

### Princes' Privilege under Section 87B, Civil Procedure Code

In a recent case<sup>1</sup> the Supreme Court had to consider the constitutionality of the bar set up by section 87B of the Code of Civil Procedure, whereby no Ruler of a former Indian State may be sued without the Central Government's consent. In this case some members of a joint family, whereof a certain Ruler was "*ipso facto*" manager, had sought sanction to sue him for maintenance and other reliefs. Sanction having been withheld, they filed a writ petition, contending that the section was *ultra vires*, as it contravened Articles 14 and 19(1) of the Constitution.

So far as Article 14 was concerned, the Court took the view, that the point had been concluded by the ruling in *Mohanlal Jain v. His Highness Maharaja Shri Sawami Man Singhji*.<sup>2</sup> With regard to Article 19(1)(f), the Court, having examined the legislative and historical background of the said section, took the view that it did not violate the said clause in the Article either. At the same time, however, the Hon'ble Judges invited Government "to consider seriously whether it is necessary to allow s. 87 B to operate prospectively for all times"; and in this connection they made two important recommendations. One was that the operation of the section might be confined to transactions prior to 26th January, 1950. The other was that sanction should be given "ordinarily, if not as a matter of course"—unless frivolous claims were preferred by intending litigants.

One cannot but agree with both the decision itself and the second of the two pieces of advice. With respect to the first recommendations, however, one might, with due respect, ask whether it does not go too far—and needlessly so. Considering the lapse of over fourteen years since the constitution came into force and the operation of the law of limitation, the number of matters in which aggrieved persons can still join issue with Rulers must be extremely few indeed. To limit the privilege, therefore, to pre-Constitution transactions would be practically tantamount to its abolition—thereby paying scant regard to the historical background to which the Court referred in some detail. Moreover, such a radical policy would be unnecessary if the Government were to follow the Court's second piece of advice;

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1. Writ Petition 87 of 1962 (*Narottam Kishore Deb Varman & Others v. The Union of India & Another*), decided in March 19, 1964.

2. [1962] 1 S.C.R. 702.



because then no person *prima facie* aggrieved, would be balked of seeking redress in a court of law.

On the other hand, there is one aspect, in which Government might perhaps justifiably go even further than it has been advised to. It is well known that, after the merger of the Indian States, our Princes have increasingly taken to business, like owning and running factories, cinemas and hotels, letting buildings and other properties, and undertaking major works on contract. One may legitimately doubt whether such a development was in the contemplation of the legislature, when it inserted section 87B in the Code. It would seem to be a negation of the very concept of equality before the law, if any person were allowed to enter the arena of business, fortified with that protective armour of the section which is denied to the ordinary citizen. Had the writ petition involved a purely business transaction, it is conceivable that the section might have been struck down as violative of Article 14. Anyway, Government would probably be justified in granting sanction as a matter of course—*i.e.*, even without any scrutiny of the strength or merits of a claim—where a business transaction is the genesis of the dispute.

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