

Chapter 27

Dignity and the Position of the Ruler of the State and the Members of his family.

In view of the fact that the Baroda State had uninterruptedly from the beginning maintained relations of great amity with the British Government, the Ruler of that State had all along been treated with unique consideration. He enjoyed the full salute of Independent Asiatic Sovereigns viz. a Salute of 21 guns. * This Salute he had received from the very beginning of his relations with the East India Company and at a time when Rulers of bigger autonomous States like Hyderabad were ~~also~~ accorded a Salute of only 19 guns.* The reigning Maharaja Gaekwad used upto 1873 to occupy the right hand seat not only in the Darbars held by the British Representative but also in his own Darbars, held for the reception of the British dignitaries and high functionaries. The various representations to the British Government on this subject had repeatedly expressed hope of the Baroda Darbar that this high position of the Rulers of this State in the estimation of the British Government would be fully maintained in future.

But with the lapse of time, there had been a diminution in the consideration shown to the Ruler of the State. This change of attitude on the part of the British Government was due to their changes in the policy towards the Native States of India in general, wherein many a time, no special consideration was given to Treaty rights of an individual State. We will note below some of the important instances where the Gaekwad felt that due consideration was not shown or the 'Treaty right' was violated.

However, he was not allowed to occupy the right hand seat in his ~~Dar~~ Darbar as was the case upto 1873, and his reception in Bombay and other places was not attended with the same ceremonies as before. The use of Crown of occidental shape in the crest of the Ruler was also prohibited.*

A. Courtesy Toward Her Highness in British India.

Due to the unique position of the Gaekwad in the British Court it was thought reasonable by the Baroda Darbar that his consort should also be officially shown that courtesy which was her rank. The practice had grown in this regard that Her Highness the Maharani was paid the customary marks of respect by the British troops only in the capital of the State. The Baroda Government was, however, anxious to see that she should be shown similar courtesy whenever she travelled in British India.

B. Privileges of Princes.

The Darbar Representation % also demanded that due consideration needed to be shown to the sons of the Ruler and other members of the Gaekwad family. ^{g*}He pointed out that "objection was taken to the sons being styled "Princes", in correspondence with the Resident or in the State Reports. The meaning of the expression is only 'Son of a king' and instead of using a vernacular expression 'Maharaj-kumar' in English communications or State Administration Reports it was not improper that the English equivalent thereof should be used."

*From a note on the subject in the reply given to the States Committee.

%H.P.O. File No. 341/9.

The Darbar clarified that by such use no assumption of the occidental title was involved or meant. ^{It} He also pointed out that the Government of India were themselves styling the Rulers of States as "Ruling Princes," implying thereby that the use of the word "Prince" did not necessarily denote an "occidental Title".

It appeared that British Government in an attempt to do away with any creation of ~~much~~ misunderstanding, ^{at that time} ~~now~~ or in future, with regard to this word 'Prince' by which as pointed above they themselves styled the Rulers of the State and not their sons or 'Princes' that they prohibited the prefixing the word 'Prince' to the sons of the Ruler. A certain denotation with regard to this word had already been created due to its frequent use in correspondence and documents and also in other important papers of the State. It meant there 'The Ruler of the State' and not the 'Son of the Ruler of the State.' This appears to be a purely a convenient device in the administrative structure and therefore Baroda representation, if the above presumption is correct, cannot be easily understood.

C. Exemption from duties of the members of his family.

Under Article VIII of the Definitive Treaty concluded between the two Governments in A.D. 1805* there appears a clause :

"Such goods and articles as may be bonafide required for the private use or consumption of that (Gaekwad) family or of the Ministers, shall be allowed to be purchased at Surat and Bombay and to be sent from thence free of duties on being accompanied by a passport from the Resident at Baroda."

In accordance with this provision, it was observed by a Darbar Representation that the personal baggage of Rajkumars Fatehsing Rao and Dhairyashil Rao (sons of Sayaji Rao Gaekwad III) was exempted from the payment of customs duties at Bombay when they returned from England in 1902. The Government of India, later on, held that the personal effects of the heirs of Ruling Chiefs, when travelling abroad by themselves could not be exempted from the payment of duty; that they must be subjected to the same duties as sons of all other Ruling Chiefs in India were, and that such exemptions would not be sanctioned in future.

The Baroda Darbar protested that the above ruling of the Government of India "does not seem to be in consonance with the Treaty provisions existing between the two Governments, and deserves to be reconsidered in a liberal and sympathetic spirit.*

D. Acquisition of Immovable property in British India
by Ruling Princes and Chiefs.

This question was very important as far as the dignity and the prestige of the Ruling Princes was concerned and the disability which the Government of India had imposed upon them they thought was not in conformity with justice and fair play. As soon as, therefore, an opportunity for its raising was available before the Princes' Committee for the codification of political practice under the Montford Reforms, the question was taken up by the Princes' Conference. Before arriving on any definite conclusion Government of India thought it wise to ascertain the views of some of the leading Princes and in accordance with this wish of the British Government Lieut.Col C.J.

Windham C.I.E. Resident at Baroda on 5th July 1920, requested His Highness Gaekwad to communicate his views for their transmission to the Government of India. In reply to the above request then, Baroda Government sent the following communication on 11th August 1920 to the address of the Resident, which lays the matter bare before us and treats the whole question threadbare:

"2. As far back as in 1892 A.D. the Government of India declared their policy to discourage acquisition of immovable property by Ruling Princes in British India whether direct or indirect, and decided that every such proposed purchase should be referred to them for orders, and that they would allow such transfers only under exceptional circumstances. The restriction was gradually extended to acquisition by the relatives of the Ruling Princes and latterly even by the notables and Chief Officers of the State; the object apparently being to prevent the use of their names merely as covers to shield benami (बेनामी) transaction.

"3. The Government of India seek to justify this prohibition on the grounds that (1) Princes and Chiefs find it difficult to distinguish between their position as Rulers and their position as property holders in British India (2) As property holders they become subject to the jurisdiction of British Courts and their dignity is wounded by the service of legal processes and (3) disagreeable discussions arise about taxation.

"4. The Government of India in the past occasionally dwelt upon the serious inconveniences arising from possession

by Ruling Princes of lands within British territories, leading them in some cases to propose effecting an exchange of territory on the basis of giving to the Princes, convenient patches of land with absolute or no sovereign rights in lieu of their zamindari possessions in the midst of British territory. For the same reason grants of land in British territory to Indian Princes have been discharged. This has on some occasions even been carried to the length of compelling a Ruler or an important notable in a State to divest himself of immovable property in British India acquired by him before his accession to the Gadi, even by grant or inheritance.

"5. His Highness' Government fail to understand why such inconvenience need be apprehended. The Ruling Princes and Chiefs do not claim to set up their lands purchased in British India as their separate or independent principalities with absolute rights of sovereignty or of jurisdiction over them. The difficulties would arise only if the Ruling Princes attempt to exercise civil and criminal jurisdiction over persons and things comprised within the limits of the property in their possession in British India. Such jurisdiction in British territory cannot be claimed by the Princes unless it is secured to them by Treaty or some other special engagement. In the absence of any such treaty or arrangement the followers of the Prince residing on his property in British India are amenable entirely to the jurisdiction of the British Government, of every description, civil, criminal or municipal. The property of the Prince is also subject to the Civil, revenue and municipal laws of the place.

"If a proper and correct understanding of the law is brought home to the Ruling Princes and Chiefs no inconvenience is likely to result from the removal of this anomalous and undignified bar against the acquisition of immovable property in British India by the Princes and Chiefs.

"6. As regards the Prince himself it is no doubt true that he is under certain conditions personally exempt from jurisdiction of the Courts in British India. It is a privilege which is inherent in his person and will follow him wherever he goes. This distinction, however, ought to cause no difference, whether he resides as the guest of some one else in British India or on his own account in a hired house or on property purchased by him; he is not amenable to the jurisdiction of the British Indian Court in either case; and the inconvenience, if any, is not specially confined to his residence on property acquired by him, and it is certainly not proposed that he should not live even in a leased house in British India.

"7. If the Government of India apprehend other complications that may arise from litigation growing round such acquisition of immovable property, which would prejudice the privileges and affect the prestige of the Prince, the position can be made definitely clear by legislation.

"It has been laid down by the Government of India long since that rights and privileges enjoyed by Rulers of States could not pursue them when they relinquished that position and assumed the character of traders, proprietors of houses and land owners in British India. Since the enactment of the Civil Procedure Code, moreover, no real ground for any such apprehension at all subsists. Part IV of the Civil Procedure Code provides for

such contingencies and preserves to the necessary extent the dignity and the privileges of the Princes and other eminent functionaries like foreign consuls, envoys and ambassadors.

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"9. If, however, any unforeseen consequences arise at any time for which there is no adequate provision in the existing law the situation can tactfully be met with all the Statesmanship at the command of the Government of India without imposing unnecessary restriction on the freedom of the Princes. Such vague fears need not be allowed unduly to encroach upon the cherished privileges hitherto enjoyed by them. The bar against acquisition of immovable property creates an invidious disability with their usual sensitiveness in such matters, the princes keenly resent.

"10. Originally and for a long time the restriction complained of affected the acquisition of immovable property only by sale, purchase or grant. In 1916, however, His Highness' Government were informed that the objections to the purchase of immovable property included ^{also} ~~into~~ the investment of money by a mortgage on such property. A mortgage it was argued would lead to foreclosure ~~on~~ acquisition of property by sale, and consequently any lending of money to commercial concerns on the Security of immovable property in British India was tabooed. The revenues of Indian States, like all other revenues, are growing, and if after meeting all desirable improvements and calls ^{of} /legitimate development of the economic and material resources of the States their surplus balances seek investment in commercial and industrial enterprises in British India. It is scarcely prudent for the British Government to put obstacles in the way of such

healthy investments. These surplus revenues do not always find attractive investments in the limited markets within their own States, and unless they are allowed to be squandered in extravagance and harmful luxuries, they should be permitted to be absorbed in outside industrial developments and advanced on the security of immovable property by way of mortgage. It is needless to mention that Indian States often constitute the strongest bulwork of the British rule in India, and what greater pledge for their steadfast adherence to the British supremacy and their interest in its stability and orderly progress can there be than these investments in British territory ! The policy of the Government of India ought to foster such identity and community of interests and not to accentuate any isolation or exclusiveness.*

The letter further referred to the proceedings of the Princes' Committee wherein this subject was discussed at length and its suggestions. It said the proceedings, "leave an impression that in future such restrictions would only affect the acquisition of Residential property and it was hoped all restriction to investment of money for Industrial purposes on the mortgaged security would be withdrawn. A liberal policy of allowing such enterprise is needed in the interests of the natural resources of the Country."*

The special considerations which prompted the Government of India to reserve certain portion of land on hill stations for the use of Europeans did not apply to the plains and to this, His Highness' Government were inclined to believe that it would be well if the Government of India reconsidered their policy and remove all restrictions against acquisition of immovable property any where in

British India. The proceedings, above referred to the letter went on , did not go far enough, for while reciting that the Government of India had no objection to the acquisition whether by purchase or mortgage of immovable property in any part of British India, they excluded Hill stations and Presidency Towns.

The Darbar was of the view on this point that with all the prudent safeguards there was little reason to keep the Princes away from the Presidency Towns. He regarded the policy of keeping Indian Princes isolated and confined to their own little principalities was not desirable in their own interest.

"By occasional residence in important centres of commercial and industrial activity their interests in the welfare of their own State is appreciably quickened. In Presidency Towns they get the benefit of watching the conduct of the Municipal Government , and of partaking into intellectual, educational , and social refinement and culture of urban life. They have opportunities there of studying the under currents of thought which they can apply for the regeneration and upliftment of their own States." *

Looking therefore, to the abovenoted benefits, it was thought by the darbar, desirable/that restrictions on acquiring property should be removed as they had outlived their use in the past, and when there have been appreciable changes in time and the Indian States were no longer detached or insular units, being the integral members of the British Empire, pulsating with the same aspiration for progress and animated with the same desire for advancement, closer intimacy of relations

between the States and the British territory was thought desirable in every way and deserved to be encouraged and promoted.

On the part of the British Government one more argument in support of the restrictions placed on Hill stations was advanced. It was urged that, "Government are bound to keep up a certain portion of these Hill-Station for Europeans and officials who must go there, and if the Ruling Princes and nobles, with practically unlimited means, could purchase what they want without let or hindrance there would soon be nothing left for other people."*

To this it was replied by the Baroda Government that "Such a racial bar is resented under the Dominion Governments. In India it was not likely to conduce to mutual good will and amity and will ~~and-w~~ certainly retard any fusion of the two races which ought to be the goal of every Statesman in both the countries. * * * Princes resort to Hill Stations for a change for the benefit of their health; and there is little ground to apprehend that they would squander away their resources in buying properties on hill stations. Most of them have now received sufficient education to make them attached to their own State and devoted to the promotion of their interests." *

The Government of India was however prepared to make a concession. In future it was proposed to withdraw the restriction in question in case of 'Notable's in Indian States. That term heretofore was meant to include all "nearrelatives of Ruling Princes, really important Sardars, or officials of Native States, and persons whose relationship to, or dependence on, such Sardars and officials is so

close that their names might be used, as a cover for benami transactions."* To this His Highness's Government ventured to point out that this was really very vague. A malafide or benami transaction, where it was proved, might be ruled out of the Court and got squashed, but it could not be presumed in a way insinuated above. Moreover it was workable. The enforcement of the order so far as the Ruler was concerned, will be attended with an amount of unnecessary friction and ill feeling between him and his relations which was ever to be seriously deprecated.

There was still further relaxation of the restriction. Though the restriction in the case of sons and other near relatives of the Rulers was proposed to be kept up, it was removed in the case of such relations who were not in the direct line of succession, and who left the State to which they belonged in order to reside in British India. To this His Highness's Government made very useful suggestion. It said to those who were intimately acquainted with the Court of the Indian Princes, nothing would appear more desirable than to provide an outlet for younger sons and cadets in the Ruling family, whose continual presence at the Court only be led to gather clouds of intrigue and mischief. A prudent Ruler had, in the interests of the peace of the family always, to make provision for the junior members and frequently it was very desirable and expedient to have such provision made outside the State. His Highness's Government felt sure that the advent of young cadets and other near relatives of Indian Rulers into British India in the role of landholders and traders, would not only add to the resources of British India, but would also open up a new and much desired avenue for directing the energies of these promising youths, who could not find

* H.P.O. File No. 341/69 A.

an adequate scope for the investment of their capital and talents in the limited and a congenial atmosphere of their own States.

Lastly His Highness' Government pointed out that these restrictions were innovations as the Treaties did not include them and appealed to the good will of the British Government that on the basis and justice and expediency these may be removed.*

E. Question of incometax on the Immovable property in British India belonging to His Highness.

Related to the above question of acquisition of immovable property, was the question of the right of the British Government to levy incometax on these said properties, reference to which has been made in the foregoing pages.

His Highness the Gaekwad had some immovable property like Palaces and estates at Bombay and Ootacamund. In November 1907 and March 1908, the State Government received notices from the Bombay and Ooty incometax authorities respectively, requiring payment of incometax on the landed properties owned by His Highness at both these places. The question of exemption from tax on the Bombay property was at the request of the State, referred by the Resident to the Government of India, who declined to grant the exemption asked for, in the absence of special reasons.% The tax was thereupon paid by the Darbar, but under protest.

In the case of the Ooty property also, the tax was paid under protest, and on the State Government requesting the Resident to supply it with a copy or the purport of the Government order on the

*H.P.O. File No. 341/69 A.

% From a note on the subject dated 15-9-1912.

strength of which the claim for the tax was made, to enable the State Government to make a representation that authority simply referred His Highness' Government to the views of the Government of India expressed in the similar case of the levy of tax from the Bombay property.

However in 1920, Baroda Government observed with gratification that the Governments of Bombay, Madras, the United Provinces and the Punjab favouring the proposal to exempt from income tax the Ruling Princes and Chiefs in respect of Residential property owned by them in British India. They, however, suggested that in the event of taxes being continued to be levied some simple procedure or machinery could be conveniently arranged without involving recourse to the ordinary processes of law.

F. Recognition of successions in the Native States
and the ceremonials to be observed at Installation of Investitures.

To a king or a Ruler of a State there has been a sentimental type of relation, which cannot be explained by any rational process, with the questions like succession, Installation and investiture. He attaches a great importance to these and any omission, even in minute detail, is strongly resented, the procedure of which has been established for centuries together. The Coronation Darbar of Mahendra Bir Bikram Shah Dev of Nepal would bear witness to the above statement. For our purpose we may note that this question did come under discussion during the British regime in India.

On 15th January 1918 * Lt.Col. Macdonald, Resident at Baroda,

*H.P.O. File No. 341/70

forwarded for delivery to His Highness the Gaekwad a Khareeta dated 27th December 1917 from the Viceroy and Governor General of India on the subject of the recognition of Succession in the Native States and the ceremonies to be observed at installations and investitures. The Khareeta said the Government of India has issued a Memorandum in this connection as a result of the discussion at the conference of the Ruling Princes and Chiefs held at Delhi in 1916. ^{To} ~~the~~ Khareeta was also appended an extract from the important speech made in this connection at the opening of the Conference of November 1917 by the Viceroy.

The views of His Highness to the Memorandum were in due course of time conveyed to the Government of India. Nevertheless, it will be better if a brief resume on the history of the subject pertaining to Baroda, is gone through here.

1. Government Note in October 1916.

At the Conference of Ruling Princes and Chiefs held at Delhi in October 1916, the first question on the Agenda was about the ceremonial to be observed at Installation and Investiture Darbars in Indian States. An explanatory Memorandum on the subject was received from the Government of India. It was stated therein that every succession required the approval and sanction of Government and that the same should be announced in formal Installation Darbar by a representative of the British Government.*

2. Gaekwad Government's Views.

Gaekwad's Government pointed out that the treaties showed that

the Baroda State occupied the position of a State in friendly alliance with the British Government, that the internal sovereignty of the Rulers thereof was unimpaired and that any approval and confirmation of a successor in the case of the direct lineal heir when there was no dispute about succession would detract from his dignity as Ruler. Such an heir ascended the Masnad (Gadi) in exercise of his inherent right. The position of the representative of the British Government at the installation Darbar was that of an invited guest and was meant to convey congratulations, offer presents and so on. .

3. His Highness' remark at the Conference of 1916.

This point was fully discussed at the Conference of the Princes on 2nd November 1916. His Highness Gaekwad took part in the discussion and made following remarks:-

"First, I must say that I do not hold the view that the succession of the Ruling Prince to the Gadi of a State needs the sanction and approval of the Government of India. Were such sanction and approval insisted on, a regrettable feeling would arise that the Rulers were ipso facto deprived of their full sovereignty in internal affairs, a sovereign which has been secured to them by Treaty obligations to which the British Government has repeatedly declared its firm intentions of scrupulously adhering.

"Secondly , I am of the opinion that the formal installation Darbar should under all circumstances, be convened by the Ruling Prince himself. The Representative of the Government of India will always be cordially welcomed, he will be treated as an honoured guest who brings message of congratulations and

good will.

"Thirdly as to the investiture Darbar on such an occasion the Ruling Prince having attained his majority, in the presence of his Sardars, officers and people, assumes those full rights, responsibilities, duties and powers, which ^{are} ~~one~~ inherent in his rank. I, therefore, hold that no investiture Darbar, in the sense attached to it in the draft Memorandum under discussion is necessary.

"Lastly, I think that most of the ceremonies now proposed for the guidance of Political officers - unless where they are supported by special engagements - and not in accordance with custom, and run directly counter both to the traditions and sentiments of the people and to the rights of the Ruler."*

4. Viceroy's speech at the Conference in 1917.

In his opening speech at the Conference of 1917, the Viceroy alluded to this subject thus:-

"Your Highnesses will remember that in the original draft Memorandum which was placed before you for your criticism and advice , it was mentioned as an introductory statement to the proposed instructions regarding ceremonials, that "Every succession requires the approval and sanction of Government." Your Highnesses took exception to the statement and held the view that succession takes place immediately as a matter of inherent right, and is not dependent on the approval or recognition of the Government of India. At the same time you admitted that the British Government was the authority of approval and recognition in cases of disputed successions. Now, in recording these views Your Highness did

did not in any sense wish to dispute the Paramountcy of His Majesty the King-Emperor in relation to your States, on whose loyal cooperation His Majesty's Government have always been able to rely. In fact you accept it in fullest manner. It is clear also that the formal recognition of a new Ruler is, in all cases, a necessary concomitant of the act of succession, since the position of the Ruling Prince who is not recognised by the King Emperor would clearly be impossible. The point to which you took special exception was the unqualified statement in the Memorandum that all successions require the sanction and approval of the Government, no reservation being made of the succession of a direct natural heir, in regard to whose legitimacy or right to succeed no reasonable doubt exists. If I interpret your view correctly, you apprehended that the statement, which I have quoted, if left unquestioned, would in some degree cast doubt on the inherent right of the natural heir to succeed."*

As a shrewd statesman Lord Chelmsford hastened to remark:

"Now I have no wish to disguise the fact that the statement made in the Memorandum was in some respects defective. The function of the Paramount Power is more properly described by the words 'recognition and confirmation' than the words 'approval and sanction', and it is the former phrase which has commonly been used in the past. Moreover, in the case of the succession of a direct natural heir, such recognition is purely formal, and the obligation on the part of the new Ruler to obtain it in no way impairs his inherent right to

succeed. This point has been made clear in the revised memorandum which has been approved by His Majesty's Government and which now lies before you. The Memorandum, as revised, states that 'where there is a natural heir in the direct line, he succeeds as a matter of course' and I trust that this definite statement, which is made with the full approval of His Majesty's Government, will remove entirely the apprehensions to which I have alluded. To prevent any misunderstanding, however, I should make it clear to you, first that recognition by the King-Emperor is necessary in all cases, and secondly, that the formula used in the Memorandum is that, of course intended to apply to the very rare case of a wholly unsuitable heir whom the Paramount Power will be compelled to depose immediately after succession.

"You may ask what is meant by a "wholly unsuitable heir". My answer is, an heir who by disloyal or criminal conduct has shown himself to be unfitted to rule. The enquiry into such conduct would ordinarily be undertaken during the lifetime of the Previous Ruler and the unfitness of the heir if established would be explicitly declared. You may therefore rest assured that in the absence of such declaration (which we may hope may never prove to be necessary) your legitimate heir in the direct line will succeed to the Rulership as a matter of course. The Memorandum you will observe make no mention of the case of an heir who is of unsound mind and I do not propose to refer to such cases beyond saying that the Government of India have no intention of debarring the succession of such persons, unless, First their insanity has been certified by thoroughly competent medical opinion and, secondly

the exclusion of such an individual from succession would be in accordance with the view or custom of the particular State."*

This was the position when the Kharita dated 27th December 1917 from the Viceroy was received. But we can mark a considerable shift in the policy which was followed in 1916 and that of 1917 which was greatly modified in deference to the opinion of the Ruling princes.

5. Past Precedents in Baroda.

Now in his speech Viceroy referred to the consideration of custom of the Country in fixing up the policy ~~of~~ and procedure for the State. What, then, were the past precedents in Baroda ?

The earliest dakhla available on the records of the State regarding the accession to the Gadi is that of His Highness the Maharaja Ganpatrao in 1847. His Highness after the religious ceremonies in Deoghar were over, went to the Darbar Hall and ascended the Masnad. The Resident was present and he had his seat to the left of the Gadi. At the time of the accession of His Highness Khanderao Maharaja, the Resident conducted His Highness from the door of Deoghar to the Gadi and seated him thereon. (हाथ धरून बसविले)%

After ~~his~~ Her Highness Jamnabai gave birth to a daughter, His Highness Malharrao was formally installed on the throne and the same ceremony of the Resident seating him on the Gadi was repeated. It is not clear why there was this departure from the procedure

* H.P.O. File No. 341/70

% H.P.O.'Notes on points discussed in the Conference of 1916' P.10

previously adopted at the time of the accession of His Highness Ganpat rao Maharaj.

6. Right of Government to recognise successions.

Having regard to the above precedents and the way in which past custom and precedents were considered to have a modifying influence on the old treaties, it was thought by the Baroda Government that it will not be advisable to take exception to the British Government as the Paramount Power in the land, reserving themselves the right to "recognise" succession of an heir although there may be no dispute about his right to succeed.

Here it will be useful to quote an extract from W.E. Hall's 'International law'. Foot note to page 27 (6th edition) which influenced Baroda's approach to the problem. It says:-

"1. Protected States such as those included in the Indian Empire of Great Britain and not subjects of International law. Indian Native States are theoretically in possession of internal sovereignty and their relations to the British Empire are in all cases more or less defined by Treaty, but in matters not provided for by Treaty a "Residuary Jurisdiction" on the part of the Imperial Government is considered to exist and the Treaties themselves are subject to the reservation that they may be disregarded when the supreme interests of Empire ~~and~~ are involved; or even when the interests of the subjects of the Native Princes are gravely affected. The treaties really amount to little more than statements of limitations which the imperial Government, except in every exceptional circumstances, places on its own action. No doubt

this was not the original intention of many of the Treaties but the conditions of English Sovereignty in India have greatly changed since these were concluded, and the modifications of their effect which the changed conditions have rendered necessary are thoroughly well understood and acknowledged.

(By notification in its official Gazette August 21, 1891, the Indian Government declared that 'The principles of International law have a bearing upon the relations' between itself and the Native States under the Suzerainty of the Queen-Empress). For the international aspects of protectorates over Eastern and African States and communities, not themselves subjects of International law and not included in the Indian Empire, See Postea P. 125."

7. The Official communication to the Viceroy.

The official communication in reply to the Khareeta from Viceroy dated 27th December 1917 bears the date 10th April 1919 and is addressed to the Viceroy by the Maharaja himself under his signature. In this letter His Highness tries to clarify some points on which some doubt may exist and also begs clarification from the Government of India on other points of dispute. These points are:-*

- (1) Authority of confirming a succession in certain cases.
- (2) 'Natural heir in the direct line.'
- (3) Idea behind the term * 'Proprio Vigore.'

(1). His Highness admitted that the British Government has admittedly the authority of confirming a succession in all cases of dispute, but he sights cases where there may be cases of collateral heir,

such as a brother, brother's son, or an uncle's son or the like, who, though may not be an heir in the direct line' has in the absence of such an heir an acknowledged right to succeed, according to law and established custom and when there is no rival claimant nor any dispute. In such cases, His Highness observed, the recognition of His succession might be only ^{formal} ~~formal~~ and should not require any further confirmation.

(2). By the expression 'Natural heir in the direct line' His Highness understood, the intention to include all direct heirs, natural or adopted, and collateral descendants from a common ancestor. The adopted son may be one, he said, adopted by the deceased ruler during his life time or after his demise according to instructions left by him. Sayajirao, therefore, thought that it will save ambiguity if instead of the said expression, the following is substituted. "Natural heir in the direct line - whether natural, or adopted or a sole collateral heir whose right is not disputed, according to the law applicable to the parties" - or any explanatory note to that effect should be added in the Memorandum.

(3) The Memorandum laid down that "The Installation of a Prince or Chief, who is of full age, carried with it proprio vigore his investiture with full ruling powers unless Government see fit to restrict by special order the exercise of such powers."*

In this connection, His Highness suggested, that the order about 'restricting the exercise of Ruling Powers, may only be made when there has been an enquiry beforehand by a commission as proposed in Para 309 of the Report on the Indian Constitutional

Reforms by the Viceroy himself and the Secretary of State for India. This Commission should also be brought forward to work ~~when~~ there is a case of restricting the heir, where there are circumstances for the restriction to be imposed, from assuming full powers even when he attains the age of majority, which the Government of India kept for the decision by itself.

This letter from His Highness ~~was~~ held back as on 12th September 1920 the Dewan Mr. Manubhai made the following remark: "The question is being taken up by the Committee of Princes appointed for the codification of Political Practice and should be postponed till I again ascertain the progress of the question from His Highness the Maharaja Bikaner." *

Thus we are able to see from the instances quoted above wherein the Darbar thought that unwarranted restrictions and modifications had been made in the relation between the Ruler and the members of his family on one side and British Government on the other. The British Government claimed the Paramountcy to justify its stand, being responsible for efficient Government in Indian States and that custom, practice and precedent have had a shaping and correcting process, radically changing the old Treaties, which were now virtually obsolete and on which in particular cases the State took its stand.

However, with the change in the idea regarding the concept of Monarchy everywhere, increasing limitations were bound to be placed on the hitherto unlimited powers of this order and British Government was rather slow in doing this in comparison with other races and people.

G. Tours and visits abroad of the Ruler.

This was one of the most hotly discussed subjects between the Baroda Government and the British Government. The gradual restrictions which the latter went on imposing, beginning with the famous Curzon Circular of 1900, on the frequently touring abroad of the Indian Princes, either on ~~the~~ health grounds or on pleasure trips, was considered by the Baroda Government an arbitrary action on the part of the Paramount Power, not calculated to promote the Izzat ~~on~~ and dignity of the Ruling Princes and a serious encroachment on their individual freedom. We may see then, what was the policy of the British Government regarding Tours and visits abroad of the Ruling Princes and Chiefs of Indian Native States, to which Baroda Government took ~~serious~~ exception.

Policy of the British Government.

When a Ruler or a Noble or a son or a near relative of a Ruler or a Noble desired to travel abroad, early and detailed information of the proposal was required to be furnished in order that ample notice might be given to the Secretary of State. "The Secretary of State attaches importance" the Government of India observed, "to the early receipt of this information in view of the inconvenience, both to the India office and to the travellers themselves that results from a failure to furnish him with the necessary particulars."* The Secretary of State also wished to be kept informed of any change of address during the course of the Ruler's travels.

In the case of the Rulers entitled to salute of eleven guns or

*H.P.O. File No. 341/83: Tours ~~and~~ visits abroad of the Ruling Princes & Chiefs.'

guns or more, it was the practice to grant customs facilities in respect of personal baggage on arrival in England and to obtain a like privilege on the continent abroad, when the foreign Government concerned was willing to grant it. The facilities which the Lord Commissioners of His Majesty's Treasury were willing to grant, did not include exemption from payment of duty and dutiable articles under the regulations in force the baggage of persons of distinction was not exempted from examination and duty was required on any article subject there to which ^{may} be contained in[^]the baggage.

With a view to the personal convenience of Rulers, therefore, precise information on the following points was required by the Government of India, to enable them to make the necessary communication to the Secretary of State.

- (a) The number of persons accompanying the Ruler with names of those of importance.
- (b) When travelling by sea, the name of the ship, ~~natur~~ name of the port of arrival and date of disembarkation.
- (c) When travelling by land, details of route with special reference to names of places where frontiers are to be crossed with date of intended crossing.

When the programme of a Ruler's journey did not admit of full information on all the points mentioned above being given before he left India, he should communicate the particulars required direct to the Political A.D.C. at the India ~~Ex~~ Office, giving at least ten days' notice of any intended journey in the course of which he wished to receive customs facilities.

The above policy was discussed in the codification committee of the Conference of Ruling Princes and Chiefs, which had met in

Simla in September 1919. This Committee, however, appears to have agreed to the stipulations but had made one important suggestion in the foot note of its revised draft which ran thus:-

"The Committee considered that as a matter of courtesy exemption from payment of duty on dutiable articles should invariably be arranged for Rulers entitled to a salute of eleven guns or more on arriving in England and that so far as possible, similar exemption should be arranged for them when travelling on the continent."*

Baroda Government's views.

When Baroda Government was consulted and asked to express its views on such a vital point, it drew forth a forceful defence of the dignity, honour and Izzat of the important Princes, against the policy of the Government of India.

In his letter written at the command of Sayajirao himself dated 14th July 1920*, the Dewan Mr. Manubhai Mehta at the outset referred the British Government to the letters addressed in this connection by his predecessor Dewan Bahadur Dhamanaskar of 19th December 1902 and of 2nd May 1903, which were written by him at the express desire of His Highness the Gaekwad and which purported to indicate in brief the painful impression created by the Government of India Circular of 20th July 1900, issued by the Government of the then Viceroy, Lord Curzon. This Circular had enjoined that previous sanction of the Government of India had to be obtained before the

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princes set out on a foreign tour. The Baroda Government observed that unmindful of the dignity and high position of Indian Princes who had been invariably honoured as ~~for~~ friends and allies in past treaties and Engagements, the abrupt manner in which the Government of India endeavoured to create a new body of usage and precedent highly detrimental to their much cherished privileges and status, evoked wide spread feelings of pain and resentment, which it was unnecessary to recall.

The modifications of the above policy subsequent to 1900 were welcomed by the Princes. However, Baroda Government appeared to be reluctant to agree to the advisability of ~~codifying~~ this political practice. It said, "the one disadvantage of any attempt at the Codification of political practice is that it tends to convert existing practice which is in a liquid or elastic condition into a rigid and cast iron rule, which may not at all be applicable when dissociated from the circumstances justifying the rule."* Therefore, it was held that, it was scarcely necessary to codify this into a rule where no facilities or conveniences for exemption of customs duties or like are asked for.

Secondly, Baroda Government was of the opinion that an Indian Prince need not suffer from any greater disability than a commoner. The then existing practice, of an application for the passport, filling a declaration form with his descriptive roll and attaching of the photograph, itself was considered as indignity, of which the distinguish princes could easily be spared. And yet, further, unlike a commoner, he was to be called upon to furnish detailed

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information of the contemplated tour, the exact date of embarking and of landing and so on. The Gaekwad thought that the Ruling Prince may be trusted to supply the required details, which was not always possible to fix up beforehand, as he might think necessary and of courtesy rather than in obedience to a rule of the new Code. *

Thirdly, the Government Circular of 1900 required the Princes to lay before the Government of India before they went abroad, the plan of administration of the State in their absence and the duration of their stay abroad. His Highness Gaekwad felt on this point that greater freedom should be allowed to the Princes than they had been in the past. He said, "Before leaving India the princes are required to propose such arrangements for the administration of their States during the absence as would satisfy the Government of India. In making these arrangements the Princes are not allowed that freedom which in view of their independence in internal matters and their undoubted solicitude for the welfare of their own subjects they are entitled to claim. The necessity to get the administrative arrangements approved of, causes inconvenience and leaves behind a sense of injured dignity and lowers the prestige in the estimation of their own people. It engenders a sense of apathy and irresponsibility which is detrimental to the best interests of their States - owing to the mental suffering caused by this prospect of having to get even the best arrangements tested and certified beforehand. Foreign tours and sea voyages proposed for the benefit of one's health have at times to be abandoned in disregard to medical advice. The lot of an Indian Prince thus subjected to inquisitive questionings becomes unavoidable and certain, undesirable developments in the States are likely to ensue on the old policy if not modified in a sympathetic spirit.*

*H.P.O. File No. 341/82 'Tours and visits abroad of the Ruling Princes and Chiefs.'

Fourthly, the Baroda Darbar objected to the regulations which the Government of India had proposed and were put before the codification Committee about the visits of Ruling Princes to Delhi, Simpla and other Hill stations, as hardly keeping with the cherished privileges of Rulers and Chiefs of India. He considered the limitation on the numbers of followers and retinue undoubtedly necessary in the interest of sanitation and hygiene which the Government of India feared might be affected by large retinue of Princes visiting these Hill Stations. But the Gaekwad argued that it was not every prince that travelled in the old oriental way, burdened with a large following of retainers. There were princes, he said, who were well conversant with the art of travelling in comfort and had by prolonged experience of foreign travel acquired a habit of dispensing with any surplus entourage. "What may be necessary with a few Princes need not be generalised into a hide bound rule or prohibition affecting all, The danger of ~~xxx~~ inconvenient precedents crystallising themselves into a rigid usage cannot be better illustrated." (From letter dated 14th July 1920). X

X Baroda Government pointed out that past treaties and engagements entitled His Highness the Gaekwad to such considerate treatment as a friend would look forward to from a hospitable host, and judged in this light the proposed rule of applying for previous concurrence with a possibility of denial will be hard for a Ruler, who took legitimate pride in his ~~xxx~~ old friendship with the British Government, to accept.*

Lastly, His Highness the Gaekwad showed his keen aversion to accept any novel situation that was not in consonance with the spirit of his old Treaties of friendship, amity and mutual good will, and

*H.P.O. File No. 341/83 'Tours and visits abroad of the Ruling Princes and Chiefs.'

moreover he said, while he was ready to cooperate with the British Government in revising political practice in order still further to improve their mutual relations, for their mutual benefit, he was equally anxious to lay down nothing which would in the remotest way impair or infringe privileges and rights flowing from past Treaties and Engagements, construed in the spirit in which they were originally entered.*

Modification in the Rule.

The Gaekwad's Government was, lateron, informed by the Resident that it was not necessary for the Government to submit the arrangements during the absence of the Maharaja for the approval of the Government of India, but they were simply to be informed of it. This modification in the policy had been omitted to be conveyed to His Highness' Government for which the Resident regretted. The Baroda Government, however, noted the change with satisfaction.

* H.P.O. File No. 341/83 'Tours and visits abroad of the Ruling Princes and Chiefs.'