INDIAN LEGAL AND CONSTITUTIONAL HISTORY

Position of Native States & and the Development of Doctrine of Paramountcy

E-content by-
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INFORMATIONAL AND CONSTITUTIONAL HISTORY
(Optional Paper)
(Paper Code: K-2005)

This course is intended to introduce students to the Legal and Constitutional History of India (1600-1950). Emphasis will be laid on the following:

I. Legal History:
The Early Charters and the Administration of Justice by the East India Company, the Mayor's Courts; Judicial Reforms of Warren Hastings and the Advent of Adalat System; the Regulating Act, Pits India Act, and the Act of Settlement; Judicial Reforms of Cornwallis and Lord William Bentick; the High Courts; Privy Council; the Supreme Court of India; the Law Commissions and Codification, Development of Criminal Law, Law of Contract and Law of Evidence in India; Personal Laws of Hindu and Mohammedans.

II. Constitutional History:

BOOKS RECOMMENDED

Jain, M.P., *Outlines of Indian Legal History*
Kulkishreshtha, V.D., *Landmarks in Indian Legal and Constitutional History*
Pranipe, N.V., *Legal and Constitutional History of India*
Puri, S.K., *Legal and Constitutional History of India*
Ramajos, M., *Legal and Constitutional History of India, Volume I, II*
Shrivastav, S.S., *Turning Points in Indian Legal and Constitutional History*
Singh, M.P., *Outlines of Indian Legal and Constitutional History*
POSITION OF NATIVE STATES & AND THE DEVELOPMENT OF DOCTRINE OF PARAMOUNTCY

• **Meaning of the Native State**-

• Sir William Lee-Wamer, then British resident and famous authority on the British Paramountcy over the Indian Natives, very well defined the nature of ‘Native States’ in India. He said, “A Native State is a political community, occupying a territory in India of defined boundaries and subject to a common and responsible ruler, who has, as a matter of fact, enjoyed and exercised, with sanction of the British Government, any of the functions and attributes of internal sovereignty. The indivisibility of sovereignty does not belong to the Indian system of sovereign States.”
• **Status of Native State-**

“No Native State in the interior of India enjoys the full attributes of complete external and internal sovereignty, since none is left either the power of declaring war or peace or the right of negotiating agreements with other States, but sovereignty of the Native State is shared between the British Government and the chiefs in varying degrees. Some States enjoy substantial immunity from interference in nearly all functions of internal administration, while others are under such subjections that the Native sovereignty is almost completely destroyed.”
It should be noted at the outset that the establishment of the British Paramountcy was a product of gradual political and military activities of the British in the 18th and 19th centuries and it took several decades to acquire its final shape. An official announcement in days of Lord Lytton aptly says, “Paramountcy is a thing of gradual growth... shaped partly by conquest, partly by treaty and partly by usage”
There were three stages of the British relations with the Indian States. Namely:-

• 1. The Ring Fence Policy : 1757 To 1813

• 2. The Policy of Subordinate Isolation :1813-1857

• 3. The Policy of Subordinate Union: 1857 onwards.
• **The Ring Fenced Policy: 1757 To 1813**

  In that stage all the treaties except only one that with Mysore, were negotiated and concluded on the basis of equality and reciprocity. The British did not claim any Paramountcy over the Indian States, at least those which were not subdued. Secondly, each of their treaties "guaranteed in a most solemn manner the absolute authority of the Indian ruler over his subjects and did not approve any British claim to intervene in their internal affairs. It was a self protective approach shown by British merchants."
The Policy of Subordinate Isolation: 1813-1857

It was a proactive stage, the British made almost all the Indian States subordinate to their power, by compelling them to enter into subsidiary alliances with them. The Indian Princes were put under obligation to accept the British Paramountcy. They were to reduce their armies, rely more and more upon the Paramount army for the external and internal security and pay for expenditure of the same in form of money or territory. They had to banish all the non-English European employees from their services and conduct their foreign affairs through the British Government only. In all their disputes with other States, the British Government would act as an arbitrator. The Princes, in return, were guaranteed the territorial integrity of their state and protection from an invasion by any power.
After the first War of Independence by the Indians in 1857 proved to be the ‘Great Divide’ in the history of the British Empire in India, it shifted rule from *East India Company Government to The Crown*. The British were successful in suppressing it. However, they certainly learnt two important lessons from it. Firstly, they felt that it would be unwise to neglect the popular sentiments of the Native States; howeverforward they might look from the modern point of view. Secondly, they should take political and military precautions so as to prevent the States from uniting each other against them in future. Thus, it was a dual policy of conciliating and befriending the State on one hand and weakening them in gradual process on the other.
One Charge Theory evolved by lord Canning-1862- The Declaration of Canning in 1862 says that the Crown stands forward ‘the unquestioned Ruler and Paramount Power in all India’. Thus the whole of India was placed under ‘One Charge’ and the Indian States became transformed into ‘Feudatories’ of the Crown.

Through the Sanads conceded to the Princes the right of adoption subject to the condition of loyalty to the Crown. Thus, while perpetuating the dynasties of the Princes, the British had established the Paramountcy of the Crown which was now given a legal basis. This was a sort of new legal theory of Paramountcy i.e. theory of ‘One charge’ provided by the Sanads of Adoption.
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**Doctrine of Interference**-

. Canning’s successor Lord Mayo (1869-1872) had elaborated the ‘Doctrine of Interference’

. The Paramount Power expected that the Indian Princes would govern their State with sense of justice and welfare of their subjects
Trial and deposition of Malharrao Gaikwad of Baroda. Misgovernment and oppression of Malharrao constrained the British Government to depose him and put another Prince in his place.

In 1877, the first great Delhi Durbar was held to proclaim that the Queen of England had assumed the imperial titles ‘the Queen-Empress of India’. It was meant to be a visible sign of the new ‘Unity of India’ under the British Paramountcy.
The Paramountcy at its Pinnacle-
The Viceroyalty of Lord Curzon (1898 - 1905) has been rightly called ‘high noon’ of the British Indian Empire as the British Paramountcy reached its pinnacle of glory during his period. With his keen brain, boundless energy and firm dedication to the British Empire, he toiled hard to bend the Indian Princes to his will.
• The Laissez-faire Policy - Lord Minto launched on November 1, 1909, the new Policy of the British Government, called’, in his speech at Udaipur. He declared, The Laissez-faire Policy “I have always been opposed to anything like pressure on Durbars with view to introducing British methods of administration. I have preferred that reforms should emanate from Durbars themselves and grow up in harmony with 11 the traditions of the State... I cannot but think that the Political Officers will do wisely to accept the general system of administration to which the Chief and his people have been accustomed.”
• On 4 June 1947, Mountbatten held a press conference in which he addressed the question of the princely states, of which there were over 563. The treaty relations between Britain and the Indian States would come to an end, and on 15 August 1947 the suzerainty of the British Crown was to lapse. They would be free to accede to one or the other of the new dominions or to remain independent.
• **Lapse of Paramountcy**—the Crown as represented by and operating through the Political authorities provided the nexus between the Indian States and the Central and Provincial Governments.

• The pivot of this arrangement was the Viceroy, who as Crown Representative, represented to the Indian States the suzerainty of the British Crown while at the same time he was, in relation to British India, the head of the Government as Governor-General.

• **The Indian Independence Act, 1947, released the States from all their obligations to the Crown.**
• It was evident that if in consequence the Indian States became separate independent entities there would be a serious vacuum not only with regard to the political relationship between the Central Government and the States, but also in respect of the co-ordination of all-India policies in the economic and other fields.

• All that the Dominion Government inherited from the Paramount Power was the proviso to Section 7 of the Indian Independence Act, which provided for the continuance, until denounced by either of the parties, of agreements between the Indian States and the Central and Provincial Governments in regard to specified matters, such as Customs, Posts and Telegraphs, etc.

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