

Common Status and the Indian States

(Being a Criticism of the Report of the Butler
Committee)

by R. S. Pandit

Dominion Status

AND THE

Indian States

*Being a Criticism of the Report of the Butler
Committee by R. S. Pandit*

**PUBLISHED BY
R. S. PANDIT, ALLAHABAD**

PRINTED BY K. P. DAR, AT THE ALLAHABAD LAW JOURNAL PRESS, ALLAHABAD

The Report of the Butler Committee must give the Rulers of Indian States food for thought. The report divides the country into two Indias—British India and "Indian India". The political relations of Indian India are declared to be with the Crown.

If the Rulers of Indian India believe that they have scored an advantage by this division and by the recommendations of the Butler Committee that hereafter the Viceroy alone, and not the Executive Council of the Government of India, should deal with questions relating to them it is a Pyrrhic victory, since the Rulers, although allowed, in theory, varying degrees of sovereignty are to remain in effect under the complete military and political control of the Paramount Power.

Indeed it is difficult to see what benefit will be derived by the Rulers of States by the Butler Committees' recommendation that in future the Viceroy and not the Governor-General in Council should deal with the problems relating to them and their States since the Viceroy has hitherto always retained the portfolio of Foreign and Political affairs in his own hands.

While on the one hand the Report declares "that treaties are of continuing and binding force as between the States which made them and the Crown," no limit is indicated to the rights of the Paramount Power to intervene, apart from treaties, in the affairs of the States.

The right to intervene, disputed by the States, in matters of succession, adoption and minority administration is asserted as being based on "usage"—"Usage," says the Report, in fact, lights up the dark places of the treaties."

According to the Butler Report, usage in effect means the rights and powers of control exercised by the British Government over Indian States with the corresponding restrictions upon the independent action of these States as the necessary consequence of the Suzerainty of the predominant power.

The Standing Committee of the Chamber of Princes produced a mass of documentary evidence before the Butler Com-

mittee to prove their grievances, their continuous protests and complaints which negate any acquiescence on their part or accrual of right by usage in the British Government. The mere fact that the British Government exercised control in various ways in different States can create no general right of usage against the States as a whole. The nature and character of the British control must be ascertained not merely from the manner in which, but from the principles upon which, it has, in fact, been exercised. The Indian Foreign Jurisdiction and Extradition Act of 1879 recites that "by treaty, capitulation, agreement, grant, usage, sufferance and other lawful means, the Governor-General of India in Council, has power and jurisdiction within diverse places beyond the limits of British India." But the fact that the Government of India acted on a supposed right of usage did not make it a real one. Rights, if any, acquired by alleged usage over foreign territory may differ not only in origin but in kind and in degree in the case of different States so that in each instance in which the nature or extent of such rights becomes the subject of consideration, inquiry has to be made into the circumstances of the particular case. From the point of view of the States "usage" may truly be said to make the light places of the treaties dark and the dark places darker.

The Butler Report puts forward new formulae of inter-
Right to intervene vention, e.g.

(1) The Paramount Power may intervene for financial and economic reasons. "Apart from interferences justifiable on international grounds or necessary for national defence it is only on the ground that its interference with state sovereignty is for the economic good of India as a whole that the Paramount Power is justified in interposing its authority." (Report para. 55.)

(2) In the case of a Prince who was not guilty of misgovernment but whose subjects demanded a change in the form of Government the Paramount Power would be bound to intervene and "suggest such measures as would satisfy this demand without eliminating the Prince." (Ibid para. 50.)

(3) "The small size of the State may make it difficult for it to perform properly the functions of Government. In these cases the Paramount Power must intervene to carry out these functions which the State cannot carry out." (Ibid para. 54.)

(4) Intervention may be based on "Treaties, Engagements and Sanads supplemented by usage or sufferance and by the decisions of the Government of India and the Secretary of State embodied in political practice." (Ibid para. 45.)

(5) Lastly, "Treaties, Engagements and Sanads where they exist are of continuing valid force but have necessarily been supplemented and illumined by political practice to mean changing conditions in a moving world." It follows that the "Political Department must continue to be paramount and therefore it must be left free to meet unforeseen circumstances as they arise." (Ibid para. 106.)

The Report is thus an Imperialist and Militarist manifestation. It is a philosophy ardently believed and unflinchingly applied. Indian India is to be the *locus classicus* of indirect rule through the Viceroy in contrast with efficient direct rule of the bureaucracy in British India.

And since India is "a geographical unity" the two Indias under the rule respectively of black and white are to form a Black and Tan Empire for the glory of Great Britain. The Butler Committee is more than satisfied with the administrative achievements of the products of British Universities and their pupils the Princes turned out to pattern from Government Colleges. This happy family is to continue to exercise condominium over the subject people of India. The future is on the knees of the gods and can take care of itself:—

"To that future we can merely open a vista. Our terms of reference do not invite us to survey the distant hills and the valleys that lead to them. But we are confident that the Princes, who in war and peace have already rendered such signal service, will play a worthy and illustrious part in the development of India and the Empire." (Ibid para. 106.)

The Butler Report tells the Princes in effect that they must take the rough with the smooth for the alternative to unconditional surrender to Great Britain is annihilation:—

Paramountcy

"Paramountcy must remain paramount; it must fulfil its obligations defining or adapting itself according to the shifting necessities of the time and the progressive development of the States. Nor need the States take alarm at this conclu-

sion. Through paramountcy and paramountcy alone have grown up and flourished those strong benign relations between the Crown and the Princes on which at all times the States rely. On paramountcy and paramountcy alone can the States rely for their preservation through the generations that are to come. Through paramountcy is pushed aside the danger of destruction or annexation." (Para. 57.)

The Committee's declaration of faith that "paramountcy must remain paramount" for the safety of the British Empire in India must be a bitter pill for those Rulers to swallow who attempted to persuade the Committee to define the extent of paramountcy having due regard to treaties and engagements. It amounts in fact to a refusal to depart from the practice of the Political Department which has hitherto claimed unlimited powers in relation to States. Lee Warner wrote: "There is a Paramount Power in the British Crown but perhaps its extent is wisely left undefined."

The novel theory of the origin of British Paramountcy is Novel theory of its origin thus asserted by the Butler Committee:—

"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. In fact, none of the States ever held international status. Nearly all of them were subordinate or tributary to the Moghul Empire, the Mahratta Supremacy or the Sikh Kingdom, and dependent on them. Some were rescued others were created, by the British." (Para. 39.)

Original dependence Thus paramountcy proceeds from the original dependent position of the States themselves, and is not derived from their treaties and engagements which are not contracts or agreements of an international character. The question therefore arises—are Rulers of Indian States including the great Mahratta Princes whose ancestors dismembered the Mughul Empire and finally conquered it and others who were not under the Mughul domination, feudatories of the British Crown?

In political parlance the Rulers of Indian States are now often referred to as Feudatories and the expression is to be found in

official documents but there is no historical basis for any such claim. Before the Mutiny, the East India Company made no attempt to treat the Rulers of Indian States as standing in a feudal relation to the King of England.

Such a conception as applying to the States as a whole appears for the first time during the Viceroyalty of Lord Canning. In 1862, Lord Canning declared that "the Crown of England stood forward the unquestioned ruler and paramount power in all India, and was for the first time brought face to face with its feudatories."

The theory of paramountcy was further elaborated in the time of Lord Mayo. It constituted a striking departure from the relations that existed between the British Government and the States up to that time. Both the Marquis of Hastings and the Marquis of Dalhousie had expressly repudiated any claim of paramountcy as is proved by Lord Hastings' letter in 1822 to the Resident, Mr. C. T. Metcalf, at Hyderabad, and by the letter to Lord Dalhousie in reply to General Fraser, then Resident at Hyderabad. These letters are dealt with later on.

Before the Mutiny the Government of India claimed no general paramountcy over Indian States investing it with the right to order the rulers to conform to its wishes or to intervene in any matters outside the express provision of their treaties. If an overzealous subordinate put forward such a policy the Government of India brushed it aside on the ground that it had not the legal or constitutional authority to justify such a course.

Thus although politically and in a military sense paramount in India the East India Company never claimed to be the paramount power with a right to intervene in the internal affairs of the States. If in 1857 the Government of India did not possess such rights, on what basis and through what processes has the British Government in India become vested with the wide powers claimed for the Crown in the Butler Report ?

After the Mutiny Lord Canning stated that the assurance to the States against annexation did not
A novel claim "diminish our right to visit a State with the highest penalties in the event of disloyalty or flagrant breach of engagements." It is sufficient to note that such a claim was never put forward by the East India Company and no Indian

Ruler has by agreement or otherwise ever accepted it.

Lord Canning declared in 1860 that "the territories under the sovereignty of the Crown became at once an important and as integral a part of India as territories under its direct domination. Together they form one direct care, and a political system which the Mughuls had not contemplated and the Mahrattas never contemplated is now an established fact of history."

Lord Mayo was equally emphatic. In his speech to the Rulers of Rajputana he said:—

"If we respect your rights and privileges, you should also respect the rights and regard the privileges of those who are placed beneath your care. If we support you in your power, we expect in return good government. We demand that everywhere throughout the length and breadth of Rajputana, justice and order shall prevail; that every man's property shall be secure; that the traveller shall come and go in safety; that the cultivator shall enjoy the fruits of his labour; and the trader the produce of his commerce; that you shall make roads and undertake the construction of those works of irrigation which will improve the condition of the people and swell the revenue of your States; that you shall encourage education and provide for the relief of the sick."

This was indeed a claim that the internal administration of the States should be conducted under the supervision of the Government of India because it was the paramount power!

Tupper, a British political officer who, like Malcolm before him and Aitchison after him, was responsible for evolving a "system" in the Department of the Government of India dealing with the States, saw all the important elements of feudalism in the relationship between the Crown and the States! He writes in his book "Our Indian Protectorate."

Elements of Feudalism

"If the fiefs were isolated so are the Native States. If the holders of the fiefs enjoyed immunity from the laws of any external power so in general do the Chiefs exercising various degrees of internal sovereignty. Even in the methods by which the system of protectorate was gradually formed we see a likeness to the process of feudalisation."

Tupper was the author of "Political Practice" a book of confidential instructions to Political officers. The Norman theory

of feudalism whereby the King claimed aid, wardship and other rights over his Barons was thus grafted into the Indian political system by those who had the control of the Government policy in relation to the States.

In pursuance of this so-called feudal theory the Government of India, after the Mutiny, claimed to control minority administration although before the Mutiny it had proclaimed in important cases that it possessed no such right.

It insisted in certain cases on *nazrana* being paid on adoption, it laid down that sanction was necessary before succession and that Rulers were to be invested with powers by Government. In the case of the Nawab of Tonk who was deposed for alleged complicity in murder the Government of Lord Lawrence mulcted the State of a slice of its territory. Apart from the rights and wrongs of the question of deposition, the confiscation of a portion of the State is difficult to understand except on the Norman theory of Feudalism that for the crime of a fief holder his fief may become escheat!

The grant of orders of chivalry was another expression of the feudal idea. In a letter to Disraeli
Orders of Chivalry \ Lord Lytton wrote in April 1877:—

“Nothing has struck me more in my intercourse thus far with Indian Rajas and Maharajas than the importance they attach to their family pedigrees and ancestral records. Here is a great feudal aristocracy which we cannot get rid of, which we are avowedly anxious to conciliate and command but which we have as yet done next to nothing to rally round the British Crown as its *feudal* head. Every Raja I have yet conversed with has been curiously and amusingly anxious to convince me of the antiquity of his family and the extent to which its importance has been recognised by the Suzerain Power at various times. Many of them have presented me with printed and illustrated genealogies and family records, lovingly edited by themselves and published at their own expense. Several of these genealogies are composed and printed in English. But what is worthy of notice is that in all of them I find evidence that small favours and marks of honours bestowed from time to time by the British Government on the head of the family such as an additional gun to his salute, the right to a return visit from the Viceroy,

or a more honourable place in Durbar, etc., are quite as highly prized and appreciated as the more substantial benefits (of augmented territory or revenue) conferred in earlier times upon that family by an Aurengzeb or an Akbar."

Further in a letter to Lord Salisbury at the same time Lord Lytton wrote:—

"I am convinced that the fundamental political mistake of able and experienced Indian officials is the belief that we can hold India securely by what they call good government, that is to say, by improving the condition of the ryot, strictly administering justice, spending immense sums on irrigation works, etc. Politically speaking, the Indian peasantry is an inert mass. If it even moves at all, it will move in obedience, not to its British benefactors, but to its native chiefs and princes, however tyrannical they may be. The only representatives of native opinion are the Baboos whom we have educated to write semi-seditious articles in the native Press and who really represent nothing but the social anomaly of their own position. Look at the mistakes which Austria made in the government of her Italian provinces. They were the best governed portions of Italy; she studied and protected the interest of the native peasantry; but fearing the native *noblesse* she snubbed and repressed it; when that *noblesse*, having nothing to gain or to hope from the continuation of her rule, conspired against it the peasantry either remained passive or else followed the lead of its national superiors in attacking its alien benefactors. But the Indian chiefs and princes are not a mere *noblesse*. They are a powerful aristocracy. To securely, completely and efficiently utilise the Indian aristocracy is, I am convinced the most important problem now before us. I admit that it is not easy of immediate solution. For whilst, on the one hand, we require their cordial and willing allegiance, which is dependent on their sympathies and interests being in some way associated with the interest of the British Power, on the other hand we certainly cannot afford to give them any increased political power independent of our own. Fortunately for us, however, they are easily affected by sentiment and susceptible to the influence of symbols to which facts very imperfectly correspond."

Lord Lytton had proposed a Indian Peerage and an Indian Privy Council. Fortunately these proposals were not accepted.

The anxiety of the Indian Government to found a personal relationship between the King and the Rulers of States led to the view that by the abolition of the Company new rights were created in the Crown and later that the authority legal and constitutional supposed to have been vested on the phantom Moghul Emperor was transferred to the British Crown. Thus Queen Victoria was to be regarded as the heir of Moghul pretensions.

But the facts were otherwise. It could not be argued that the assumption of the administration of India by the Crown invested the Government of India with suzerainty over the States. Since only the rights possessed by the Company were transferred to the Crown no additional rights could accrue to the Crown by such transfer. The Act of 1858 provided that all treaties made by the Company shall be binding on Her Majesty." The proclamation of the Queen made it still clearer:—

"We hereby announce to the native Princes of India that all treaties or engagements made with them by or under the authority of the Hon'ble the East India Company are by us accepted and will be scrupulously maintained and we look for the like observance on their part."

Indeed this is admitted in the Butler Report "The Act of 1858 which put an end to the administration of the Company did not give the Crown any new powers which it had not previously possessed. It merely changed the machinery through which the Crown exercised its powers." (Para.).

The transfer of control being merely a resumption by the Crown of the powers of a corporation created by itself could not vest in the Crown greater authority over third parties than that corporation possessed and in any case such a transfer could not impose fresh obligations on those who were not parties to the relation between the Crown and that corporation.

On the death of the last Moghul Emperor, Disraeli in 1876 revived the idea that the Queen should assume the title of Empress of India. This idea had previously been mooted by the Prince Consort for his wife and Sovereign in 1858. In the spring of 1876 the Royal Titles Bill was introduced in the House of Commons. The new title was explained by Lord Hartington in

the House of Commons to be the "assumption of the fallen estate of the Moghuls." During the debate on March 14, Disraeli emphatically asserted that the "title Empress of India did not in the least affect the right, dignity and honour of the Indian Princes as guaranteed in the Proclamation of 1858." Thus the fact that the Queen's Government assumed the administration of India in 1858 or that the death of the last Moghul Emperor finally ended the fiction of a Moghul Empire in Rulers or convert them from Allies to Feudatories or make the British Government in India from a predominant partner bound by treaty contracts into a Suzerain whose wishes were law.

Yet the policy which Canning began and Mayo continued has been preferred in its legal and constitutional ramifications by successive Viceroys up to the time of Lord Reading whose letter to the Nizam in 1926 is regarded by the Butler Committee as the *dernier mot* in this controversy. Lord Reading writes:—

"I will merely add that the title 'Faithful Ally' which your Exalted Highness enjoys has not the effect of putting your Government in a category separate from that of other States under the paramountcy of the British Crown."

The Butler Report relies on three cases, viz., Baroda (1873-75), Manipur (1891-92) and Hyderabad (1926).

The first is the "trial" and deposition of Maharaja Malhar Rao Gaekwar of Baroda. The Gaekwar was accused of an attempt to poison the Resident and he was tried by a tribunal appointed by the Government of India. The legality of this tribunal and of its proceedings is open to doubt. The British Government recognised that the Sovereign Prince of Baroda was in alliance with it. What legal claim did it possess to try him? Tupper admits that the action was taken apart from Treaty Rights. The objections to the procedure were clear from the beginning—a fact which was possibly recognised when under the orders of the Conservative Government which had succeeded Mr. Gladstone's Ministry, the Gaekwar was deposed not on the charge for which he was tried but on general grounds of mal-administration.

The Baroda case
The Manipur case

In the Manipur case the brother of the ruling Prince rebelled and installed the Jubraj (heir apparent) on the *gaddi*. The Jubraj was recog-

nised by the British Government which however demanded the expulsion of the rebel brother. The Jubraj refused to comply with the order. The British Government thereupon invaded Manipur, deposed the Jubraj and after a trial sentenced him to be hanged. A proclamation of the Government of India enjoined the State subjects to take warning. A recent writer has summed up the situation which arose as follows:—

“The question whether in an act of resistance by a ruler, the subjects of the State should loyally obey a Maharaja cannot be answered completely by a proclamation from the Government of India. Subjects of a State like that of the Nizam owe their immediate duty and allegiance to their sovereign. The claim put forward that the Imperial authorities can dissolve this allegiance by proclamation is tenable rather on the basis of superior strength or political expediency than of law or of treaty obligations. The idea that new obligations can be created or established rights taken away in the case of States in alliance by the Government of India, issuing either a circular letter or a proclamation is not sound. But such action, though it could establish no legal claim, is a clear enough indication of the tendency towards Imperial authority. The Government of India has exerted itself to push forward new claims and to extend old ones. For this purpose, constitutional, legal and feudal theories have been brought into use. Each in its turn has served to deprive the rulers of some part of their authority, or to give to the Central Government some new basis for intervention.”

As regards the Hyderabad case, apart from the rights and wrongs of the Berar question, it is interesting briefly to examine the relationship of the British Government with the Nizam.

According to the author of the *Siyar-ul-Mutakharin*, Chin-Kilich Khan, a Turani nobleman and Viceroy of the Deccan, invited Nadir Shah to invade India. He proclaimed himself independent ruler of the Deccan soon after the departure of Nadir Shah from Delhi. At this period the English were traders on the coast of India (1739). “At what precise time,” says Mr. Field, a Judge of the Calcutta High Court, “the Company exchanged the character of subjects for that of Sovereign and obtained for the Crown the right of sovereignty, is by no means clear. There can be no doubt that, at the beginning of 1806, the Sovereignty of the Bengal Presidency had been acquired and the British power

had become paramount in India." (Field's Regulations of Bengal Code, Introduction, p. 17). Mr. Field can hardly be accurate in his date since the military power of the Mahrattas was unbroken and the Punjab was independent under the Sikhs in 1806. Assuming the date to be correct the political relations of the East India Company with the Nizam and the Mahratta Princes were based on treaty contracts of an international character. Since the Company thereafter came to be recognised as an independent power by Indian Rulers who were themselves independent Sovereigns in their own territories.

The first Governor-General who desired to establish the "Pax Britannica" in India was perhaps Wellesley. In a speech to the European inhabitants of Calcutta on the eve of his departure he said:—

"My public duty is discharged to the satisfaction of my conscience by the prosperous establishment of a system of policy which promises to improve the general condition of the people of India and unite the principal Native States in the bond of peace under the British power."

It was however reserved for the Marquis of Hastings to achieve the goal by his treaties with a large number of States. The States, including those of Rajputana, agreed to give up for the price of protection the right to make peace or to declare war. The term "subordinate co-operation" which occurs for the first time in these treaties made by Hastings was later interpreted by the Political Department to justify intervention in the internal affairs of the States.

Mr. Henry St. George Tucker who was a Director of the East India Company, writes:—

"The Marquis of Hastings took charge of the Government in 1813 and manifested at a very early period that his views of our foreign policy differed widely from those of his immediate predecessors."

He continues:—

"He (Hastings) was ardently impressed with the opinion that the absolute supremacy of the British power throughout India must be maintained, and that the Native States must be united in one great federative league, under a supreme head, which should control and protect them."

"This broad scheme of policy, which has found some strenuous advocates, is very much in unison with that which was for

some time successfully pursued by the late ruler of France (Napoleon) It was perfectly simple in its own nature and reducible to one proposition—the establishment of the well meant despotism of a powerful state over all its weaker neighbours.” (Memorials of Indian Government edited by Kaye pp. 233-34).

Yet in reply to the Resident, Mr. (afterwards Sir Charles) Metcalfe, who had suggested intervention in Hyderabad in the interests of good government, Hastings wrote:—

Intervention in Hyderabad

“Your letters of August 31, and September 3 and 5 have been laid before the Governor-General in Council, and I am directed to communicate the observations which occurred on their perusal.

“(2) In the second paragraph of your first letter you say, that ‘you suppose our interference in the Nizam’s affairs to be not merely right, but also a duty, arising out of our supremacy in India which imposes on us the obligation of maintaining the tranquillity of all countries connected with us, and consequently of protecting the people from oppressions, as no less necessary than the guaranteeing of their rulers against revolution.’ The assumption of our possessing a universal supremacy in India, involving such rights as you have described, is a mistake. Over States, which have, by particular engagements, rendered themselves professedly feudatory, the British Government does no doubt exercise supremacy; but it never has been claimed, and certainly never has been acknowledged in the case of Native powers standing within the denomination of allies. Although a virtual supremacy may undoubtedly be said to exist in the British Government, from the inability of other states to contend with its strength, the making of such a superiority a principle singly sufficient for any exertion of our will, would be to misapply, and to pervert it to tyrannic purposes.”

No authorisation
“(3) In your third paragraph you observe, ‘the only refuge of a people intolerably vexed, is in emigration or insurrection; and as we secure the Nizam’s Government against rebellion, it seems to be incumbent on us to save his subjects from grievous oppressions.’ The argument of supremacy having been set aside, nothing but the tenure of some special engagement could render us liable to the call, or allot

to us the title for such interposition. Our treaties, characterising the Nizam as an independent sovereign, authorise no such latitude. When, for our private views that prince was constrained to support a body of our troops, to be stationed near his capital, the then Government disguised the interested oppressiveness of making him pay a portion of our army for holding him in thralldom, by a sturdy declaration, that His Highness had spontaneously sought the aid of a subsidiary force to secure his person and territories. The veil thus thrown over our policy required that any stipulations which could mark the prostration of his power should be forborne, so that in appearance, he legitimately retained his freedom. The measure, however, really placed him at our mercy. It was hardly to be imagined that our advantage would not be abused, and it was abused: the independence which the very conditions of the compact recognised and pledged us to respect, was set at naught. Gradual but unequivocal encroachments on the Nizam's just authority were perceived by the honourable court, and a more becoming system was enjoined. The Governor-General in Council laboured to introduce it—a work of no small difficulty when the country was so disorganised—and having established an understanding with Rajah Chundoo Lall for the correction and future conduct of affairs (this Government, in return, binding itself to support that Minister), the Resident was directed to adopt a course of conciliatory counsel instead of those starts of despotic dictation which had before been in use. That limited degree of interference would still be objectionable, but for the common interests between the two governments, that His Highness' territories should be restored to prosperity; yet even that excuse would be insufficient, were not our influence to be managed with delicacy, and to be unavowed. Such is the distinct nature of our relation with the Nizam; and a disregard of its terms would be no less repugnant to general principles, than to the orders of this Government.

“(4) Paragraphs 4 and 5 plead necessity for our interposition, because the Nizam does not rule his subjects with equity and prudence. The fact of mal-administration is unquestionable, and must be deplored. Does that, however, decide the mode in which alteration is to be affected? Where is

Mal-administration

our right to determine that the amount of the evil is such as to demand our taking the remedy into our hands? His Lordship in Council observes that the necessity stated is altogether constructive. Were such a pretence allowable, a powerful State should never want a colour for subjugating a weak neighbour. The consequence is so obvious that no principle in the law of nations leaves room for acting on such a presumption. It is admitted, that if convulsions rage so violently in one State as clearly to threaten the excitation of ferment in a bordering one, the latter may be justified in reducing to order the nation by which its tranquillity was menaced. This, however, is an extreme case, at the same time that it is of a description strictly defined. No analogy exists between indisputable exigency and an asserted convenience, where vague arbitrary charges, if tolerated as a ground of procedure, would furnish ready pretext for the foulest usurpation." (Bengal Political Letter, dated December 20, 1822).

Lord Dalhousie's policy of annexation has been regarded as a violation of the solemn treaties entered into by the British with the States and also of that provision of the Charter Act of 1793 which solemnly declared:—

"That to pursue schemes of conquest and extension of dominion in India are measures repugnant to the wish, honour and policy of the nation."

But the annexations were not due to the land hunger of an individual Governor-General. In a letter to Major Evans Bell dated May 8, 1872, General John Briggs wrote:—

"But perhaps I ought not to attribute so much to the personal or free action of Lord Dalhousie, for I have good reason to believe that in Lord Auckland's time, long before the appointment of Lord Dalhousie, there was a conclave of Whig Ministers and magnates at Lord Lansdowne's place, Bowood, to discuss the policy of upholding or of absorbing the Native States, and it was decided that we should avail ourselves of all opportunities for adding to our territories and revenues at the expense of our allies and of stipendiary Princes like the Rajah of Tanjore and the Nawabs of the Carnatic and Bengal. In this Direction the Bombay Government set the example by annexing the considerable principality of Colaba, under the pretext that an adopted heir had no right of succession. This led the way to the

more important and more impolitic cases, under Lord Dalhousie, of Jhansi and Nagpur. Lord Dalhousie only acted on the policy prescribed by the Ministers in England." (Memoir of General John Briggs, p. 277).

And yet the annexationist Governor-General reiterated the position that the treaties with the States gave the Government of India no right to meddle in their internal affairs. When General Fraser, Resident in Hyderabad, suggested intervention, Dalhousie replied:—

Dalhousie's view

"I desire to record my entire dissent from, and disapproval of, the policy which the Resident has suggested for the adoption of the Government of India. For more than half a century relations of amity and intimate connection have existed between the British Government and the Nizam, and they have been strengthened on both sides by the stipulations of formal treaties.

"The several obligations which those treaties imposed have been faithfully observed by the contracting parties on either side. Among them all, no article was more distinctly or emphatically worded than that wherein the Hon'ble Company's Government distinctly declared that they have no manner of concern with any of His Highness' children, relations, subjects, or servants, with respect to whom His Highness is absolute. . . .

"Again, it is often maintained that such is the misgovernment of His Highness the Nizam, that so great are the violence and lawless confusion which pervade every part of his dominions, that it has become the moral duty of the British Government, as the paramount power in India, to assume to itself the Government of His Highness' dominions, in order to correct the evils of his rule, and to rescue his subjects from the sufferings which are alleged to proceed therefrom.

"I desire to repudiate all adhesion to a doctrine which leads, in my humble judgment, to a system of unwarranted and officious meddling.

"In too many instances, I fear it proceeds not from sentiments of enlarged benevolence but from the promptings of ambitious greed. Even where the motive from which it springs is pure and sincere, the doctrine is, in my view, not the less unsound. The acknowledged supremacy of the British power in India gives to it the right and imposes upon it the duty, of maintaining by its influ-

ence, and (if need be) compelling by its strength, the continuance, of general peace. It entitles it to interfere in the administration of Native Princes if their administration tends unquestionably to the injury of the subjects or of the allies of the British Government.

"But I recognize no mission confided to the British Government which imposes on it the obligation, or can confer upon it the right of deciding authoritatively on the existence of native independent sovereignties and of arbitrarily setting them aside, whenever their administration may not accord with its own views, and although their acts in no way affect the interests or security of itself or its allies.

"Still less can I recognise any such property in the acknowledged supremacy of the British Government in India, as can justify its rulers in disregarding the positive obligations of international contracts, in order to obtrude on native princes and their people a system of subversive interference which is unwelcome alike to people and prince.

"In the case of the Nizam, the British Government is bound by the solemn obligations of a treaty to abstain from all interference in His Highness's internal affairs. The sovereign has been and still is strongly and consistently averse to any of the slightest evasion on our part of these obligations. His people have shown no desire for our good offices, nor have ever furnished us with the slightest pretext for interposition. And, whatever may be the tenor of His Highness's administration, it cannot be said as yet to have materially affected the security of any portion of British territory, or to have damaged the interest of British subjects

"I refuse to entertain them because we acknowledge the Nizam as an independent Prince. We have bound ourselves by treaty to shield him from every enemy, and we have guaranteed to him the exercise over his own subjects of his sole and absolute authority. The British Government therefore cannot honestly entertain, and has never entertained, any intention of open aggression on the independence of this prince. It nourishes no secret and insidious design of standing aloof while his sovereignty is fast crumbling under the weight of his own incapacity and folly. The Resident at His Highness's Court continues, and will continue, to persevere in the endeavours he has made in past times to support His Highness's power

and to promote the good of his people. He will be instructed to give, on every fit occasion the services of the contingent troops, or, if need be, those of the subsidiary force also, for the maintenance of the sovereign's just authority. In so doing, he will exercise the power with which he is vested, of judging in each case of the fitness of the purpose for which the troops are required, and of demanding subsequently the adoption of such measures as are the proper consequence of his interposition.

"He will warn him on every fitting occasion of the evils which his administration may involve: He will point out the remedy for the abuses he may have denounced, and he will tender freely to His Highness all the aid which the Government of India can supply, whether by his counsel or by force of arms, for meeting the opposition which may be roused to the application of the remedies he may have suggested.

"But so long as the alleged evils of His Highness's Government are confined within its own limits, and affect only his own subjects, the Government of India must observe religiously the obligations of its own good faith. It has no just right to enter upon a system of direct interference in the internal affairs of His Highness's kingdom, which is explicitly forbidden by the positive stipulations of treaty, which would be utterly repugnant to the wishes of the sovereign, our ally, and is unsought by the people over whom he rules.

"If, indeed, the effect of His Highness's misgovernment should be felt beyond his own bounds, if the safety of our territory should be placed in doubt, or the interests of our subjects in jeopardy, I shall be prompt to demand and to enforce reparation for the aggrieved, as well as the infliction of signal punishment on the aggressors. . . ."

It is unnecessary to quote here from State documents to prove that before the Mutiny the great Mahratta Houses of Scindhia, Holkar and Baroda were recognised as independent Sovereigns in alliance with the East India Company.

The Butler Report says:—

"It is not in accordance with historical fact to say that the term 'subordinate co-operation used in many of the treaties is concerned solely with military matters. The term has been used consistently for more than a century in regard to political relations.' (Para. 42.)

Subordinate co-operation is a phrase which is met with for the first time in official documents in the time of the Marquis of Hastings. In the treaty concluded by that Governor-General with the Maharana of Udaipur it is laid down:—

“The Maharana of Udaipur 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.”

The same phraseology is repeated in most of the treaties made by Lord Hastings. Persistent attempts have been made to interpret the phrase “subordinate co-operation” to mean the subordination of Indian States to the policy of the British Government in India. The Government of India has in many cases depended upon this clause to force upon the States policies which the latter have regarded as encroachments upon their rights.

It will be found that the clause in the treaties laying down subordinate co-operation, if taken in conjunction with other articles of the treaty and of the political facts existing at the time, will not bear the interpretation put upon it by the Butler Report.

I.—First, it can be seen from the text of the treaties, that the clause dealt exclusively with the conditions of external relations or military co-operation. The purpose was to see that the ruler taken in alliance did not disturb the general peace. The Udaipur Treaty, for example, mentions in the same article that the Maharana will not have any connection *with other chiefs and States*.

II.—Secondly, these treaties lay down emphatically that the Rulers will remain absolute in their own territory and that their internal sovereignty will not be encroached upon.

Thus the Jaipur treaty, which is one of subordinate co-operation, has the following clause:

“The Maharajah and his heirs and successors shall remain absolute rulers of their territory and their dependents according to long established usage; and the British Civil and Criminal Jurisdiction shall not in any manner be introduced into that principality.”

III.—Similar clauses exist in most other States allied by treaties of subordinate co-operation.

Lord Hastings expressed himself unequivocally as to what he meant by the "absolute rulership" which the treaty guarantees. In the letter to C. T. Metcalfe already quoted, the Governor-General negatived all suggestions that a right of interposition exists in the case of states "standing within the denomination of allies." "Our treaties characterising the Nizam as an independent sovereign authorise no such latitude."

This being Lord Hastings' view with regard to States whose rulers are declared to be absolute, it cannot be contended that any degree of subordination, except in military matters was intended by the phrase in question. It could not be that Lord Hastings declared a ruler to be absolute and subordinate at the same time, especially when we know that he had laid down as a principle of his policy that where a ruler was declared independent the British Government has no right to intervene.

Sir Charles Metcalfe when he became acting Governor-General wrote in his paper on the affairs of Jaipur in 1835:—

"The true basis of non-interference is a respect for the rights of others—for the rights of all, people as well as Princes. The treaties by which we are connected with Native States are with rare exceptions founded on their independence in internal affairs. In several instances the States are, with respect to external relations, dependent and under our protection but still independent in internal affairs. It is customary with the advocates of interference to twist our obligation of protection against enemies into a right to interfere in the internal affairs of protected States, a right however, which our treaties generally do not give us, otherwise than as the supporters of the legitimate sovereign against usurpation or dethronement, in the event of his not having merited the disaffection of his subjects."

Though meant originally to limit the external relations and military activity of the States, the phrase was expanded and constructively interpreted to mean almost the complete subordination of the States to the opinions and views expressed by the Resi

gency. The transformation of the Residents from the representatives of an allied Government to the controllers of Indian States and the diminution of the authority of the Ruler are the results of a wide and comprehensive interpretation of this term.

Originally the Agents and Residents were appointed to control the external relations of the States and to guard the Company's interests. The earlier agreements contained arrangements for mutual appointment of agents. Later, by the policy of "subordinate co-operation" the Company gained an advantage, in that it secured the right to station its agent in the Indian States, without a corresponding privilege being extended to the States.

The duties of the Agent, however, were then precise and meant only the transaction of the external affairs of the States. His duty was to watch that the State concerned had no external relations except with the Company. The treaties bargained for this and nothing more.

At a later stage the presence of the Political Agent enabled the Government to charge him with additional duties thus enlarging his powers and correspondingly curtailing the Ruler's rights. For this there was no authority except the interpretation that the Government gave to the term "subordinate co-operation."

A right thus assumed could be enlarged in various ways and was enlarged to the detriment of the Ruler's powers. With the entire authority of the Indian Government and its military resources behind them, the Political Officers were no longer intermediaries between two parties in alliance. They became the dictators in the States. As one writer has put it, "The whisper of the Residency became the thunder of the State."

The presence of the Political Officers in the States has led to yet another vital change in the status of Indian Rulers. During the minority of a Ruler administration automatically passes into the hands of the Resident (or other political officer appointed for the purpose), irrespective of the circumstances in which the British originally found a footing in the State.

The Government of India assumes responsibility and as a matter of course immediate authority is conferred by it upon its local representative. He becomes either the sole administrator or the President of the Council of Administration, or other arrangements are made for the State to be run under his "supervision and guidance."

He thus unites in himself two capacities. He is the representative of the British Government as also the trustee acting on behalf of the Ruler, a combination in which, unfortunately for the State, the interests of the senior and dominant partner often carry greater weight than those of the junior.

With the help of the misinterpretation of the phrase—"subordinate co-operation"—the Political Agent has become the repository of almost unique powers. He is a judicial officer entrusted with the enforcement of law against Europeans in all States and against British Indians in some. He is the sole channel of communication with the Government of India, whose deputy he is in all matters.

He is also the representative of the King-Emperor and thus enjoys extra-territoriality, freedom from customs, special personal honour, etc. He also represents the Government of India in an executive capacity. The combination of such diverse authority makes the Residents of Indian States specially prone to interpret the obligations of "subordinate co-operation" of States as meaning compliance without question with the will of the British Government.

Nowhere is this more manifest than in questions relating to the armed forces in the States. Armed forces of the States The East India Company had made alliances with the States in order to vanquish its own enemies with the help of such States as were on their part at war with one another. After the Mutiny the armed forces of the States were gradually reduced by political pressure although the treaties warranted no such interference. In a confidential despatch to the Home Government Lord Napier of Magdala, the Commander-in-Chief wrote *inter alia*:

"Our whole experience in India should warn us that we cannot always depend upon tranquillity; that disturbances arise when they are least expected; and, when they commence,

at one point, unless immediately checked, they are sure to be followed by others”.

“There are considerable forces under Native Chiefs, who may be individually friendly, but whose troops can never be relied on not to join against us”.

“Our military force at Gwalior is much inferior in strength to that which Scindia could bring against it, and nothing but the possession of the fort could justify our position at Morar, even with the garrison originally appointed for it”.

“We are aware that the Deccan, Central India and the Border States of Rajputana, such as Kerowlee and Kotah, could furnish larger bodies of men than those which gave such ample occupation to General Stewart’s and afterwards Sir Hugh Rose’s and Sir John Mitchell’s forces.”

“We know that Holkar has a foundry and makes good guns for his own amusement. We do not know how many may be made in other places, but we may be certain that guns will not be wanting whenever there are people to use them”.

The above extract is from a pamphlet printed and published in Calcutta in 1872. About this time the Spectator commented:—

“If we could persuade the Native Princes to disarm on condition of a guarantee of quiet possession from any exterior force, we should be relieved from one of the causes of danger which make our Military expenditure so heavy. These Princes amuse themselves by keeping on foot and equipping with arms of the newest pattern armies of very considerable size for no apparent purpose whatever. These forces are ten times what they need for internal police of their territories and there is no external enemy that could touch them. The real object of these armies is that their masters, if bad times came for the English, might rule the situation, and ask their own terms. We are at present on excellent terms with these princes, but we are obliged to watch their armies and keep armies of our own to hold them in check. The consequence is that the vast majority of the natives in India bear the burden of taxes which they hate, and which grind them terribly, in order that the princes of a small minority may enhance their dignity by keeping up armies to frighten us with”.

The Russian Scare led to offers by the States to help in the defence of India and enabled Lord Lansdowne to organise the sys-

tem of Imperial Service Troops inaugurated by his predecessor. Later the Commander-in-Chief became a frequent visitor in the States and there was no need thereafter to write minutes upon the danger from troops maintained by the Indian Princes. Since the War the Imperial Service Troops have been replaced by what are known as "Class A" and "Class B" troops which in some cases cost the States twice as much as their ordinary forces.

British control has grown *pari passu* with the organization of the State forces and the Rulers cannot even make alterations in the distribution of units or even change the name of a unit without inviting interference from the Government! Some of the States have thus to pay twice over for the common defence of India while in reply to their requests for facilities for the proper training of their own officers they have so far only got promises which remain to be fulfilled. Restrictions on armaments which have no necessary reference to treaty stipulations meanwhile continue. The armed forces of the states are powerless to obey or protect their own Rulers whenever the British Government desires to take action against them although the troops are useful for such Imperial purposes for which the British Government propose to use them. With the disappearance of the military power of the Rulers they have gradually suffered humiliation in their ancient "dignity and honour."

Although Lord Curzon said "the Princes are no longer detached appendages of Empire, but its participators and instruments. They have ceased to be architectural adornments of the Imperial edifice, and are among the pillars that sustain the main roof" significant changes have been introduced in the phraseology of official documents by the Government of India. The Imperial Gazetteer of 1866 if compared with the Imperial Gazetteer of 1908 will furnish illustrations on this point. Such terms as "dynasty" "alliance" "Indian Power" "sovereignty" "throne" "reign" etc., are deleted and they are replaced by new sentences containing words innocuous in a political sense. The Rulers are not to be treated as Royal Personages and they are no longer to expect treatment as independent sovereigns because they have transferred some of their sovereign rights and independence to another Sovereign Power for the benefit of the

Dignity and Honour

country as a whole.

Lord Curzon's first speech on the States was delivered in Gwalior in November 1899. He said:—
Lord Curzon's views

“The Native Chief has become, by our policy, an integral factor in the imperial organisation of India. He is concerned not less than the Viceroy or the Lieutenant-Governor in the administration of the country. I claim him as my colleague and partner.”

The terms of partnership were, however, to be those which His Excellency considered best for the safety of the British Empire in India. Lord Curzon's regime witnessed the climax of the policy of considering the Indian Rulers as administrative agents of the Government of India whose rights, powers and dignity were derived from the Crown. At the various installation speeches Lord Curzon asserted the unlimited rights of the Paramount Power.

At the installation at Bahawalpur he said: “The sovereignty of the Crown is everywhere unchallenged. It has itself laid down the limitations of its own prerogative.”

At the Alwar installation Lord Curzon declared that the Government must satisfy itself “that the young Chief has received the education and training that will qualify him to rule over men” before entrusting him with the task of administration. Lord Curzon also issued a circular to the effect that before an Indian Ruler left India he should obtain the permission of the Viceroy!

The growth of the national movement in British India during the Viceroyalty of Lord Curzon alarmed the British Government. A new policy of co-operation with the States was therefore inaugurated by his successor Lord Minto who could claim a special interest in the welfare of Indian Rulers owing to the previous connection of his family with many of the States.

The change of policy was announced at Udaipur. It was a total departure from the hectoring and unfriendly patronage of Lord Curzon. Lord Minto said:—

“I have made it a rule to avoid the issue of general instructions as far as possible and have endeavoured to deal with questions as they arose with reference to existing treaties, the merits of each case, local conditions, antecedent circumstances and the particular stage of development, feudal and

constitutional of individual principalities.”

Lord Minto translated this changed attitude of Government into action by re-establishing the State of Benares. Lord Minto saw in the Chamber of Princes Princes a bulwark against subversive movements in British India and he began to take counsel with the Princes in the movement in British India has however had its repercussions in the States.

The Montford Report led the Government to abandon the policy of isolating the States and to invite their co-operation through a Chamber of Princes to solve problems of common interest. Apart from matters in which they have surrendered their freedom of action such as the right to make war and peace there is no justification, legal or constitutional, for treating Indian States as subordinate entities.

The problem of the relationship of political communities small or large can only be solved by justice and co-operation among equals. The States are under present circumstances unable to develop their own political and economic life. Their rights, such as they are, have to give way before questions affecting the good of India as a whole which is another way of saying for the permanence of British rule in India.

The position of minor States and those that have no treaties to show is an unenviable one while the position of those among them who through gradual political pressure are now reduced to the status of mediatised States or mere Feudatories of the larger States is indeed much worse. As regards the Treaty States who were once independent their Rulers must pause and consider whether they should accept the position of Feudatories of the British Crown which the Butler Report in effect assigns to them.

The gift of protection which the British Government offers is not unconditional. Protection against external and internal enemies, for a Ruler who has not misgoverned, is definitely promised. But there may be no protection against a popular demand for a change.

The rights and grievances of subjects of the States the Com-

their own people. Cromwell wrote on the Statute Books of the English Parliament "All just powers under God are derived from the consent of the people."

The Butler Report says:—

"The marching life of Moghul and Mahratta times has yielded to the sustained quiet of British rule but the old spirit survives in many a story and many a hope". (Para. 12.)

If the old spirit does survive the Indian Rulers cannot accept the position declared by the Butler Committee of perpetual dependence on the British Crown, and their "hopes" whatever they may be, must remain a will-o'-the-wisp.

If, however, justice in India means the same thing as in England and the self-governing Colonies, then Froude's view that "free nations cannot govern subject provinces" must ultimately prevail and British domination in India must in course of time cease.

The choice of the Rulers lies between dependence on an alien power to maintain their privileged position and complete autonomy, on an equal basis for themselves and their people as part of India free from alien domination.