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State Succession and the Cession of French Establishments to India

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The change in the international status of a State is an event fraught with complex legal consequences. Whatever may be the form of change that takes place in the legal personality of a State, it will immediately affect the continuance of the legal system. Hence, the legal norms are necessary to minimize the consequences of the discontinuance, and, to meet the exigencies arising out of such disruptions. These norms are embodied under the rubric popularly known as 'the Law of State Succession' and one of the important components of public international law. State succession means, the legal transfer of territory from one State to another. This can be otherwise characterized as the transfer of rights and liabilities from one international person to another, as a result of change in sovereignty.

The question of 'succession' as a basic problem of law is simple one. But it assumes a different dimension in international law, and is coupled with legal complexities. Hence, it is not possible to resolve all the aspects of it with a definite solution. Therefore, it is necessary to examine each one of the aspects connected to it such as the obligations under treaties, different kinds of public debts, concessions, contracts, administrative and tortuous liabilities etc. independently, depending upon the political and factual considerations related to the birth and demise of States.

The issue of transfer of territory from one State to another normally takes place in seven different forms. They are (a) cession; (b) conquest or annexation; (c) fusion with other States; (d) entry into a federal union; (e) dismemberment or partition; (f) separation or secession and (g) retro-cession. Whatever may be the mode and impact of these changes on political and factual circumstances, in the language of law one thing is common in all of them - a specific portion of territory passes from one sovereign to another without any exception. This common feature is not only confined to the transfer of territory, but also extends to the substitution of jural relations between the 'new' and the 'old' State, *de facto* as well as *de jure*. It is here the problem of state succession assumes significance to deal with the jural relations that arise due to the transfer of sovereignty.

In the year 1664, the French Crown founded the French East India Company to establish direct commercial relations with India. Taking benefit of the internal dissensions and divisions, the French came to acquire territorial possessions in the Indian soil. Finally, this had culminated in the establishment of the French rule in India over the pockets of Pondicherry, Karaikal, Mahe, Yanam and Chandranagore, covering an area of 509 sq. kms. After independence, the Government of India initiated negotiations with the foreign governments. Intensified struggle for liberation in the pockets forced both the Governments of India and the Republic of France to find out a peaceful solution. As a result of negotiations in a phased manner the Government of India acquired these territories through treaties of cession as *de jure*, in spite of opposition from certain quarters in the French Parliament.

In view of the sensitiveness of the rubric of state succession and due to lack of clear cut practice of the States, an attempt is made in this paper to study in brief, the

impact of the treaties of cession relating to the former French territories with respect to public and private rights and obligations of the State of India and the people of these territories under the municipal law of India. Further, an attempt is made to analyse to what extent the issues settled by India and France through the treaties of cession are coherent with the principles of international law of state succession. It is also proposed to examine in brief, whether the treaties really impose any restrictions upon the sovereignty of India. Though the French pockets have had not been given complete autonomy either before or after their cession in accordance with the principles of international law as that of the territory of Hong Kong, a critical examination of the treaty of cession of 1956, clearly specifies that the people have been given autonomy in certain issues with respect to changes in the administrative set up and changes in their territorial structure. Basing on these provisions of the treaty few years back it became a debatable issue in these territories, whether the Government of India has the power to bring in changes either in territorial or administrative set up without the consent of the people of these territories. In the light of the views aired by certain quarters, it is imperative to examine whether the treaty really impose any restrictions on the sovereignty of the legislative and executive powers of the Government of India? Further, by accepting such a condition whether the Parliament has to forgo its right to bring in territorial changes in accordance with Art.3 of the Constitution of India?

Cession of French Territories to India

During the course of negotiations between India and France, both the governments had agreed to conduct a plebiscite in all the French settlements to determine and to ascertain the views of the people living in the respective areas, whether they are willing to remain with French Republic or to join with the Union of India. To this effect a joint communiqué was issued on June 8, 1948. (For the text: Foreign Policy of India: Texts and Documents, 1947-59(2nd edn.,)1959:3).

Accordingly, plebiscite was first conducted in Chandranagore on June 19, 1949, in which the response of the people was overwhelmingly to merge with the Union of India. In accordance with the result, the free town of Chandranagore was transferred *de facto* to India on May 2, 1950. France and India again on February 12, 1951, concluded a treaty, which enabled the *de jure* cession of the free town of Chandranagore on June 9, 1952. (For the text of the treaty see: United Nations Treaty Series, 1966, Vols.2-3; 155). In the year 1954, the Government of India with the consent of the local administration of the free town of Chandranagore merged it with the State of West Bengal by an Act of Parliament. (The Chandranagore (Merger) Act 1954, Act No.XXXVI of 1954, AIR Manual (4th edn., Vol.3, 1974:81).

After the cession of Chandranagore to India, both India and France entered into an agreement on October 21, 1954, for the settlement of other French Establishments of Pondicherry, Karaikal, Mahe and Yanam. (For the Text see; Foreign Policy of India: Texts and Documents, 1947-59, 2nd edn.). In accordance with the provisions of the agreement the territories would be transferred to India only after ascertaining the will of the people. Till that time the administration of the said territories was handed over to India as a de facto authority without any change in exercise of the French sovereignty. (**Krimens Oil Mills (pvt) limited V. Registrar of Companies** AIR 1958 Mad: 450). On May 28, 1956, both the states entered into a treaty in order to cede the territories permanently to India (For the text, see IYBIA, vol.5, 1956:1750). On August 16, 1962, the said territories were *de jure* transferred to India after the instruments of ratification were exchanged between the two states in New Delhi. The Government of India in order to maintain the separate identity of these territories in 1962, through the fourteenth Amendment to the Constitution declared these territories

as Union Territories and included them in the first Schedule to the Constitution and subsequently passed the Pondicherry (Administration) Act in 1962 (For the text of the Act: AIR Manual Vol.29, 1974:178) extending its jurisdiction over the territories in all respects and bringing in several changes in their administrative structure without any reference to the people of these territories as stipulated by the treaty. This was not objected either by the people of these territories or by the French administration.

In accordance with the provisions of both the treaties of cession, the Government of India succeeded to all the rights and obligations arising out of the acts of the French administration as are binding on the establishments. These issues which were sorted out by both the governments through treaties of cession and have importance under the law of state succession will be examined briefly under the following heads:

The impact of Cession on Legal and Judicial System

With respect to continuity of judicial system definitely conflicts will arise with the laws of the predecessor and indicate a lapse of jurisdiction of the courts of predecessor. In order to settle these problems various types of procedures have been evolved by the States from time. Fortunately, in the case of the French Establishments both India and France had regulated all the aspects by treaties of cession. In accordance with their provisions, it was agreed that the legal proceedings instituted before May 2, 1950 in the case of Chandranagore and the judgments and decrees passed by the French judicial authorities before the said date are considered as they are passed by the appropriate Indian authorities and for appeals which lie for judgments to be filed and disposed of as though the said territory had not been transferred to India (Art. VIII of the Treaty of Cession, 1951).

With respect to the cession of other establishments it was agreed that the legal proceedings pending before the transfer of the territories to India would be completed by the existing courts in the establishments. These courts would continue until such proceedings are settled completely. In deciding these matters, the courts allowed to apply the basic law that was in force prior to November 1, 1954. However, if the interested parties agreed to transfer the proceedings to the Indian courts they could do so, provided they were not entered into the list of the French courts. Judgments, Decrees and Orders or Appeals passed either before or after November 1, 1954, were also should be executed by the competent Indian authorities, irrespective of the court which exercised the jurisdiction (Art. 14 of the Treaty of Cession, 1954). The judicial records of the Courts Registries up to the date of cession, should be preserved in accordance with the rules applicable to them on that date and copies or extracts of these records should be issued to the French authorities or parties concerned without any extra cost. It was further provided in the treaty that with respect to the implementation of sentences in criminal matters both the governments should inform each other with respect to the nationals of either country born in the said establishments (Art.15).

In spite of clear-cut arrangements and specific procedures provided by both the governments, few cases came up before the Indian courts with respect to the interpretation of the provisions of the said treaties. In **Dabendra V. Amarendra** (AIR 1955 Cal. 159) it was argued that the Indian sub-court of Alepore which had tried the suit relating to immovable properties situated in Chandranagore (then French territory), had no jurisdiction over it. The Calcutta High Court after an examination of the legal status of Chandranagore and the provisions of the treaty of cession held that at the time of filing the suit the court had no jurisdiction, since the immovable properties were situated in a foreign territory. But it was pointed out by the court that since at

the time of framing of the issues in the suit, Chandranagore became an Indian territory and so, the Alepore court had the jurisdiction. Therefore, the High court ordered the plaintiff to amend the plaint and accordingly decree the suit.

In **N. Masthan Sahib V. Chief Commissioner of Pondicherry** (AIR 1962 SC 797) the question came before the Supreme Court was whether the statement made by the Executive on the status of Pondicherry shall be binding upon the courts of India, without a final ratification of the agreement of October 21, 1954, transferring the French Establishments to India. The Supreme Court in the first instance referred the question to the Government of India for its reply. The Court after an examination of the reply rendered by the Government held that though complete administrative control has been transferred to the Government of India by the French Government through the agreement of October 21, 1954, the transfer of control of territory is not complete even if it was the common intention of both the parties to the agreement. The Court after having referred to the principles of international law, declared that unless ratification takes place there would legally be no transfer of territory and without the transfer of territory it would not be amount to "acquisition of territory". Accordingly it was held that Pondicherry was not formed part of the territory of India at that juncture.

The effect of Cession on Public Rights and Obligations

Although the law of state succession has undergone several changes from its early periods, it is quite controversial to what extent the public rights and obligations (such as public property, debts, treaties, administrative rights and obligations) of the predecessor would devolve on the successor state. Bulk of the state practice establishes that succession never occurs in a legal vacuum because that would be inconceivable (Lauterpacht. H. 1977 vol. 3:121-37). Hence, it is necessary to examine each issue independently taking into consideration the political contexts and the specific arrangements made by the States.

(a) Public Property

After the cession of Free town of Chandranagore, it was agreed that all the public properties owned by France and the public bodies situated within the territory shall be property of India. It was also agreed that all the archives relating to the local administration should become the property of India. Archives connected to general historic interest of France would be retained by the French government (Art V (a), VI, VII, II of the Protocol). All the financial transactions arising out of the cession of the territory including the accounts of the budget of the said territory should be settled in accordance with the advice rendered by a Commission constituted for the said purpose (Art 29 of the Treaty, 1954).

With respect to other territories both the States agreed that immovable property situated in the territories would be ceded to the Government of India, except the property reserved for the French political and cultural mission in the territories. In accordance with the provisions of agreement, India also agreed to the continued existence of French institutions of scientific and cultural character. It was also agreed that the *College Français de Pondichéry* and other private educational establishments in the territories should be allowed to continue to impart French education and the property and administration shall be maintained by the French Government. All the properties owned by the local administration shall become the properties of India, except the property located in *rue de la Marine* (for the installation of the French Consulate); properties belong to the *College Français de Pondichéry*, the war memorial; properties located at Karaikal for the establishment of a branch of the French Consulate

and for the properties of the French Institute situated in Pondicherry. It was further agreed to retain the *status quo* of the French language as one of the official languages of the territory. It was also provided that properties relating to worship or in use for cultural purposes should be owned by such missions or institutions as established by the French laws and regulations (Arts. 12,20,21, and 22 of the Treaty and Arts. 8,12, and 13 of the Protocol).

With respect to the French currency withdrawn from the establishments after their *de facto* transfer to India, the Government of France agreed to reimburse the equivalent value in sterling or Indian rupees, to the Government of India within a period of one year from the date of the *de facto* transfer.

(b) Debts

After the cession of the French Establishments to India, in view of lack of clear cut norms of the subject, both France and India entered into an agreement to settle the debt claims of the French Establishments. In accordance with the provisions of the Agreement, India would substitute France for all credits, debts and deficits relating to the local administration. All food stocks accumulated in the territory for local population, whether charged to the metropolitan or local budgets, would be repurchased by the Government of India. India shall also pay the indemnity for the purchase of the Pondicherry power station as agreed by both governments. The Government of India further agreed to reimburse to the French Government the amount of Treasury loans and various funds connected to the territory. It was also agreed to repay the advances made by the *cassie centrale de la France d' outre mer* for the development of these territories (Aufricht H; Vol. XI 1962:154). However, any amount that had been sanctioned as grants need not be repaid by India. In view of the clear cut provisions specified by both the states in the Treaty of Cession, the International Monetary Fund concluded that all the loans incurred by the French Government with respect to these territories should be the responsibility of India to repay the debts connected to the said territories which was accepted by India (Verzijl; 1974 Vol. VII 191).

(c) Civil Services and other Services and Pensions

At the time of the cession of French territories to India, it was agreed that civil servants and other employees would be taken over by the Government of India, except those whose services were under the control of metropolitan cadre or the general cadre of *France d'outre mer* Ministry with effect from November 1,1954. It was also agreed by India that the service conditions in respect of remuneration, leave and other privileges would be continued as they were governed by the rules of the French Government before November 1, 1954. It was further accepted that no disciplinary action be initiated against the absorbed employees, whatsoever were the acts in the course of their service prior to November 1, 1954. It was also provided in the treaty that the French civil servants and other officers born in the French territories would be allowed to visit the French Establishments freely without any conditions

With respect to pensionary obligations it was provided in the treaty that with respect to the employees governed by the metropolitan budget the Government of France shall pay the pensions, even if they acquire the nationality of India. Where as, the other employees covered under the local budget of the establishments, their pensions, allowances and other grants should be paid by the Government of India. Various local retirement funds connected with the system of pension shall continue to be in force (Arts. 19, 20 of the Treaty).

The Effect of Cession on the Legal Interest of the Individuals

The practice of the Indian courts has no exception in adopting the doctrine of Act of State. This is because the Constitution of India under List I of the Seventh Schedule has specifically empowered the President and the Parliament of India to exercise the full sovereign powers with respect to other States and subjects, subject to the limitations imposed by the constitution. In fact, the Indian courts went a step forward and held that the doctrine of Act of State would sometimes be a continuous process if a distinction could be drawn between a *de facto* exercise of control and a *de jure* assumption of sovereignty.

In **K.S. Ramamurthy Reddiar V. Chief Commissioner of Pondicherry** (AIR 1963 SC 1464), the Supreme Court in answering a question relating to the Indo-French agreement of October 21, 1954 and the *de facto* transfer of the French Establishments to India held that since Pondicherry and other territories were transferred only as *de facto*, and not *de jure*, the action by the concerned authorities constitutes only an Act of State. The court further opined that since the territories were not formed part of India, in view of their *de facto* transfer, the action by the Chief Commissioner was justifiable and constituted as an Act of State. The brief facts of the case were, Ramamurthy Reddiar (hereafter referred to as the petitioner) had applied for a stage carrier permit before the State Transport Authority, Pondicherry. The application of the petitioner was rejected on the ground that he was only a resident of Pondicherry and not a native of Pondicherry. The petitioner went in appeal to the Chief Commissioner of Pondicherry, where in also the petition was dismissed stating that he was not a native of Pondicherry on September 9, 1960.

The petitioner contended that the State had acted in contravention to the provisions of Art.15 of the Constitution in exercising the powers under the doctrine of Act of state. The court after an examination of the provisions of the constitution and the agreement entered between France and India opined, though the territory was under the jurisdiction of the Government of India, they were not formed part of Indian territory. This was because, since the treaty transferred the establishments only in *de facto* but not in *de jure*, the territories remained as foreign territories to India and the refusal naturally constituted as an Act of State. Hence the question of violation of the provision of the constitution does not arise at all and the concept of acquired rights had no validity in this case.

In relation to contracts and concessions, the Supreme Court in **M/s. Universal Imports Agency V. Chief Controller, Pondicherry** (ILR 1961 SC 4; also see **M/s. French India Importing Corporation, Delhi V. The Chief Controller of Imports and Exports,** AIR 1961 SC 1752) held that though the Indian Government extended its laws by the Foreign Jurisdictions Act of 1947 to the French Establishments on November 1, 1954, these laws cannot invalidate the contracts either executed or executory, even if some of the legal effects and consequences projected into the post merger period.

In this case, M/s. Universal Imports Agency was registered with Pondicherry and was having its main office there. Before the merger of the territory with India, the Agency entered into firm contracts of sales by imports with foreign sellers and made available foreign exchange either under letters of credit or otherwise. According to the contracts with the company, the goods were shipped either before or after merger, though they reached Pondicherry only after the merger. In the meanwhile on November 1, 1954, in accordance with the Indo-French Agreement, the Government of India extended all its laws relating to imports and exports to the territory in accordance with section 4 of the Foreign Jurisdiction Act of 1947 and appointed a Customs Collector.

Before the merger, Pondicherry was a free port without any restrictins on imports and exports on various items and the importers could acquire foreign exchange either at the official rate in respect of some transactions or at the open market in respect of others. The Collector of Customs confiscated the goods, on the ground that they were imported without license as acquired under the Indian laws.

The court after an examination of the Foreign Jurisdictions Act of 1947 held that as specified in the Act under Section 6, "things done or omitted to be done" covers the above contracts. Since a contract of import involved a series of integrated activities commencing from the contract of purchase with a foreign firm and ending with the bringing of the goods into the importing country and that the purchase and resultant import forms part of a same transaction. Hence, the Court ruled that the government had no right to confiscate the property under the pretext of Act of State.

Nationality

After the acquisition of the free town of Chandranagore under the Indo-French Treaty of Cession of 1951, the Parliament of India enacted the Chandranagore (Merger) Act, 1954. This Act conferred citizenship on all the French subjects and citizens domiciled in the free town of Chandranagore in accordance with Art. II of the Treaty, which provided that the French nationals of that town would became citizens of India on the day of the commencement of the Agreement (i.e. June 9, 1951). However, Article III of the Treaty further specified that French nationals have the option to retain their French nationality by merely filing a declaration with the French authorities within six months from the date of the commencement of the Treaty, and, such retinues should never be considered as having acquired Indian citizenship. It had been further provided that a husband's declaration would not determine his wife's nationality. In the case of unmarried minors below 18 years of age, the declaration by their father, or in his absence, by their mother would be decisive. But this was not applicable to married males of over 16 year of age.

After the transfer of the remaining territories (Pondicherry, Karaikal, Mahe and Yanam) *de jure* in 1962, the Government of India passed the Citizenship (Pondicherry) Order, 1962, in accordance with the provisions of the Treaty of Cession. According to the Order, every French national born in Pondicherry and domiciled there in or else where in India or outside the Union of India, on August 16, 1962 was to be citizen of India from that date, by declaration to that effect within six months. In the case of minors a declaration by either of the parents or a guardian was necessary. However, if a minor wanted to revert to his French nationality, he could do so after making a declaration within six months of attaining major. The Order has given an option to retain the French nationality. However, any French national who had not been covered under the French nationality laws on August 16, 1962, was to become only a citizen of India.

Conclusion

Form the above study it is clear that though States, as international persons having the sovereignty to transfer their territories freely, are bound to follow the principles of international law of state succession. Further, it is also clear form the above discussion that, even if a territory is transferred by one State to another, the territory cannot be considered as a part of the Successor State until the territory is transferred *de jure* by way of ratification of the treaty of cession.

The overall practice of the States and the theories propounded by the scholars are though inconsistent with each other, cession of the French establishments to India confirms the point beyond any doubt that the various issues relating to State succession can be settled more amicably than by any other mode of acquisition of territory. The survey also reveals that a successor State (especially in cases of cession) is more accommodative to share not only the benefits that arise out of the territory but to the burdens too, depending upon the political, socio-economic and legal considerations.

The study further reveals that in India though treaty making is an executive act, a legislative enactment is always necessary to implement the provisions of a treaty whether in acquiring or ceding a territory in accordance with Articles 1 and 3 of the Constitution of India. In order to fulfill the obligations of the Constitution, the Government of India specially enacted separate legislations with respect to the French Establishments acquired by it.

The study again clarifies that India had agreed to retain the autonomy of the territories in question as the French Government administered them prior to the cession. This means that the provisions of the treaty of cession (especially with respect of Pondicherry, Karaikal, Mahe and Yanam) impose a restriction on the Union of India that in future it can not change the constitutional status of these territories on its own sweet will, as it has agreed to change the special administrative status of these territories only with the consent of the inhabitants of these territories. This leads to an important issue whether such an obligation imposes a restriction on the supremacy of the Parliament of India that it can't bring in any changes freely for administrative purposes in future in exercise of its powers under Article 3 of the Constitution of India? On an important issue like this there are two opinions: One opinion is that in view of the restriction accepted by the Government of India, it certainly cannot alter the constitutional status of these territories under any circumstances without the consent of the inhabitants of these territories. Any violation of the provisions of the treaty would automatically give right to the French Government to take up the matter to the International Court of Justice as per the provisions of the treaty of cession. The second opinion which is a better view is that the restriction imposed by the treaty is in no way impairs the prerogative of the Parliament of India for two reasons. One is that the territories of Pondicherry, Karaikal, Mahe and Yanam though stated to be autonomous territories before cession, they were not having cent per cent autonomy in accordance with the principles of international law of State succession. Hence it is implied that the French Government might have bargained with the Government of India to have such a restriction only to satisfy the ego of some people who were opposed to transfer of these territories in France and to satisfy them that by transferring these territories to India they still have the same kind of autonomy as they were before the cession. Second view is more in tune with the actual practice and the general principles of law that after acquiring these territories, the Parliament of India through the Union Territories Act, 1963, had brought in numerous changes in the administrative setup of these territories along with other Union Territories. This Act had enabled the Parliament to modify the French administrative set up that was in force prior to November 1, 1954 completely. In the place of French administrative system, the Parliament created Legislative Councils consisting of Council of Ministers on the similar lines of Part C States that were in existence under the States Act 1951, which was repealed by the States Reorganization Act 1956. In implementing these changes, the parliament neither consulted the people of these territories nor was objected by them or France. Hence it can be interpreted that on the similar lines, the Parliament has the power to change the status of these territories for any administrative purposes in future without any reference to the people of these territories in accordance with Article 3 of the Constitution of India.

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