

Chapter 8.

Guarantee to certain subjects of the State.

We have been considering the question of jurisdiction in the preceding chapters and from it, it is now fairly clear that jurisdiction in internal affairs of the State was also not fully enjoyed by the Native Government as there were certain checks over some definite area of land like Cantonment or definite section of people like Europeans and British Civil Servants. But one of the most obnoxious features of a British policy, which is to be found in almost all the Native States, to a lesser or greater extent is the institution of a Guarantee. But it is most interesting as well.

We may now briefly state what it exactly meant.

It is a mistaken view that it were Britishers who introduced this system of giving guarantees to certain subjects who rendered yeoman service to the British cause in India in any form or to a certain class of subjects who remained loyal to Britishers in times of stress; in both the cases the adherence to the British cause was not necessarily always antagonistic to the good of the State. This would be evident when we talk of the question of guarantee as found in Baroda State. Its origin, therefore was to be found in individual history of a State.

This institution, however, indicated one singular fact viz. Sovereignty lay somewhere else and not in the Native State ~~or~~ or in its Ruler. It was a distinct act of interference from the point of view of a Native State which advocated Sovereignty for itself in the internal jurisdiction of a State. This sovereignty of the State ^{was} now/a common feature in the representation or petition of a State to the British Government.

Native States used to abhor it not because it was in itself that constituted an act of interference in the internal administration of a State when particularly applied to these Guaranteed subjects or classes only. But its later interpretation by different Political officers according to their own whims, to ~~re~~cover the 'area' which was not at all intended while it was given. This was particularly its mischievous characteristic and a subject on which consistent demands were made for redress.

There was also another point which was often raised by a Native State relating to this question. The Representations frequently referred to the inconsistency of a British policy with regard to the subject of guarantee. The inconsistency was both internal and external. The internal inconsistency occurred when British Government showed its , in the initial stages, aversion to the continuance of this system of giving guarantee, but was to be found later on, not only continuing the old ones but also giving new ones. External inconsistency occurred when firstly the ~~nature~~ nature of the guarantee ~~was~~ was modified by British Political officers by different interpretations put for it and secondly its continuance even when it had outlived its utility.

There was also another point of view of looking at this institution of guarantee which could not be avoided in the new order of things. The Native States urged the abolition of this system of giving guarantee to the subjects living within their boundaries. But at the same time they forgot that the continuance of their State and Government and also the dynasties of their Rulers along with the protection of their persons were also guaranteed by the British

Government against internal revolution or external aggression.

The place of guarantee in Baroda State.

One class of cases in which the British Government interfered in the internal administration of the State was in respect of certain subjects of the State who enjoyed the 'Guarantee' of that Government. These guarantees came into existence in the following manner.

In the beginning of the last century the Arab mercenaries in the employ of the State having become formidable and having on one occasion defied the authority of the constituted Government, it was agreed with the consent of the British and Baroda Government to disband them. These mercenaries were in the habit of guaranteeing the fulfilment of certain contracts between the State and its subjects or pledging to protect the latter from molestation by the State. They made it a condition of leaving the Baroda State and its service that the guarantees given by them should be taken over by British Government. The latter complied with the request and moreover adopting the same practice they also granted new guarantees. In course of time, innumerable guarantees came into being, and as the people who possessed them sometime disregarded the legitimate authority of the State, and as the State had to take measures to see its authority respected, complaints arose on both sides. This led to the British Government laying down a policy whereby among other things it was ruled that no more guarantees should be given and that the Government should withdraw from the existing guarantees whenever it could do so with a due regard to its good faith.

After abolishing many guarantees upto the end of 1920

there remained four persons enjoying these privileges. They were: *

- (1) The Desai of Navsari.
- (2) The Desai of Palsana.
- (3) The Pol Pagedar and
- (4) The descendants of Sunderji Nilaji.

The guarantees to the first two holders were not hereditary, but it had been held that as hereditary office and emoluments were guaranteed, they were perpetual. The holders were granted exemption from service on the strength of the guarantee. How the second holder of the guarantee viz. Desai of Palsana came to be absolved from the obligation to render service was interesting. The Desai of Palsana (a village in the Surat District of Bombay State) having represented to the Residency that His Highness' Government had issued an order that he or some member of his family should render service to the value of 6/16 of his Vatan and that on failure to do so, half the Vatan would be deducted, the Resident informed the Baroda Government that the case of the Palsana Desai was on all fours with that of the Navsari Desai in which the Government of India had ordered that service could not be demanded by the Baroda State from the Desai in respect of the Inami village of Kolasna. %

It was pointed out to the Resident by Baroda Government that the analogy between the Navsari and the Palsana Desai's cases was only apparent and not real, that whereas in the case of the Navsari Desai the property sought to be charged with service was only a

*H.P.O. From 'Reply to the States Committee'
%H.P.O. File No. 72/78A.

village granted for the upkeep of the expenses of a Palanquin in the case of the Palsana Desai, it was the whole Vatan property enjoyed as the hereditary emoluments of the Desai's office including the Palkhi village of Kharwasa, which was asked to be subjected to the burden of service, that unlike the Kolasna village of Navsari Desai, the Kharwasa village in this case was distinctly ~~included~~ by the Palsana Desai himself in the list of his Vatan holdings; that all the property was, therefore, incontestably Desai's property, and formed part of the Vatan which constituted the remuneration for service of the Vatan, that in the Palsana Desai's case which was much more clear than the Navsari Desai's Case, there could be no question that the property was anything else, or that its tenure was something other than pure service Vatan, that the Sanad of 1801 A.D. given to the ancestor of the Desai, also contained the words "You are faithfully to perform the service of the Sarkar"; that the guarantee of the Arab Jamadars as well as the British guarantee was only meant to safeguard the Desai's property and not to give any exemption from the duty which that very property imposed, that there was no meaning in the hereditary office unless it connoted the hereditary liability to serve the State, that to deny this would be to assert that a Desai's Vatan had only benefits and no burdens, that it only conferred rights and no obligations; and that, therefore, it was not desirable to disturb the orders passed in the case.*

From the above stand of the Baroda Government the nature of the "Guarantee" and His Highness' Government's policy towards it, comes out very clearly.

* H.P.O. From a note on the subject dated 15-9-1912.

In 1911* the Residency advised Baroda Government to withdraw the claim on the ground that from the date of the Sanad till 1892 i.e. for 90 years, no service had been demanded by His Highness' Government from the family, that the Desai contended that the phrase "Faithfully to perform the service of the Sarkar" contained in the Sanad, conveyed merely a pious formula on the part of His Highness' Government indicating that he and his descendants were to continue as before to remain the Sarkar's loyal and obedient servants; that it was not intended to be of a practical character; that the Desai's interpretation of the phrase was correct judging from the subsequent conduct of the parties, that in the case of the Desai of Navsari, a similar Sanad existed containing a similar provision, but that the claim to exact service from that family advanced by His Highness' Government had been disallowed by the Secretary of State as the ultimate Court of Appeal; that the said decision should be made applicable to the Desai of Palsana, and that assuming that the positions were reversed, it was doubtful if His Highness' Government would entertain with favour so belated a claim etc.

It would be interesting here to note the opinion of the Legal Remembrancer of the Baroda Government to whom the request was made for legal opinion. He states, "there is no chance of the Government of India deciding the question in our favour and against the opinion of two successive Residents, more especially as no service was demanded of the Desai for nearly a century, and the Government of India and the Secretary of State have given decision

against us in a similar case concerning the Desai of Navsari."*

The holder of third guarantee was the Pol Pagedar. He was the killedar (commandar) of the fort of K~~X~~haira (a District in Gujarat) . When the fort was granted to the East India Company in Inam in 1803, the allowances received by the Killedar and his brother were continued to them under the guarantee of the British Government. It was maintained by the Baroda Government that his Sanad of guarantee contained no words implying perpetuity, and even though this was pointed out the guarantee was still being continued.

The history of the holders of the forth guarantee viz. the descendants of one Sunderji Nilaji was rather amusing. Sunderji Nilaji was employed by the then Resident, Col. Walker, as his Native Agent, in the beginning of the 19th Century. (1802).

Sunderji having been taken prisoner by Malharrao Gaekwad of Kadi and ill treated on the occasion of the Kadi war, a hereditary pension of Babashai Rs. 1200/- p.a. % was granted to him by His Highness's Government on the recommendation of Mr. Duncan, then Governor of Bombay.

Subsequently the guarantee of the Hon'ble East India Company was affixed to the grant "without obtaining the consent of His Highness' Government, and the pension is now paid to remote descendants of Sunderji, although they reside in Bombay and render no service to the State."

*. H.P.O. File No. 72/86.
%. H.P. . File No. 72/82 A.

The Baroda Government thought perpetuating these guarantees as 'absurd' and inquired as to what justification could there be for perpetuating this burden of the pension on the State.

There was still another question of the guarantee to Sundarji Nilaji regarding its mode of payment to which Baroda Government took exception.

"His Highness' Government are required to remit the amount of pension to the Bombay Government, through the Residency who disburse the amount to the recipient through the Accountant General, Bombay. When a male member of the family dies, inquiry regarding the heirs is made by the Solicitor to the Government of Bombay, and His Highness' Government are required to enter the name of the individual in the State records on the strength of the report of the officers of Bombay Government. In other words, the usual procedure about the interested parties establishing their claims in the constituted Courts of the State, is not allowed to be observed in this case."

This practice had been in vogue for a very long time. In 1878% the question was raised by the Baroda Government but the Residency advised them to maintain the status quo.

Again a representation on this subject was sent in by the Baroda Government to the Resident in 1910@ with a request that it

*H.P.O. File No. 72/82 B.
%H.P.O. File No. 72/27.
@H.P.O. File No. 72/82 A.

should be transmitted to the Government of India, but he declined to forward it on the ground that the lapse of a long period made the case stronger for the recipients of the allowance.

From the above account of the guarantee one point emerges out clearly. British policy in this regard was unbending and Govern^{ment}~~er~~ of India refused to reopen the questions that were settled long ago. It appeared to them that reopening of such questions only resulted in the embarrassment of both the Governments and set new precedents which might have still dangerous consequences in future.

On the other hand, His Highness's Government consistently pointed out in their representations to the inconsistencies mentioned above. They said moreover "whatever justification existed at the time of these guarantees were given, the same has long since ceased; the conditions of the Government are altered: the fear of oppression from the malice of the Ruler no longer exists: administration of justice has considerably improved: and in case of wrong done by the State, suits against Government are entertained by Civil Courts. It is, therefore, hardly necessary to continue the anomalous arrangement of a guarantee against the Ruler, a century after events which justified it, when circumstances have materially changed."

"These guarantee-holders have privileges of exemption from general taxation of service although they enjoy all the benefits of the improved administration, an anomaly which offends against the present day ideas of good Government of a country."*

But the British Government refused to be drawn into discussion on such acts of faith, whereby they could indirectly maintain even a show of the supremacy, in law Courts. This feature of their policy towards the Native India was characteristic of an Indian Political Law which was at the base of their relations with Rulers their States and their people.