

Treaties Engagements and Sanads

A Contribution in
Indian Jurisprudence

By
K. R. R. SASTRY

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Treaties, Engagements and *Sanads*
of
INDIAN STATES

A CONTRIBUTION IN INDIAN JURISPRUDENCE

By

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AUTHOR'S PREFACE

While continuously engaged in studies of several aspects of the problems of Indian States for the past seven years, it appeared that a *complete analytical examination of the several Treaties, Engagements and Sanads* had not been done thus far. No work has been written which subjects these treaties, engagements, and *Sanads* to a process of *analysis* and interpretation.

Certain aspects of the problem of *Indian States vis-a-vis* responsible Government in India have been attempted in a work of the author published in 1939.* The all-absorbing question of *Paramountcy and State-subjects* had been chosen by this writer for the Sayaji Rao Gaekwar Golden Jubilee Memorial Lectures at Baroda in 1940-41. An *objective* examination of these treaties, engagements and *Sanads* was then found to be a fit topic for legal study.

New conceptions in the post-War era (1918-1939) bear abundant testimony to the ingenuity of statesmen; and juristic ideas have to keep pace with novel experiments as the League of Nations and Mandates. India is only semi-sovereign with an anomalous status, and the Indian States can be assigned a status which is *sui generis* and *quasi-international*. Thus problems relating to the position of Indian States cannot be satisfactorily discussed with reference to purely juristic criteria.

*K. R. R. Sastry. *Indian States and Responsible Government*, 1939.

The chapter on implications of paramountcy has had to be introduced; otherwise an erroneous conception would be given to the foreign observer faced only with treaties and engagements between two states. The treaty relationship started between allies, one of whom grew up into a position of Paramountcy, established through the right of "conquest, operating by assumption and acquiescence."

This branch of juristic study has got all the characteristics of a combination of law and politics. The branch which is *ex facie* contractual has alone been selected for examination.

The author is indebted to several leading lawyers in India for helpful suggestions. Conclusions and opinions in the study are entirely his.

All students of "Indian States" are indebted to the monumental works of Aitchison, Sir Lewis Tupper and Sir W. Lee Warner. Besides the books consulted in the Allahabad University and Madras Law College, the author is under obligation to the valuable collection of books at 19, Albert Road, Allahabad.

January 1, 1942

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SELECT BIBLIOGRAPHY

- Aitchison .. *A Collection of Treaties, Engagements and Sanads*, IV Ed. 1909 and V Edition.
- American Journal of International Law.*
- Anson .. *Law and Custom of the Constitution*, Oxford. 1922.
- Arnold, Sir Edwin *Administration of Lord Dalhousie.*
- Banerji, Sir A. R. .. *The Indian Tangle.*
- Barton, Sir W. .. *The Princes of India.*
- Basu .. *Story of Satara.*
- Blackstone .. *Commentaries*, I.
- Borchard .. *The Diplomatic Protection of Citizens abroad—1915.*
- Brierly .. *Law of Nations*, II Ed.
- Briggs .. *The Nizam, his history and relations with the British Government*
—2 Volumes.
- British and Foreign State-Papers—Vol. 89.*
- British Crown and the Indian States.* London 1929.
(Chamber of Princes)
- British Yearbook of International Law*, 1925, 1930, 1934.
- Bryce .. *International Relations.*
- Cheshire .. *Private International Law*, 1938
II. Ed.
- Chudgar .. *Indian Princes.*
- Colebrooke .. *Letters and Life of M. Elphinstone*
Vols. I and II.

- Crandall .. *Treaties, Their making and enforcement*, II Ed.
- Cunningham .. *History of the Sikhs*.
- Curzon .. *Leaves from a Viceroy's Notebook*.
- Evatt .. *The King and His Dominion Governors*.
- Forrest, G. W. .. *Selection of State Papers in Foreign Dept.* Vols. I and II.
- Footc .. *Private International Law*.
- Fraser (Genl.) .. *Memoirs and Correspondence*.
- Frazer .. *Nizam—Our Faithful Ally*.
- Griffin, Lepal H. .. *The Rajas of the Punjab*, 1870.
- Grotius. H. .. *De Jure Belli ac Pacis*, Carnegie Publication (Translation) 1925.
- Grotius Society* .. *Transactions of the*
- Gense and Banerji .. *The Gaikwads of Baroda*, Vols. I to V.
- Hall .. *Foreign Powers and Jurisdiction of the British Crown*, 1894.
- Hall .. *International Law*, VI and VIII Editions.
- Halsbury .. *Encyclopaedia of the Laws of England*, Vol. 10.
- Holland .. *Lectures on International Law*.
- Hope John .. *House of Scindia*.
- Ilbert .. *The Government of India*, III Ed.
- Jenkins .. *British Rule nad Jurisdiction beyond the Seas*, 1902.
- Jones, B. S. .. *Papers relating to the progress of British Power in India and the system of Subsidiary Alliances*.

- Kaye .. *Life and Correspondence of Charles Metcalfe*, Vols. I and II.
- Kaye .. *John Malcolm*, Vols. I and II.
- Keith .. *The King and the Imperial Crown*.
- Latthe, A. B. .. *Problems of Indian States*.
- Lauterpacht .. *Private Law Sources and Analogies of International Law*.
- Lawrence .. *International Law*.
- Lee Warner, Sir W. .. *The Native States of India*.
The Life of the Marquess of Dalhousie—2 Vols.
- Low, Sir Sydney .. *Indian States and the Ruling Princes*.
- Macmunn, Sir G. .. *Indian States and Princes*.
- Malcolm, Sir J. .. *Central India*, Vols. I and II.
- Martin .. *Despatches, Minutes and Correspondence*, 4 Vols.
- Maxwell .. *Interpretation of Statutes*, 1929.
- McNair, A. D. .. *Law of Treaties*, 1938.
- Mehta .. *Lord Hastings and the Indian States*.
- Minto (Countess of) .. *India, Minto and Morley*.
- Moore .. *Digest of International Law*, 8 Vols.
- Mukherjea .. *Indian Constitutional Documents*.
- Nicholson .. *Scraps of Paper*.
- Oppenheim .. *International Law*, Vols. I and II,
V Ed.
- Owen .. *Wellesley Papers*.
- Panikkar .. *Indian States and the Government of India*, 1927.
British Policy towards Indian States.
Indian Princes in Council, 1936.
Interstatal Law.
- Phillips, C. H. .. *East India Company, 1784-1834*.

- Phillimore .. *International Law*, 4 Vols. 1854-61
 Phillimore .. *Three Centuries of Treaties of Peace*, 1919.
 Piggott .. *Ex-territoriality*, 1892.
 Extradition.
 Pitt-Cobbett .. *Leading Cases in International Law*,
 V Ed., 2 Vols.
 Princep .. *Military and Political Transactions*
 in India during the administration
 of Marquess of Hastings.
 Raghbir Singh .. *Indian States.*
 Ruthnaswamy, M. .. *Administrative System in India.*
 Ronaldshay .. *Curzon*, Vols. I and II.
 Ross .. *Cornwallis Correspondence.*
 Rice .. *Sayaji Rao III*, Vols. I and II.
 Sastry, K. R. R. .. *International Law*, 1937.
 Indian States and Responsible Govt.
 1939.
 Sen, D. K. .. *Indian States.*
 Sivaswamy, Sir P. S. *Indian Constitutional Problems.*
 Stowell .. *Intervention in International Law*
 1921.
 Stubbs .. *Suzerainty*, 1882.
 Tupper, Sir C. .. *Our Indian Protectorate*, 1893.
 Twiss .. *Law of Nations*, 1884.
 Varadachariar, N. D. *Indian States in the Federation.*
 Varadarajan, M. K. *Indian States and the Federation.*
 Vattel .. *Le Droit Des Gens*, English Trans.
 3 Vols. Carnegie Publication
 1916.
 Westlake .. *International Law.*
 Collected Papers.

SELECT BIBLIOGRAPHY

11

- Wheaton .. *International Law*, IV and VI Eds.
Williams, Sir J. F. .. *Chapters on Current International
Law and League of Nations.*

RECORDS AND REPORTS

- Indian States Committee. (Butler)
- Indian States Enquiry Committee. (Financial)
- Joint Parliamentary Committee.
- Orissa Reforms Enquiry.
- Montagu-Chelmsford Report on Indian Constitutional Reforms.
- Reforms Enquiry—Hyderabad. 1938.
- Constitutional Reforms in Mysore. 1939.
- Selection of Records of East India House Judicial Vol. I.
- Minutes of Evidence on Affairs of E. I. Coy., 1832.
- Report of Select Committee on Affairs of E. I. Coy., 1832.
- Copies of *Treaties and Engagements*, 1853. Printed in return to an order of the House of Lords.
- Maine's *Minute on the Kathiawar States*, 22 March 1864.
- Memoranda on Indian States*, 1937, 1940.
- Private Journal of the Marquess of Hastings*.
- House of Commons Debates*, 1935.
- Minutes of Evidence of Select Committee, 1853.

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OPINION

Sir C. P. Ramaswami Aiyar, K.C.S.I., Dewan of
Travancore :—

I must congratulate you on the thoroughness of the research displayed and the analysis that you have made of the progress of the Paramountcy idea and the reactions to it by the Indian States.