

Legislative reform in Colonial Coorg: A study on Constitutional Identity

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Abstract

The customs and manners of any land have its origin in the times of yore and are handed from generation to generation. The Coorg was annexed on the 7th of May, 1834. The country was constituted into a separate province under the direct control of the Government of India. An officer with the title of Superintendent of Coorg was appointed as chief local authority and was invested with criminal, civil and revenue powers, the duty of supervising his administration being assigned to the Commissioner governing the adjoining country of Mysore. This arrangement continued until the Mysore State was made over to the Maharaja in the year 1881, when the newly appointed Resident in Mysore was entrusted with the duties previously discharged by the Commissioner for the affairs of Mysore and Coorg, his official style being changed to Chief Commissioner of Coorg. The title of Superintendent was at the same time altering to Commissioner. Since 1881 there has been no radical change in the main outlines of the administration except in 1924 when a Legislative Council was granted to the province.

Keywords: Province, local authority, commissioner, indigenus

Introduction

The geographical feature of a country influences the civilization and culture of the people living there.¹ The customs and manners of any land have its origin in the times of yore and are handed from generation to generation. ² The Coorg was annexed on the 7th of May, 1834.³ The

¹The province of Coorg which covers an area of 1,682 sq. miles and contains a population of 163,838, is roughly commensurate with a sub-collectorate of the adjoining province of Madras. The Coorgs or Kodagus, from time immemorial the lords of the soil, number about 44,000. They form the largest compact unit and are strikingly Rajput in characteristics. They have their own language, their own religion, their own national dress and their own system of land tenure.

² The proclamation then issued by Lord William Bentinck runs as follows *Whereas it is the unanimous wish of the inhabitants of Coorg to be taken under the protection of the British Government, His Excellency the Right Honorable the Governor General has been pleased to resolve that the territory heretofore governed by Virarajendra Woodyar shall be transferred to the Honorable Company. The inhabitants are hereby assured that they shall not again be subjected to native rule; that their civil rights and religious usages will be respected; and that the greatest desire will invariably be shown by the British Government to augment their security, comfort and happiness.*

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country was constituted into a separate province under the direct control of the Government of India. An officer with the title of Superintendent of Coorg was appointed as chief local authority and was invested with criminal, civil and revenue powers, the duty of supervising his administration being assigned to the Commissioner governing the adjoining country of Mysore. This arrangement continued until the Mysore State was made over to the Maharaja in the year 1881, when the newly appointed "Resident in Mysore" was entrusted with the duties previously discharged by the "Commissioner for the affairs of Mysore and Coorg", his official style being changed to "Chief Commissioner of Coorg". The title of Superintendent was at the same time altered to Commissioner. Since 1881 there has been no radical change in the main outlines of the administration except in 1924 when a Legislative Council was granted to the province.⁴

The province is under the control of the Chief Commissioner, indirect subordination to the Government of India. In his person are combined the provincial functions discharged in other provinces of India by the local Government and the High Court. As Chief Commissioner he is the controlling revenue authority, the Inspector General of Police and Prisons, and the supreme local head of the Public Works, Educational, Medical, Registration and other miscellaneous departments, while as Judicial Commissioner he is the highest civil and criminal court in the province. He is assisted in his work by a secretarial establishment located in Bangalore and controlled by the Secretary to the Resident, who in that capacity bears the style of "Secretary to the Chief Commissioner of Coorg". In the province itself the chief local authority is the Commissioner, whose headquarters are Mercara, and whose duties extend, practically to every branch of the Administration. The Accountant General, Madras, is the account and audit officer for the province of Coorg. Local self-government has not progressed far in the province nor is there any real demand for its extension. There is a single district board for the whole province outside the Municipal areas.⁵

It is presided over by the Commissioner and was originally constituted by nomination. But in 1926, that is to say, two years after the Legislative Council had been set up, the elective principle was introduced. The district board now consists of 13 elected members, 5 *ex-officio* Government members and 2 members nominated by the Chief Commissioner to represent minorities and backward classes. The elected members are returned from electoral areas which are sub-divisions of the electoral areas for the Legislative Council forming single-member constituencies. The franchise for the district board is save in one insignificant identical with the franchise for the Legislative Council; but the constituencies are not arranged separately according to *jamma* and *non-jamma* tenures as in the case of the Legislative Council

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⁴ Muthanna. I.M. (1953), A Tiny Model State of South India, Mysore Pollibetta, Tiny Spot, Coorg, Pp.156-169

⁵ Imperial Gazetteer of India, Mysore and Coorg, Superintendent of Government printing Calcutta, 1908. pp.404-408

constituencies. *Jamma* and *non-jamma* holders vote in the same constituencies. There is an elected Vice-President. The annual income is approximately Rs. 1,40,000. Only the towns of Mercara and Virajapet are large enough to warrant the grant of municipal powers. These two municipalities have elected non-official Presidents and Vice-Presidents. The Mercara municipality consists of 16 members of whom 12 are elected non-officials and 4 are officers of Government sitting *ex officio*. The Virajapet Municipality consists of 14 members, of whom 10 are elected non-officials and 4 are officials. The former municipality controls an income of approximately Rs. 24,000 and the latter Rs. 15,000.⁶

A brief note on Research topic:

The people of Coorg are educationally well advanced and have seldom in recent years been free from political aspirations. These aspirations found expression for the first time in an address. Which was presented to His Excellency the Viceroy and the Secretary of State for India in 1917 by the Coorg Landholders' Association on behalf of all the inhabitants of the Province. In that address they asked that such reforms as were introduced elsewhere should be extended to Coorg. The feeling at that time was against amalgamation with Madras and the recommendations made in their address, in addition to various changes in the internal administration of the province, included the constitution of a representative assembly of 30 under the Chief Commissioner and an Advisory Council of 15 elected by the Assembly. That suggestion did not commend itself to the authors of the Report on Indian Constitutional Reforms, for in paragraph 198 of their Report they treated Coorg as one of those areas where the principle of responsibility cannot yet be applied. They laid on the Government of India, however, the task of considering whether it would be well to associate with the personal administration of the Chief Commissioner some form of Advisory Council adjusted in composition and functions to local conditions.⁷

The very limited proposals of the Joint Authors for constitutional advance in Coorg naturally caused some disappointment the people of the province. Amalgamation with Madras which the port on Ilium con- had in the past been frequently represented as fraught with grave-fluxional danger to then nationality was proclaimed as preferable to the exiguous measure of reforms adumbrated in the Report. At a conference of officials and non-officials, representing various communities and interests, held in February 1919, a demand was put forward for a provincial council of 30 members. The council was to have the power of discussing all legislative projects affecting the province, Imperial or local, of asking questions, of passing resolutions on matters of provincial interest and of discussing the budget. It was

⁶ Muthanna. I.M. (1953), A Tiny Model State of South India, Mysore Pollibetta, Tiny Spot, Coorg, Pp.156-169

⁷ Sathish Gatti., *The Furniture of Empire: A Study of the Gazetters and District Mannuals of Coorg, South Canara and Malabar*, Mangalore University (Un-published MPhil discretion) 2013. Pp.12-39

recommended that the Council should be created under section 3 of the Government of India Act, 1912, in order that legislation on local matters might be passed by the Council subject to the veto of the Chief Commissioner and the Governor-General in Council. It was further recommended that if a division of subjects was introduced on the lines of dyarchy, resolutions on the budget demands for transferred subjects should be binding. The treatment of this demand and of the recommendation of the Joint Authors was mixed up with discussion of the arrangements suitable for other centrally administered areas. But eventually the conclusion was reached that the introduction of the dualised system of government adopted in the case of the larger provinces would be entirely unsuitable to the circumstances of Coorg, besides imposing an intolerable burden on provincial finances. At a later stage the further conclusion was reached that the power of voting the budget and the direct association of the people with the administration would necessarily involve the elevation of Coorg into a Governor's province. To this it was impossible for the Government of India to agree. The problem, therefore, resolved itself into a choice between two alternatives either a purely advisory Council might be established all the members of which would be nominated by the Chief Commissioner though a proportion might be nominated on the recommendation of bodies such as municipalities and the district board, or under section 77 (2) of the Government of India Act a small Legislative Council with a substantial non-official majority might be created. The Government of India recognized that the first alternative would be entirely unacceptable to the people themselves who would regard the type of Council proposed as a mere shadow of a representative assembly unworthy of their educational and political advancement. The people of Coorg were: ware of the nature of the proposals which the Government of India had under consideration. Opinion was not only divided but was vacillating for there was always the possibility of securing a degree of responsible government by amalgamation with Madras.⁸ The course then which was obviously open to the Government of India was to put to the people of Coorg the two practical alternatives of a Council under section 77 (2) of the Act or amalgamation with Madras. Fortunately the vacillation of the Coorgs came to an end and a fully representative meeting of Coorgs, both of moderate and of advanced views, unanimously decided to accept the type of Council suggested by the Government of India.

The primary intention of the reforms granted to Coorg was to set up there a Legislative Council of the nature of the Legislative Councils of Lieutenant Governors. This was done by notifications issued on the 30th October 1923 and, in pursuance of further notifications, the Legislative Council of Coorg was duly inaugurated on the 28th January 1924. But the step of setting up a Legislative Council was found to involve consequences which affected not only the legislative but the administrative

⁸ Vijaya. T. P., Jamma System in Kodagu: its Socio-economic Dimensions (1800-1980), Mangalore University, (*Un-published Phd thesis*) 1993. Pp.280-296

arrangements of the province. It was necessary to classify subjects, in relation to the functions of Government, as central and provincial subjects, and, seeing that the legislative council was to be concerned with the budget, a separation of provincial from central revenues and an allocation of revenues to the local Government were also inevitable. Accordingly, Devolution Rules were framed, the bulk of which took effect from the 28th January 1924, but those which referred to allocation of revenues to the local Government were given effect from the 1st of April 1924. The existing constitution of Coorg is, therefore, described in a series of notifications of 1923 and 1924 which form an Appendix to this memorandum. And the expenditure powers of the Chief Commissioner have been defined in the rules made by the Secretary of State in Council under the proviso to section 21 of the Government of India Act which are also included in the Appendix. For the purpose of defining the provincial sphere of administration and of legislation (subject to section 80-A of the Government of India Act) the most important rules are the Devolution Rules. These rules do not contain any explicit devolution of authority in respect of provincial subjects to the local Government as in rule 13 of the Devolution Rules applicable to Governors' Provinces.⁹ But it has been held that such devolution is implicit in the rules, and in practice the constitution has operated as if there were explicit devolution. The local Government has, therefore, been given powers of its own, but since there has been no transfer from among provincial subjects of subjects to the administration of a locally responsible executive, the local Government in all its functions is subject to the unrestricted superintendence, direction and control of the Central Government: It was a consequence of the devolution of authority to the Chief Commissioner that his expenditure powers should be somewhat wider than those of local Governments in centrally administered areas. Accordingly, he has been given powers in respect of expenditure which are less than those conceded in Governors' Provinces but more than those of minor local Governments. The classification of subjects as central and provincial follows closely the classification adopted in major provinces. But the financial powers of the local Government are subject to restriction. Taxation bills, like all other bills, require the previous sanction of the Governor-General in Council and a similar sanction is required in the case of proposed borrowing. The local Government (Borrowing) Rules have not been applied to Coorg. The allocation of revenues to the local Government was based generally on the assumption that receipts accruing in respect of provincial subjects and other allocated sources of provincial revenue would normally suffice to meet provincial expenditure. The province was, therefore, given no opening balance and the arrangements do not include any grant or subvention from central revenues. 'Central subjects in Coorg are administered by the local Government as the agent of the Governor-General in Council. The

⁹ Vijaya. T. P., Jamma System in Kodagu: its Socio-economic Dimensions (1800-1980), Mangalore University, (*Un-published Phd thesis*) 1993. Pp.310-312

Coorg Legislative Council consists of 15 elected members and 5 other members nominated by the Chief Commissioner of whom 4 are officials and one is a non-official representing depressed classes. Of the 15 elected members 2 represent the European community, 9 the *Jama* tenure holders [defined in Coorg Electoral Rules, Schedule II, paragraph 1 (3)] and 4 the *non-jama* tenure holders. The franchise qualifications are based, as in major provinces on the tenure of land, on assessment to income-tax, on military service and on payment of certain municipal tax. The constituencies are territorial and residence in a constituency is a necessary qualification of an elector. The European constituency extends to the whole province and returns two members.¹⁰ The other constituencies are arranged by dividing the area of the province into four areas for each of which there is a *jama* constituency and a *non-jama* constituency. The *non-jama* constituencies are single-member constituencies but two of the *jama* constituencies return 3 members and one *jama* constituency returns two members. These four electoral areas do not cut across the electoral areas for the constitution of the district board but represent a grouping of these smaller areas. Members of the Council hold office for three years from the date of taking a seat. *There is no provision for the term of life of the Council or for its dissolution. The effect is that in course of time the Council will be constituted by a series of bye-elections. The quorum for the transaction of business is eight. The Chief Commissioner is *ex-office* President of the Council.

The functions of the Legislative Council fall into three divisions,

1. Legislative
2. Deliberative and
3. Interrogatory

One source of provincial legislation is the powers given by the 'Scheduled Districts Act, XIV of 1874, which was declared to be in force in Coorg by a notification, dated the 22nd February 1875. Section 3 of this Act, as amended by the Devolution Act, XXXVIII of 1920, empowered the local Government to declare authoritatively which general Acts and Regulations are or are not in force in Coorg, and section 5 enables the same authority to extend to Coorg, which suitable modifications, any enactment which is *in* force in any other part of British India. Powers of control vested in and exercised by the Governor-General in Council in virtue of certain enactments have been relaxed and transferred to the local Government by the Devolution Act referred to above. Another source of legislation is the powers given by section 71 of the Government of India Act which applies to Coorg. These powers remain unaffected by the establishment of Legislative Council which has been empowered to make laws for **"This follows the distinction between Governors' Legislative Councils and Legislative Councils of Chief Commissioners made in sections 72-B and 78 (1) of the Government of India Act.** The peace and good Government of the province, subject to the restrictions (a) that the previous sanction of

¹⁰ Report on the moral and Material progress of the Coorg province during the period 1881-1891,1891-1901,1901-1911 1911-1922, Bangalore.

the Governor-General is required to all legislation and (b) that all bills passed by the Council are reserved for the consideration of the Governor-General;¹¹

The Deliberative powers of the Council are (1) discussion of the annual financial statement and (2) discussion of matters of general public interest. The rules defining them are substantially transcripts of the rules in force in pre-reform Councils. The rules for the discussion of the annual financial statement distinguish between the financial statement and the budget. The first means the preliminary financial proposals of the local Government for the financial year next following. The second means the financial statement as revised by the local Government after the proposals of the Finance Committee have been considered. On a day not later than the 5th day of January in each year a Finance Committee of the Legislative Council is constituted for the purpose of discussing the draft financial statement and making proposals with reference thereto for the consideration of the local Government. The Committee consists of a Chairman and such other members not exceeding five as the Chief Commissioner may direct, of whom not more than half are nominated by the Chief Commissioner and the remaining members are elected by the non-official members of the Council. The Chief Commissioner of Coorg who is the "Finance member" for the purpose of those rules is the Chairman of the Committee. The draft financial statement is referred to the Committee on a day not later than the 18th day of January in each year.

It contains statements showing:

- a) The Opening Balance of The Provincial Account;
- b) The Estimated Provincial Revenue;
- c) The Estimated Provincial Expenditure;
- d) The Amounts Available For Maximum Recurring Expenditure and For Total Expenditure Upon Other New Schemes;
- e) The Estimated Closing Balance Which Should Not Be Less Than Rs. 50,000.

The draft is accompanied with an explanatory memorandum. The financial statement is then discussed by the Committee whose proceedings are private and informal. The Committee submits to the local Government their report indicating the changes which it recommends by the 28th day of January. After considering the proposals of the Committee the local Government embodies its own conclusions in the financial statement. The budget is not formally presented to the Council but copies are supplied to all members. It comprises a memorandum by the Finance Member explaining the general financial situation of the province in the current and ensuing years together with a memorandum explaining the estimates of revenue and expenditure.¹²

¹¹ Imperial Gazetteer of India, Mysore and Coorg, Superintendent of Government printing Calcutta, 1908. pp.412-421

¹² Imperial Gazetteer of India, Mysore and Coorg, Superintendent of Government printing Calcutta, 1908. Pp.409-428

The first stage of discussion takes place on a subsequent day after the copies of the budget are supplied to members. At this stage the discussion of the budget is general and no member is permitted to move any resolution nor is any question submitted to the vote of the Council. On the day following that on which the the general discussion has been held the heads or groups of heads in the budget are considered separately. The members are then at liberty to move resolutions, subjects to certain restrictions resembling those in force in Governors' provinces. The subjects specifically excluded from discussion are those referred to in sub-section (3) of section 72-D of the Government of India Act and in rule 23 of the Rules of Business for provincial legislative councils. The Council can divide on these resolutions. Every resolution, if carried, has effect only as a recommendation to the Chief Commissioner.¹³

Conclusion

The declaration of a definite goal received careful consideration of the Committee which had before it a number of conflicting proposals of the tiny province. Some maintained that a declaration in terms of responsible government would help to quiet us to unnecessary and avoidable political agitation and set the people to work out their political salvation on a settled plan while permitting the Ruler to put forth his best efforts to assist the people to attain the goal.

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¹³ Muthanna. I.M. (1953), A Tiny Model State of South India, Mysore Pollibetta, Tiny Spot, Coorg, Pp.180-186