



THE IMPACT OF INDIAN COUNCIL ACT 1892 ON INDIAN CONSTITUTION

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ABSTRACT

The Act of 1892 provided that the number of Additional Members nominated to the Supreme Legislative Council by the Governor-General should not be less than ten and more than sixteen. The Governor-General in Council with the approval of the Secretary of State in Council was authorized to make regulations. Under the regulations duly framed, not more than ten out of the sixteen Additional Members were nominated from amongst the non-officials, the obvious purpose being to retain the majority of the officials in the Council. Five of these non-officials were nominated by the Governor General directly, four on the recommendation "of the non-official members of the Provincial Councils, and one on the recommendation of the Calcutta Chamber of Commerce.

During 1892-1909, when the Indian Councils Act, 1892, was in operation, some of the prominent Congress leaders were members of the Supreme Legislative Council Pherozeshah Mehta, G.K. Gokhale etc.

KEYWORDS :

INTRODUCTION:

The Indian Councils Act, 1892 made a specific provision for preventing members from being absent for a period of two consecutive months. The authorities were empowered to declare the seats of such absenting members vacant. Thus the abuse of absentee membership which had been so common during the preceding thirty years was stopped. The Indian members who were appointed between 1894 and 1908 were much regular in attendance and independent in spirit. The very fact that some of the members present in the Council owed their position to election and not to nomination imparted a new tone to the deliberations in the Council. Pherozeshah Mehta said on the 24th January, 1895 in course of the debate on the Amendment of Act V of 1861 relating to the Police: "There is nothing in its creative statutes or in the declarations of intention and policy surrounding them to justify the supposition that this Council was designed to be a deliberative body without the power or freedom of deliberation, or of carrying the deliberation into effect. Parliament continues to legislate for India and Viceroy can promulgate Ordinance. Mischievous action of Legislative Councils is safeguarded by the power vested in the Governor General or giving or withholding his assent, and the power of the crown, signified through the Secretary of State to disallow any law made by the Council. I venture to think that the fact of the Bill being introduced by the direction of Secretary of State does not deprive me of the right of free and independent judgment within the walls of this Council."

MAIN CONTENTS:

Pherozeshah Mehta was bold enough to raise his voice against the tendency of the executive authorities to secure from the Legislature power of making rules under the Act. He regretted that instead of inserting limitations on the power of the Executive in the Act itself, indefinite power is given to it to make rules and regulations. "Assurances and understandings are made to take the place of definite provision", he asserted, "but it not infrequently happens that they are forgotten or, what is still more dangerous interpreted in all sorts of wonderful and unexpected ways. On another occasions stricture on the Indian Executive became severe and satirical. Speaking of the Police Bill he said: "My Lord, I can not conceive of legislation more empirical, more retrograde, more open to abuse, or more demoralising. It is impossible not to see that it is a piece of that empirical legislation so dear to the 'heart of the executive officers, which will not and cannot recognise the scientific fact that the punishment and suppression of crime without injuring or oppressing innocence must be controlled by judicial procedure and cannot be safely left to be adjudged

upon the opinions and moral certainties of men believing themselves to be capable, honest and conscientious.

Even the tone of the scions of great aristocratic families changed under the new atmosphere. Maharajahdiraj Lakshmishwar Singh of Darbhanga vehemently opposed the Amendment of the Police Act. He frankly said that the object of the Bill was to give to the Magistrate of District the power of redressing, if he so pleased, what he conceived to be a miscarriage of justice on the part of the judicial authorities. He said that the imposition of Punitive tax would embitter the communal feeling. "The feud will be perpetuated, and a most unfortunate impression will be created that the head of the District is in sympathy with one faction to the exclusion and detriment of the other. Nor will the effects be less harmful in the case of agrarian disturbance." He disliked the idea of vesting too much power in the District Magistrate.

The oldest members of Indian bureaucracy felt very much annoyed at the exhibition of such critical spirit. Sir James Westland could not but give vent to his feeling of painful surprise at what he considered to be the arrogance of Pherozeshah Mehta. Addressing the President of the Council he said: "As the first member of Your Excellency's Executive Council, who has an opportunity of speaking after the extraordinary observations which have fallen from the Hon'ble Mr. Mehta, I desire to enter a protest against the new spirit which he has introduced into this Council. I have never heard the conduct of the administrative officers of the Government, as a whole, mentioned here without admiration of the qualities they bring to the execution of their duty, and their anxious endeavour to do their work with even-handed justice. Today for the first time executive officers of Government, who have contributed to the framing and consolidation of the Indian Empire, I hear them all arraigned as a class as biased, prejudiced, utterly incapable of doing the commonest justice and unworthy of being relied on to do the duties which this Legislature imposes upon them." Westland must have completely lost control over his temper, as he attributed to Mehta words which the latter had never used. But the conflict between the senior most ex-officio member of the Supreme Council and its junior most additional member, who had taken his seat for the first time on the 27th December, 1894, that is, 27 days before the occurrence of this verbal duel, heralded the era of struggle for freedom in India.

The Indian National Congress was far from being satisfied with the new reform of legislative councils. But its early leaders never thought of demonstrating their dissatisfaction by

boycotting these. Between 1885 and 1893 we do not find a single important leader of the Congress nominated to the Supreme Council, though a few of them found place in the Provincial Councils. Members of the Supreme Council like Maharaja Jotindra Mohan Tagore, K.L. Nulkar and Sir Ramesh Chandra Mitra were connected with the Congress indeed, but they did not take much active part in it. Nulkar spoke on two resolutions only in 1885, Tagore was a delegate in 1886 and Mitra proposed Pheroze Shah Mehta for Presidentship in 1890. In 1896 he was the Chairman of the Reception Committee of the Congress indeed, but was too ill to read out the Address. It was read out by Dr. Rash Behari Ghosh, who did not play any important part in the history of the Congress before 1906. It should be noted in this connection that at least two of the persons nominated by the Government in the period preceding 1892 were popular enough to be elected in the succeeding period. These were Dr. Rash Behari Ghosh and Maharaja Lakshmeshwar Singh of Darbhanga. The latter was a staunch supporter of the Congress.

Between 1893 and 1909, the period during which legislative councils were constituted under the rules made under the Act of 1892, several important Congress leaders became members of the Supreme Council. Their names along with the years of their membership within brackets are given below:

1. Gangadhar Madhav Chitnavis (1893-95, 1897-99, 1908-1910) of Nagpur, who is said to have been offered the Presidentship of the Congress in 1900 but declined the offer owing to short notice.
2. Pheroze Shah Mehta (1895, 1899-1900)-Chairman of the Reception Committee of the Congress in 1889 and President in 1890. He was again elected President in 1909 but resigned six days before the date of meeting. Such a person could not be brow-beaten by a sun-burnt British bureaucrat.
3. P. Ananda Charlu (1896-99, 1900-1903) - President of the Congress in 1891 and its Joint Secretary in 1892, one of the pillars of the Congress movement from the very beginning.
4. Muhammad Rahimatullah Sayani (1897-98) - One of the foundation members of the Congress and its President in 1896.
5. Bisambhamath (1896-97) - Vice-President of the Reception Committee of the Congress session at Allahabad in 1888 and Chairman, Reception Committee, 1892.
6. Bipin Krishna Bose (1899-1905) - He proposed in the Congress in 1891 that its session should be held in England. He was a member of the All-India Congress Committee in 1916.
7. Sri Ram (1902-1915) - In 1886 he spoke in the Calcutta Congress on the separation of Judiciary from the Executive.
8. Munshi Madholal (1907-1908) - Secretary, Reception Committee of the Congress in 1905 (Varanasi session).
9. G.K. Gokhale (1903-1910) - President of the Congress in 1905 and its Joint Secretary (1904-1908), a towering personality in the Congress from 1889 till his death in 1915.

Lord Elgin wrote in a Minute, dated 25th August, 1896 that the nomination of Congressmen to the Councils would make them more responsible, while their exclusion would make them less so. This is why the recommendation of the constituencies electing them was not set aside.

The Provincial Councils contained a much larger number of prominent Congressmen. Thus in the Bengal Legislative Council we find Congress leaders like W.C. Banerjee (1893-1900), Surendra Nath Banerjee (1893-1902), Ananda Mohan Basu (1896-1900), Lal Mohan Ghosh (1893), Guru Prasad Sen (1895), Narendranath Sen (1897), Saligram Singh (1897), Kali Charan Banerjee (1897), J. Choudhary (1906) and a host of

others. Men like Dadabhai Naoroji (1900) Pheroze Shah Mehta (1894) etc.

In 1904 we find two intellectual giants, Dr. R.G. Bhandarkar, and Dr. Ashutosh Mukherjee as members of the Supreme Legislature. The former was a nominated and the latter an elected member. But as Dr. Mukherjee was soon elevated to the Bench, he had to resign the membership of the Legislature. It is interesting to recall in this connection that his name was proposed by Morley as the first Indian member of the Viceroy's Executive Council. But the British bureaucracy in India knew that it would not find it easy to tackle such a great personality. They, therefore, raised absolutely flimsy objections against his appointment. One of these was that his complexion was intensely dark.

Between 1893 and 1906 altogether 338 non-official members were appointed, whether by election or nomination, to the various Provincial Councils in India. Of these 123 or 36% were lawyers and 77 or 22% landholders. Of the 54 members elected by the District Boards, 36 were lawyers and 10 landholders. Of the 43 members elected by big Municipalities 40 were lawyers and 2 landholders. Between 1893 and 1907 the Moslems constituted 12% of the nominated nonofficial members.

Nawab Mohsin-ul-Mulk wrote of W.A.J. Archbold, Principal of the A.A. Muslim College, Aligarh, in a letter on 4th August, 1906 which said: "No Mohammedans get into the Councils by election; every now and then the Government nominates a stray Mohammedan or two by kindness, not however on the ground of his ability, but of his position, which is neither fit to discharge his duties in Council nor is he considered a true representative of his community."

The most remarkable thing about the reformed Council was the manifestation of the spirit of criticism, even by the members belonging to the landed nobility. In 1894 the Prince of Oudh expressed his doubt about the advisability of imposing any duties on cotton goods manufactured in India. He supported Fazalbhoy Vishram's amendment to the effect that cotton goods below 24 counts should be exempted from Excise duty. In the Budget of 1894 import duty was proposed on iron, coal and many other articles with the sale exception of cotton goods. The Maharajadhiraj of Darbhanga said: "The imposition on the taxpayers-of India of a vast system of import duties, with the sale exemption of cotton goods, seems to me very much to resemble a performance of the play of Hamlet from which the part of Hamlet himself is altogether omitted. When import duties have been talked about, whether in the Herschel Committee or elsewhere, as a possible means of relief from our financial difficulties, it is absolutely undeniable that what has been meant primarily is an import duty on cotton goods. Let us consider the meaning of a duty on the import of the various raw or partly manufactured articles that are used as mill stores in our cotton mills. It is unnecessary to point out that this is a protective duty-protecting the mills of England against our Own mills. This sort of banter and sarcasm was unthinkable in the days of Lord Lytton. The Maharajadhiraj was equally solicitous of the welfare of manufacturers and the rural people. He condemned the duty on Kerosene oil on the ground that it would fall heavily on the poor."

Maharaja Partab Narain Singh of Ayodhya in his speech on the Budget on 27th March, 1894, quoted a sentence uttered in the old Council on 10 March, 1882 by Maharaja Sir Jotindra Mohan Tagore to the effect that there had been neglect of justice to India in consideration of the interests of Manchester manufacturers. He condemned severely the use of Famine Insurance Fund for general purposes and the drawing up of Provincial balances by the Central Government. He boldly asserted that the measures adopted in the Council did not

longer leave the people indifferent. These were discussed at market places and in social gatherings. He, therefore, warned the Government that the exemption of cotton goods from import duty would be at once regrettable and disastrous as there had arisen in India a real public opinion.

The first great battle in the constitutional field was fought over the amendment proposed by Fazalbhoy Vishram On the 27th December, 1894, for it voted two Europeans Griffith Evans and Playfair along with seven Indians, namely, Mohini Mohan Roy, Prince Sir Jahan of Oudh, Chitnavis, Pherozeshah Mehta, Khem Singh Bedi, Maharaja Lakshmeshwar Singh of Darbhanga and Vishram. But eleven members namely—Fryer, Clogstoun, Lethbridge, MacDonnell, West-land, Pritchard, Bracken-bury, Alexander Miller, the Commander-in-Chief, the Lt. Governor of Bengal and the President voted against it. Mr. Stevens did not vote and we find no mention of the Maharaja of Ayodhya either for or against the amendment.

In 1896 the Government proposed to exempt yams from import duty, to lower it from 5% to 3½% on cotton piece goods but to impose an Excise duty on all Indian mill-made cloth at 3½%. Balwant Rao Bhuskate, who represented C.P. in the Supreme.

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