



# THE INDIAN STATES,

THEIR

STATUS, RIGHTS AND OBLIGATIONS

BY

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"Glory be to God, who among other things has rooted out all hatred and enmity from the bosoms of these nations, and has commanded them to keep their Treaties inviolable, as the very glorious Book saith: O YE WHO BELIEVE, KEEP YOUR COVENANTS."—*Treaty between the Emperor of Persia and the Emperor of the Turks, 1747.*

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TO

HIS HIGHNESS

SHRI MAHARAJA BHUPINDER SINGHI

MAHARAJA DHIRAJ OF PATIALA

CHANCELLOR OF THE CHAMBER OF PRINCES

Ubis Ulorh

IS

BY HIS HIGHNESS' PERMISSION

RESPECTFULLY DEDICATED.

## PREFACE

IN the course of the last few years the Indian States have acquired a great deal of practical importance. The part played by them and their rulers in the Great War, which forms one of the grandest chapters in the history of their relations with the Crown, has brought them to the fore-front of Imperial affairs. Moreover, recent constitutional changes in British India, devised without due regard to their extra-territorial effect, have clearly brought out the fact that in view of the close and intimate relationship, and of the community of interests between British India and the Indian States, the position of the States cannot legitimately be ignored in any constitutional scheme designed for British India. It is, therefore, clear that no constitution for British India can prove to be stable and successful which does not take into consideration the legal position and the rights of the Indian States.

It is, however, surprising that so far no attempt has been made to examine the legal position of the States and their *de jure* relationship with the British Government. The only exhaustive studies on the question are those of Sir William Lee-Warner and Sir Lewis Tupper, but both these writers have studied the question from the stand-

point of policy and expediency. It cannot, therefore, be denied that in ascertaining the rights and obligations of the Indian States, the contributions of Sir William Lee-Warner and of Sir Lewis Tupper cannot necessarily be of great use and profit. Nor can it be disputed that the conclusions arrived at by these two well-known officers of the Political Department of the Government of India cannot be accepted without closest scrutiny and examination. Several International publicists have attempted to examine the position of the Indian States from the standpoint of International Law, but none of them have dealt with the question exhaustively from a strictly impartial and critical point of view. Their conclusions and statements cannot be passed without challenge in view of the fact that none of them have studied the treaties, engagements, and *sanads*, which are primarily the source of the rights and obligations of the Indian States. There is another reason why their conclusions cannot be accepted by any critical and impartial student. Most of them have failed to realise the very important fact that the Indian States are not all of the same type, and that there exist important and striking differences between the States of the same category. Thus uniformity of terminology has tended to obscure the real juristic character of the Indian States. In the following pages an attempt has been made for the first time to examine the question from a purely legal standpoint, and to apply legal rules

and principles in ascertaining the exact juristic character of the Indian States, and their rights and obligations vis-a-vis the Crown.

The present writer had the privilege of listening to Sir Leslie Scott's illuminating argument before the Indian States Committee, and he takes this opportunity of expressing his indebtedness to him, although he has ventured to differ from him on certain important points. He is also thankful to Colonel K. N. Hakser of Gwalior for his many fruitful discourses on questions relating to the Indian States. He is also indebted in a special measure to Professor L. F. Rushbrook Williams of Patiala for giving him the benefit of his valuable criticisms and suggestions. He has also to thank Miss Nellie I. Gidion for her invaluable help, especially in connection with the Continental authorities discussed in the present essay.

It is needless to add that this book does not claim to have any official stamp or character. It merely embodies the results and conclusions arrived at by the present writer after a close and careful examination of the whole subject.

D. K. S.

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TABLE OF CONTENTS.

	PAGE
PREFACE... ..	v
BIBLIOGRAPHY... ..	ix

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CHAPTER

I.—THE TREATY POSITION OF THE STATES ... ..	1
II.—EFFECT OF USAGE ON THE TREATY POSITION OF THE STATES ... ..	21
III.—OPINIONS OF PUBLICISTS ON THE LEGAL POSITION OF THE STATES ... ..	38
IV.—INTERNAL SOVEREIGNTY OF THE STATES ... ..	58
V.—JURISDICTIONAL AUTHORITY OF THE STATES ... ..	82
VI.—POSITION OF THE STATES IN INTERNATIONAL AND INTER-STATAL AFFAIRS ... ..	114
VII.—THE CROWN IN RELATION TO THE STATES ... ..	132
VIII.—THE RIGHTS AND OBLIGATIONS OF THE CROWN... ..	164

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APPENDICES.

APPENDIX

A.—POSITION OF THE BIHAR AND ORISSA STATES ... ..	185
B.—POSITION OF THE SIMLA HILL STATES ... ..	190
C.—STATUS OF THE EAST INDIA COMPANY ... ..	193
D.—EXTRACTS FROM ROYAL PROCLAMATIONS ... ..	196
E.—REPORT OF THE INDIAN STATES COMMITTEE. A REVIEW ... ..	198

## TABLE OF CONTENTS.

APPENDIX	PAGE
F.—SPECIMENS OF TREATIES AND ENGAGEMENTS :	
I.—Treaty of Protection : Udaipur ... . . .	214
II.—Treaty of Protection and Guarantee: Kutch	216
III.—Engagements of Vassalage and Suzer- ainty—(a) Munde; (b) Mysore ...	222
G.—RESOLUTION OF THE GOVERNMENT OF INDIA, 1920	232

## APPENDIX A.

### POSITION OF THE BIHAR AND ORISSA STATES.

The States of Bihar and Orissa may be divided into three classes:—

1. Vassal States, such as Patna and Sonpur.
2. Tributary States consisting of most of the Tributary Mahals of Orissa.
3. Sovereign States, such as Mayurbhanj and Seraikela.

As regards the first group, it is clear that they were originally vassals of the kingdom of Nagpur. In 1803 they were ceded by the Government of Nagpur to the East India Company after the treaty of Deogam, but were restored to Nagpur by the treaty of 1806. They were finally ceded to the East India Company by the treaty of 1826. In 1867 they received *sanads* from the British Government whereby they were recognised as Chiefs with full jurisdiction except in criminal cases in which sentences of death were required to be confirmed by an officer of the British Government. Several other restrictions were imposed on their authority. For instance, it was expressly laid down that the Rulers were "to accept and follow such advice and instructions as may be communicated" to them by British authorities.

The position of these States is perfectly clear. They were originally vassals of the kingdom of Nagpur. In 1826, when they were finally ceded to the East India Company, they became vassals of the Crown, but their rights and powers were not in any wise curtailed or abridged, the treaty of 1826 operating as an acknowledgment or renewal by the Crown of the grant made by

the kingdom of Nagpur. However, it cannot be disputed that the *sanads* of 1867 made several encroachments on the authority of the States, and that such encroachments were clearly unwarranted and illegal in view of the fact that the British Government succeeded to the rights and powers of the Government of Nagpur by virtue of the treaty of 1826, and could not, therefore, claim powers larger than those exercised by their predecessor in title.

The second class of Bihar and Orissa States first came into relations with the Crown in 1803, when they entered into treaty engagements with the East India Company. Before 1803 they were no doubt obliged to pay tributes to the Mahrattas, but this did not involve any restriction on their internal and external sovereignty; in other words, their position was analogous to that of Jaipur, Kotah and Bundi which paid tributes to the Mahrattas. The treaties of the Orissa States with the Company were ratified by the treaty of Deogam between the Raja of Nagpur and the East India Company. In 1889 the first attempt was made to encroach upon the rights and powers of these States. It was proposed to impose restrictions on their criminal jurisdiction, to define and curtail their powers by grant of *sanads*, and to vest in British authorities residuary jurisdiction in judicial and administrative matters. The judicial officer who recommended these proposals did not, however, fail to recognise the fact that "under treaties it is plain that there was no limit on the power of the Chiefs in the administration of civil and criminal justice." These recommendations were not accepted by the British Government, which had in 1821 enunciated their considered policy thus: "Interference should be chiefly confined to matters of a political nature, to the suppression of feuds and animosities prevailing between the Rajas and the adjoining Mahals, or between the members of their families, or between the Rajas and their subordinate Feudatories, to the correction of

systematic oppression, violence and cruelty practised by any of the Rajas, or by their officers towards the inhabitants, to the cognisance of any apparent gross violence by them of their duties of allegiance and subordination, and generally to important points which, if not attended to, might tend to violent and general outrage and confusion, or to contempt of the paramount authority of the British Government." (Bengal Government Records, 1851, No. III.)

However, in 1894 *sanads* were issued to these States curtailing their authority and powers recognised and guaranteed by the British Government. It is stated in the preamble of the *sanads* that the position of the Chiefs "requires to be defined as doubts have from time to time arisen"; but it is perfectly evident that this was a clear misstatement of fact as prior to 1894 the British Government did not have the slightest doubt regarding the authority and position of these States. It is further stated that the *sanads* were intended to guarantee the rights and privileges hitherto enjoyed by the States, but even a cursory examination of the several clauses of the *sanads* makes it manifestly clear that for the first time attempts were being made to abridge the rights and powers of the States. In 1908 these *sanads* were revised on the ground that the status and position of the States "required to be freshly defined," in spite of the fact that a definite and clear statement regarding the position of the States had been embodied in the *sanads* of 1894. In 1915 there was another revision of the *sanads*, and a similar argument for revision was put forward by the British Government.

The last group comprises the three States of Mayurbhanj, Seraikela and Kharsawan. Mayurbhanj was originally under the suzerainty of the Emperor of Delhi, as is evident from the *Farman-i-Shahi* issued by the Emperor in 1724. But apart from the payment of

tribute and the obligations of military services, the State of Mayurbhanj was practically uncontrolled in its internal administration, and was never wholly brought under Imperial jurisdiction. With the decay of the Mughal Empire Mayurbhanj seems to have established itself as an independent State. The Mahrattas, who overran the whole of Bihar and Orissa, did not succeed in establishing their supremacy over Mayurbhanj. It is, therefore, clear that at the time when the State of Mayurbhanj came into relations with the British Government, it was an independent State, enjoying fullest powers of internal and external sovereignty. In 1829 the Ruler of Mayurbhanj executed a treaty engagement with the East India Company whereby the State was placed under the protection of the British Government, but no restrictions were imposed on its rights and powers. In 1894 a *sanad*, similar to those issued to other Bihar and Orissa States, was "granted" to the Ruler of Mayurbhanj. It is clear that this *sanad* was an unjustified encroachment upon the authority of Mayurbhanj, inasmuch as it disregarded the treaty of 1829. The Ruler of Mayurbhanj was not prepared to accept the restrictions which had been unlawfully imposed on his authority, and obtained the opinion of the official counsel to the Government of Bengal. This eminent lawyer was of the opinion that the *sanad* of 1894 "in various ways derogates from his rights as the Ruler of a Tributary State . . . possessing sovereign powers, which, though not unlimited, are yet of considerable extent," and advised the Ruler that he "should, without delay, memorialise His Excellency with respect to that *sanad*, and ask for its withdrawal or amendment." The Maharaja thereupon submitted a detailed memorial to the Government of India in 1896, praying for the withdrawal or amendment of the *sanad*. But the memorial failed to achieve its object.

In the case of Seraikela, similar unwarranted

encroachments have been made upon the rights and powers exercised by the State for more than fifty years after it came into relations with the British Government. These encroachments are not only unwarranted, but also unlawful, being directly contrary to the assurances expressly and otherwise given to the State. They are also diametrically opposed to the solemn pledge contained in the Royal Proclamation of 1858 that "all treaties and engagements made by them (the Indian Princes) will be scrupulously maintained," and that the rights, dignity and honour of the Indian Princes will always be respected.

The question, therefore, arises whether the *sanads* given to the last two groups of Bihar and Orissa States can be considered valid in the eye of the law, and whether the provisions of the *sanads* can be deemed to have curtailed the rights and powers of the States. It must be borne in mind that the relationship between the Bihar and Orissa States on the one hand and the British Government on the other is purely contractual. It follows, therefore, that this relationship founded on agreements cannot be modified or otherwise affected in any manner without the consent of both the contracting parties. The *sanads* of 1894 were not, therefore, originally valid inasmuch as they were not founded on the consent of the States; and the rights and powers reserved to the British Government under these *sanads* were, therefore, tantamount to usurpation. And as Pradier-Fodéré points out, usurpation which is unlawful in its inception cannot be the source of lawful rights. It is, therefore submitted that the position of the Bihar and Orissa States belonging to the second and third groups has not been affected in any manner by the *sanads* issued to them inasmuch as these *sanads* being initially void cannot be said to have acquired legal validity by mere lapse of time.



## APPENDIX B.

### POSITION OF THE SIMLA HILL STATES.

BEFORE entering upon a discussion of the present status and condition of the Simla hill States, it will not be out of place to refer to three important historical facts concerning them. A critical examination of the history of these States clearly establishes the following points:—

1. that the founders of the Simla hill States were not originally of the Simla hills, but belonged to other parts of India;
2. that all these States were founded by conquest; and
3. that they did not owe their origin and existence to any grant or gift from any suzerain power or overlord.

Before the Gurkhas spread their sway over the entire territory at present known as the Simla hills, the hill States were of two different categories. There were in the first place independent principalities enjoying sovereign power and authority unrestricted in any manner. Such, for instance, were the States of Sirmore, Hindoor, and the *Barra Thakoorai*, which comprised ten independent principalities. The second class consisted of the States of Jubbal, Balsan and Soorahun, which were dependencies on the State of Sirmore. (*Punjab Government Records*, Vol. 2, pp. 393 *et seq.*) Upon the conquest of the hill territory by the Gurkhas, some of the Chiefs were deprived of their power and possession. Others were allowed to remain in full possession and enjoyment of their sovereign authority subject to the payment of tributes to the Government of Nepal. Such, for instance, were the States of Baghat and Jubbal.

When the British authorities decided upon an extensive campaign against the Gurkha power they considered "the expediency of restoring the exiled hill Chiefs to their former possessions, and holding out to them and to their subjects that expectation" with a view to stimulate their exertions in co-operating with the British Government in the expulsion of the Gurkhas, and a proclamation expressly and specifically giving an assurance to that effect was, therefore, issued to the Chiefs of the hill States. This proclamation stated: "the Commander of the British Troops is authorised and directed by his Government to promise in its name a perpetual guarantee against the Goorkha Power and to assure the Chiefs and inhabitants of the hills of its *scrupulous regard for all their ancient rights and privileges*. The British Government demands no tributes or pecuniary indemnification whatever for its assistance and protection."

"Immediately after the expulsion of the Nepal Troops by the British armies in 1815, the Native Chieftains who had been exiled during the former regime presented themselves and laid claim to their estates, which they received under certain stipulations" embodied in the *sanads* issued to them. Similar *sanads* were granted to the States which had not lost their separate existence during the ascendancy of the Gurkha power. All these *sanads*, which are still in force, have transformed the character of the hill States; they have reduced the States from independent principalities to petty vassals of the Crown. Further, some of the important stipulations incorporated in the *sanads* have imposed unjustified restrictions on the ancient rights and powers of the hill States in direct contravention of the clear and distinct assurance given to them in the year 1815.

The process of disintegration of the authority of the

States did not terminate with the *sanads*. Further restrictions have followed, and the rights and powers guaranteed by the *sanads* have been gradually reduced to a mere shadow. For instance, capital sentences passed by the State tribunals are required to be confirmed by the British authorities. The forests of the States have been entirely taken over by the British Government. Interference in judicial matters, both civil and criminal, has become very common. Judicial files are called for inspection on the application of any petitioner and sometimes cases already decided are reopened by the British authorities. Interference in executive matters has become still more common and extensive. The British officer concerned does not hesitate to parade his authority in every matter, however petty or trifling. The British Government have gradually usurped every kind of power and control over the roads which traverse the territories of the States. In excise matters the rights of the States are entirely ignored and the States are required to abide by the instructions of the British authorities. Excise laws of British India have been applied to the States by executive orders, without the consent of the Rulers. It is needless to add that repeated and emphatic protests against such usurpations and unlawful restrictions have been of no avail.

## APPENDIX C.

## STATUS OF THE EAST INDIA COMPANY.

As we have already indicated, the question whether the East India Company was a sovereign body or merely an agent of the Crown has an important bearing on the discussion of the precise nature of the relationship existing between the Indian States and the British Crown. Opinion is divided on this point. Some well-known Indian lawyers relying on certain judicial authorities (a) advocate the view that the East India Company was a sovereign power. It is submitted that this view cannot be sustained. A critical examination of judicial decisions and of Royal Charters and Statutes clearly proves that the East India Company exercised rights of sovereignty merely as an agent or delegate of the Crown under express grants.

This view is founded on several unquestionable arguments. In the first place, the decisions on which the first view is grounded do not support the contention that the East India Company was a sovereign body. In all those cases the question of sovereignty was not expressly raised or decided; it was merely held that the act in question was an Act of State. No doubt in *Rajah of Coorg v. The East India Company*, Romilly, M.R.,

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(a) *The Nabob of the Carnatic v. East India Company*, 2 Ves. p. 56; *Gibson v. East India Company*, 5 Bing. N. C. 262; *Elphinstone v. Bedree Chand*, 1 Knapp. P. C. 316; *Doss v. Secretary of State*, 19 Eq. 509; *Frith v. The Queen*, L. R. 7 Ex. 365; *Rajah Salig Ram v. Secretary of State*, 12 Bengal Law Reports, 167; *Reg. v. Shaikh Boodia* (Perry's Oriental Cases), and *Rajah of Coorg v. East India Company*, 29 Beav. 300.

remarked that the East India Company was a sovereign power, but this was in the nature of an *obiter dictum* and the question of the sovereignty of the East India Company was neither directly in issue nor argued, nor was the attention of the learned Master of the Rolls invited to relevant authorities.

Secondly, important judicial decisions expressly hold that the East India Company was not sovereign, but merely an agent or delegate of the Crown. In the *Secretary of State v. Kamachee Boyee Sahiba* (7 M. I. A., 476) it was held by Lord Kingsdown that the property claimed by the respondent had been "seized by the British Government, acting as a sovereign power, through *its delegate* the East India Company." He expressly stated that "the East India Company exercised delegated powers of sovereignty." It was further laid down by him: "If there had been any doubt upon the original intention of the Government, it has clearly ratified and adopted the acts of its agent, which according to the principle of the decision in *Buron v. Denman* is equivalent to previous authority." All these extracts clearly show that in the opinion of the great jurist the East India Company was an agent of the British Crown.

The East India Company was a creature of Royal Charters and Imperial Statutes. Almost all Charters unmistakably indicate that the sovereignty of British possessions in India was vested in the Crown. This is confirmed and emphasised by all Statutes of the Imperial Parliament beginning with the Act of 1813, which declare "the undoubted sovereignty of the Crown in India."

There is still another argument in favour of the view maintained in the present essay. Simultaneous exercise of rights of sovereignty by the Crown and the East India Company under the authority of the Crown clearly proves that the East India Company exercised as agents rights

## STATUS OF EAST INDIA COMPANY. 195

of sovereignty delegated by the Crown. This is clearly supported by the judgment of the Allahabad High Court in *Lachmi Narain v. Rajah Partap Singh* (I. L. R., 2 Allahabad 1). In this case it was held that the Company acted only in virtue of the authority granted to it by the Crown, and that on Her Majesty taking over the governance of India by the Act of 1858 the rule of the Company came to an end.

Finally, it must not be forgotten that well-recognised authorities on the subject uphold the view that the East India Company exercised rights and powers of sovereignty as an agent of the Crown. "The history of British India illustrates the doctrine that no subject of the Crown can acquire dominion except on behalf of the Crown." (Jenkyns, *British Jurisdiction beyond the Seas*, p. 41, n. See also 6 Bomb. L. R. 131; L. R. 1 A. C. 332, *per* Lord Selborne, and *per* Fitzjames Stephen, Q.C., *arguendo*.)

## APPENDIX D.

### EXTRACTS FROM ROYAL PROCLAMATIONS.

#### 1. ROYAL PROCLAMATION OF 1858.

“ We hereby announce to the Native Princes of India that all Treaties and Engagements made with them by or under the authority of the Honourable East India Company are by Us accepted and will be scrupulously observed and We look for the like observance on their part. We desire no extension of Our present Territorial Possessions; and while We will admit no aggression upon Our Dominions or Our rights to be attempted with impunity, We shall sanction no encroachment on those of others. We shall respect the rights, dignity, and honour of the Native Princes as Our own; and We desire that they, as well as Our own subjects, should enjoy that prosperity and that social advancement which can only be secured by internal peace and good Government.”

#### 2. ROYAL PROCLAMATION OF 1903.

“ To all My feudatories and subjects throughout India, I renew the assurance of My regard for their liberties, of respect for their dignities and rights, of interest in their advancement, and of devotion to their welfare, which are the supreme aim and object of My rule, and which, under the blessing of Almighty God, will lead to the increasing prosperity of My Indian Empire, and the greater happiness of its people.”

3. ROYAL PROCLAMATION OF 1911.

“Finally, I rejoice to have this opportunity of renewing in My own person those assurances which have been given you by My revered predecessors of the maintenance of your rights and privileges and of My earnest concern for your welfare, peace, and contentment.

“May the Divine favour of Providence watch over My people and assist Me in My utmost endeavour to promote their happiness and prosperity.

“To all present, feudatories and subjects, I tender Our loving greeting.”

4. ROYAL PROCLAMATION OF 1921 INSTITUTING THE  
CHAMBER OF PRINCES.

“In My former Proclamation I repeated the assurance given on many occasions by My Royal predecessors and Myself, of My determination ever to maintain unimpaired the privileges, rights and dignities of the Princes of India. The Princes may rest assured that this pledge remains inviolate and inviolable.”



## APPENDIX E.

### REPORT OF THE INDIAN STATES COMMITTEE.

THE Indian States Committee was appointed:—

1. To report upon the relationship between the Paramount Power and the States, with particular reference to the rights and obligations arising from (a) treaties, engagements and sanads, and (b) usage, sufferance and other causes; and
2. To inquire into the financial and economic relations between British India and the States and to make any recommendations that the Committee may consider desirable or necessary for their more satisfactory adjustment.

The Report, therefore, deals with two different sets of questions—one purely legal, and the other economic and fiscal. The second set of questions lie entirely outside the province of the present essay. In the following pages an attempt has been made to examine the main historical and legal contributions of the Committee.

Historical inaccuracies.

Some of the important pronouncements made by the Committee are historically incorrect. For instance, the Committee are of opinion that “it is not in accordance with historical fact that when the Indian States came into contact with the British Power they were independent, each possessed of full sovereignty and of a status which a modern international lawyer would hold to be governed by the rules of International Law.” They further hold: “None of the States ever held international status. Nearly all of them were subordinate

or tributary to the Mughal Empire, the Mahratta supremacy or the Sikh kingdom, and dependent on them." These statements are entirely unsupported by facts. It is no doubt true, as we have already indicated (a), that all the Indian States did not enjoy full and complete sovereignty when they entered into the relations with the British Crown, but this does not mean that *none* of the States could lay claim to the title of independent and sovereign States. Although originally subordinate to the Peshwa, both Sindhia and Holkar were independent Rulers at the time when they came into contact with the British Government. According to Malcolm, the British Government acknowledged Sindhia "as an independent Prince, which was done by the terms of the treaty of Salbæ and by keeping a Resident at his court." Similarly Holkar had declared himself an independent Ruler before the first treaty was concluded between him and the British Government. As regards the State of Hyderabad, according to Briggs, although the Ruler "always professed obedience to the Emperor, even when waging war against him," he became "wholly independent" from the year 1723; and diplomatic relations were contracted with him by the British Government on the assumption that he was an independent Ruler enjoying full and complete sovereignty. The States of Alwar and Bhopal were also independent principalities when they came into contact with the British Government. Similarly the Phulkian States of the Punjab enjoyed complete independence, paying no tribute and owing no allegiance, when they placed themselves under the protection of the British Crown. Further, the treaties and engagements concluded with the Indian States clearly establish the fact that the States, which came into

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(a) *Vide* Chap. I.

treaty relations with the British Government, were independent and sovereign States *vis-à-vis* the British Crown. For instance, the preamble of the Orchha treaty of 1812 runs as follows: "The Rajah Mahendar Bickermajeet Bahader, Rajah or Oorcha, one of the Chiefs of Bundelcund, *by whom and his ancestors his present possessions have been held in successive generations during a long course of years without paying tribute or acknowledging vassalage to any other power*, having on all occasions manifested a sincere friendship and attachment to the British Government, and having solicited to be placed under the powerful protection of that Government, the British Government, relying on the continuance of that disposition which the Rajah has hitherto manifested towards it, and on his adherence to whatever engagements he may form on the basis of a more intimate union of his interests with those of the Honourable Company, has acceded to the Rajah's request, *and the following Articles of a Treaty of friendship and alliance are accordingly by mutual consent concluded between the British Government and the said Rajah Mahendar Bickermajeet Bahader, his heirs and successors.*" Are not these words conclusive of the opinion of the British Government at the time that there were two distinct and independent States entering into treaty relations? Is such a preamble consistent with the view of the Committee that the Indian States were neither independent nor sovereign? Could it be legitimately contended, as the Committee appear to have done, that the State of Orchha was a subordinate vassal of the Mughal Emperor or of the Peshwa?

The Committee have also ignored the fact that the mere payment of tribute does not necessarily imply loss of independence. Under the treaty of 1766 with the State of Hyderabad, the British Government was bound to pay tribute to the Nizam, but this payment can in no

account be held to have curtailed or abridged the independence of the British Government. If the Committee's views were correct, it would mean that the principal Maritime States of Europe lost their independence when they engaged themselves to pay tributes to the Barbary States: a conclusion obviously untenable.

The Committee's statement that none of the States had international status is clearly at variance with the views of well-known publicists as well as of highest British Indian authorities. According to Sir William Lee Warner, "the principles and even the precise language of International Law were generally and properly applied to the Indian States," prior to their acceptance of the protection of the British Crown. Speaking of the Indian States on the occasion of the impeachment of Hastings, Edmund Burke said: "the Law of Nations is the law of India as well as of Europe, because it is the law of reason and the law of nature, drawn from the pure source of morality, of public good, and of natural equity." Sir Robert Phillimore is equally emphatic and considers that the principles of International Law *did govern* and *ought* to govern the relations between the States and the Crown. Lord Dalhousie equally admitted the independence of some of the Indian States and the application of the rules of International Law to such States. (See *The British Crown and the Indian States*, at pp. 37-38.) Even Professor Westlake, from whom the Committee appear to have drawn their legal inspiration, was of the opinion that the rules of International Law were applicable to the Indian States when they entered into relations with the British Government.

Equally startling is the statement that "the Paramountcy of the Crown acting through its agents dates from the beginning of the nineteenth century when the British became the *de facto* sole and unquestionable Paramount Power in India." It is evident that the

Committee are not aware of the fact that the Sikh Power did not lose its supremacy in the Punjab till after the death of Maharaja Ranjit Singh in 1839. Nor do they seem to remember that the kingdom of Burma was not annexed by the Crown till the year 1852. The Committee have also challenged the proposition that the term "subordinate co-operation" used in many treaties is concerned solely with the military matters. It is, however, curious that they have not adduced the slightest shred of evidence in support of their contention.

Criticising the opinion of the eminent counsel of the Princes, the Committee say: "It is not in accordance with historical fact to say that the term 'subordinate co-operation' used in many treaties is concerned solely with military matters. The term has been used consistently for more than a century in regard to political relations. *In these and other respects the opinion of counsel appears to us to ignore a long chapter of historical experience.*" It is strange that the Committee should have questioned the views of counsel on historical grounds when their own opinions are admittedly mere caricatures of the history of the relations between the Crown and the States. It cannot be disputed that if the evidence of history is to be called in aid to support the views expressed by the Committee, a new history of India must be compiled, and unquestioned and established facts must be coloured and tortured.

When historical speculations usurp the place of facts it is not surprising that legal theories based upon such speculations should be obviously unsound. It is not possible within a short compass to examine the various theories propounded by the Committee regarding the legal position of the States. We must, therefore, be content with an examination of the main and striking pronouncements of the Committee regarding the rights and obligations of the States. In the first place, the

Committee hold: "The relationship of the Paramount Power with the States is not merely a contractual relationship, resting on treaties made more than a century ago. It is a living, growing relationship shaped by circumstances and policies, resting, as Professor Westlake has said, on a mixture of history, theory and modern fact." It is submitted that this view is palpably inconsistent with the opinion that the Indian treaties and engagements still retain their binding force and character. If the treaties have not lost their validity, the relationship is, it must be admitted, primarily contractual, and if the relationship is contractual no change or development in the relationship can take place except with the express or tacit consent of both the contracting parties. Professor Westlake no doubt holds that the relationship is not contractual, but he also holds that the treaties have been abrogated by the political changes in the country. It is, therefore, clear that his opinion cannot be pressed into service to support the contention of the Committee.

Nature of the relationship.

The Committee are of opinion that "the novel theory of a paramountcy agreement, limited as in the legal opinion, is unsupported by evidence, is thoroughly undermined by the long list of grievances placed before us which admit a paramountcy extending beyond the sphere of any such agreement, and in any case can only rest upon the doctrine, which the learned authors of the opinion rightly condemn, that the treaties must be read as a whole." It is submitted that this is clearly a *non sequitur*. It is not correct to say that the long list of grievances admit a paramountcy extending beyond the sphere of the paramountcy agreement. On the contrary, they indicate that the agents of the Crown have, in spite of solemn declarations of the Crown regarding the inviolable character of the treaties, made innumerable unjustifiable inroads upon the rights and

The paramountcy agreement.

powers of the Indian States guaranteed by the British Government. The very term "grievance" shows that these were cases of usurpations of power in flagrant violation of solemn promises and public pledges. The argument of the Committee amounts to this—it was necessary for the Crown to disregard the terms of the treaties, therefore the conduct of the agents of the Crown was legal and justifiable; hence the infringements of treaty-rights, of which the States complain, have enlarged and extended the powers of the Crown; in other words, the treaties and engagements of the Indian States are no longer binding—a proposition elsewhere emphatically condemned by the Committee.

Secondly, it is not clear why the theory of a paramountcy agreement, limited in its scope, can only rest upon the doctrine that the treaties must be read as a whole. According to the eminent counsel, paramountcy relates to external and internal security and the control of foreign affairs; the rights and obligations of the Crown in respect of these matters are nearly the same in all the treaties and engagements, and paramountcy consists of these factors which are common to all the States. Apart from these common rights and obligations, the Crown may under a particular treaty possess other important rights and powers, but these depend on the terms and contents of each particular treaty, and do not constitute essential elements of paramountcy. It is, therefore, obvious that the theory that paramountcy comprises definite rights and obligations, does not require the support of the doctrine that the treaties must be read as a whole. On the other hand, it is the view of the Committee regarding the paramountcy of the Crown which can only rest upon this doctrine. According to the Committee, paramountcy embraces all those rights and powers which the Crown enjoys and exercises with regard to the Indian States. It follows, therefore,

Criticism  
of the  
Committee's  
view.

that as the treaties differ in their contents and terms, the content of paramountcy must accordingly differ in different States. But, according to the Committee, the content of paramountcy is the same in regard to all the States. The conclusion is, therefore, inevitable that the theory of paramountcy enunciated by the Committee is clearly untenable unless all the treaties and engagements are read as a whole.

The Committee have translated the doctrine of paramountcy into a theory of divine rights of the Paramount Power. In their hands it has become a doctrine of "sword law," a claim that there is no law but that of force. It would appear that, according to the Committee, paramountcy is a supreme deity in whose name justice and equity may be ignored, solemn pledges and assurances may be disregarded, and duly executed agreements may be set aside whenever necessary. The Committee say: "the Paramount Power has had of necessity to make decisions and exercise the functions of paramountcy beyond the terms of the treaties in accordance with changing political, social and economic conditions." Their argument on this point bears close analogy to the legal jugglery of German jurists in justification of Germany's violation of the neutrality of Belgium.

Divine rights  
of the  
Paramount  
Power.

The Committee take pride in the fact that intervention in defiance of the treaties commenced almost as soon as the treaties were made. They hold that such intervention has always been in the interests of the British Government "as responsible for the whole of India, in the interests of the States, and in the interests of the people of the States." The inaccuracy of this statement is conclusively proved by the evidence which was placed before the Committee by the Chamber of Princes. The Committee have cited the Hyderabad case as one of the earliest cases in which the British

Breach of  
treaties as a  
source of  
rights.



The  
Hyderabad  
case of 1804.

Government have interfered in the internal affairs of the States. Three important points must be borne in mind in estimating the evidentiary value of this case. In the first place, according to Lord Dalhousie, "the interposition of the Government of India in the Internal affairs of the Nizam has *on no occasion been brought into action, except on the application of His Highness himself.*" If this statement is correct, the Hyderabad case cannot be considered as a precedent establishing the right of the British Government to interfere in the internal affairs of the States without the consent of the Rulers. Secondly, the testimony of history proves beyond doubt that the intervention of the British Government in the internal affairs of Hyderabad was neither in the interest of India as a whole, nor for the benefit of the State or its peoples; it was, therefore, clearly a case of intervention opposed to the principles laid down by the Committee. As regards the object of intervention in this case, Briggs says: "it was rightly judged that any advantage to be derived by the British from an alliance with the Hyderabad State depended on placing its resources under the control of a minister who should owe his elevation exclusively to their influence . . . two alternatives were open for adoption: either to abandon the alliance altogether, or by direct and authoritative interference to replace it on its proper basis. The adoption of the first must, in justice, have been followed by a renunciation of the territories acquired by the East India Company under the Treaty of 1800, and would in all probability have endangered the political ascendancy of the British over other Powers in India. It was therefore abandoned; the Governor-General having, on due deliberation, determined to enforce with the full right and influence of Government a settlement of the affairs of Hyderabad favourable to the interests of the Company. . . . The real, though not avowed,

object of the British Resident throughout these negotiations was to effect an arrangement which, while it gave to the Nizam the appearance of having exercised his prerogative of appointing his own dewan, left the executive in the hands of a minister who should be indebted to the Resident alone for his elevation to power, and feel that his maintenance in office depended solely on his subserviency to his wishes" (b).

Thirdly, according to the Committee, "intervention may take place for the benefit of the Prince, of the State, of India as a whole." In other words, in no other case is the Crown justified in interfering in the internal affairs of an Indian State. But the disastrous consequences of the intervention of the British Government in the Hyderabad case clearly show that this case does not illustrate the principles of intervention enunciated by the Committee. In 1811 the British Resident at Hyderabad pointed out to the Government of India "the progressive injury which the Nizam's affairs were suffering from the rapacious and improvident system under which they were administered." Writing in 1822 regarding the administration of the State under Chundoo Loll, the Minister in the pay of the British Government, the Resident stated as follows: "At present there is the strongest reason to believe that he (Chundoo Loll) lavishes the revenue of the State for the support of his own power, while he leaves the Army unpaid and is burdening the Government with a load of debt, which will hereafter crush the State itself or ruin its creditors." In 1823 the British Resident thus described the administration of this protégé of the Government of India: "*The merits of Chundoo Loll consist in his ready attention to the wishes of the British Government. . . . The demerits of Chundoo Loll consist in the gross abuse of the unlimited and irresistible power*

obtained by our support, in the most vicious maladministration: in a system of extortion which has ruined the country, and destroyed all confidence in the possession of property of any kind." These clear admissions bear out the contention advanced by the Nizam that the financial ruin and the gross maladministration of the State of Hyderabad in the first three decades of the nineteenth century were primarily due to the unjustified intervention of the British Government in the internal affairs of the State.

Sources of  
para-  
mountcy.

The Committee are of opinion that the paramountcy of the Crown is based upon—

- (a) Treaties, engagements and *sanads*;
- (b) usage and sufferance; and
- (c) decisions of the Government of India and the Secretary of States.

Usage as  
a source.

As regards the second source of paramountcy, the Committee hold that usage in itself is *not* in any way sterile. In their opinion, "usage has shaped and developed the relationship between the Paramount Power and the States from the earliest times, almost in some cases, as already stated, from the date of the treaties themselves." This bald statement is, however, open to several objections. In the first place, the Committee do not define the term "usage." If they use the term in the ordinary sense in which it is used both in Municipal and International Law, it cannot be denied that valid usage is based upon the presumption of implied consent. It follows, therefore, that where this presumption can be rebutted by strictest evidence, usage cannot have the slightest operative effect. The *dictum* that "usage in itself is not sterile" is therefore clearly opposed to the rule of Municipal Law as well as of International Law. In the Common Law, according to Tindal, C.J., "*Custom comes at last to an agreement which has been evidenced by repeated acts of assent of*

both sides from the earliest times, before the time of memory, and continuing down to our own times, that it has become the law of a particular place." (*Tyson v. Smith*, 9 A. & E., at p. 425.) In International Law, as Phillimore points out, usage or custom must "ripen into quasi-contract" before it can have any legally operative effect. In short, consent is the basis of custom or usage in International Law as well as in Municipal Law. The precise effect of usage on the treaty position of the States has already been examined (c). It is, therefore, unnecessary to discuss the question once again at length. Secondly, where usage is intended to contradict the specific provisions of the treaties, mere usage unsupported by specific evidence of consent cannot have any legal effect. Usage may rightly be said to "light up the dark places of the treaties," but it cannot on any ground be held to modify or abrogate the specific provisions of the treaties.

The Committee have founded their contention on the fact that "usage is recited as a source of jurisdiction in the preamble to the Foreign Jurisdiction Act, 1890." It must, however, be observed that the preamble merely states that usage is one of the sources of the existing extra-territorial jurisdiction of the Crown; it does not define the nature of usage which can lawfully confer such jurisdiction; nor does it afford any authority for the contention that where jurisdiction is founded upon treaties, the treaties can be modified or abrogated by usage unsupported by the express or tacit consent of the Sovereign within whose territories such jurisdiction is exercised. Further, the Committee appear to have lost sight of the fact that usage which originated during the minority of a Ruler cannot operate to curtail or abridge the rights of a State, inasmuch as such usage was at its inception illegal. The Committee have also ignored the

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(c) *Vide* Chaps. II and V.

fact that usage which is valid in regard to one State cannot necessarily be valid in regard to another.

Decisions  
of the  
Paramount  
Power.

As regards the third source of paramountcy the Committee held that their contention is based on the decision of the Privy Council in *Hemchand v. Sakar Lal* (Bomb. L. R., p. 129). It is submitted that the interpretation put upon this case by the Committee is entirely unwarranted. All that the case decided was that the decisions of the Government of India and the Secretary of States are binding on the authorities in British India; they never held that such decisions were binding on the Indian States as well. This point is made perfectly clear by the paragraph which follows the statement quoted by the Committee.

Pronounce-  
ments of the  
Paramount  
Power.

Unwarranted reliance has also been placed by the Committee on the declarations of the Government of India. They state that "the Paramount Power has defined its authority and right to intervene with no uncertain voice on several occasions." This view is manifestly unsound. In the first place, it is contrary to the elementary principles of law and justice to assert that the unilateral and *ex parte* declarations of one of the parties to a contract can legally affect the rights and powers of the other contracting party. Secondly, there is absolutely no reason why the declarations of the Government of India should carry greater evidentiary value than the authoritative pronouncement and claims of the Indian States. The declarations of the Government of India are, if in the nature of admission, admissibly only against them, and cannot operate to abridge or curtail the rights of the States. In the third place, the Committee appear to have ignored the very important fact that the history of the relations between the Crown and the States present a striking spectacle of conflicting declarations, and that such declarations and pronouncements "need nothing short of the forcible

methods of a Procrustes" to reconcile them. For instance, no amount of human ingenuity and sophistry could reconcile Lord Dalhousie's Minute of 1851 with Lord Reading's eloquent but unfair outburst in 1926. The only principle that can be legitimately applied in the alignment of those warring pronouncements is that no declaration made after the statutory ratification of the Indian treaties can, even from the standpoint of British Indian law, be legitimately held to curtail the rights and powers of the States. Further, it is curious that the Committee have totally disregarded the authoritative pronouncements, made by highest officials in British India, which are diametrically opposed to the claims asserted by the Committee.

The Committee have baldly questioned the statement that the so-called paramountcy of the Crown involves definite rights and obligations. Yet in dealing with the rights of the Paramount Power they have not discovered any instance of the exercise of the rights of paramountcy other than those set forth by the counsel for the Princes. They hold that "the activities of the Paramount Power may be considered under three main heads: (1) External affairs; (2) defence and protection; (3) intervention." In other words, the Committee here lend support to the view advanced by counsel that the paramountcy of the Crown relates solely and exclusively to internal and external security.

Activities  
of the Para-  
mount  
Power.

As regards the first head of paramountcy, the Committee state as follows: "For international purposes State territory is in the same position as British territory, and State subjects are in the same position as British subjects. The rights and duties thus assumed by the Paramount Power carry with them other consequential rights and duties. Foreign States will hold the Paramount Power responsible if an international obligation is broken by an Indian State. Therefore, the Princes

External  
affairs.

co-operate with the Paramount Power to give effect to the international obligations entered into by the Paramount Power." For lack of comprehension of the legal position of the question and total ignorance of indisputable facts, it is difficult, if not impossible, to surpass this statement. In the first place, it is not correct to say that the territory of the Indian States is in the same position as British territory for all international purposes. For instance, if a criminal, who is alleged to have committed an extraditable offence in France, escapes into an Indian State and takes refuge there, the French Government cannot demand his surrender under their extradition treaty with Great Britain, nor can the Government of Great Britain ask the State concerned to deliver up the fugitive criminal. This is in consequence of the fact that the territory of an Indian State is not in the same position as British territory. In most cases the State concerned may, no doubt, as a *matter of courtesy* surrender the fugitive offenders, but the demand for surrender cannot be considered as a matter of right. Similarly, it is not correct to say that State subjects are in the same position as British subjects. The enactments of the Imperial Parliament as well as of the Indian Legislature clearly establish the fact that, in the view of English Municipal Law, the international position of the subjects of Indian States was not analogous to that of British subjects. This explains the genesis of the Act of 1876, which declared that for the purposes of the Orders in Council specified therein "all subjects of the several princes and states in India in alliance with Her Majesty residing and being in the several dominions comprised in such orders, are and shall be deemed to be, persons enjoying Her Majesty's protection therein." This view is equally the foundation of the fifteenth section of the Foreign Jurisdiction Act, 1890, which runs as follows: "Where any Order in Council made in pur-

suance of this Act extends to persons enjoying Her Majesty's protection, the expression shall include all subjects of the several princes and states in India." Further, if Indian States subjects are for international purposes in the same position as British subjects, where was the occasion for express provisions for the extension to Indian States subjects of the privileges enjoyed in foreign States by British subjects under treaty stipulations? For instance, the Muscat agreement conferring extra-territorial jurisdiction on the Crown expressly provides "that the words 'British subjects' in all treaties between the English Government and the Muscat State shall include subjects of native Indian States." Finally, the bald and unqualified statement that "foreign States will hold the Paramount Power responsible if an international obligation is broken by an Indian State" cannot be supported either by law or facts. It is no doubt true that where there is a breach of an obligation arising under general principles of International Law foreign Governments will hold the British Crown responsible in view of its international guardianship. But where an obligation has been incurred by the British Government on their own behalf or even on behalf of India as a whole, such an obligation cannot be enforced against the States without their consent; nor can foreign States saddle on the British Crown the responsibility for the breach of such an obligation committed by an Indian State. The correctness of this proposition has been admitted by the Government of India themselves. (See *ante*, Chaps. V and VIII.)



## APPENDIX F.

### I. TREATY OF PROTECTION.\*

#### THE UDAIPUR TREATY OF 1818.

TREATY between the Honourable the English East India Company and Maharana Bheemsing Rana of Udaipur, concluded by Mr. Theophilus Metcalfe on the part of the Honourable Company in virtue of full powers granted by His Excellency the Most Noble the Marquis of Hastings, K.G., Governor-General and Thakoor Ajeet Singh on the part of the Maharana in virtue of full powers conferred by the Maharana aforesaid.

#### ARTICLE 1.

Perpetual  
alliance  
and unity.  
" Real," not  
" personal,"  
union.

There shall be perpetual friendship alliance and unity of interests between the two states from generation to generation and the friends and enemies of one shall be friends and enemies of both.

#### ARTICLE 2.

Promise of  
protection.

The British Government engages to protect the principality and territory of Oudeypore.

#### ARTICLE 3.

Acknow-  
ledgement  
of British  
supremacy.

The Maharana of Oudeypore will always act in subordinate co-operation with the British Government and acknowledge its supremacy and will not have any connection with other chiefs or states.

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\* For a better example, see Hyderabad Treaty of 1800.

ARTICLE 4.

The Maharana of Oudeypore will not enter into any negotiation with any chief or state without the knowledge and sanction of the British Government; but his usual amicable correspondence with friends and relations shall continue.

Restriction on negotiation with other States.

ARTICLE 5.

The Maharana of Oudeypore will not commit aggressions upon any one; and if by accident a dispute arise with any one it shall be submitted to the arbitration and award of the British Government.

Arbitration of the British Government.

ARTICLE 6.

One-fourth of the revenues of the actual territory of Oudeypore shall be paid annually to the British Government as tribute for five years; and after that term three-eighths in perpetuity. The Maharana will not have any connection with any other power on account of tribute; and if any one advance claims of that nature the British Government engages to reply to them.

Tribute.

ARTICLE 7.

Whereas the Maharana represents that portions of the dominions of Oudeypore have fallen by improper means into the possession of others and solicits the restitution of those places; the British Government from want of accurate information is not able to enter into any positive engagement on this subject, but will always keep in view the renovation of the prosperity of the state of Oudeypore and after ascertaining the nature of each case will use its best exertions for the accomplishment of that object on every occasion on which it may be proper to do so. Whatever places may thus be restored to the state of Oudeypore by the aid of the British Government, three-eighths of their revenue shall be paid in perpetuity to the British Government.

## ARTICLE 8.

The troops of the state of Oudeypore shall be furnished according to its means, at the requisition of the British Government.

## ARTICLE 9.

Absolute  
internal  
sovereignty  
of the Ruler.

The Maharana of Oudeypore shall always be absolute ruler in his own country and the British jurisdiction shall not be introduced into that principality.

## ARTICLE 10.

The present treaty of ten articles, having been concluded at Delhi and signed and sealed by Mr. Charles Theophilus Metcalfe and Thakoor Ajeet Singh Bahadur the ratifications of the same by His Excellency the Most Noble the Governor-General and Maharana Bheemsingh shall be mutually delivered within a month from this date.

Signed: C. T. METCALFE.

Signed: THAKOOR AJEET SINGH.

Signed: HASTINGS.

Ratified by His Excellency the Governor-General this 22nd day of January, 1918, in camp Oocher.

Signed: J. ADAM,

Secretary to Governor-General.

## II. TREATY OF PROTECTION AND GUARANTEE.

TREATY OF ALLIANCE BETWEEN THE EAST INDIA COMPANY  
AND HIS HIGHNESS THE MAHARAO OF KUTCH, 1819.

Preamble.

WHEREAS a Treaty of Alliance, consisting of thirteen Articles, was concluded on the 16th January 1816, with two supplementary Articles, under date 18th June 1816, between the Honourable East India Company and the

## TREATIES AND ENGAGEMENTS. 217 :

Maharaj Rao Bharmuljee and his successors. In consequence, however, of the hostile conduct of the said Rao towards the Honourable Company, and his tyranny and oppression to his Bhayad, it has become necessary for the stability of the alliance between the contracting parties to make certain alterations in the above-mentioned Treaty.

### ARTICLE 1.

It is hereby declared that all Articles of the aforesaid Treaty which are not modified or superseded by any of the Articles in the present Treaty shall be considered good and valid.

Repeal and ratification.

### ARTICLE 2.

Agreeably to the desire of the Jhareja Bhayad the Honourable Company agrees in declaring Bharmuljee to have forfeited all claims to the guddee of Kutch, and he is accordingly solemnly deposed. The said Bharmuljee shall reside in Bhooj as a State prisoner, under a guard of British troops, subject, however, to be removed to a place of further security in the event of his being implicated in any intrigue, the Kutch government agreeing to pay annually the sum of 36,000 corries through the Honourable Company for the subsistence of the said Bharmuljee.

Deposition of the Ruler.

### ARTICLE 3.

The infant son of the late Rao Bharmuljee having been unanimously elected by the Jhareja Chiefs to succeed to the vacant throne, he and his legitimate offspring are accordingly acknowledged by the Honourable Company as the lawful sovereigns of Kutch under the name and title of Maharajah Mirzo Rao Dessuljee.

Election of the new Ruler.

### ARTICLE 4.

In consequence of the minority of the present Rao Dessul the Jhareja Bhayad, with the Honourable Com-

Appointment of the Council of Regency.

pany's advice, determine that a regency shall be formed with full powers to transact the affairs of the government. The following are chosen as the members: Jhareja Vijerajjee of Somri Roha, Jhareja Prutherajjee of Naugercha, Rajgoor Odhowjee Hirbhoy, Mehta Luckmidas Wullubjee, Khuttri Ruttonsi Jettani, and the British Resident for the time being. These six persons are entrusted with the executive management of the government of Kutch; and in order that they may perform the service of the State with effect the Honourable Company agree to afford the regency their guarantee, until the Rao completes his twentieth year, when the minority ceases.

## ARTICLE 5.

Protection  
and dynastic  
guarantee.

*The Honourable Company engages to guarantee the power of His Highness the Rao Dessul, his heirs and successors, and the integrity of his dominions, from foreign or domestic enemies.*

## ARTICLE 6.

Employment  
of a British  
force.

The Honourable Company, at the desire of Rao Shree Dessul and the Jhareja Bhayad, for the security of the government of Kutch, agrees to leave a British force in its service. For the payment of this force Rao Shree Dessuljee and the Jhareja Bhayad agree that funds shall be appropriated from the revenues of Kutch. The Honourable Company retains to itself the option of reducing or entirely withdrawing its troops (and relieving Kutch from the expense) whenever, in the opinion of government, the efficiency and strength of the Rao's authority may admit of its being done with safety.

## ARTICLE 7.

The money stipulated for in the preceding Article is to be paid in instalments, each of four months, and it is

## TREATIES AND ENGAGEMENTS. 219

further engaged that the regency appointed in the 4th Article shall enter into a separate responsibility for the regular payment of the above kists.

### ARTICLE 8.

The Kutch government engages not to allow any Arabs, Seedees, or other foreign mercenaries to remain in its territories, nor generally to entertain any soldiers, not natives of Kutch, without the consent of the Honourable Company's government.

*Exclusion of foreign mercenaries.*

### ARTICLE 9.

The Kutch government agrees that no foreign vessels, American, European or Asiatic, shall be allowed to import into the territories of Kutch arms or military stores. The Honourable Company engages to supply the wants of the Kutch government in these articles at a fair valuation.

*Restrictions on the importation of arms and ammunition.*

### ARTICLE 10.

The Honourable Company engages to exercise no authority over the domestic concerns of the Rao or of those of any of the Jhareja Chieftains of the country; that the Rao, his heirs and successors, shall be absolute masters of their territory, and that the civil and criminal jurisdiction of the British Government shall not be introduced therein.

*Internal sovereignty of the Ruler.*

### ARTICLE 11.

It is clearly understood that the views of the British Government are limited to the reform and organization of the military establishment of the Kutch government, to the correction of any abuses which may operate oppressively on the inhabitants, and to the limitation of the general expenses of the State within its resources.

*Limitations on the rights of the British Government.*

## ARTICLE 12.

Restrictions  
on inter-  
course with  
other States.

The Rao, his heirs and successors, engage not to enter into negotiations with any Chief or State without the sanction of the British Government, but their customary amicable correspondence with friends and relations shall continue.

## ARTICLE 13.

Loss of  
external  
sovereignty.

The Rao, his heirs and successors, engage not to commit aggressions on any Chief or State, and if any disputes with such Chief or State accidentally arise they are to be submitted for adjustment to the arbitration of the Honourable Company.

## ARTICLE 14.

Military  
assistance to  
the British  
Government.

The Rao, his heirs and successors, engage to afford what military force they may possess to the aid of the Honourable Company's government upon its requisition. This Article, however, is not to be understood as imposing any duties on the Jhareja Bhayad contrary to their established customs.

## ARTICLE 15.

Opening of  
the Kutch  
ports to  
British  
vessels.

The Kutch ports shall be open to all British vessels, in like manner as British ports shall be free to all vessels of Kutch, in order that the most friendly intercourse may be carried on between the governments.

## ARTICLE 16.

Guarantee to  
the Chiefs.

The British Government, with the approbation of that of Kutch, engages to guarantee by separate deeds the Jhareja Chiefs of the Bhayad, and generally all Rajpoot Chiefs in Kutch and Wagur, in full enjoyment of their possessions, and further to extend the same protection to Mehta Luckmidas Wullubjee, who, for the welfare of the Kutch Durbar, has acted in concert with the Jharejas, and with great zeal and sincerity.

## ARTICLE 17.

His Highness the Rao, his heirs and successors, at the particular instance of the Honourable Company, engage to abolish in their own family the practice of infanticide; they also engage to join heartily with the Honourable Company in abolishing the custom generally through the Bhayads of Kutch.

Abolition of  
infanticide.

## ARTICLE 18.

Previously to the execution of the deed of guarantee in favour of the Jhareja Bhayad, according to the tenor of the 16th Article, a written engagement shall be entered into by them to abstain from the practice of infanticide, and specifying that in case any of them do practise it, the guilty person shall submit to a punishment of any kind that may be determined by the Honourable Company's government and the Kutch Durbar.

## ARTICLE 19.

The British Resident or his Assistant shall reside in Bhooj, and be treated with appropriate respect by the Government of Kutch.

## ARTICLE 20.

(Abrogated.)

## ARTICLE 21.

It being contrary to the religious principles of the Jharejas and people of Kutch, that cows, bullocks, and peacocks should be killed, the Honourable Company agree not to permit these animals to be killed in the territory of Kutch or to permit in any way the religion of the natives to be obstructed.

These twenty-one Articles are binding to the Rao, his



heirs and successors, for ever, and to the Honourable Company.

Done at Bhooj on the thirteenth day of October A.D. 1819.

Signed: JAMES MACMURDO, *Captain and Resident in Kutch.*

[The Governor-General's small seal.] Signed: HASTINGS.  
Signed: J. STEWART.  
Signed: J. ADAM.

Ratified by His Excellency the Governor-General in Council this fourth day of December A.D. 1819.

Signed: C. T. METCALFE,  
Secretary.

### III. ENGAGEMENTS OF VASSALAGE AND SUZERAINTY.

#### (a) THE MUNDEE SANAD OF 1846.

Preamble.  
Derivative  
title of the  
Ruler.

WHEREAS by the Treaty concluded between the British and Sikh Governments, on 9th March 1846, the hill country has come into the possession of the Honourable Company; and whereas Rajah Bulbeer Sein, Chief of Mundee, the highly dignified, evinced his sincere attachment and devotion to the British Government; the State of Mundee, comprised within the same boundaries as at the commencement of the British occupation, together with full administrative powers within the same, is now granted by the British Government to him and the heirs male of his body by his Ranee, from generation to generation. On failure of such heirs, any other male heir who may be proved to the British Government to be next of kin to the Rajah, shall obtain the above State with administrative powers.

Be it known to the Rajah, that the British Govern-

ment shall be at liberty to remove any one from the Guddee of Mundeë who may prove to be of worthless character and incapable of properly conducting the administration of his State, and to appoint such other nearest heir of the Rajah to succeed him as may be capable of the administration of the State and entitled to succeed. The Rajah or any one as above described, who may succeed him, shall abide by the following terms entered in this Sunnud, viz. :—

The right of the Crown to depose the Ruler.

1st.—The Rajah shall pay annually into the treasury of Simla and Subathoo, one lakh of Company's Rupees as nuzzuranah by two instalments, the first instalment on the 1st of June, corresponding with Jeth, and the second instalment on the 1st November, corresponding with Kartick.

Payment of tribute.

2nd.—He shall not levy tolls and duties on goods imported and exported, but shall consider it incumbent on him to protect bankers and traders within his State.

3rd.—He shall construct roads within his territory not less than 12 feet in width, and keep them in repair.

4th.—He shall pull down and level the Forts of Kumlagurh, Anundpore, etc., and never attempt to rebuild them.

5th.—On the breaking out of disturbances, he shall, together with his troops and hill-porters, whenever required, join the British army, and be ready to execute whatever orders may be issued to him by the British authorities and supply provisions according to his means.

Servitium.

6th.—He shall refer to the British Courts whatever dispute may arise between him and any other Chief.

7th.—In regard to the duties on the iron and salt mines, etc., situated in the territory of Mundeë, rules shall be laid down after consultation with the Superintendent of the Hill States, and those rules shall not be departed from.

8th.—The Rajah shall not alienate any portion of the

lands of the said territory without the knowledge and consent of the British Government, nor transfer it by way of mortgage.

9th.—He shall so put a stop to the practices of slave-dealing, suttee, female infanticide, and the burning or drowning of lepers, which are opposed to British laws, that no one shall venture in future to revive them.

It behoves the Rajah not to encroach beyond the boundaries of his State on the territory of any other Chief, but to abide by the terms of this Sunnud and adopt such measures as may tend to the welfare of his people, the prosperity of his country, and the improvement of the soil, and ensure the administration of even-handed justice to the aggrieved, the restoration to the people of their just rights, and the security of the roads. He shall not subject his people to extortion, but keep them always contented. The subjects of the State of Mundeel shall regard the Rajah and his successors as above described to be the sole proprietor of that territory, and never refuse to pay him the revenue due by them, but remain obedient to him, and act up to his just orders.

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(b) THE MYSORE INSTRUMENT OF TRANSFER, 1831.

Preamble.  
Derivative  
title of the  
Ruler.

WHEREAS the British Government has now been for a long period in possession of the territories of Mysore and has introduced into the said territories an improved system of administration: And whereas, on the death of the late Maharaja the said Government, being desirous that the said territories should be administered by an Indian dynasty under such restrictions and conditions as might be necessary for ensuring the maintenance of the system of administration so introduced, declared that if Maharaja Chamrajendra Wadiar Bahadur, the adopted son of the late Maharaja, should, on attaining the age of eighteen years, be found qualified for the position of

ruler of the said territories, the Government thereof should be intrusted to him, subject to such conditions and restrictions as might be thereafter determined: And whereas the said Maharaja Chamrajendra Wadiar Bahadur has now attained the said age of eighteen years and appears to the British Government qualified for the position aforesaid, and is about to be intrusted with the Government of the said territories: And whereas it is expedient to grant to the said Maharaja Chamrajendra Wadiar Bahadur a written Instrument defining the conditions subject to which he will be so intrusted: It is hereby declared as follows:—

1. The Maharaja Chamrajendra Wadiar Bahadur shall, on the twenty-fifth day of March, 1881, be placed in possession of the territories of Mysore, and installed in the administration thereof.

2. The said Maharaja Chamrajendra Wadiar Bahadur and those who succeed him in manner hereinafter provided shall be entitled to hold possession of, and administer, the said territories as long as he and they fulfil the conditions hereinafter prescribed. Conditional grant.

3. The succession to the administration of the said territories shall devolve upon the lineal descendants of the said Maharaja Chamrajendra Wadiar Bahadur, whether by blood or adoption, according to the rules and usages of his family, except in case of disqualification through manifest unfitness to rule:

Provided that no succession shall be valid until it has been recognized by the Governor-General in Council. Control over succession."

In the event of a failure of lineal descendants, by blood and adoption, of the said Maharaja Chamrajendra Wadiar Bahadur, it shall be within the discretion of the Governor-General in Council to select as a successor any member of any collateral branch of the family whom he thinks fit.

4. The Maharaja Chamrajendra Wadiar Bahadur Fiducia.

*Servitium.*

and his successors (hereinafter called the Maharaja of Mysore) shall at all times remain faithful in allegiance and subordination to Her Majesty the Queen of Great Britain and Ireland and Empress of India, Her Heirs and Successors, and perform all the duties which in virtue of such allegiance and subordination may be demanded of them.

Protection  
against  
external  
enemies.  
Tribute.

5. The British Government having undertaken to defend and protect the said territories against all external enemies, and to relieve the Maharaja of Mysore of the obligation to keep troops ready to serve with the British army when required, there shall, in consideration of such undertaking, be paid from the revenues of the said territories to the British Government an annual sum of Government Rupees thirty-five lakhs in two half-yearly instalments, commencing from the said twenty-fifth day of March 1881.

6. From the date of the Maharaja's taking possession of the territories of Mysore, the British sovereignty in the island of Seringapatam shall cease and determine, and the said island shall become part of the said territories, and be held by the Maharaja upon the same conditions as those subject to which he holds the rest of the said territories.

7. The Maharaja of Mysore shall not, without the previous sanction of the Governor-General in Council, build any new fortresses or strongholds, or repair the defences of any existing fortresses or strongholds in the said territories.

Restriction  
on the  
importation  
of arms and  
ammuni-  
tions.

8. The Maharaja of Mysore shall not, without the permission of the Governor-General in Council, import, or permit to be imported, into the said territories, arms, ammunition or military stores, and shall prohibit the manufacture of arms, ammunition and military stores throughout the said territories, or at any specified place

## TREATIES AND ENGAGEMENTS. 227

therein, whenever required by the Governor-General in Council to do so.

9. The Maharaja of Mysore shall not object to the maintenance or establishment of British cantonments in the said territories whenever and wherever the Governor-General in Council may consider such cantonments necessary. He shall grant free of all charge such land as may be required for such cantonments, and shall renounce all jurisdiction within the lands so granted. He shall carry out in the lands adjoining British cantonments in the said territories such sanitary measures as the Governor-General in Council may declare to be necessary. He shall give every facility for the provision of supplies and articles required for the troops in such cantonments, and on goods imported or purchased for that purpose no duties or taxes of any kind shall be levied without the assent of the British Government.

Establishment of British cantonments.

10. The military force employed in the Mysore State for the maintenance of internal order and the Maharaja's personal dignity, and for any other purposes approved by the Governor-General in Council, shall not exceed the strength which the Governor-General in Council may, from time to time, fix. The directions of the Governor-General in Council in respect to the enlistment, organisation, equipment and drill of troops shall at all times be complied with.

Limitations regarding the army of the State.

11. The Maharaja of Mysore shall abstain from interference in the affairs of any other State or Power, and shall have no communication or correspondence with any other State or Power, or the Agents or Officers of any other State or Power, except with the previous sanction and through the medium of the Governor-General in Council.

Restrictions on correspondence with other States.

12. The Maharaja of Mysore shall not employ in his service any person not a native of India without the previous sanction of the Governor-General in Council,

Restrictions on the employment of foreigners.

and shall, on being so required by the Governor-General in Council, dismiss from his service any person so employed.

British  
currency to  
be a legal  
tender in  
the State.

13. The coins of the Government of India shall be a legal tender in the said territories in the cases in which payment made in such coins would, under the law for the time being in force, be a legal tender in British India; and all laws and rules for the time being applicable to coins current in British India shall apply to coins current in the said territories. The separate coinage of the Mysore State, which has long been discontinued, shall not be revived.

Free grant  
of land for  
telegraph  
lines.

14. The Maharaja of Mysore shall grant free of all charge such land as may be required for the construction and working of lines of telegraph in the said territories wherever the Governor-General in Council may require such land, and shall do his utmost to facilitate the construction and working of such lines. All lines of telegraph in the said territories, whether constructed and maintained at the expense of the British Government, or out of the revenues of the said territories, shall form part of the British telegraph system and shall, save in cases to be specially excepted, by agreement between the British Government and the Maharaja of Mysore, be worked by the British Telegraph Department; and all laws and rules for the time being in force in British India in respect to telegraphs shall apply to such lines of telegraph when so worked.

Free grant  
of land for  
railway  
purposes.

15. If the British Government at any time desires to construct or work, by itself or otherwise, a railway in the said territories, the Maharaja of Mysore shall grant free of all charge such lands as may be required for that purpose, and shall transfer to the Governor-General in Council plenary jurisdiction within such land; and no duty or tax whatever shall be levied on through traffic

carried by such railway which may not break bulk in the said territories.

16. The Maharaja of Mysore shall cause to be arrested and surrendered to the proper officers of the British Government any person within the said territories accused of having committed an offence in British India, for whose arrest and surrender a demand may be made by the British Resident in Mysore, or some other officer authorised by him in this behalf; and he shall afford every assistance for the trial of such persons by causing the attendance of witnesses required, and by such other means as may be necessary.

Surrender of fugitive criminals.

17. Plenary criminal jurisdiction over European British subjects in the said territories shall continue to be vested in the Governor-General in Council, and the Maharaja of Mysore shall exercise only such jurisdiction in respect to European British subjects as may from time to time be delegated to him by the Governor-General in Council.

Criminal jurisdiction over European British subjects.

18. The Maharaja of Mysore shall comply with the wishes of the Governor-General in Council in the matter of prohibiting or limiting the manufacture of salt and opium, and the cultivation of poppy, in Mysore; also in the matter of giving effect to all such regulations as may be considered proper in respect to the export and import of salt, opium and poppy-heads.

Restrictions on the manufacture of salt and opium.

19. All laws in force and rules having the force of law in the said territories when the Maharaja Chamrajendra Wadiar Bahadur is placed in possession thereof, as shown in the Schedule hereto annexed, shall be maintained and efficiently administered, and, except with the previous consent of the Governor-General in Council, the Maharaja of Mysore shall not repeal or modify such laws, or pass any laws or rules inconsistent therewith.

Restrictions on the legislative authority of the State.

20. No material change in the system of administration, as established when the Maharaja Chamrajendra



Wadiar Bahadur is placed in possession of the territories, shall be made without the consent of the Governor-General in Council.

21. All title-deeds granted and all settlements of land-revenue made during the administration of the said territories by the British Government, and in force on the said twenty-fifth day of March, 1881, shall be maintained in accordance with the respective terms thereof, except in so far as they may be rescinded or modified either by a competent Court of Law, or with the consent of the Governor-General in Council.

The Ruler must conform to the advice of the Governor-General.

22. The Maharaja of Mysore shall at all times conform to such advice as the Governor-General in Council may offer him with a view to the management of his finances, the settlement and collection of his revenues, the imposition of taxes, the administration of justice, the extension of commerce, the encouragement of trade, agriculture and industry, and any other objects connected with the advancement of His Highness's interests, the happiness of his subjects, and his relations to the British Government.

Revocation of grant in the event of breach or non-observance of conditions.

23. In the event of the breach or non-observance by the Maharaja of Mysore of any of the foregoing conditions, the Governor-General in Council may resume possession of the said territories and assume the direct administration thereof, or make such other arrangements as he may think necessary to provide adequately for the good government of the people of Mysore, or for the security of British rights and interests within the province.

24. This document shall supersede all other documents by which the position of the British Government with reference to the said territories has been formally recorded. And if any question arise as to whether any of the above conditions has been faithfully performed, or as to whether any person is entitled to succeed, or is fit

*TREATIES AND ENGAGEMENTS.* 231

to succeed, to the administration of the said territories,  
the decision thereon of the Governor-General in Council  
shall be final.

(Signed) BROWN.

Fort William.

1st March 1881.

## APPENDIX G.

COPY OF RESOLUTION No. 426/R DATED THE 29TH OCTOBER, 1920, BY THE GOVERNMENT OF INDIA IN THE FOREIGN AND POLITICAL DEPARTMENT.

The Government of India have had under consideration the question of giving effect to the recommendations contained in paragraph 309 of the Report on Indian Constitutional Reforms and are pleased to prescribe the following procedure for dealing with cases of the nature therein referred to:—

When in the opinion of the Governor-General the question arises of depriving a Ruler of an important State temporarily or permanently of any of the rights, dignities, powers or privileges, to which he as a Ruler is entitled or debarring from the succession the heir-apparent or any other member of the family of such Ruler, who according to the law and custom of his State is entitled to succeed, the Governor-General will appoint a Commission of Enquiry to investigate the facts of the case and to offer advice unless such Ruler desires that a Commission shall not be appointed.

The composition of the Commission will ordinarily include:—

- (a) A judicial officer not lower in rank than a Judge of a Chartered High Court of Judicature in British India.
- (b) Four persons of high status of whom not less than two will be Ruling Princes.

The names of the persons proposed as members of the Commission will be communicated to the person whose conduct is the subject of enquiry, and he will have the right of objecting without grounds stated to the appoint-

ment of any person as a Commissioner. If objection is so taken, the place of such person will be supplied by another person nominated by the Governor-General, but in that case there shall be no further right of objection.

The Governor-General will convey to the Commission an order of reference stating the matter referred for enquiry. The Ruler or other person whose conduct is the subject of enquiry, will be entitled to represent his case before the Commission by Counsel or otherwise. The Commission after hearing the evidence placed before them by direction of the Governor-General and the representations of the Ruler or person, whose conduct is under enquiry, will make their recommendations to the Governor-General in a report. The report will set forth the findings of the Commissioners on the facts relevant to the matter referred for their consideration and their recommendations will be accompanied by a copy of the proceedings and documents placed before the Commission.

The proceedings will ordinarily be treated as secret; but if the Ruler or person, whose conduct is under enquiry, desires publication, the Government of India may publish the proceedings unless there are special reasons to the contrary.

If the Government of India disagree with the findings of the Commission, the matter will be referred to His Majesty's Secretary of State for decision. The Government of India will communicate to the Ruler or person, whose conduct is under enquiry, their reason for disagreeing with the recommendations of the Commission and invite him to make a representation. This representation will accompany the reference of the Government of India to the Secretary of State; when the reference comes before the Secretary of State, the Ruler or person will be entitled to present an appeal to the Secretary of State.

When the Government of India agree with the recommendations of the Commission, their decision will be communicated to the Ruler or person, whose conduct is under enquiry. The Ruler or person concerned will be at liberty to present an appeal to the Secretary of State against the decision of the Government of India.

The cost of the Commission, other than Counsel's fees, will be borne by the Government of India.

Nothing in this resolution will be held to affect the discretion of the Government of India or of a Local Government to take such immediate action, as the circumstances may require, in the case of grave danger to the public safety.

The resolution shall be applicable to the case of all States, the Rulers of which are entitled to membership of the Chamber of Princes in their own right; it is open to the Governor-General to apply the procedure laid down in this resolution to other States also not included in the above category, in cases where it may be deemed advisable to do so.