

ORIGIN OF LEGISLATIVE COUNCIL IN TAMIL NADU

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ABSTRACT

The aim of this article is to highlight the origin of legislative council in Tamil Nadu. Of all the organs of Government the legislature is the most important. It is also the most powerful because it consists of the direct or indirect representatives of the people who are sovereign in democracy¹. The History of the origin and growth of the legislative powers of provinces tracing in 1797, the Presidency of Bengal was authorized to issue Independent regulations with its Jurisdiction similar powers were given in 1807 to the presidencies of Madras and Bombay. The result of this was that each Presidency developed its own system of laws². The origin of a council for making laws and regulations in Madras Presidency may be said to date from 1799 in which year the statute 39 and 40 George III, Cap III was passed. This statute empowered the Governor in council of Madras to frame regulations for the provincial courts and councils of presidency. Madras regulations based on those of Bengal were thus first passed in 1802.

Key words :

The Regulating Act of 1773, The India Councils Act of 1861, The Legislative Councils

Introduction :

The Charter of 1726 empowered the Governor in Council and Bombay Calcutta and Madras Presidencies to make laws Ordinances and regulations in their respective Jurisdictions. The Regulating Act of 1773 required that the Governments of Madras and Bombay must send copies of their laws and orders to the Government of Bengal.

The origin of a Council

The origin of a Council for making laws and regulations in this Presidency may be said to date from 1799 in which year the Statute—39 and 40 George III Cap. III was passed. This Statute empowered the Governor-in-Council of Madras to frame regulations for the Provincial Courts and Councils of the Presidency. Madras Regulations based on those of Bengal were thus first passed in 1802. In 1807 was passed the Statute 47 Geo., III Cap. 68, which more specifically empowered the Governor of Madras in Council from time to time,

respecting ordinances, to make, frame and issue such rules and regulations for the good order of the civil government for the town of Madras and of the Company's Settlement of Fort St. George and other places subordinate to it, in addition to the necessary sanctions which the Governor-General - in - council might make for the good order and civil government of Fort William. A copy of every regulation passed at Madras was sent to the Governor-General-in-Council but it does not appear that the Governor-General exercised any direct authority over the Governor-in-Council of Madras in the matter of making laws³. In the year 1813 the Legislative power thus conferred on the local Council was further extended and at the same time placed under greater control. The Governor-in-Council was empowered by an act passed in that year to impose duties and taxes within the town of Madras. That act also enabled the local Government to make articles of war for the order and discipline of the native officers and soldiers in their services; and for the administration of justice by courts-martial. In addition to these powers of legislation, a general power of altering the revenue and of imposing new taxes had been exercised within the province. But as there is no act which expressly conferred it, such power has generally been considered to rest on the inherent powers of Government, Thus from time to time the Legislative powers of the Council were developed and in pursuance of those powers, laws and regulations were enacted till 1834⁴.

In 1833, the attention of Parliament was drawn to certain defects in the laws in force in British India, the authority for making them and the manner of executing them Act 3 and 4 William IV Cap, 85 therefore restricted the power of legislation to the Governor-General-in-Council and took it away from the other Governments which were however authorised to propose to the Governor-General-in-Council drafts or project of laws or regulations which they might think expedient with the reasons thereof. This suspension of Provincial Legislation lasted till 1861. A considerable change was made in the character and constitution of the legislature established by the Statute of 1834 in the year 1853. In that year a Statute was passed—16 and 17 Victoria Cap. 95 by which certain legislative councillors were added to the Council of the Governor-General of whom two were English Judges of the Calcutta Supreme Court and others were appointed severally by the local government. In consequence of these changes discussion in the Council became oral instead of in writing; Bills were referred to Select Committee instead of a single member and the legislative business was conducted in public. While however the Councils of the Governor-General was thus improved in two important features viz., local representation of province and special adaptation of legislative functions it did not satisfy the ideas of many. Lord Caning after discussing various proposals for reform in the direction desired suggested the establishment of local Legislative Councils. Accordingly, when the governance of India passed in 1858 (21 and 22 Victoria Cap.106) from the East India Company to the British nation the opportunity was taken for a fresh departure in the work of legislation and it was decided to empower subordinate or provincial governments to frame and pass all minor acts required for the administration of their local affairs leaving the Supreme Council to supervise their work and to frame and pass all measures of Imperial importance applicable to the Empire

generally. In 1861 therefore was passed the Act 24 and 25 Victoria Cap. 67, the Indian Councils Act 1861 to which as amended by a later Statute the local legislative council owes its present constitution⁵.

Working of the Council.

The provisions of Act 24 and 25 Vict., Cap. 67 under which the power of legislating for local purposes was given to the Madras Government were brought into operation on the 14th January, 1862. Under Section XXIX of the Act the following constituted the members of the first Legislative Council of the Government of Fort St. George⁶:

Officials :—Thomas Sydney Smith Advocate General.

Thomas Pycroft Chief Secretary to Government.

Charles Pelly—First Member of the Board of Revenue.

Non-Officials:—Robert Orr Campbell—Chairman of the Chamber of Commerce.

William Reirson Arbuthnot—Ex-Chairman of the Chamber of Commerce.

Vembakkam Sadagopa Charlu—a native pleader in the Court of Sadr Adawl.

An Estimate

The Legislative Councils created under the India Councils Act 1861, generally, and particularly in Madras served no useful purpose during the first thirty years of its existence. The Act did not go further beyond making a distinction and that too formally between Legislative and Executive Councils. It would not be wrong to say that the Legislative Councils were only the expansion of Executive Councils in the provinces. The Governor nominated only such individuals to be associated with him in the Legislative Council as would always lend support to measures sponsored by the Government. The distinction between 'the Official' and 'the Non-Official' was superficial and even if it be really proved ineffective due to the official majority. The choice of additional members of the Legislative Council lay entirely in the hands of the Governor, the law only restricting the number of persons so chosen by him. Prosperous men who were in the good books of the Government and others who had come in contact with the Governor in his gubernatorial tours and who had given proofs beyond doubt as to their sincerity and sympathetic attitude towards government were the normal choice.

REFERENCES

- ¹ Rabindranath, P., *Politics*, Guntur, 1964, p. 173.
- ² Mahajan, V.D., *India Since 1526*, New Delhi, 1965, p. 373.
- ³ Proceedings of the Legislative Department dated 22nd, January, 1862 p. 368.
- ⁴ Prakashankendra (Pub.,) *Tandon Law Series Constitutional History of India*, pp. 31 – 32.
- ⁵ Chawdhry, B.B., *Indian Constitution and Government*, Delhi, 1990, pp. 59 – 60.
- ⁶ Journal of Fort St. George Legislative Council - Vol. I, pp. 1862-1871, Proceedings dated 22nd January, 1862.
- ⁷ Indian Council Act, 1861, Section XLIX, 24, and 25, Victoria Cap. 67.
- ⁸ Rules for the conduct of Business – Madras Council Supplement to the Fort, St. George Gazetteer, 14th, January, 1862.
- ⁹ No. 289, Fort William Home Department, Legislative, 17th, January, 1862.
Journal of Fort St. George, Legislative Council, Vol. I, 1862 – 1871.
- ¹⁰ Despatch from Lord Kimberly, Secretary of State to the Governor, General of India Council, 16th, February, 1893 (Vide) G. O. No. 32, dated 12th, April, 1893.

