

Chapter 14.

Extradition.

As early as January 1876, that Raja Sir T. Madhav Rao took up the question for consideration which relates to such an important branch of jurisdiction of a State as extradition. However, as is evident in all other foregoing branches of jurisdiction, either internal or external, the subordination of an Indian Native State to that Supreme Central Power of British was a fact which now could refute, with regard to Extradition also.

Before Raja Sir T. Madhav Rao took up this question, for which no specific procedure existed for dealing cases coming under it, and with regard to which much needless complications had made it difficult the day to day Government of the State. in this respect.

Raja Sir Madhav Rao on Extradition.

The question as stated by Sir Madhav Rao was very simple one, and nothing more had to be done in the matter except laying down specific procedure for dealing with cases comprising under its heading according to certain accepted laws and regulations, because a specific provision in the Treaty dated 6th November 1817 existed. Article 9 of this Treaty runs thus:-*

"The contracting parties being actuated by a sincere desire to promote and maintain the general tranquility and order of their respective possessions, and adverting to the intermixture of some of the territories belonging to the Honourable

*Aitchison's Treaties Vol. 6 P. 357 Edi. 5.

Company and the Maharaja Anandrao Gaekwad, Senakhas Khel Shamsheer Bahadur, it is, therefore, hereby agreed that offenders taking refuge in the jurisdiction of either party shall be surrendered on demand without delay or hesitation."

And it only remained for Sir Madhavrao to put down certain cardinal principles for the acceptance of the British Government, which might facilitate the course of action as felt by Baroda Government, keeping in mind the provision in the Treaty. In a communication to the Resident, Mr. Melvill, opening the subject for negotiation and settlement, he expressed his hope in these words:-

"In conclusion, I need hardly express my respectful hope that, in the circumstances in which the present order of things here has been inaugurated, and with the prospect of good Government that lies fairly before us, the Government of India will be pleased to accord to us in all such matters the most liberal consideration which it may offer to any Native State."*

And as the desire ~~of~~ for the solution of this vexed problem existed on both sides it did not take much time, and before long it was settled to the satisfaction of both the parties, the disagreement limiting itself only to minor details.

In every question of jurisdiction in this regard three demands, as Raja Sir, T. Madhavrao put it had mainly to be considered. They are:-

- (A) Of which Government the Criminal is the subject.
- (B) In which territory was the offence committed.
- (C) In which territory is the Criminal a fugitive from justice ?

*H.P.O. "Memo on Extradition" P.1.

For all the possible cases arising ^{out} ~~and~~ of the consideration of above three principles, when applied to the British as well as Baroda Government, Sir Madhav Rao prepared a Tabular Statement* reproduced below.

Tabular Statement.

No.	Of which Government Criminal Subject.	In which territory offence committed.	In which territory Criminal fugitive.	Remarks.
1.	British	British	Baroda.) In these cases the British Government demands extradition from Baroda' territory.
2.	Baroda	British	Baroda.	
3.	Baroda	Baroda	British) In these cases Baroda demands extradition from British Territory.
4.	British	Baroda	British	
5.	Baroda	British	British.)) In these cases the criminal being in the territory in which the offence was committed no demand for extradition can arise.
6.	British	Baroda	Baroda.	
7.	Baroda	Baroda	Baroda.) These cases may be struck out as no question of jurisdiction can possibly arise therein.
8.	British	British	British	

It will be seen from the foregoing statement that the cases from No. 1 to 4 inclusive are the principal ones requiring consideration.

In dealing with these cases then, Sir Madhav Rao enumerated these principles, on which the question of extradition was for ^{to be} ever/solved as far as the general policy was concerned. The Memorandum prepared

*H.P.O. "Memo on Extradition" P. 3.

on these lines by him is one of the most important and principal documents on the subject. The principles, above alluded to were:-

"(1) Treaties between the British and Baroda Governments should be fully respected." No reason for the sustenance of it should be advanced as they are prominent ones e.g. Queen's proclamation of 1858 and above all the moral obligation of both the Governments to preserve it.

"(2) Criminals being the common enemies of Society all Governments should cordially cooperate to put them down." This is sovery obvious to require any reason.

"(3) It follows from Principle (2) that the arrangements for putting down criminals in the intermingled territories of two States should as much as possible approach those which would be made if the two territories formed but one territory under the same Government."

"Whatever the differences in the constitution of the two States, it is not the criminals that should be enabled to benefit by such."

"The principle under reference applies herewith particular and unusual force, because the British provinces and the Baroda territories are not extensive blocks touching only at a distant frontier line, but are greatly intermixed and are also provided with the most rapid means of inter communication, by which means criminals are enabled most easily to pass from one territory into the other."*

This principle, importance of which can be judged from the fact

*H.P.O. "Memo on Extradition" Pp. 4-5.

that ~~in~~ almost in each important Native State there were exclusive areas of land in the heart of it or in the vicinity of its territory, which were occupied for either Railway purpose or Cantonment purpose and in these, British jurisdiction was retained.

"(4) It follows from principle No. (3) that when a Criminal is fugitive in a territory which is not the scene of his offence, he should be remitted to the territory which is the scene of his offence for the purpose of preliminary enquiry and afterwards for trial."*

It was evident ~~that~~ as observed judiciously by the Dewan "the community injured by the offender is precisely the one which has the best, if not the sole, right to punish the author of the injury. It is that community which is likely to be most zealous in repressing offences against itself. It is that community which will command the greatest facilities for bringing the offence home to the offender, because the party immediately injured by the offender, the persons who witnessed the commission of the offence, the various circumstances connected with the offence and furnishing evidence against the offender are all in the midst of that community."

"(5) In giving effect to the foregoing principles, precautions should be taken to prevent the subject of one Government, suffering manifest injustice on the part of the other, and precautions should also be taken to prevent preponderant inconvenience to the Governments themselves."%

These were, therefore, the five capital principles on which Raja Sir T. Madhav Rao desired the relations between two Government be based

upon, with regard to extradition.

These were such plain and primary principles that no more satisfactory solution could have been evolved, and these were thus accepted by the British Government, although some misunderstanding with regard to the interpretation and subsequent application of the principles appears to have arisen between two Governments relating to details of execution.

Treaty Provisions.

The first principle was then clear that Article 9th unequivocally demanded the surrender of the offender "without delay or hesitation."

Be it noted that two reasons were assigned for this agreement regarding extradition, namely,

- (1) The sincere desire of the contracting parties to maintain and promote peace and order in their respective possessions
- (2) The intermixture of the two territories.

Now the first of these, ~~had~~ by no means diminished but the ^{rather} ~~rather~~ had decidedly increased and was increasing on both sides, and again the second had been ⁷aggravated by the creation of Railway and other means of rapid communications enabling criminals most easily to pass from one territory into the other. The very line of Railway traversing Baroda territories was to all intents and purposes, British territory. The consequence was person, committing offences in Baroda territory had it in their power to pass into British limits even in a few minutes and vice versa.

"This state of things makes the aforesaid provision of the treaty more than ever imperatively necessary," once observed Sir Madhavrao.*

Here then was the poser "What then is the course to be followed, as concurrently indicated by every consideration of Treaty justice and good policy?" enquired Sir Madhav Rao. He himself gave the answer.

When the principles were applied to the cases that are enumerated in a tabular statement above, any class of case, which presented any difficulty at all was class No. 4 i.e. the case of a British subject, committing an offence in Baroda territory and taking refuge in British territory. Other classes did not create any difficulty.

Here, of course, Baroda State was evidently entitled to demand extradition of the offender. But here, Principle five came into play. The question here arose what precautions should be taken to prevent any subject of the British Government when surrender being exposed to manifest injustice?

The precautions afforded by the Gaekwad's Government were these.

There was the safeguard of a prima facie case, upon which the requisition of the Baroda State would be founded.

The Baroda State was prepared to bind itself to regulate the punishment of such offenders according to the British Indian Penal Code. "the scale of which shall not be exceeded."% it was assured.

The Baroda Government was even further willing to bind itself.

In the words of the Minister , "Any offender of the class under consideration, supposing himself aggrieved by the action of the Baroda authorities may prefer his representation to the British representative at Baroda after exhausting local remedies. The British representative, if satisfied that there is good ground to do so, may call for the record of the case, a call which the Baroda Government would readily comply with. The Agent to the Governor General may thus satisfy himself that substantial justice has been done. If on the other hand, that authority should have reason to suppose that manifest injustice has been done, that authority may give such advice to the Baroda Government as the circumstances may call for."*

The above referred special securities were thus offered to the British Government by the Gaekwad of Baroda, against injustice in any shape.

We may not fail to note here that the above condition is self-evidently showing the subordinate position that even a first class State like Baroda held and how far the British intervention could go. The Agent to the Governor-General had thus the last word in case of Extradition.

The Minister was, however, careful to point out that over and above the securities mentioned, there was the general security in the shape that improved administration had been inaugurated in Baroda.* Men of higher character, several of them were servants of British Government, either lent by them or trained under them and imbued with British principles, composed the administration and hence there was a fair promise of good government,

The above arrangement was mainly related to, it may be observed, 'Native criminals, not being the public servant of either Government and in regard to all universal offences such as these mentioned in the Second Schedule to Act 11th of 1872 of British India.' This Act declared that its provisions did not affect existing treaties, hence these proposals were demanded to ~~come~~^{put} into effect immediately by the Baroda Government.

However, some kind of friction did take place later on with regard to the execution of the above agreement on the part of the British Government. In the early part of this Century, Baroda Government demonstrated that by the Treaty of 1817 complete reciprocity of procedure in extradition matter was meant. But in practice which had grown up around the settlement, this reciprocity was not observed. One example to prove this was cited by the Baroda State. It said "Baroda has to furnish a prima facie case in support of every extradition demand made by it, whereas prima facie cases are supplied to it only when the extradition of a Baroda subject is asked from it. In other cases only a certificate that a prima facie case exists against a particular offender is supplied to it, and the State has to surrender the offender on such a certificate. It was suggested by the Baroda Government that the arrangement might be the same in all classes of cases. But this did not affect the settlement itself which formed the basis of the relation between two Governments in matters of extradition.

*From a reply to the States Committee.