

### CHAPTER 3

#### Concept of 'Paramountcy' with regard to Indian Native States - Baroda.

In the previous chapter <sup>the</sup> a concept called Paramountcy has been referred. The theory of Paramountcy, which is some what vague like that of the inherent jurisdiction of High Courts, in the exercise of which a good deal can be done for which no statutory authority could be found. The temptation, therefore, to find any reliable definition of such an elusive concept shall be checked at the earliest moment. Without going, therefore, into the detailed theoretical discussion of the concept, which has been dealt with in many text Books of Political theory we will restrict ourselves only to the discussion as to its operation in India particularly in the Native States. Even so celebrated a Committee, which is known as the Indian States Committee admitted in such clear words its failure to define 'Paramountcy'. In their Report, which we will now have frequent occasions to refer while discussing <sup>they</sup> this aspect of our problem, in Para 57/say:-

" x x x We have endeavoured, as others before us have endeavoured to find some formula which will cover the exercise of Paramountcy, and we have failed, as others before us have failed, to do so. The reason for such failure is not far to seek. Conditions alter rapidly in a changing world. Imperial necessity and new conditions may at any time raise unexpected situations. Paramountcy must remain Paramount, it must fulfil its obligations, defining or adopting

itself according to the shifting necessities of the time  
and the progressive developments of the States. x x x " \*

The Committee while giving some incidents and illustrations of Paramountcy, observed that though Paramountcy and Paramountcy alone had grown up and flourished those strong benign relations between the Crown and the Princes on which at all times the States relied. On Paramountcy or Paramountcy alone could ~~could~~ the States rely, moreover, for their preservation through the generations that were to come. The Committee finally expressed the view that through Paramountcy was pushed aside the danger of destruction or annexation.

It was Sir Tej Bahadur Sapru, I suppose, who said once that in the relationship between the British Government and a native State difficulties arose because of the consideration by British constitutionalists that Paramountcy must remain Paramount, which is not a fact.

#### Paramountcy.

Describing the fact and development of Paramountcy the Committee observes:-

"The fact of the Paramountcy of the Crown has been acted on and acquiesced in over a long period of time. It is based upon the treaties, engagements and sanads supplemented by usage and sufferance and by decisions of the Government of India and the Secretary of State embodied in Political Practice. The general course of its evolution has been well described by a great modern Jurist. "The same people" wrote Professor Westlake "has determined by its action the

constitutions of the united kingdom and of India and as a consequence these are similar so far as that neither is an engine- turned structure, but the architecture of each includes history, theory and modern fact, and the books which describe them are similarly varied in their composition. On the side of substance the principal difference between them is that while in both the field covered by express definition leaves room for questions to arise, in the Indian Constitution an acknowledged supreme will decides every question which arises, but in that of the United Kingdom a balance of power causes questions to be less easy of solution." \*

\* "The Native States of India" Law Quarterly Review, Vol XXVI, 318.

#### Paramount Power.

Giving their view with regard to what they meant by Paramount Power, they reported: % "The 'Paramount Power' means the Crown acting through the Secretary of State for India and the Governor General in Council who are responsible to the Parliament of Great Britain, Until 1835 the East India Company acted as trustees of and agents for the Crown, but the Crown was, through the Company, the Paramount Power. The Act of 1858, which put an end to the administration of the Company did not give the Crown any new powers which it had not previously possessed. It merely changed the machinery through which the Crown exercised its powers." This meaning of the 'Paramount Power' was amply justified by the pronouncement of Lord Canning, the first Viceroy of India, on that great

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\* "The Native States of India" Law Quarterly Review Vol XXVI, P. 318.

% Ibid P. 13.

historical event, with its numerous implications viz. the change over of the machinery of the Government of India in 1858. The Pronouncement read thus:-

"The Crown of England" , he said, stands forth the unquestioned ruler and Paramount Power in all India and is for the first time brought face to face with its feudatories. There is a reality in the <sup>Suzerainty</sup> ~~Sovereignty~~ of the Sovereign of England which has never existed before and which is not only felt but eagerly acknowledged by the Chief." \*

In his despatch of 30th April 1860, later on, Lord Canning laid down the two great principles which the British Government had followed ever since in dealing with the States, which make the nature of Paramountcy Functions more clear ; Viz:-

- (1) That the integrity of the States should be preserved by perpetuating the rule of the Princes whose powers to adopt heirs/<sup>was</sup> recognised by Sanads granted in 1862.
- (2) That , flagrant mis government must be prevented or arrested by timely exercise of intervention.

#### Paramountcy Functions.

The following extracts from the Butler Committee's Report, the India States Committee is frequently and familiarly termed as

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\* Ibid-P.-15.

The Native States of India" Law Quarterly Review Vol.XXVI. P.13

Butler Committee, from its having<sup>been</sup>/presided over by Sir Harcourt Butler, the other two members being Sydney Peel and W.S. Holdsworth, will indicate what the Committee meant by "the incidents illustrations of Paramountcy."

" x x x As a general proposition, and by way of illustration rather than of definition, the activities of the Paramount Power may be considered under three main heads:-

- 1) External Affairs.
- 2) Defence and Protection, and
- 3) Intervention.

1) External Affairs.

\*"The Indian States have no international life. They cannot make peace or war or negotiate or communicate with foreign States. Until quite recently the Paramount Power acted for the States not only in relation with foreign countries but also in their relation with one another. During the present century circumstances have ~~continued~~ combined greater inter communication between the States. But they cannot cede, sell, exchange or part with their territories to other states without the approval of the Paramount Power, not without their approval can they settle inter statal disputes."

2) Defence and Protection.

% "The Paramount Power is responsible for the defence of both British India and the Indian States, and as such has the final voice in all matters connected with defence, including establishments, war

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"The Native States of India" Law Quarterly Review Vol. XXVI  
\* Ibid P. 26. % Ibid P. 27.

material, communications, etc. It must defend both these separate parts of India against foes, foreign and domestic. It owes this duty to all the Indian States alike. It follows from this duty of protection, first, that the British Government is bound to do everything really necessary for the common defence of the States; secondly, that the States should cooperate by permitting everything to be done that the British Government determines to be necessary for the efficient discharge of their duty; thirdly, that they should cooperate by abstaining from every course of action that may be declared dangerous to the common safety or the safety of other States. It follows that the Paramount Power should have the means of securing what is necessary for strategical purposes in regard to road, railways, aviation, posts, telegraphs, telephones and wireless, cantonments, -----forts, passages of troops and the supply of arms and ammunitions. The duty of the Paramount Power to protect the States against rebellion or insurrection imposes on the Paramount Power correlative obligations in cases where its <sup>intervention</sup> ~~intervention~~ is asked for or has become necessary. The guarantee to protect the Prince against insurrection carried with it an obligation to enquire into the causes of the insurrection and to demand that the prince shall remedy legitimate grievances and an obligation to prescribe the measures necessary to this result."

Now with this acceptance of the necessity of intervention modern Political Practice may be said to have begun.

### 3) Intervention.

Intervention was effected by the Crown or the Paramount Power

through the Political Officer stationed at the Native Court, responsible directly to the Viceroy of India. This intervention might take place for the benefit of the Prince, of the State or of India, as a whole.

For the Benefit of Princes.

\*" It was laid down in 1891, that it is the right and the duty of the British Government to settle successions in subordinate Native States. Every succession must be recognised by the British Government and no succession is valid until recognition has been given. In 1917, however, this view of the position was modified and it was laid down that where there is a natural heir in the direct line he succeeded as a matter of course, and it was arranged that in such cases the recognition of the succession by the King-Emperor should be conveyed by exchange of formal communications between the Prince and the Viceroy. In the case of disputed succession, the Paramount Power must decide between the claimants having regard to their relationship, to their personal fitness and to local usage. In the second place, Lord Canning's Sanads guaranteed to the Princes and the Chiefs the right, on failure of natural heirs, to adopt a successor with the consent of the Paramount Power. In the third place, the Paramount Power, has in the case of the minority of a Ruling Prince, very large obligations to provide for the administration of the State and for the education of the minor."

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"The Native States of India" Law Quarterly Review Vol. XXVI  
\* Ibid P. 29.

For the Benefit of the State.

"The conduct of the Prince may force the Paramount Power to intervene both for the benefit of the State and the benefit of the successors to the Prince. It is bound to intervene in the case of gross misrule, and its intervention may take the form of the deposition of the Prince. Paramount Power will also intervene if the Ruler though not guilty of misrule, has been guilty of disloyalty or has committed or been a party to a serious crime. Similarly it will also intervene to suppress barbarous practices, such as Sati ---- or infanticide, or to suppress torture and barbarous punishments.

"The small size of the State may make it difficult to perform properly the functions of the Government. In these cases the Paramount Power must intervene to carry out these functions which the States cannot carry out. " \*

For the Benefit of India.

"It is in respect of financial and economical matters that the dividing <sup>line</sup> ~~border~~ between State Sovereignty and the authority of the Paramount Power runs,; and apart from interference justified on international grounds or necessary for national defence, it is only on the ground that its interference with State Sovereignty; is for the economic good of India as a whole that the Paramount Power is justified in interposing its authority. It is not justified in interposing its authority, to secure economic results which are beneficial only or mainly to British India, in a case in which the economic interests of British India and the States conflict.

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\* ~~Ind. xxix 29-30~~

"The Native States of India" Law Quarterly Review Vol. XXVI Pp.29-30



"It is the fact that the States are outside the jurisdiction of the British ~~Courts~~ Courts, and that British law does not apply to their inhabitants, which are the most distinct and general difference between the States and the British India. Nevertheless the Paramount Power has found it necessary in the interests of India as a whole, to introduce the jurisdiction of its officers in particular cases such as the case of troops stationed in cantonments and other special areas in the Indian States, European British subjects and servants of the Crown in certain circumstances. \*

#### Summary.

To summarise, the functions of the Paramount Power could be said to cover the following:-

- 1) Defence.
- 2) External affairs,
- 3) Disputes between States inter se
- 4) Disputed successions.
- 5) Gross misrule,
- 6) Education of minor Princes and minority administration.
- 7) Residuary jurisdiction over small states.
- 8) Jurisdiction over specified class of persons viz. European British subject, in respect of certain areas like cantonments, Railway lands etc, and in respect of specified offences.
- 9) In the internal administration of the Native State, in the manner and to the extent specially provided in the treaties and ~~to the extent specially~~ engagements with the Native State.

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\*~~Ind~~ ~~xx29-30~~

"The Native States of India" Law Quarterly Review Vol. XXVI. P. 29-30

We would see by and by how, when and where these Paramounty functions came to be operated in the Baroda State and how far justified during our period of examination Viz. 1875 to 1920 in the following and also pages/where did Baroda stand in this regard.

Now defence and external affairs had been ceded by the State to the British Government by treaty provisions and therefore, had no ground to complain, except with certain matters regarding the subsidiary troop and the commutation of Rs. 3½ lakhs with regard to the contingent. But that the responsibility of defence of the whole of subcontinent of India including the states was never questioned by Baroda.

Under the interstatal disputes, one item can be deemed, as far as the Baroda Government is concerned, to come under this. It was about interstatal tributes and the sovereignty of the Gaekwad over States and estates in Kathiawar and Gujarat, tributary to Baroda, wherein the British Government had undertaken to recover tributes on behalf of the State. This question has been dealt with all its pros and cons elsewhere in this thesis.

According to the arrangements with regard to succession to Gadi, it was laid down that where there is a natural heir in the direct line, he succeeded as a matter of course and the recognition of the succession by the King Emperor was conveyed by an exchange of formal communication between Prince and Crown representative. Paramountcy had therefore not much to do in matter of smooth and matter of course succession. Under the head Residuary Jurisdiction and protection of the interests of small States would come only the Guaranteed Giras arrangements. The Paramountcy had already begun

shedding at the end of the second decade of this century, its functions in this matter by agreeing to remove the interference of the Resident in the guaranteed Giras matters. This problem also is dealt with in details elsewhere in this thesis.

Jurisdiction in respect of specified areas particularly cantonments and Railway lands in the State was claimed by the Paramount Power either under express agreements or by virtue of long established practice.

In the case of Baroda, jurisdiction over Europeans etc. was exercised by the Crown not by virtue of any treaty engagements but on the score of Imperial Policy.

The Crown, however, did not exercise any jurisdiction in matters falling under the specified offences.

Education of minor and the minority administrations were justified by the British Government on grounds of for the benefit of the Prince and the State. This will be found dealt with in the second part of the second section as this function of Paramountcy viz. intervention had an important place in Baroda State.

It now remains to be said something with regard to the intervention due to misrule. This function of the Paramountcy had also to be brought in to play during the reign of Malharrao Gaekwad and is quoted in the Butler Committee's Report which is worth quoting here. Defining the authority and right to intervene of the Paramount Power it says:-

Baroda Case, 1873-75. \*

"25. In the Baroda case a Commission was appointed to investigate complaints brought against the Gaekwad's administration and to suggest reforms. In reply to his protests against the appointment of the Commission, as not being warranted by the relations subsisting between the British Government and the Baroda State, the Gaekwad was informed as follows by the Viceroy and the Governor General:-

"This intervention, although amply justified by the language of treaties, rests also on other foundations. Your Highness has justly observed that 'The British Government is undoubtedly the Paramount Power in India and the existence and prospering of the ~~Native~~ Native States depend upon its fostering favour and benign protection.' This is especially true of the Baroda State, both because of its geographical position intermixed with British territory and also because a subsidiary force of British troops is maintained for the defence of the States the protection of the person of the Ruler, and the enforcement of his legitimate authority.

" My friend, I cannot consent to employ British troops to protect any one in a course of wrong doing. Misrule on the part of a Government which is upheld by the British power is misrule in the responsibility for which the British Government becomes in a measure involved. It becomes therefore, not only the right but the positive duty of the British Government to see that the administration of a State in such a condition is reformed, and that gross abuses are removed.

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\* Butler Committee Pp. 16-17  
Report.

"It has never been the wish of the British Government to interfere in the details of the Baroda Administration nor is it my desire to do so now. The immediate responsibility for the Government of the State rests, and must continue to rest, upon the Gaekwad for the time being. He has been acknowledged as the Sovereign of Baroda, and he is responsible for exercising his sovereign powers with proper regard to his duties and obligations alike to the British Government and to his subjects. If these obligations be not fulfilled, if gross mis~~x~~-Government be permitted, if substantial justice be not done to the subjects of the Baroda State, if life and property be not protected, or if the general welfare of the Country and people be persistently neglected, the British Government will assuredly intervene in the manner which in its judgment may be best calculated to remove these evils and to secure good Government. Such timely intervention, indeed, to prevent misgovernment culminating in the ruin of the State is no less an act of friendship to the Gaekwad himself than a duty to his subjects."

Thus the right to intervene has been pronounced by the Paramount Power in no equivocal terms. It also shows that the ground advanced by the Gaekwad that the treaties and engagements with the State <sup>did</sup> ~~do~~ not warrant such intervention was unacceptable to the British Government as the treaties were considerably modified ~~by now~~ as implied by that ~~&~~ authority. How the Treaties of 1805 and 1817 have come in the intervening years to be virtually obsolete in great part, would be worthy of notice and

will be found in the following Chapter. However, it may be mentioned here that there must have been a slowly shaping and correcting process going on, involving custom, practice, and precedent which had brought about the strange result, that the treaty relations of Baroda with the Paramount Power as they existed in 1817 had been radically changed, while it appears that no more recent treaty had been substituted for and so replaced these which now alone survived. It may be hazarded that when the Crown took over the Government of India from the old East India Company it necessarily implied alterations in almost every form of administration, the functions and extent and power of the Government introduced by themselves and among these particularly with regard to their very definite assertion of Paramount Power by the Crown over every part of the continent, including, of course, imbedded Native States, with whom half a century earlier the East India Company had been on terms of equality or almost equality. The Paramount Power probably justified its claim to this right on the broad ground that it was the Paramount Power and as such responsible in a measure for the efficiency of the ruling chiefs, whom in turn it protected both against external aggression and internal revolutions. If for example an heir-apparent were notoriously evil, murderous, disloyal or utterly incompetent by reason of every indulgence in all forms of vices, might not the Paramount Power with some justice say, we cannot hand the people over to such a ruler and protect him by our power in tyranny and every form of misrule? But in answer to this it can be said that the circumstances of interference in the internal administration of Baroda in the past were peculiar and they had only a temporary significance. When the interference was withdrawn the position of Baroda as a State in friendly alliance remained

unaffected.

The deposition of Malharrao in 1875 was in the interests of the peace of the Country and the subsequent declaration was to the effect that Baroda's position under the previous treaties remained unaffected, and Baroda however was successful in the latter years to assert on the basis of these treaties the right to internal autonomy, ceding of course the right of intervention to the British Government in time of emergency. This right on the part of the British Government was <sup>again</sup> very categorically stated in his famous letter which Lord Reading addressed to H.E. the Nizam of Hyderabad as late as in 1926. We may here quote only the general propositions even though the letter deserves to be quoted in extenso.

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"The Sovereignty of the British Crown is supreme in India, and therefore no ruler of an Indian State can justifiably claim to negotiate with the British Government on an equal footing. Its supremacy is not based only upon treaties and engagements, but exists independently of them and quite apart from its prerogative in matters relating to foreign powers and policies, it is the right and duty of the British Government while scrupulously respecting all treaties and engagements with the Indian States to preserve peace and order through out India.

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x

"The right of the British Government to intervene in the internal affairs of the Indian States is another instance of the consequences necessarily involved in the supremacy of the British Crown. The British Government have ~~involved~~ indeed shown again and again that they have no desire to exercise this right without grave

reason. But the internal, no less than the external, security which the ruling Princes enjoy is due ultimately to the protecting power of the British Government and where Imperial interests are concerned, or the general welfare of the people of a State is seriously and grievously affected by the action of its Government, it is with the Paramount Power that the ultimate responsibility of taking remedial action, if necessary, must be. The varying degrees of internal sovereignty which the rulers enjoy are all subject to the due exercise by the Paramount Power of this responsibility.

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"It is the right and privilege of the Paramount Power to decide all disputes that may arise between States or between one of the States and itself and even though a Court of Arbitration may be appointed in certain cases, its function is merely to offer independent advice to the Government of India, with whom the decision rests." \*

From this discussion we can gather that out of the three functions of the Paramountcy only the last that is of intervention with which the States of India are usually preoccupied. With regard to others viz. External affairs and Defence, there rarely arose any dispute.

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\* ~~Ind~~ Pp. 56,57.

Butler Committee Report Pp.56-57