



SOUTH INDIAN HISTORY CONGRESS

Proceedings of the South Indian History Congress
Journal of the South Indian History Congress since 1981
ISSN No.: 2229-3671
UGC CARE Listed Journal

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Source: Proceedings of the South Indian History Congress 32(2012), pp. 161-165

Stable URL: http://journal.southindianhistorycongress.org/journals/articles/2012/SIHC_2012_V32_054.pdf

Published By: South Indian History Congress

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PERIYAR AND THE FIRST AMENDMENT TO THE CONSTITUTION OF INDIA, 1951 – A CRITICAL STUDY

Dr. C. Paramarthalingam

Introduction

Periyar (1879-1973) who strode like a colossus for 54 years from 1919 to 1973 in Tamil Nadu politics for social equality between man and man, man and woman, celebrated the Independence Day on 15th August 1947 as a "day of mourning" on the ground that political freedom was of little avail unless it was accompanied by social freedom. To him, "Independence" meant "suppression of the Dravidians in the South by the Aryans of the North". Manu, the ancient law giver, divided the Hindu society into four vertically giving the preponderance to the Brahmins in the divided society.

The Madras G.O. 1948

In 1948, the Madras Government under T. Prakasam (1946-1949), the Premier, regulated,

by an order (G.O. No.1254) (Education and Public Health Department), dt. May 17, 1948) the admission to medical and engineering colleges and directed them to follow it from the academic year 1948-1949. As per the said GO of 1948, of the total 330 medical seats available, 17 were to be allotted to candidates from other states; 12 seats were earmarked for discretionary allotment; the remaining seats were to be apportioned as follows: out of every unit of 14 seats, 6 were to be given to the Non-Brahmin Hindus, 2 to Backward Class Hindus, 2 to Brahmins, 2 to Harijans (Hindus), 1 to Anglo-Indians and 1 to Muslims¹. Two Brahmin candidates, Champakam Dorairajan and C.R. Srinivasan sought admission into M.B.B.S. and B.E., courses respectively. Though both of them secured high marks in their respective qualifying

examination with C.R. Srinivasan having secured 369/450 marks in his Intermediate Examination and Champakam Dorairajan, a B.A., graduate of the University of Madras having passed it in 1934 with Physics and Chemistry as the subjects, they could not get admitted into the respective courses to which they sought admission because of the Madras Government's reservation policy (1948 G.O.)². They filed writ petitions in the Madras High Court.

Interpretation of the GO, 1948

The two students interpreted the GO (1948) as a measure of discrimination against the Brahmin community in particular³. The Salem Brahmin Sangam petitioned to the President of the India (Dr. Rajendra Prasad) urging him to set aside the Madras G.O. on the ground that it was against the fundamental rights of the two Brahmin students. Setting aside the G.O. as "Ultravires" (unconstitutional), the full Bench of the Madras High Court, in their Judgement in July 1950, ruled, "It (the Madras, G.O. of 1948) denies equal treatment to all the citizens under like conditions, both in the privileges conferred, disabilities imposed. In its effect and operation, the Communal G.O. (of 1948) discriminates markedly against the members of a particular caste and shuts out the students having high qualifications, solely on the ground of their caste or negligence and lets in other with inferior qualifications on the same ground⁴. Dr. B.R. Ambedkar (1891-1956), one of the architects of the Indian Constitutions and also the Chairman of the Constitution Draft Committee, defended the Madras G.O. on the ground that "the administration was fully dominated by one particular caste and it was unwise to expect others who were more than 95 percent to co-operate with Government. Their children could not dream of becoming a Gladstone, a Nelson or a Wellington and they could not aspire for the post of a judge or a professor, a scientist or a commissioner of police. They were dumped into a darkness of wood. They remained hewers

of wood and drawers of water for ever and the forward people remained lords over them".

The Madras Chief Justice's Observation

The Chief Justice of the Madras High Court, Mr. Justice P.V. Rajamannar, in his judgement, stated though the aforesaid two Brahmin candidates secured good marks, they failed to get the medical and the engineering seats respectively which was determined to Article 15 (1) and Article 29 (2) which have guaranteed equality and that their applications should have been considered on merit and not on religion, race, caste and language and hence the Madras Communal GO (1254 of 1948) was rendered "ultravires". However, their Lordships advised the Madras Government to file an appeal to the Supreme Court, if it so desired.

Reaction of the Press

The amendment received a mixed reaction from the press. The Brahmin newspapers, both in English and Tamil such as The Hindu, The Indian Express, Free Press, Dinamani Kadir, Ananda Vikatan, Kalki and Swanthinthira Bharatha Devi launched a scathing attack on the projected amendment. The Non-Brahmin newspapers in Tamil Nadu such as Viduthalai (Social Liberation), Dina Thanthi (Daily Telegram), Tamil Mani, Dravida Nadu (Dravidan country), Tamil Nadu, Porval (War Sword) were wholeheartedly supporting the amendment.

The Supreme Court Judgement

Affirming the ruling of the Madras High Court, the Supreme Court of India ruled that "It may well be that the intention of the Constitution was not to introduce at all communal considerations in matters of admission into any educational institutions maintained by the State or receiving aid out of State Funds"⁵. The judgement further noted that "... their Lordships (Mr. Justice Mahajan and Mr. Justice Mukherjee) informed the Advocate General of Madras that

they would uphold Madras High Court's judgement declaring the State Government's Order regulating admission into colleges on the basis of caste "Ultravires" of the Constitution⁶.

Reaction on the Judgement by the Public Protest

The judgement gave a rude shock to the Non-Brahmin and the Muslims alike. On 13 August 1950, Periyar addressed a D.K. meeting on the Conron Smith Ground, Rayapuram, Madras in which he highlighted the necessity of caste-based reservation and urged the students to boycott schools and the business men to close their shops and join the procession due to take place⁷. On 14 August 1950, Periyar observed hartal (closure of shops) and led a big procession demanding the restoration of the 1948 GO along the main streets of Madras and a public meeting was held in Madras to condemn the judgement of the Madras High Court⁸. Similar processions by the D.K. activists took place at Panagudy in Tirunelveli district, and Kuttalam in Thanjavur district on 14 August 1950. The processionists raised the slogans, "Give communal representation, Long Live Communal representation"⁹. The same day (14 August 1950), the students of the M.D.T. Hindu College, Tirunelveli, staged a boycott to the classes raising the slogan as "As long as communities exist, there has to be communal representation"¹⁰. Similar processions were held by students in many other places also. From 16 October 1950 to 31 December 1950, those D.K. activities who courted arrest in connection with the agitations were 312¹¹.

The Madras Legislative Assembly's Resolution

The Supreme Court of India turned down the argument put forth by the Government of Madras involving Article 46 of the Constitution in support of the 1948 Madras G.O. and upheld the verdict of the Madras High Court in February 1950. The Supreme Court's confirmation of the

High Court's verdict on the communal issue caused much consternation to the Madras Government. The Madras Legislative Assembly, fearing agitation, hastily passed a resolution in April 1951 in favour of the amendment of the constitution to satisfy the public interest.

State-wide agitations

The setting aside of the Madras Communal G.O. (1948) in 1951 by the Supreme Court of India led to serious consequences in the Madras State at D.K. Conference meant for focusing communal representation held at Thiruvanthapuram in the North Arcot District on 20 January 1951 in which resolutions were passed to amend the Constitution on communal representation. The Central Executive Committee of the D.K. met at Trichinopoly on 1 April 1951 under the presidentship of Periyar and the Supreme Court's judgement nullifying the Madras Communal G.O. came in for severe criticism. The Executive Committee demanded the immediate resignation of the Madras ministers in toto on this issue. It also resolved to organize black flag demonstrations at all places which might be visited by those ministers who did not resign¹². Viduthalai (Social Liberation), the mouthpiece of the D.K. wrote that the Madras High Court judgement had rendered the Dravidians as "orphans" depriving them of their due rights in the educational institutions¹³.

Periyar plunges into action

Periyar organized a state-wide agitation in a non-violent way in co-operation with the Forward Bloc, the Backward Classes, the Muslims, the Adi Dravidas and others who protested against the verdict of the Supreme Court unitedly and demanded the restoration of the G.O. concerned. Periyar convened an All Party Conference at Trichinopoly on December 3, 1951 which was attended by all leaders belonging to the respective political parties and social organizations, besides members of the Muslim and the Christian

Communities¹⁴. It was decided to agitate through constitutional means to get back the G.O. (1948)

Pt. Nehru Addresses the Parliament

With the escalation of the situation due to the nullification of the Madras G.O. (1948) by both the Madras High Court and also the Supreme Court, Home Minister and also the Deputy Prime Minister, Sardar Vallabhai Patel (1875-1950), apprised Prime Minister Nehru (1889-1964) and Law Minister Dr. B.R. Ambedkar of the Madras "happenings" and underscored the imperative need of amending the Constitution for the "socially and educationally backward classes", K. Kamaraj (1903-1975), the Congress leader from Madras, also prevailed upon the Central leaders the pressing need for amendment in order to protect the interest of the Backward Classes.

Moving the Bill for amendment, Pt. Nehru observed that "The House knows very well that this matter (reservation) came in this particular form because of certain "happenings" (Periyar's agitations) in Madras, therefore, there is no need to try and hush it up. The Government of Madras has issued a G.O. (G.O. No.1254 Education and Public Health Department, dt. May 17, 1948). I do not know its details according to which certain reservations were made for certain classes and communities. The High Court of Madras said that this G.O. was not in order that it was against both the spirit and the letter of the Constitution. Therefore, some sort of special provisions must be made. We have to do something for the communities which are backward educationally, economically and in other respects, if wish to encourage them in these matters¹⁵. Pt. Nehru was hopeful that if the First Amendment was passed, the State Governments concerned would get power to go ahead with other laws¹⁶.

Nature of the Amendment

The procedure for the amendment was discussed threadbare in Parliament in February 1951 and it became law in March 1951. The First

Amendment to the Constitution in 1951 was pertaining to Articles 15 (4), 29 (2) and 31 (B). In other words, Article 15 "empowered the State to make special provisions for advancement of socially and educationally backward classes of citizens¹⁷.

The Constitution Act of 1951

The First Constitutional Amendment 1951, otherwise called the Constitution Act of 1951 envisaged "that the socially and educationally backward classes would be identified, their difficulties removed and their condition improved". Consequently, the Madras Government issued a G.O. on 27 September 1951 whereby the Scheduled Castes and the Scheduled Tribes were entitled to get 15 percent of reservation collectively, the Backward Classes were to get 25 percent and the rest of the 60 percent was thrown open to all communities¹⁸. It was again revised in 1954, according to which the Scheduled Castes and the Scheduled Tribes were entitled to get 16 percent reservation and 59 percent was fixed for open competition and 25 percent respectively for Backward Communities.

Preparation of Fresh Backward Classes List

With the enactment of the Constitution (Amendment) Act, 1951, the question of identifying "the socially and educationally Backward classes for the purpose of Articles 15 (4) and 16 (4) arose and Union Government examined the problem. The Government of Madras published a list of "socially and educationally Backward Classes" within the confines of Articles 15 (4) and 16 (4) respectively of the Constitution¹⁹. In a cycle of 20 appointments, 3 were reserved for the Scheduled Classes and the Scheduled Tribes respectively, 5 for Backward Classes including Muslims and Anglo-Indians²⁰. It is said that the First Amendment to the Indian Constitution was "effected to fulfill the noble cause of promoting equality demanding all sections of the people²¹.

The First Amendment led to other

Amendments

Being the first and best amendment to the Indian Constitution, the First Amendment led to the most important amendment, *Indraw Sawhney versus Union of India Case (1993)* in which the Supreme Court held that the maximum limit of reservation cannot exceed 50 percent and that there can be no reservation in promotion posts²². It has conveyed the message that any State Government, if it should enhance the quota above 50 percent (in the case of Tamil Nadu which has inflated the quota of 69 percent) it should be brought under judicial scrutiny by the Supreme Court.

Conclusion

From the foregoing discussion, it could be inferred that Periyar was solely and wholly responsible for the First Amendment Act of 1951 to the Indian Constitution. Being the architect of the First Amendment, Periyar helped the Backward Classes in Tamil Nadu to get more representation in professional colleges and public appointments. The present communal representation for various

communities in Tamil Nadu is as follows: OC - 31%, BC - 30%, MBC - 20%, SC 18%, (as per the Constitutional Allotment) and ST-1% (as per the Constitutional Allotment). It could be argued that even the Mandal Commission of 1980 earmarking 27% for the Backward Classes in the Central Services, in a sense, is the by product of Periyar's strenuous efforts.

Thus, other things apart, Periyar by being responsible for the First Amendment to the Constitution, lived a life as enunciated by the great Tamil poet, Thiruvalluvar conforming to the dictum that

**ùNVtL-V ùNnYôo ùT-Vo, £±Vo
ùNVtL-V ùNVL XôRôo²³.**

"The great will do those things which are difficult to do; the mean cannot do those things which are difficult to do" – Thirukkural – 26.

E.V. Ramasami richly deserved the appellation "Periyar" (the great man) as enunciated by Thiruvalluvar. This will be the legacy of this study.

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