

INDIAN COUNCIL OF WORLD AFFAIRS PAPERS: 4

INDIAN STATES IN A FREE INDIA

BY

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NEW DELHI
1945

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*Indian States (1941) and Treaties,
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PRINTED BY B. R. SARDANA AT THE CAMBRIDGE PRINTING WORKS
DELHI AND PUBLISHED BY THE SECRETARY, INDIAN COUNCIL OF
WORLD AFFAIRS.

INDIAN STATES IN A FREE INDIA

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The Indian states form an **ain** of land-locked territories down the spine of India, surrounded by the narrow strips of sea coast which were occupied by the English in the course of their acquisition of power. They are generally inaccessible and less fertile parts of the Indian peninsula. Travancore, Cochin, Kathiawar peninsula, Cutch island—these exhaust the seaboard of Indian states. They cover an area of 712,508 square miles while British India has an area of 1,006,171 square miles. According to the latest publication of the Government of India,¹ there are 601 states, jagirs, and estates in India. They vary in size, population, revenue, and level of internal administration. Approximately two-fifths of the total area of India, their population is 81,310,845 while the population of British India is 271,526,933. (1931 Census.)

They range in size from Hyderabad with a population of 14 million and an annual revenue of eight and a half crores of rupees to the state of Bilbari, having a population of 27 and an annual revenue of eighty rupees.

Of 283 Kathiawar states, excluding the nine richer states of Bhavanagar, Cutch, Dhrangdhara, Gondal, Idar, Junagarh, Morvi, Navanagar and Porbundar, the remaining 274 Indian states have a total revenue of about 135 lakhs of rupees. This sum has to maintain 274 ruling families and also run 274 separate, semi-independent administrations. The total area

¹ *Memoranda on Indian States, 1940.*

of these 283 states is about 32000 square miles and their total population is four millions. This provides the people of Kathiawar (excluding the larger states) with one separate state for every 25 square miles of area or every 500 heads of population.²

In another reading of these details the area of 178 states is from 10 to 100 sq. miles each; 202 states in India have each an area of less than 10 square miles and 139, less than 5 square miles; 70 states have each an area not exceeding one square mile.

Economic Features

The unity of India under the Crown after the mutiny began to assume an economic as well as a political complexion. When the co-operation of the states was required in the interests of all India, it was freely and ungrudgingly given. They made free grants of land for the development of India's great railway system, which, in 1858, comprised but a few hundred miles³ and in 1932 extended to over forty thousand. Over these lands, they ceded Civil and Criminal jurisdiction in order that the development of trade and communications might not be hampered by a multiplicity of authorities. Co-operation was also forthcoming for the construction of roads and irrigation canals.

Many of the states which possessed local currencies and postal systems agreed to abolish them so that their subjects might participate fully in the benefits arising from a central administration of these great public services.

Similar progress was made in the removal of the barriers imposed on trade by a multiplicity of fiscal systems. Practically every state in India had from time immemorial levied transit

² What are the Indian States ? p. 8.

³ Report of the Davidson Committee.

duties on goods passing through its territories. The growth of the railway system was inimical to this form of taxation and the Princes of India, realizing its incompatibility with modern conditions, agreed to its extinction. Some rulers further agreed to abolish export and import duties, though the majority of Indian states still depend largely on revenues from this source.

Steps were also taken between 1863 and 1866 to advance the freedom of India's coastal trade. Previously the ports of all Indian states had been treated for customs purposes as foreign and goods arriving therefrom at Bombay or any other British Indian harbour for shipment to Europe had been subjected to import duties, export from British India being similarly taxed by the states: Arrangements to remove these impediments to trade were made in 1865—1866 with certain of the maritime states. In subsequent areas this process was further continued until the British Indian sea customs tariff has been adopted by every maritime state in India with the solitary exception of Cutch. The Port Agreement of 1925 regarding the development of Cochin harbour, Lord Dunedin's award of 1934 regarding the claim of Nawanagar for exemption from customs duty, the Agreement with Baroda of March 1936 on the basis of Baroda's sovereignty over Navsari and Billimora,—these are recent instances of reconsideration of old agreements.

Another development of great importance was the series of salt agreements concluded during the Viceroyalty of Lord Lytton (1876—1880) with numerous states in Rajputana and in Central and Western India.⁴ Most of the great salt sources of India are situated in Indian states and it was essential to secure their co-operation in order to arrange a diminution in the

⁴ Vide Act I to XVI of the Agreement.

⁵ Extracted from *Indian States* 1941, by K. R. R. Sastri, p. 23-25

cost of production and transport as well as a more up-to-date and businesslike system for the collection of the salt-tax, which has served as one of the mainstays of Indian finance. 'In these arrangements,' observe the Davidson Committee 'the co-operation of the states was forthcoming on terms which, though occasionally resented as doing less than justice to individual interest, have proved to be of material benefit to India as a whole'.

Sirdar K. M. Panikkar has drawn pointed attention to the effect of fiscal and financial policies of British India on Indian states. The economic life of the states and British India has been united owing to 'conscious and imperceptible factors' The rural economy of the states 'became dependent on the markets and industries of British India'*. Progressive states as Mysore, Baroda, Travancore, Hyderabad, Bhopal and Rampur have developed also industrially.

The protagonists of Indian states have been legitimately complaining that they had not been given the benefit of the change over of India from a free trade to a protectionist policy adopted by British India after the World War No. I.

Secondly the customs tariff of India is determined solely by the interests of British India. The states in the hinterland found themselves at a further disadvantage since they could not depend on inland customs—their important source of revenue, in a protectionist India—as that would burden their subjects with double taxation.

Historical Background⁶

A peep into the historical background of Indian states can alone be given here; but that is essential for a proper under-

* *Indian States*. K. M. Panikkar Oxford Pamphlet No 4, pp.16.

6 The student is requested to refer to the chapter 'General Historical Back-ground' in this author's work *Treaties, Engagements and sanads of Indian States* published in 1942. Vide pp 19 to 84.

standing of the unparalleled relationship that has grown between Indian states and the Paramount Power. There is, however, one insuperable difficulty in our path, for, the records of the Political Department which one would like to consult are not open to inspection by the general public.

Aitchison's 14 volumes contain a generally correct historical introduction. The courtesy shown to the present writer by many Indian states through supplying authentic copies of agreements of 1936 and *Sanads* of 1937 has made it possible for him to make the study as up-to-date as possible. What was found in dusty archives and inaccessible rooms had been unearthed and systematized in the valuable Davidson Committee's Report.

Many Indian states had maintained an independent existence for hundreds of years and some states including Travancore, Jammu, Orchha, and Hyderabad, and many of the Rajput and other states had never been conquered or annexed.

The Southern States: A start from the southern states is historically very instructive. At no time was Travancore conquered and the treaties were on the basis of two sovereign states contracting with each other, one of which no doubt was much more powerful than the other and obtained favourable terms.

The Moghul Empire had fallen 'into decrepitude' and its powerful Subahdars as the Nizam of the Deccan and the Nawab Wazir of Oudh asserted 'a practical independence similar to that of the German States, but again similarly without wholly ignoring the nominal sovereign of India.' The East India Company treated those rulers as internationally sovereign and made alliances, wars and peace with them just

⁷ Westlake, *Collected Papers*, p. 198.

as England and France acted with regard to the Elector of Brandenburg or of Bavaria.

With regard to Mysore, after the fall of Seringapatam (1799) and the death of Tippu valiantly fighting therein, the family of Tippu was set aside and the ancient Hindu dynasty was restored in Mysore. The grant of territories to the Maharaja was made solely by virtue of the powers of the British Government acquired through conquest.

The Marathas. The Maratha domination in India was analogous to the position of 'merely insurgent powers'. The *de facto* sovereign power exercised by the Peishwa was sufficient to induce the East India Company to conclude many treaties with Peishwa Rao Pundit Purdhan.

The rulers of Kolhapur have been descended from the representatives of the younger branch of the family of Shivaji Maharaja, the great founder of the Maratha Empire.

Except with reference to the province of Okhamandel and the island of Bate wherein sovereignty was obtained through the grant of the East India Company, the Gaekwar was *de jure* sovereign in his territory through conquest and functioning as the 'farmer' of revenue of territories under the sovereignty of the Peishwa.

The East India Company entered into a treaty of alliance and mutual defence with another power in the form of the Scindia who since the Treaty of Salbai (1782) had a separate sovereign entity in law. 'Accredited ministers from each Government' were to reside 'at the Court of the other' since 1803.

Rising in his stature from a soldier of fortune to that of the *de facto* and *de jure* sovereign of territories conquered, the Holkar had a status in law sufficient to exact tributes from

Udaipur, Jaipur, Jodhpur, Kotah, Boondi and Karauli among other chiefships. The Treaty of Mandasor (1818) which defines to this day 'the relations of the state with the British Government', has all the marks of a solemn engagement between allies where the British Government guarantees 'absolute' internal autonomy (Art X) and 'binds itself' to maintain the 'internal tranquillity of the territories of Mulhar Rao Holkar and to defend them from foreign enemies.' (Art VII.)

The Indian States 'have lost the character of independence, not through any epoch-making declarations of British sovereignty, but by a gradual change in the policy pursued towards them by the British Government. Encountering the ambition of some of its neighbours and the internal anarchy of others and the efforts of France or French adventurers to build on these elements a power rivalling its own, the Government was early led to see that its own security, even within the limits which it had from time to time attained, was to make for itself among the states of India such a preponderant position as Charles V, Louis XIV, and Napoleon had essayed or were essaying with less justification to make for themselves among the states of Europe'⁸.

The Dhar State rebelled in 1857 and was in consequence confiscated. It was subsequently restored to Raja Anand Ram Puar with the exception of the Barsia Purgana.

Bhopal's status in 1817 was that of a sovereign country *de jure* and *de facto*.

Orchha was the only state in Bundelkhand which was not held in subjection by the Peishwa. Through a treaty of friendship and defensive alliance it was brought into relationship with the East India Company.

⁸ Weetlake, *Collected Papers*, p. 205.

The sovereignty of the Ruler of Rewa is acknowledged in the Treaty of 1812.

The Rajput States.—The object of the treaties with the Rajput States 'was the establishment of a barrier against the predatory system and against the extension of the power of Scindia or Holkar beyond the limits which governments designed to impose on it by other measures'. The Rajputana Chiefs were invited to ally themselves with the British Government on the basis of acknowledging its supremacy and paying a certain tribute in return for external protection and internal independence. In chronological classification, Alwar, Karauli, Kotah, Jodhpur, Udaipur, Bundi, Bikaner, Kishengarh, Jaipur, Banswara, Partabgarh, Dongarpore, and Sirohi passed under treaties with the East India Company between 1803 and 1823.

Bharatpur, a Jat principality had to surrender to Lord Lake and a new treaty was concluded in 1805. The company became guarantee to 'the Maharaja Ranjeet Singh for the security of the country against external enemies.'

The principality of Jammu was conferred by Ranjit Singh on Gulab Singh with the title of Raja. Gulab Singh's title to Jammu and Ladakh and Kashmir was through conquest. Art. I and II of the Treaty of Amritsar (1846) read together lead to the necessary result of acquisition of sovereignty by Maharaja Gulab Singh over Kashmir through purchase. (cf e.g. Purchase of Alaska from Russia in 1867 by the U. S. A; Sale of Louisiana to the U. S. A. by the Treaty of Paris 1803 between France and U. S. A.)

The Phulkian states of Patiala, Jind and Nabha owe their separate existence to the *firman* of the Moghal Emperor.

Jaisalmere escaped through its isolated geographical situation the rule of the Mahrattas. Political relationship with the East India Company started from the treaty of 1818

whose clauses are worded differently from those of the Rajputana States.

The Orissa States:—Till 1803 the tributary chiefs of Orissa were feudatories of the Raja of Nagpur. The Mahrattas had a defeat in 1803 at the Barmul Pass. Under the treaty of Deogaun (1803) it was stipulated that certain treaties had been made by the British Government with feudatories of Sene Sahab Soubah. These treaties were to be confirmed.

The status of Keonjhar and Mayurbhunj under the Treaty engagements is superior to the rest of the Orissa states, but the Political Department authorities have ignored the clauses of the old treaty engagements and virtually superseded them by a series of subsequent unilateral *Sanads*.

The Kathiawar States:—In 1820 through a dual source of rights flowing from the Peishwa and the Gaekwar, the British Government had become overlords of these petty chiefs. In some states such an exclusive authority had to be got only in 1850. Sir Henry Maine had to evolve a theory of the division of sovereignty since some measure of sovereignty remained with the Kathiawar states which were reorganized into seven classes.

Mediatized States of Central India:—‘After the subjugation of the Pindarees in 1818, the smaller states in Malwa and Central India were under tributary obligations to Scindia, Holkar, or the powers of Dhar and Dewas and sometimes to all these chiefs. The British Government would not let slip such an opportunity for breaking the continuity of the influence of the Mahratta Powers.’

After settling Central India, Sir John Malcolm got a virtual surrender of the supremacy over the petty states and chiefs to the British Government the reduction of the military classes to the control of British power and

the cessation of ruinous interference in the affairs of the smaller states on the part of their more powerful neighbours.⁹

Status of Indian States

Problems relating to the position of the Indian states cannot be satisfactorily discussed with reference to purely juristic criteria. In view of the admitted facts, any attempt to evolve a formula must be a failure. Thus judgment on the matter on one side or the other must be more or less arbitrary. The esteemed Indian statesman, the Right Hon'ble Sir T. B. Sapru, had these inherent difficulties in mind, when he wrote that the

'temptation to indulge in legal and constitutional theories, not wholly applicable to the facts as we find them, is as great as the temptation on the other hand to take shelter behind the theories of the divine right of Kings and conceptions of Government wholly inconsistent with the spirit of the time'.*

With shreds of sovereignty intact, with Rulers who have some rights of foreign sovereigns while travelling abroad, with subjects who like their cousins across the all-too-thin frontier, are British protected subjects while travelling outside their states, the status of Indian states that emerges is quasi-international.

Classifications of Indian States have been made by Joseph Chailley, by the Indian States' Committee, Sirdar D. K. Sen, Dewan Bahadur A. B. Lathe, and Lord Oliver among others. Lord Oliver's is constitutionally correct :—

(1) Quasi-sovereign states with treaties in which sovereignty and rights of internal government have never been surrendered.

⁹ Malcolm : *Central India*

* Introduction to G. N. Singh's "*Indian States and British India*" p. 8.

(2) Those in which certain rights of interference have been established by treaty and whose independence is thus partial and subject to effective supervision.

(3) A large number of petty states the sovereign control of which has been taken over by the transference of their vassalage, from some other Indian sovereign state which previously exercised or claimed dominion over them.*

Mr. A. B. Lathe, criticizing this and similar classifications, suggests a three-fold classification in a dynamic setting :—

- (a) States which have or may have as full powers of internal autonomy as possible.
- (b) States which have or may have the same powers of full internal autonomy consistent with their being grouped together to form such units of a Federation.
- (c) States which have limited jurisdiction and powers of legislation even at present and are not entitled by treaty or usage to full jurisdiction and unlimited powers of legislation,**

When so classified, about 200 states alone would remain, and the rest would have to be converted into either Zamindaris and amalgamated into the British Indian Provinces or merged with progressive Indian States. No treaty commitment would be violated as about 400 petty jagirs have been artificially protected by British Paramountcy, which has become a 'hospital with numerous patients incurable but undying.'

Constitutional Characteristics

A full discussion of the legal theory and implications of suzerainty is not necessary for the purposes of this paper

* Foreward to K.M. Panikkar's work on, "*Relations of Indian States with the Government of India*". p. 7,

** A. B. 1. "*Problems of Indian States.*" pp. 7 & 8.

since they have been dealt with in an earlier work. *

The amended definition of Indian states runs thus in the Government of India Act, 1935.**

'Indian States' means any territory, not being part of British India, which His Majesty recognizes as being such a State, whether described as a state, an estate, a Jagir or otherwise.

The deletion of the term (*Suzerainty*) may satisfy the hypersensitive states but the shifting of the Status to *depend purely on recognition by His Majesty* has reduced all states to one level. It is presumed that this simplified definition will not disturb the existing relationships of *suzerainty* as between certain states and their subordinate jagirs.

1. Indian states are political communities.
2. The territory of Indian states is not British territory.† The certificate which the India office gave to assist the Court in assessing the status of the Gaekwar of Baroda as a foreign ruling prince illumines this position.†† Lord Halsbury's remarks regarding jurisdiction over the railway territory of Indian states have to be referred to also.†††
3. The subjects of Indian states are not British subjects.
4. Some Indian states have their legislation, administration and Civil and Criminal jurisdiction.
5. The Laws of England do not apply to the inhabitants of the states. The King-in-Parliament is precluded from legislating for the Indian states. The Secretary of State for India's letter dated 28 September 1927 to the Secretary-General of the League of Nations in regard to the ratifica-

* Vide *Treaties, Engagements and Sanads*, (1942) by K. R. R. Sastry. pp. 204 to 221.

** 3 and 4 Geo. VI. Ch. 5.

† *Empress V. Keshab Mahajan and others* 8. C. 985 F. B.

†† *Statham V. Statham etc.* 1912, P. 92

††† *Muhammad Yusuf-ud-din V. Queen Empress* 24. I. A. 137.

tions of conventions of the International Labour Organization by Indian States makes this abundantly clear.

6. Indian States are outside the jurisdiction of the British Courts.
7. Treaties of the Crown with other states are not applicable *ipso jure* to the territory of the Indian states, but only if in these treaties the application to these states is expressly agreed upon.
8. It has been stated in books written by distinguished publicists connected with Indian states that Rulers of Indian states are sovereign enjoying extraterritoriality. Put in such a form the statement is too wide.

The Law of Nations gives a right to every state to claim the so-called extraterritoriality, and therefore exemption from local jurisdiction, chiefly for its Head, its diplomatic envoys, the men of war and its armed forces abroad.* This branch of Law has for the first time had in 1938 the benefit of the decision of a supreme tribunal in England.†

So far as the Indian states are concerned, it is well established that while travelling abroad, these princes enjoy the status of a foreign ruling prince and are exempt from municipal jurisdiction.

But, this rule of international law which is based on the principle of absolute independence of the sovereign to recognize any superior authority cannot be applied to the Rulers in India since they are subordinate to the authority of the Crown.

The rule of international law has been modified by the provisions of §86 Civil Procedure Code (V of 1908) under which alone the Ruler can claim exemption.

It has to be noted here that in cases of grave misconduct of a prince, the Crown under its prerogative powers has pun-

* Oppenheim · Vol. I, IV, Ed pp. 280-281.

† The Cristina; 1938, A. C. 485.

ished Rulers. The modern practice is trial by a commission consisting of a judicial officer not lower in rank than a High Court Judge and four other persons of high status of whom not less than two will be the ruling princes.

As Lord Curzon has put it, in cases of flagrant misdemeanour or crime, the Viceroy retains, on behalf of the Paramount Power, the inalienable prerogative of deposition, though it is only with extreme reluctance and after the fullest enquiry and consultation with the Secretary of State that he would decide to exercise it.*

Cultural and Moral Aspects

Culturally there is little difference between the cousins say in Travancore and Cochin on the one hand and British Malabar on the other. Amidst all the seeming diversity from the Cape to Kailas, there is a fundamental unity of culture: this is amply revealed by ties of religion, social customs, trade usages, and celebrations of the same festivals.†

The ethical impulse of Hindu Society reveals itself in *Dharamshalas*, *Gorakshan* centres and the supply of drinking water and butter-milk during the hot season. Likewise, marked Muhamadan events as *Bara Wafat*. *'Id-ul-fiter* and *Id-ul-Zuha* are celebrated in British India and Indian states where Muhamadans thrive.

Sirdar K. M. Panikkar writes of the moral domination of British India over Indian states through her universities: it was more the subtle influence of an educated cousin over his rural cousin: if one were to visit progressive Mysore which had the unique advantage of fifty years of the British type of administration, this so-called moral domination will be found

* *Leaves from a Viceroy's Note-Book* Curzon p. 41.

* *Makar Sankranti*, *Shiva Ratri*, *Ram Navami*, The Solar and Lunar Eclipses, *Raksha Bandhana*, *Krishna Janmashtami*, *Maahalya Amavasya* and *Dewali* are celebrated with eclat in British and Indian India.

absent. Hyderabad, Mysore and Travancore have paid the compliment to British India through instituting their own universities,

Per contra, the Indian states under wise rulers as Shri Sayaji Rao III of Baroda and the benevolent Shri Krishna Raja Wodeyar of Mysore have kept alive a part of Hindu culture by continuing political genius: The Indian states have served as laboratories of social experiments: the social legislation of Baroda, the library movement of Baroda, the temple-entry of Travancore, the Osmania University teaching in an Indian language, and the pioneer industrial expansion in Mysore are prominent instances of healthy activity.

Further, when British India was having only the benefits of good government under British rule till 1919, shrewd and talented men from British India had been given opportunities of statesmanship in progressive Indian states as Baroda, Mysore and Travancore.

Culturally viewed, there is wide-spread education in Travancore and Cochin: if Madras is fit for self-government, are not, for the same reason, Travancore and Cochin fit for it? How can Mysore lag behind Madras?

The Treaty States

It is sometimes remarked that out of 601 states only 40 states have treaties and hence this stress on the binding character of treaties is stressed over much. A few facts will dispel this fundamental misconception based on an alleged illusion of mere numbers.

Of 601 there are more than 327 petty states, jagirs and others; 286 out of the foregoing are organized in groups called *Thanas* under officers appointed by the local representatives of the Paramount Power who exercise various kinds and degrees

of Criminal, Revenue and Civil jurisdiction.

Taking again the level of administration, thirty-four states have legislative councils. Forty states have High Courts, 60 states have a fixed privy purse; 46 states have a graded civil list of officials, 54 states have pension or provident fund schemes.

A study of the statistics of population shows that out of a total population of 81,320,845 for the whole of Indian states, 40 treaty states have a population of 54,727,582.¹⁰ More than two-thirds of the total population of Indian states is found in states governed by treaties; viewed thus from any relevant point, the states governed by treaties constitute among the most important of Indian states.

Growth and Development of Paramountcy

Paramountcy is a 'conveniently compendious word that has been given to describe the relations between the States and the British Government in India'? Not theories of politics or international law determined the views taken and enunciated by the Rulers of India:

'The facts of the international situation and of the internal situation in each of the states gave the British the opportunity, the reason, the hints which allowed them to build up the theory of those relations between them and the States.'¹¹

According to the Butler Committee, Paramountcy is based upon 'treaties, engagements, and *sanads* supplemented by usage and sufferance and by decisions of the Government of India and the Secretary of State embodied in political practice.' The Princes who were pressing for a definition of 'Paramountcy' were authoritatively answered thus by the Secretary of State for India in the House of Commons:—

'In ultimate analysis, however, the Crown's relationship

¹⁰ 1931 Census.

¹¹ M. Ruthnaswamy—*British Administrative System in India*, p. 604.

with the States is not merely one of contract, and so there must remain in the hands of the Viceroy an element of discretion in his dealings with the States. No successful attempt could be made to define exactly the rights of the Crown's Representative to intervene.' ¹².

At every point of study of treaties, engagements and *sanads* of Indian states, one finds purely legal ideas or jural concepts made inapplicable owing to the inroads made by the tentacles of paramountcy or by more subtle applications of the doctrine of Act of State defying jural analysis.

The relationship that has been established between the British Government and the Indian States has passed through the stages of ring-fence, subordinate isolation, imperial union and cordial co-operation. The East India Company made treaties with each state separately and although several treaties of a period contain some very similar provisions, each treaty stands by itself. No definite principles or policies ever uniformly characterized the company. Each occasion was dealt with according to its necessities.

Implications of Paramountcy

For international purposes, state-territory is in the same position as British territory and state-subjects are in the same position as British subjects. Surrendering foreigners in accordance with the extradition treaties of the Paramount Power, co-operation with the Paramount Power to fulfil its obligations of neutrality, assistance to enforce the duties of the Paramount Power in relation to suppression of slave-trade, duty not to injure any subject of a foreign power within its territory—all these obligations are to be respected by the states.

¹² House of Commons Debates 20 March 1935, p. 1236.

Interstatal Relations. In reference to inter-statal relations, the states cannot cede, sell, exchange or part with their territories to other States without the approval of the Paramount Power.

Defence of India. The Paramount Power is responsible for the defence of both British India and the Indian states and as such has the final voice in all matters connected with defence including establishments, war-materials, communications etc. It follows that the Paramount Power should have means of securing what is necessary for strategical purposes in regard to roads, railways, aviation, posts, telegraphs, telephones and wireless, cantonments, forts, passage of troops and the supply of arms and ammunitions.

Occasions of Intervention. Intervention for the benefit of the Prince, for benefit of the state, and for benefit of India as a whole has been claimed as a right of the Paramount Power.

Intervention for the benefit of the state may arise out of gross misrule, disloyalty, serious crime or existence of barbarous punishments.¹³

An analytical study of treaties, engagements and *sanads*—including typical agreements for extradition, railways, opium, salt, postal conventions, agreements for Indian state forces and other miscellaneous arrangements—reinforces the lesson that in an alliance between two States one of which grew so much more powerful than the other as to become paramount, the intrusions of the predominant power have to be accepted. Salt agreements, opium conventions, jurisdiction in and extension of cantonments and Residency bazaars, closing of mints and coinage, extension of postal system, abolition of transit duties,

¹³ For further particulars of the cases of intervention, reference is invited to the *Sayaji Rao Golden Jubilee Memorial Lectures on Paramountcy and State Subjects* K. R. R. Sastry 1941.

curtailment of the enfeebled state-forces, the railway agreements favourable terms in forest leases, inter-portal conventions and the Berar Agreements—these have illustrated the price of protection by the Paramount Power.¹⁴

Holdsworth's Theory of Paramountcy

Sir William Holdsworth defended the theory propounded by the Indian States Committee of which he was a distinguished member that the Crown cannot cede its rights and duties as paramount Power to any other state.¹⁵ Further he postulates that since,

the 'usage accepted by the Princes is the most important basis of paramountcy, and since paramountcy resting upon this basis is a source of a separate part of the prerogative, no alteration in this usage or in the prerogative resulting from it can be effected without the consent of the Princes.'

Three arguments have been advanced by the eminent Indian jurist Sir P. S. Sivaswamy Aiyar¹⁶ in support of the correct historical position that

'The Crown acted, not in a personal capacity or in the capacity of sovereign of England, but in the capacity of Ruler of British India, in its relations with Indian States.'

Again, Professor Holdsworth's reply to Sir P.S. Sivaswamy Aiyar is couched in the statement that

'a change in the form of the Government of British India which gave to British India full responsible Government in effect brings into existence a new and autonomous state'.

To call India with dominion status or substance of independence a 'new state' is surprising. Are the British Dominions

¹⁴ For a thorough analysis under seventeen heads of all these 'Treaties'. Vide pp. 85 to 198 of K. R. R. Sastry's *Treaties Engagements and Sanads*, 1942.

¹⁵ *Law Quarterly* 1930, p 429.

¹⁶ Sir P. S. S. Aiyar *Indian Constitutional Problem* pp. 210-213.

to be construed as new states after the Statute of Westminster? There is in spite of the statute a singular unanimity among British constitutional writers that there is no 'deviation from the unity in the fact that the Crown appears in various aspects and that in these aspects there may be collisions of interests and of rights' (A. B. Keith). Since the passing of the two recent Acts (*The Status of Union Act, 1934* ; and *the Royal Executive Functions and Status Act, 1934*) in South Africa, it would appear that 'all the prerogatives of the Crown in relation to South Africa are capable of being distinguished and separated from those in relation either to the United Kingdom or to the rest of the Empire or to other Self-Governing Dominions.'¹⁷

Two further observations have to be made: There can be no limitation upon the doctrine of legal supremacy of Parliament in Great Britain. Secondly there is not in constitutional law a single prerogative of the Crown which the Parliament cannot touch by enacting a statute for its abridgement, curtailment or other mode of regulation. It has also been held that when the operation of a statute overlaps the exercise of a prerogative, the prerogative is superseded to the extent of the overlapping.¹⁸ It has further been established that prerogatives affecting the Dominions may be swept away by their Parliaments. In 1933 the Parliaments of the Irish Free State and Canada abolished respectively all rights of appeal from the Supreme Court of the Irish Free State and all appeals from Canada in criminal cases.¹⁹

The arguments on 'grounds of policy' are intriguing: Professor Holdsworth, while disagreeing with the argument of the Counsel of the Princes, based upon their 'treaty-sovereign rights' is building up a laboured agreement on 'usage' which on his

¹⁷ Evatt—*The King and his Dominion Governors*, p. 313.

¹⁸ Attorney-General v. De Keyser's Royal Hotel Ltd., 1920 A.C. 508

¹⁹ Vide also: 1935 A.C. 484 and 1935 A.C. 500.

own showing has to rest foisted upon a strained basis of 'implied consent.' The talented counsel for the Princes strenuously argued that mere usage cannot vary the treaties or agreements, Professor Holdsworth had verily forged a golden chain linking the Princes for ever with 'the Crown, acting through agents responsible to Parliament basing one of his main arguments on the special character of usage as a source of paramountcy'. An adequate answer, to the other phases of Holdsworth's pleadings is given in the author's work on *Treaties, Engagements and Sanads*.²⁰

Special Pleas of the States

Sir C. P. Ramaswamy Iyer, Dewan of Travancore, stated to the Press on 7 February 1940 :

'Many of these treaties are on a contractual basis although they are founded also on the theory of allegiance to the British Crown coupled with rights and obligations arising out of treaty and usage. It cannot be asserted that if the Crown parts with power today, the Princes also have to do so. Nor can there be an automatic transfer of allegiance or obligations or rights to some other political entity, excepting on the basis of fresh understandings and new treaties. On the other hand, if the Crown withdraws from India, the Indian states presumably will resume the position they occupied in India before the treaties were entered into'.

The Chamber of Princes, an advisory and consultative body, was formally inaugurated in February 1921 by the Duke of Connaught on behalf of His Majesty. The major Indian states have not elected to take their seats in it thus far. The Princes seem to be afraid of the levelling tendency of any organization of this sort. In their historic session on 11 March 1940, the Chamber of Princes reiterated its view thus :—

This Chamber further records its view that any constitutional scheme which may involve the transference of the

²⁰ PP. 247 to 254.

relationship of the states with the Crown to any other authority without their free and voluntary agreement or which may permit of alterations affecting the rights and interest of the States without their consent cannot be acceptable to them'.

In a speech delivered to the Hyderabad Legislative Council on 5 February 1940, Sir Akbar Hydari has once again formally restressed the view that the State's relations are with the Crown in the United Kingdom. He clutched upon the high-office of the Crown Representative as being symbolic of it (vide §3 Government of India Act, 1935).

He laid down the *ipse dixit* that any 'constitution for India, if it involves, even in part the transference of those relations to any other authority must necessarily require the assent of His Exalted Highness in so far as Hyderabad is concerned. Further he followed it up by emphatically asserting that this view 'applies no less to defence than to other matters where powers have been handed over by the state to the Crown'. Thus if a radical change with regard to defence takes place it cannot be considered as being applicable to the state without the state's consent.

Prof. A. B. Keith, a high constitutional authority, met this view of Sir Akbar Hydari through a forceful letter published in the *Hindu*, 20 February, 1940. Prof. Keith adverted to the historical letter of Lord Reading to the Nizam dated 27 March 1926 which emphasized the hard fact of the 'sovereignty of the British Crown in India' and said that 'the sovereignty of the British Crown meant the sovereignty of the Crown in Parliament and that sovereignty of neither Hyderabad nor any other State has any legal or moral right to question.'

The Standing Committee of the Chamber of Princes resigned early in December 1944 probably due to the Crown

Representative asking the Indian states to line up with British India in the post-war development of transport, taxation, labour-laws and other matters. The draft resolution of the Chamber of Princes which could not be moved is reported once again to have reasserted its view of 1940.

Answer of History. When the agency of management was changed from the East India Company to the Crown in 1858, the Rulers were not consulted (Vide section §67 Government of India Act, 1858).

Having succeeded to the East India Company, the Crown as sovereign of British India is the legal entity which functions as paramount power. 'Free and equal partnership in the British Commonwealth' which has been reiterated in authoritative quarters as the definite goal of India will create not a new state but an autonomous state. The Parliament of Great Britain is legally supreme, and a statute of Parliament can always cede the exercise of its paramountcy to the Ministry responsible to an autonomous Indian Federal Legislature. Legal cobwebs thus removed, the Indian states owe their subordinate co-operation not to the King in his personal or individual aspect but to the Crown *i.e.* His Majesty the Emperor of India in his (political and) *legal aspect*.

In such a setting, there is a helpful suggestion from a recent observation of Sir C. P. Ramaswamy Iyer that purely legalistic interpretations of 18th century documents are out of the question; the Indian states are certainly entitled to equitable treatment from all groups in the country.*

**Treaty Rights of Indian States* p. 14, Indian Council of World Affairs Papers (Bombay Branch).

Internal Administration

The Paramount Power has undertaken certain obligations by the Indian states. An analytical study of treaties, engagements, *Sanads* and historic proclamations reveals an assurance from the Paramount Power to the Rulers that they and their territories would be protected from external aggression and internal commotion, their dynasty would be maintained and their rights, privileges and dignity would be guaranteed.

In Lord Irwin's time, the Paramount Power circulated to the Indian states certain notes on civilized administration under twelve heads. In February 1928 in response to the Irwin memorandum, the Chamber of Princes passed a resolution which urged on the Princes (a) a definite code of law guaranteeing liberty of person and safety of property, administered by a judiciary independent of the Executive and (b) the settlement upon a reasonable basis of the purely personal expenditure of a Ruler as distinguished from the public charges of administration. The mere passing of a Resolution, with utter disregard shown by the majority of the Princes in carrying out the terms of the resolution has been properly characterized as a political blunder, which later was to weaken their position at least from a moral point of view.²¹

The demand of the state-subjects for responsible government was bound to be made with the working of National Government in British Indian provinces.

Indian states, though as a whole autocratically governed, have, in some cases, extended representative institutions in which free discussions of the conduct of administration take place.

²¹ Maharaja Kumar Raghubir Singh, *Indian States* 1938; p. 89.

The states which have impressed the present writer with their constitutional progress are Aundh, Cochin, Baroda, Jammu and Kashmir, Mysore, Travancore, Hyderabad, Gwalior, Indore, Jaipur, Udaipur, Banswara, Sitamau, Porbunder and Palitara,

Stages to Responsible Government

It has to be stated that one long jump at a stretch should not be taken from undiluted autocracy to responsible Government. The successful and stable establishment of self-government is best attempted gradually and by stages.

What are these stages? The nature of the constitution, the necessary legal safe-guards to preserve the dignity and status of the Ruler, and the steps to be taken to entrust the representatives of the people with power have to be studied in the major states—which can afford to have the law-making machinery—after sufficient enquiry and detailed examination. Mysore, Cochin, Baroda, Jammu and Kashmir, Hyderabad, and Jaipur have shown the other states how to begin with enquiry and follow it up by suitable reforms.

The Cochin experiment of dyarchy has been generally praised and also criticized. The alternative of an undivided executive responsible to the Ruler with some of them chosen from a popularly elected legislature has been followed by Mysore and Baroda, Jammu and Kashmir, Indore and Sangli in their latest reforms.

Whatever be the executive suited to the particular state, the objective should be to preserve the best elements of Indian kingship amidst modern surroundings.

II

CONSTRUCTIVE SUGGESTIONS

Autocracy of the East had a check in public opinion. A military conqueror with a mercenary army could get along

provided his administration be not unpopular. Rioting, revolt or dynastic conspiracy would shorten the career of these governing despots. In untrammelled Eastern countries the remedy against unbearable despotism is mutiny, rebellion or palace-murder. Against these fates, the strong hand of Britain guarantees the incumbents of the princes' throne. The Paramount Power is thus indirectly, if not directly, responsible for the varieties of misrule in many Indian States. In cases of gross misrule, where people are goaded by desperation to the verge of rebellion, the Paramount Power has indeed interfered. When across the all-too-thin frontier there is civil liberty, impartial justice, security of private property, and responsible Government to a degree exist, why should the state-subjects alone wait every time for their sufferings to become unbearable in order to await the intervention of the Paramount Power? Except a few well-governed states how many of these petty bolstered up relics of medieval barbarism could have existed with their territorial integrity, once the big arm of the protecting power had elected to remove herself from the vortex of affairs?

As regards the interpretation of treaties, engagements and *Sanads* excepting with regard to specific rights to prerogatives which have been specially granted to individual Princes, these treaties which were entered into at a time when the political status of both the British Government and the Princes was far different from what it is at present, have to be interpreted according to the political relationship that exists at present in practice.

Territorial Redistribution of states :—The size and the income of many of these small jagirs are permanent impediments in the way of a minimum standard of civilized administrations.

Periodic sermons by successive Viceroys since 1927 have had little effect. The new body, the 'Chamber of Princes,' never taken seriously by the big states, has thus far devoted all its efforts to the preservation of treaty rights and the rectification of their specific economic grievances.

The emotional extremist would like all the Indian States to be liquidated and the ruling families pensioned off.

A doughty thinker and eminent jurist as the late S.Srinivasa Iyengar would prefer to incorporate all minor states into the adjacent provinces and make the major states constitutional units in a federal India. The rulers in the major states should become strictly constitutional monarchs. Following the ancient Indian precedents, Mr. Iyengar would prefer that the legislature of each state should elect a qualified member of the ruling family to be the head of the state and hold the office for life.

In his memorable speech to the Chamber of Princes on 13 March 1939, the Viceroy stated that in no case was there a greater and more immediate need for co-operation and combination than in the smaller states, the resources of which were so limited as virtually to preclude them from providing for the requirements of their people in accordance with modern standards. In this speech the Viceroy advised these small states to take early steps to combine with their neighbours in the matter of administrative services so far as this was practicable.

*The attachment scheme :—*By an executive order of His Excellency the Crown Representative, acting with the concurrence of the Secretary of State, certain of the smaller states comprised in the Western India Agency were during 1943 attached to larger states with headquarters both inside and out-

side their agency.²² It was argued before the Judicial Commissioner's Court (Western India Agency) that the executive order of attachment issued by the Crown Representative was illegal and *ultra vires* of the powers of that high officer under the provisions of the Government of India Act, 1935. It was held by the Court that the Crown Representative's order attaching Bhadwa Taluka to Gondal State was illegal. The Crown never absorbs a state and much less merges it into another state.

The matter was set at rest by the Attachment of India States Act.²³ Under Section 1, any state not mentioned in Division I to XVI (Table of seats) Part II Schedule I of the Government of India Act, 1935 of Western India States Agency or Gujerat States Agency may be attached to any other Indian state notwithstanding the Foreign Jurisdiction Act of 1890.

Section 2 of this Act authorizes the

- (a) transfer to Courts and officers of any powers or jurisdiction on behalf of the Crown ;
- (b) relinquishment of any such power ; and
- (c) transfer of cases pending at Courts or officers of the Crown.

The Attachment Act is restricted in scope and has in view purely judicial work in the petty states of Western India and Gujerat States Agency.

The Merger Communique of 1943:—Though differences of opinion are always possible in such progressive changes, the executive order of the Crown Representative in concurrence

²² The Crown vs Bai Jivi Keshar in Bhadwa Taluka:
Cr. R. Appln: 9/43: Judicial Commissioner's Court

W. I. S. Agency

²³ 7 and 8 Geo. VI. Ch. 1V (*Gazette of India* 25 March 1944).

with the Secretary of State for India of 1943 is a step in the right direction.

The units so attached cover an area of over 7,000 square miles with a population over 80,000 and an annual revenue of more than 70 lakhs of rupees.

The communique* of 16 April 1943 has laid down a weighty principle that autocratic powers shall not be abused and that nothing which is not inherently capable of survival should be artificially perpetuated.

Geographical and other factors have precluded the absorption of the areas in British India.

The responsibility of the Paramount Power is here delegated to the bigger states of Western India and Gujerat who are in the best position to discharge it.

The interests of the inhabitants of the smaller states and of the larger states with which a new relationship is to be established have fully been kept in view. The possibility of future intervention by the Paramount Power is also borne in mind.

The Ludhiana Scheme:—Dr. Pattabhi Sitaramayya suggested that 'the vast bulk of Indian states must be merged either with the British Indian territory or as was suggested by the Viceroy amalgamated with the adjoining Indian states.' In ultimate analysis, he visualized not more than 50 states; in his view British India would have to be divided into 14 Provinces on a linguistic basis.

The All-India States Peoples' Conference held at Ludhiana in February 1939 recommended that all states with a population of below 20 lakhs or an annual revenue of less than 50 lakhs of rupees should amalgamate with neighbouring

* The Political Department did the courtesy to send this writer a copy of the communique of 18 December 1944.

provinces. If given effect to, only 21 states will remain as separate units and the remaining 580 will be absorbed.

History shows us how the free cities, duchies, bishoprics, baronies, and tiny principalities were grouped together under the Holy Roman Empire in Central Europe. A similar problem of a number of tiny states faced Germany. It was solved in the only scientific way of these Rulers of states being allowed to retain their titles and some revenue. Their powers were taken from them and their states were absorbed in the German Reich.

A Parliamentary Commission necessary. An arm-chair regrouping of Indian states into 21 major states and amalgamation of the rest into British India is neither fair nor desirable.

More than 600 protected states, jagirs, and estates persist in India owing to the might of the Paramount Power. Territorial redistribution of these petty states which cannot maintain a policeman and a schoolmaster is overdue. What must be the exact number to be retained is a matter for consideration by a Royal Commission which should be appointed immediately after the war without any further delay. Facts have to be ascertained, historical sentiment and traditions have to be suitably respected and regrouping has then to be made, with such necessary alterations of treaties, engagements and *sanads* as would be necessary to suit the changed circumstances.

India's Future

The shape of things to come is just visible in portions in a setting where the victory of our Allies is assured: The problems of peace after this maelstrom appear very intriguing.

Sovereignty emphasized by Austin as illimitable, indivisible and essential to a state has had much water flown

under it in the form of federations, and mandates: and its indivisibility has long ago been torpedoed successfully.

With three or four Big Powers in the world emerging out of the cauldron of this world war, dynamic thinking is necessary so far as preserving and presenting India as a healthy, powerful India playing a significant rôle in Asia.

Associated partnership rather than insular independence has alone a chance in the difficult confusing times ahead.

'Equal partnership in the Commonwealth' which is explicit in the authoritative declaration of 8 August 1940 will be a far-off dream unless India is able to defend her land, shores, and superincumbent air-space. With jet propulsion, rocket-bombs, long-range naval guns, and mass air attack helped by thousands of parachutists 'Father Himalayas and Sisters of the Three Seas' are no longer invulnerable frontiers.

In a realistic setting, a strong and stable machinery is necessary in India for purposes of defence, customs, communications including roads, railways, posts, telegraphs and civil aviation, and currency.

All efforts at compromise to reach this inevitable destination are necessary at this juncture.

In such a setting, Indian states cannot be allowed to cling to their moth-eaten treaties, engagements and *sanads* to the detriment of India's integrity.

These relics of medievalism can have their *raison d'être* in the progressive rôle they are voluntarily prepared to play. Sovereign states as Egypt and Persia, had to permit powerful allies to defend them; part-sovereign states have to co-operate in a subordinate capacity with the machinery for all-India defence; and defence in the modern world of a three dimensional warfare implies combatants and non-combatants actively co-operating all through.

Viewed from all relevant angles, external as well as internal, the states reduced into compact progressive units would alone assist the satisfactory solution of the constitutional problem of India.

The central problem of Indian States running from 1766 to 1945 has to be faced by the Rulers as a class. Deprived of the weapons of external aggrandizement, the Indian states have suffered from internal stagnation and decrepitude.

Paramountcy in the absence of a well-knit Federation between British India and Indian states is bound to mean to the states an unending tutelage.

The only constitutional way to escape the tightening effects of a perpetual tutelage is for the states to 'pursue a path of constitutional reform wherein a power will be brought into existence within the Indian state itself to check the natural faults of autocracy.'

With such decision made voluntarily the auxiliary issues as federal finance, representation of states subjects in the central legislature, and other corollaries are easily solved in a spirit of give and take.

Paramountcy will have to merge in the Indian Federation; the alternative structure of a confederation as tried in U. S. A. Germany and elsewhere has only led to a strong federation. When there is to be a federal ministry, it *a fortiori* follows that two-fifths of it will be of Indian states' representatives.

The happiest day of the Crown will be when it will be only advised by the Federal Ministry of India—constituted of the two Indias of to-day—such a logical and promised consummation of the destiny of Britain's great adventure is over-due.

*Sardar M. V. Kibe visualizes the inevitability of two sets of federations. *Indian Review*, Jan. 1945.

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