitution of the Council of the Secretary of State have remained practically unchanged since 1858, and they are dealt with, below, in Part II of this book.

**The Council of the Secretary of State.**

17. The Indian Councils Act of 1861 modified the constitution of the Governor-General's Executive Council ; and the Indian Legislatures were also broadened. A fifth ordinary member was added to the Governor-General's Council, excluding the Commander-in-Chief. For purposes of legislation, the Governor-General's Council was reinforced by additional members not less than 6 and not more than 12, nominated by the Governor-General and holding office for 2 years. Not less than one half of these additional members should be non-officials.

**The Indian Councils Act, 1861.**

The power of legislation which had been taken away from Local Governments, by the Act of 1833 was restored to them by the Act of 1861, and these Councils also were expanded by the addition of not less than 6 and not more than 12 members, at least half of whom were to be non-officials. The power of the Governor-General in Council to legislate for the whole of the Indian territories was retained, and his assent to laws passed by the Local Councils was made essential, subject to the veto of the Crown acting through the Secretary of State. Power to make ordinances in cases of emergency, to be in force for 6 months, was also conferred on the Governor-General. The Governor-General was empowered to establish, by proclamation, Legislative Councils in Bengal, North Western Province and Punjab.

The Governor-General in Council could assemble at any place in India. If they assemble in the Presidencies of Bombay and Madras, the Governor of the Province was to be an extraordinary member of the Council. If they assemble in the Presidency of a Lieutenant-Governor, then, the Lieutenant-Governor was to be an additional member for the purpose of legislation only.

18. Important changes were made with regard to the powers of the Governor-General's Legislative Council, by the Act of 1861.

The Act of 1853 did not define the powers of the legislatures established thereunder. Therefore they modelled themselves on the procedure of the House of Commons in England, and not only proceeded to deal with matters of legislation pure and simple, but also with questions of administration. They showed an inconvenient degree of independence by asking questions as to, and discussing the propriety of, measures of the Executive Government, deeming themselves competent to enquire into abuses and grievances, calling for reports and returns from the Local Administrations, debating, long, on questions of public interest, and introducing motions and resolutions, independent of the Executive Government.

The Legislative Council came into constant conflict with the Executive Government. In the words of Lord Canning, "they had assumed jurisdiction in the nature of that of a grand inquest of the nation."

The Indian Councils Act of 1861 provided a most effective check on legislative interference with the executive, even by way of advice or suggestion. It definitely delimited the powers of the Legislative Councils. The Legislative Councils appointed under the Act of 1861 were not deliberative bodies. Their functions were strictly limited to legislation, and they were expressly forbidden to transact any business except the consideration of, and enactment of, legislative measures, or to entertain any motion except a motion for leave to introduce a bill, or having reference to a bill actually introduced. They could not enquire into grievances call for information, or examine the conduct of the Executive. The acts of administration could not be impugned nor could they be properly defended in such assemblies, except with reference to the particular measure under discussion. These Councils were, therefore, merely Committees by means of which the Executive Government obtained advice and assistance, in respect of the piece of legislation then under "consideration."

The legislative power of the Governor-General's Council was extended in 1865 to all British subjects in Native States, and still further in 1869, by enabling it to make laws for all Native Indian subjects of the King, in any part of the world.

By the Act of 1870, the Governor-General in his Executive Council was enabled to legislate in a summary manner for the less advanced parts of India, and his power of overruling his Council was also strengthened.

The Act of 1874 enabled a sixth member to be appointed for the purpose of "public works." This restriction as to "public works" was removed by later legislation.

19. By the Act of 1892 the following changes were introduced :—

(1) The legislatures were enlarged. The number of additional members in the Legislative Council of the Governor-General was to be not less than 10 and not more than 16. That in the Council of the Governors of Bombay and Madras was to be not less than 8 and not more than 20, while it was not more than 20 for Bengal, and not more than 15 for North Western Province and Oudh.

(2) Provision was made for interpellations and discussion of the Budget, subject to the conditions and restrictions prescribed by Rules made by the Governor-General in Council or the Governor-in-Council. But the members had no right to submit or propose any resolutions, or to divide the Council in respect of any such financial discussion or the answer to any interpellation.

(3) The additional members were to be nominated in accordance with regulations made by the Governor-General in Council and approved by the Secretary of State. Under the regulations so made, a certain number of these nominations had to be made on the recommendation of specified persons, bodies and associations, the intention being to give a representative character to the persons so nominated. As Mr. Gladstone pointed out during the passage of the bill in Parliament, “ while the language of the bill cannot be said to embody the elective principle, it is very peculiar language unless it is intended to pave the way for the adoption of that principle.”

The word ‘ election ’ was never used in the statute. The process was described as nomination made on the recommendation of certain bodies. In the case of the Indian Legislature, five more ‘ additional ’ members were thus brought in, one being recommended by the non-official members of each of the 4 Provincial Councils, and one by the Calcutta Chamber of Commerce. In the case of the Provincial Councils the recommending bodies were, for the most part, Municipalities and District Boards. A species of indirect election was thus inaugurated.

Lord Morley described the system as follows :—“ No election takes place in the strict sense of the term. The nearest approach to it is the nomination by the Viceroy upon the recommendation of a majority of votes of certain public bodies.”