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THE CHARISMATIC LEADER: DURGABAI DESHMUGH AND HER ROLE IN INDIAN CONSTITUTION

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Abstract:

Dr.Durgabai Deshmukh, the phenomenon is hundred years old. In life and death, Durgabai remained a phenomenon. It is evident from the fact, that she influenced, may mesmerized anybody, who came in contact with her. This influence remained in fact for long, after she breathed her last. Her memory is etched firmly in all those, who came under her spell, in thought and deed. There can't be greater evidence than, the great Mahatma was so influenced by a girl of early teens, which Durgabai was at the time of Indian National Congress at Kakinada lie allowed her to organize a band of young Balasevikas during the freedom struggle.

KEYWORDS:

Phenomenon, Indian Constitution.

INTRODUCTION

"The founding fathers of Indian Constitution" Completely obvious of the fact, that the framers of Indian Constitution included women was not the case with the U.S.A. One of the Distinguished women, who participated in the deliberations relating to the making of the constitution, was Smt. Durgabai (1909-1981). This paper focus on member of constituent assembly and constitution articles viz., Legislative Relations Articles, Financial Relations Articles, Inter State Trade and Commence Articles, Judiciary, Directive Principles State Policy, Establishment of High Court, Appointment of Governor, Fundamental Rights Emergency Powers, etc.

Since her childhood, she had been quite active in the struggle for freedom. As a member of the Indian National Congress, she participated in the satyagrahas in 1930's. It was after those satyagrahas, at a very late age she educated herself getting an Honours degree followed by a degree in law. She had in the late 1930's established Andhra Mahila, Sabha in Madras which is now doing a yeoman service for the cause of women. By the time of her elections, she had no previous experience of the Central or State Legislatures not did she hold any office in the Congress Organisation. Durgabai an advocate in the High Court of Madras, was elected, to the Constituent Assembly of India in 1946 from Madras Province.

On 9th December, 1946, Durgabai presented her credentials and signed her name in the Register of the Members of the Constituent Assembly. She as the only women member on an important 15-member Committee set up by the Constituent Assembly to frame the rules of procedure.² This Committee submitted its report on December, 20, 1946. Later she was elected to the steering Committee entrusted with the responsibility of arranging the order of business for the day, grouping similar motions and acting as a liaison body between various wings, organs and functionaries of the Assembly.³

(1) With Prof.K.Santhanam, M.Ananthasayanam Ayyangar and T.T.Krishnamachari - she commented on the following aspects and articles: State Executive- Articles 131,132,133, 134, 135, 142,144 and 147; State Legislature - Articles 149,153,156,158, 161,165,166,163,175,176 and 184; Legislative Powers of the

Governor- Articles 187, Elections Article 298, High Courts-Articles 191,192,193,196% and 197; Centrally

Administered Areas - Articles 212 and 213; Relations between the Union and the States:-

a)Legislative Relations - Articles - 217, 223,218, 220, 224, 226, 228, 230, 231, 233, 234, 239, 240 and 241.

b)Financial Relations:- Articles 249,251, 252,253,254,257,226 and 269;

Inter State Trade and Commerce:- Articles - 44 Services under the Union and the State Services, Articles 282,285,286 and 288. Minorities:-Articles 292, 293, 294, 295 & 296; Amendment of the Constitution - Articles -304 305 (3); Temporary and Transitional Pro-visions -Articles - 306,307,312 and 313.

(ii) In association with Dr.Pattabhi Seetharamayya, Takur Das Bhargava, B.V.Keskar, T.T.Krishnamachari, M. Anantasayanam Ayyangar and K.Santhanam, she made suggestions or comments on the following aspects of the Constitution:- Preamble; Union and its territory - Articles 2,3,4, Citizenship - Article 5, Fundamental Rights:- Articles - 7, 9, 13, 15,20,21,23,24,25 and 27;

Directive Principles State Policy:- Articles 29, 40, Union Executive - Articles 42,44,47 and 55.

Union Legislative:- Articles - 67,68,69,72, 73,75,78,81,82,83,86,87,88 and 89; Legislative Powers of the President:- Articles - 102. Judiciary - The Supreme Court -Article 103,109 and 122 and Auditor General of India- Article 124.

(iii) With K. Santhanam and M. Ananthasayanam Ayyangar - Emergency Provisions - Article 278.

JUDICIARY:-

When the Constituent Assembly was discussing the Report of a Model Provincial Constitution, Smt.G.Durgabai on July 21, 1947, supported clause 1 in part II relating to the procedure for appointment of Judges to the provincial Courts. She confessed that she herself held view for some time that it would be desirable to leave this matter to the Governor acting on the advice of his Ministers. But on a careful Consideration of the matter she found that the procedure than suggested had greater advantages.

Therefore, considering all these matters, she feel that it is highly necessary that the Chief Justice of the Supreme Court is consulted by the President of the Federation in making these appointments to the Provincial Court. Of Course, this need not really leave a fear in our minds that the freedom of the Provinces is curtailed to a large extent, but this sort of check, will be used only on rare occasions and generally the recommendations made by the Governor on the advice of his Ministers and in consultation with the Chief Justice of the High Court will be accepted so long as they are right and also their choice is bound to be good generally, except in very rare instances when the intervention of the Federal Authority is to be brought.⁴

Establishment of High Court:- During the discussion on the Report of the Union Constitution Committee, Durgabai moved an amendment on July 28th 1947 to add a new clause 18-A with the purpose of laying down some kind of procedure for establishment of High Courts in the existing provinces and newly created units. Alladi Krishna Swamy Ayyar and Ananthasayanam Ayyangar agreed with her amendment in principle. M.S. Aney felt that the matter would not come under the chapter relating to Federal Judicature. N.Gopaldaswamy Ayyangar also felt so but pointed out that "a matter of this description will not be lost sight of in framing the final text of the provincial portion of the Constitution". In view of this assurance, Durgabai withdrew the amendment.⁵

Judges of the Supreme Court to be Citizens of India - N.Gopaldaswamy Ayyangar referring to an amendment of hers observed on July 29, 1947.

"Srimati Durgabai has suggested that every judge of the Supreme Court shall be citizen of the Union of India. Nobody will take exception to that statement as general proposition. But we have perhaps to take the composition of the Court as it may be at the inception of the Constitution and the question is whether it should go into Constitution in the form that has been proposed in the amendment or in some different form". I suggest it might be left to the draft men". In view of this suggestion, Durgabai did not press her amendment⁶

Fundamental Rights:- Draft Article 17, Corresponding to article 23 of the Constitution came up for Consideration in the Assembly on December 3,1948. Several amendments were moved. Durgabai referring to an amendment to the article proposed by Professor Shah to substitute in clause; I."Traffic in human beings or other forms of enslavement and degradation as well as beggar" observed that "If any province has suffered from this bad practice of dedication of devadasis in the name of religion", it is the province of Madras, The worst form of this custom existed in Madras for a long time, I do not know whether this custom of dedication exists in any other province in any form. But we all know that in several ways this

was practice". She referred to the efforts of reformers like Muthulakshmi Reddy and said Madras had passed a law prohibiting the custom. She felt that it was not necessary to include this provision although she very much appreciated the spirit which actuated Professor Shah to move the amendment.⁷

Throwing open Hindu Temples;- On 6th December, 1948, Durgabai moved an amendment to Article 19(2) (1) of the Draft Constitutions of a public character to any class or section of Hindus. Durgabai wanted the words "all classes and sections" be substituted for the words "any class or section." In her view the clause as it stood was restricted in its scope, and the object of her amendment was to secure the benefit in a wider way and to make it applicable to all classes and sections. Her amendment was accepted and the draft article as amended was adopted.⁸

Remedy for Violation of fundamental rights: In course of discussion on Article 25 of the Draft Constitution, Durgabai in support of the Article, the main principle of which was to secure an effective remedy to the infringement of the fundamental rights guaranteed under the Constitution, observed on 9th December, 1948 as follows ;

"All of us are aware, and the Drafting Committee is quite alive to the fact, that in recent times in England the procedure under ancient writs has been considerably modified and a simple remedy by a petition has been substituted for writs in a recent enactment in England. Perhaps that is the reason why the drafting Committee has put in this article direction or orders in the nature of writs of habeas corpus etc.

Another point is that the right that is vested in the Supreme Court in no way affects the right of the High Courts in any part of India to issue similar writs or to enable parliament to make laws empowering any other Courts to exercise the same power within the local limits of its Jurisdiction".⁹

Prevention Detention:- On September 16th, 1949, while supporting the move of Dr. Ambedkar for addition of a new Article 15-A in the Context of Preventive detention, Durgabai Observed.

"This new Article 15-A introduced by Dr. Ambedkar is a very happy compromise. Think of the 1818 Regulation which had no time limit at all. There after came public Security Acts of the various Provinces. Now the Board has been introduced in this new article. The Board has got to go through these cases. Also in no case is the detention is to then the Board has got to report. The Court has got to examine the papers and representations made by the Executive, very carefully. Dr. Ambedkar has very ably explained the limitations and the restrictions over this power".¹⁰

Age of the Member of Council of States:- Article 152 of the Draft Constitution Prescribed an age qualification for members of State legislatures. There was no corresponding provisions for members of Parliament. Later it was felt necessary. The new Article 68-A, intended for insertion after 68, proposed a minimum of 25 and 35 years respectively for the members of the House of the people and the Council of State. Durgabai moved an amendment on 18th May, 1949 to lower the age to 30 from 35 for a seat in the Council of States and it was adopted.¹¹

Appointment of Governor:- of On 31st May, 1949 during the discussion on amendment to Article 131, Durgabai supported the amendment moved by Brajeshwar Prasad and supported by Sri Kamath.

She frankly confessed: "I also for sometime held the view that the system of election (of governor) by direct vote would be a better one compared to every other system. But I should say that I have changed my views in the matter because I am one of those who have given some thought to this question and came to the conclusion that the proposal of nomination or appointment as suggested in the amendment is better one in the circumstances that we have today".

She felt that the election system as proposed by some as against the amendment was very dangerous. She further observed - "Those in favour of this system of appointment said yesterday that a happy and healthy Convention would grow of Consulting the provincial Prime Ministers. I think already the system has grown and is growing that whenever a Governor is appointed to a province, the Chief Minister of that Province is invariably consulted. Therefore I think the fear of my friends that the President would not discharge his responsibilities well and in the interest of the Country is absolutely groundless. She also noted.

"The Drafting Committee itself has changed its view and has put forward an alternative proposal, Viz. to appoint one of the four Candidates out of a panel of four candidates to be elected by the Houses. Sir, this is a proposal which has no counter part of similarities in the whole world and also it is impossible to depend this panel business on its merits. I would say this will not carry any responsibility but on the other hand carries all the disadvantages of a divided responsibility. It carries no responsibility of either the President or the cabinet or the Provincial Cabinet because the responsibility here is very much divided. In this panel system there is this danger that it there notes recorded vary, as they are bound to vary, and if the President happens to pick up a man who has secured less number of votes, the person chosen will come into clash with the Provincial legislature. Therefore he would be naturally unwilling to take up that responsibility. Ultimately, therefore it would be resolve itself into an election by the house itself. An

election or appointment which rests on the House, I do not think, carries much importance.¹²

Conditions of appeal to the Supreme Court:- On 6th June, 1949, Durgabai, accepted and supported an amendment to Article 111 moved by Dr. Ambedkar. She offered a few remarks. Though there was an amendment similar to that given notice of by hers did not move it as Ambedkar's amendment accepted the major part of her amendment. The article under consideration laid down, the conditions in detail for the appeals to the Supreme Court. The Object of her amendment, which she did not move was to introduce a kind of elasticity of the conditions of appeal and leave the conditions to the future parliament to lay down if it finds absolutely necessary and essential. In the law as it stood prior to the passing of the Federal Court Enlargement Jurisdiction Act, the conditions of the appeal were regulated by the Civil Procedure Code or by Order - in Council made by his Majesty. This Civil Procedure Code was liable to be amended by parliament. Sri Rohini Kumar Chowdari told, that he was rather diffident in making a strong appeal in that matter because no less a person than Smt. Durgabai had sponsored the original idea and Sri. Alladi Krishna Swamy Ayyar said, that it had his full sympathy. Dr. Bakshi Tek chand observed and said that the amendment which Prof. Shibban Lai Saksena had moved and had been supported by Alladi Krishna Swami Ayyar and Smt. Durgabai was not as innocent as, it appeared to be, and it was really of a very revolutionary. Dr. P.K. Sen expressed his opposition. The article 111 as amended was added to the Constitution.¹³

Emergency Powers:- In support of Article 277 of Draft Constitution relating to emergency which was under discussion on August 20, 1949, Durgabai, favouring an amendment of Dr. B.R. Ambedkar, observed.

"Article 277 empowers the President to effect alterations which are necessary in the existing arrangements with regard to the distribution of revenues between the units and the Centre. This power is conceded to the President only for the period of emergency and in my opinion this is necessary equal to article 275 which has already been agreed to by the House.¹⁴

Seventh Schedule:- On 31st August, 1949, Dr. B.R. Ambedkar moved that after entry 70 of list I, the following entry 70-A "the sanctioning of cinematograph films for exhibition" be inserted. The entry which had Originally been placed in the Concurrent list was thus Proposed to be put in List I. Speaking in support of Ambedkar's motion, Durgabai observed that the object of the Centre in taking over this power to itself was to lay down certain uniform standards in the films that are exhibited all over this country and also outside this Country. And that the Provincial interests or the Provincial Censorship boards that were functioning should be consulted and their interests should be taken into Consideration and in every matter their advice and Co-operation ought to be sought in censoring these films. H.V. Kamath wholeheartedly agreed with Durgabai and stated that our films ought to reflect the genius and culture of the nation. Entry 70-A as moved by Ambedkar was added to the union List.¹⁵

Protection of Children:- On the 3rd September, 1949, Dr. P.S. Deshmukh moved that in Entry 6 of List 111, after the word 'infants', 1. The words 'care and protection of destitute and abandoned children and youth'. 2. Or alternatively the words 'Protection of childhood and youth against exploitation and against moral and material abandonment' be inserted. In support of this amendment, Durgabai appealed to the Drafting Committee and the House to realize the great importance of the protection of children from exploitation or abandonment and to accept the principle behind it.¹⁶

Acceptance of Hindi as Official Language:- During the Discussion on N. Gopalswamy Ayyangar's draft relating to Official Language. Durgabai pleading for its acceptance observed as follows on September 4, 1949.

"The National Language of India should not be and cannot be any other than Hindustani which is Hindi Plus Urdu. For the sake of satisfying the sentiments of our friends we have accepted Hindi in Devanagari script. It is no less sacrifice for us to have had to depart from a principle, which we have all along fought for and lived for. This departure means a very serious inconvenience to us and it is not without a pang that we have agreed to this departure from the tolerant Gandhian ideology, the Gandhian Philosophy and the Gandhian proposition namely, that the official languages of India should be only that which is commonly understood and easily spoken and learnt. Sir, this is the sacrifice that we have made.

We urge caution and an accommodating spirit on their part, in the interests of the minorities here who like the Muslims, need time and sympathy to adjust themselves. They have all displayed large hearted readiness to fall in line with the predominant sentiments purely from the point of view of excellence of literature and international reputation. Bengali is worthy of adoption as the national language. From the point of view of sweetness and also from the fact that of view of sweetness and also from the fact that it is the second largest of the languages spoken in India, Telugu could be worthy of adoption as the national language. Sir, we have given up our claims for Telugu. We have not spoken one word in favour of it. We have not suggested that one of these provincial language should be accepted as the National Language of our Country.

Now when we have made this sacrifice, you come out and say sacrifice another point and swallow the other five percent remaining out of the hundred percent and adopt the Hindi numerical. I should say that

is the height I hesitate to put it that way but I must say it of Language tyranny and intolerance, we have agreed to adopt Hindi in the Devanagari script, but I must remind the house that we have agreed to the adoption of Hindi in the Devanagari Script subject to certain Conditions.

The other questions which I wanted to speak about is that in the non-Hindi speaking areas. We have got to learn Hindi which we have raised to the position of an official language. Our purse is very meager and we are already spending so much for the removal of illiteracy in our provinces. Therefore it becomes the duty and responsibility of the Centre to give sufficient grants to the provinces which are Non-Hindi speaking areas to develop and also to propagate this Hindi. Please remember that we are accepting Hindi only with these Conditions which I have stated. For your part you should have no hesitation to accept Shri. Gopaldaswamy Ayyangar's draft. Even we do not agree with some of the provisions there, but we have accepted it, and therefore you should have no hesitation in accepting it and supporting it.¹⁷

Durgabai's Last speech on Draft Constitution:- The Last speech of Durgabai on Draft Constitution, was on 24th November, 1949 during the discussion on the Third Reading of the Draft Constitution. Some of her Comments in this context are worth, noting on the nature of the Constitution, she observed.

"It is possible for a socialist to complain that the principles of his own party do not find a place in this Constitution. But our is a Constitution, which is neither a socialist Constitution, or a Communist Constitution, Or even for matter of that, a Panchayat Raj constitution. It is a people's Constitution, which gives free and ample scope to the people of India to make experiments in Socialism or any other ism in which, they believe would make this country prosperous and happy. It would have been wrong on the part of the makers of the Constitution to have introduced their own political philosophy, and they have done well in making this Constitution, as I say a cent percent, people's Constitution leaving it at that".

Referring to the Criticism, that adult franchise unleashes vast forces, which may not work in the interest of national good, but which may work in sectional interest. She stated that depends upon the leaders, who were going to take charge of the destinies of our country and of the new setup to create sufficient safeguards; against such an abuse.

She noted, that the restrictions on the Fundamental Rights are completely in consonance and in accord with well recognized restrictions in the whole Jurisprudence not only of this country, but of the whole world and the Constitution of various countries. She felt that, it would not be an insurmountable difficulty for a Republican constitution like India to work well within the common wealth. Drawing an apt analogy from ancient Indian History, she said "I would mention again, that it is not unknown in ancient India, because the Republic of lichavis is mentioned as having a form of membership or partnership with the empire of Chandragupta. These two names are inscribed on the imperial coins. Towards the end of her last speech on the Draft Constitution, she said: I have just read the decision of the Government of India this morning in the papers, that they have rested facilities to bring about the Andhra Province at an early date. They have done well in leaving the details to be worked out by a partition council and that the centre could not interfere with them. I am very glad about it and I hope that the partition Council which might be created will not do anything that is injurious to the peaceful and quiet life which the people are enjoying hitherto. Her hopes did not come true.

Durgabai is a builder. Her life is a saga of building institutions through out her life, their Wherever she lived, she left not only monuments but also some of our constitution as evidence for her intellectual capacity, concern for the down trodden, emancipation of women, simpathy, for the weak and infimaentally and physically international contact and exchange. She had a bold touch. Whatever she touched it flourished. Her Magic wand has shaped not only an organization but also constitution of our country. The total number of suggestions would be 165 taking into Consideration, two or more comments on any particular article. These suggestions cover most of the chapters of the Constitution and thus provide a glimpse of her interest in diverse aspects of the Constitution. During the discussion on draft constitution clause - by - clause Consideration of the Draft Constitution and also the discussion on the reports of the various Committees appointed by Constituent Assembly in the context of the framing of the Constitution, Durgabai presented her well-Considered views on different aspects in Judiciary, Fundamental Rights, Interstate Relations etc.

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