

Empire by Agreement: Treaties and Sovereignty in the Indian Princely States

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Introduction

Treaties were one of the central legal and political foundations of the British Indian Empire.¹ Unlike in precolonial India, where formal bilateral treaties were rare and not generally used as a means of diplomatic negotiations, the East India Company (hereinafter the EIC) made extensive and strategic use of treaty-making. These agreements were not mere diplomatic formalities, rather, they served as tools of empowerment and legitimacy through which the EIC channelled its imperial scheme in colonial India.

The period from the mid-eighteenth to the mid-nineteenth century marked a profound political transformation across the Indian subcontinent. The decline of Mughal authority inspired ambitious political projects in which regional polities sought to preserve autonomy alongside military campaigns and diplomatic negotiations. It was within this volatile environment that the EIC expanded its influence. Through a combination of military success and treaty-based arrangements modelled on European diplomatic practices, the Company inserted itself into the internal and external affairs of Indian states. These treaties were basically descriptive texts detailing the rights and obligations of the state parties involved, as we will examine later, and contained an inbuilt asymmetry in which the EIC (and the British government) held the supreme position. In bilateral relations, these arrangements served not only as evidence of the legality of states but also as recognition and permission for them to continue as such.

The Company gradually concluded treaties with several major Indian states. Although the rulers of these states had authority over their internal administration, the foreign and defence affairs were significantly controlled by the Company. By these treaties, the EIC gained political leverage over some crucial affairs of the states, like a. it stationed its forces within the frontiers of native states, b. native states were bound to incur fiscal burdens, c. the EIC took control over foreign and defence affairs of the states, etc.; Thus, limiting the external feature of sovereignty, the states were allowed to continue to exist within the broader imperial framework. Also, numerous smaller states were brought under British suzerainty through *sanads* and

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¹ This Article is influenced by the Unpublished Doctoral research of the Author.

other unilateral instruments. However, the present analysis focuses specifically on formal treaty arrangements.

Over the course of the nineteenth century, all the Indian native states were absorbed into the British Empire. This incorporation, as the paper argues, entailed substantial limitations on their external sovereignty. By the late nineteenth century, the meaning and extent of that sovereignty became a matter of continuous dispute. The states persistently maintained that they retained sovereign status and, on that basis, argued for the applicability of international law; on the other hand, the British government denied both their sovereign character and the relevance of international law to the relationship with the Empire.

The purpose of the current paper, against this backdrop, is threefold. Firstly, it examines the legal character of the Princely States and the nature of their relationship with the Empire. Secondly, it analyses some treaties with several Indian states to show how these instruments created a form of dependency under the cloak of alliance and protection. Thirdly, it shows how the question of sovereignty became a point of longstanding debate between the native states and the British government.

Although sovereignty in colonial India was a complex and contested question, implicating the East India Company, the Mughal Emperor, and the native states alike, the present study confines its focus to the relationship between the Company and the Princely States.

A Glimpse of the Princely State System:

Throughout the 18th century, India underwent a profound political transformation as the Mughal Empire gradually declined. This, in effect, produced a fragmented political landscape in which regional powers competed for dominance along with the ambitious foreign traders. This created an opportune moment for the EIC to advance its political and trade interests in ways that eventually led to the foundation of British rule in India (in 1757). The processes employed by the company were a complex amalgam of military intervention, diplomatic negotiation, and, most importantly for the present purpose, treaty-making.

In the mid-18th century, the EIC made several significant victories, of which the Battle of Plassey (1757) and the Battle of Buxar (1764) were central to transforming the Company from a commercial enterprise into a territorial power. By defeating the Nawab of Bengal and later the combined forces of the Nawab of Awadh and the Mughal Emperor, the Company not only secured revenue-rich Bengal but also acquired political legitimacy as

a governing authority.² This, in effect, elevated the image, prestige, and power of the EIC to the point that it not only surpassed other foreign companies but also, gradually, the native states.

The practice of native states taking British protection coincided with, on one side, the growth of British influence over the Indian political landscape and on the other, the increasing existential fear of the native states in the face of diversified challenges of 18th-century India. While the EIC was liberal in protecting the Indian states, it had a specific and deliberate scheme expressed through numerous treaties, which all the protected states had to accept and implement. These treaty arrangements laid the foundation for what later became known as the princely states.³ The process of the Indian states seeking British protection was intensified by the adoption of the subsidiary alliance policy during Lord Wellesley's tenure.

Richard Wellesley, one of the principal architects of the British Indian Empire, once articulated in clear terms the strategic and ideological premises of subsidiary alliance policy. An 1804 despatch of the Governor-General writes, "The fundamental principle of his excellency the Governor-General's policy in establishing subsidiary alliances with the principal states of India is to place those states in such degree of dependence on the British power as may deprive them of the means of prosecuting any measures, or, of forming any confederacy hazardous to the security of the British empire, and may enable us to preserve the tranquillity of India by exercising a general control over those states calculated to prevent the operation of that restless spirit of ambition and violence which is the Characteristic of every Asiatic government, and which from the earliest period of Eastern history has rendered the peninsula of India the scene of perpetual warfare, turbulence, and disorder."⁴ The central notion in Wellesley's formulation appears to be "exercising a general control over those states" in way to create a stable imperial order.

Politically and symbolically, the princely state system served an additional purpose. It created an appearance of continuity with India's native political

² After the defeat in Buxar, the Mughal Emperor had to enter into an agreement (known as the Allahabad Treaty of 1765) with the EIC, in which he allowed the company the right to collect taxes in the Subah Bengal otherwise known as *Diwani*. For details see, CU Aitchison (Comp.), *A Collection of Treaties, Engagements and Sanads relating to India and Neighbouring Countries*, Vol. 1. (Calcutta, Superintendent of Government Printing, 1892), 60.

³ Most of the princely states governed their internal affairs and taxation; this internal autonomy empowered them to maintain their own administrative costs independent of the Company.

⁴ Charles Lewis Tupper, *Our Indian Protectorate An Introduction to the Study of the Relations between the British Government and its Indian Feudatories*, (London, Longmans Green and Co., 1893), 40.

traditions while entrenching those traditions within an imperial legal framework. The states appeared culturally Indian and were governed by hereditary rulers, yet their authority was grounded in treaty obligations to the EIC or the British government. This arrangement strengthened imperial legitimacy by presenting British rule not as outright annexation but as indirect governance conducted through recognised Indian authorities.

It is conceivable that the native states did not accept British subordination as an act of free and voluntary choice. Some entered the system following military defeat, while others accepted British protection under political pressure or, in exchange for security guarantees. In either case, their continued existence was conditional upon loyalty to the Company and, after 1858, to the British Crown. Among the major Indian powers, the Nizam of Hyderabad was one of the first to accept British protection in the 1760s.

Geographically, most princely states were surrounded by territories directly governed by the British government. There were, however, a few exceptions along the western coast⁵. Collectively, these states comprised roughly two-fifths of the land area of the Indian subcontinent.⁶ The total number of princely states within the Empire was not static; official reports about their total number vary from 562 to 693.⁷ Situated all-over India, they displayed remarkable diversity in population, size, geography, and cultural composition, ranging from vast and populous kingdoms to small principalities with limited resources and influence.⁸ Accordingly, their power over their subjects and with the imperial government differed from state to state and was largely defined by the terms and conditions laid down in the treaties. McDonald encapsulates this reality in the following terms:

The degree to which the native sovereignty extends has been determined by no general principle, but by historical accident, the size and the importance of the States themselves, the terms of the treaties made between the imperial Government and the Native rulers, other agreements and usages. The Nizam of Hyderabad exercised maximum power. He issued his own coinage, had a free

⁵ For instance, some states in the West coast of India like Travancore, Junagadh, were not landlocked.

⁶ Caroline Keen, *Princely India and the British Political Development and the Operation of Empire*, (London, IB Tauris and Co. Ltd., 2012), 1.

⁷ See-East India (Indian States), *Report of the Indian States Committee 1928-1929* (London, 1929). 10-11. Imperial Gazetteer of India, *The Indian Empire*, vol. 4, Administrative (Oxford, 1909), 92-103. In fact, a number of states could not survive for long even within the British rule. One key reason was annexation of the state by the British government if the ruler was manifestly incompetent or died without a male heir.

⁸ Keen (n 6) 3.

hand as to taxation, and had absolute powers of life and death. Some of the rulers of smaller States had little more than minor judicial powers and immunity from British taxation.⁹

Legally, due to the existence of the native states, the British Indian Empire was not unitary but a complex amalgam comprising at least two different systems of governance. This duality was recognised in the Interpretation Act of 1889, which defined India in two separate senses. First, “British India” referred to ‘all territories and places within Her Majesty’s dominions which are for the time being governed by Her Majesty through the Governor-General of India or through any governor or other officer subordinate to the Governor-General of India.’¹⁰ Second, the broader term “India” denoted ‘British India together with any territories of any native prince or chief under the suzerainty of Her Majesty exercised through the Governor-General of India, or through any governor or other officer subordinate to the Governor-General of India.’¹¹

The treaties concluded between the princely states and the British Empire were framed as mutual obligations, but in general, they retained a supreme position for the British government and a subordinate position for the states- illustrating a clear hierarchy.¹² Beyond this negotiated stature, from the early nineteenth century, under Lord Hastings and officials such as David Ochterlony and Charles Metcalf, the British increasingly described their position as “paramount,”¹³ a new idea, mostly to justify imperial intervention. In other words, as the treaties were generally negotiated between and among the parties, and the states were more likely to resist any system of intervention in internal governance (or sovereignty) through these instruments. So, the British government had to adopt a separate doctrine independent of treaties to legitimise its interventionist policies. The doctrine of paramountcy- which was never clearly defined by the British government but frequently used to intervene in native states' internal affairs- served as that broad justificatory principle. It further repositioned the state-Empire relation in which the superior party, the British

⁹ Quoted in RC Majumdar, ‘History and Culture of the Indian People’ in RC Majumdar and others (eds.), *British Paramountcy and Indian Renaissance*, Vol. IX, Part I, (Mumbai, Bharatiya Vidya Bhavan, 2002), 959.

¹⁰ Interpretation Act 1889, s 18(4). See Adrian Sever (Ed.), *Documents and Speeches on the Indian Princely States*, Vol. 1 (Delhi, BR Publishing Corporation, 1985), 321.

¹¹ Ibid s 18 (5).

¹² Especially the treaties signed by the EIC with the country powers from mid 18th century onwards often provided a rather clear hierarchy in which the British government held the dominant position.

¹³ Edward Thompson, *The Making of the Indian Princes*, (Oxford University Press, London: 1943), 284.

government's power, extended so much that it could legitimately end any state for misrule or maldistribution and annex its territories.

Asymmetrical Treaties and the Reconfiguration of Sovereignty in Colonial India

International treaties, whether bilateral or multilateral, were not a common feature of political practice in precolonial India.¹⁴ Historically, the Mughal government concluded only three notable treaties: the Treaty of Purandar 1665,¹⁵ the Treaty of Shalimar 1740,¹⁶ and the Treaty of Allahabad, the latter signed with the East India Company following the Battle of Buxar in 1764. The limited recourse to such agreements over a span of more than three hundred years suggests that treaties were not regarded in Mughal India as a primary or systematic instrument of political negotiation

Factually, it was during the rule of the East India Company (EIC) and later the British Raj that treaties emerged as a widely utilised legal instrument across the subcontinent. The treaties concluded by the EIC, both in form and structure, closely followed European diplomatic models. These treaties are significant for two related reasons. On the one hand, they showed the expanding scheme of colonial governance in India; on the other, they reveal a fundamentally asymmetric relationship. Although the EIC was merely a chartered British company, it entered into agreements with Indian sovereigns in a manner that positioned the Company, not the native rulers, as the dominant authority. Legally, such arrangements demonstrate a problematic asymmetry: a non-sovereign European company was presented as equal, and at times even superior, to Indian sovereign powers. It may also be noted that, through these treaties, the EIC gradually sought to cloak its formal legal identity as a trading corporation and recast itself as a political authority, thereby effectively assuming the attributes of statehood.

One example is the treaty concluded in 1773 between the EIC and the small state of Kooch Behar, which bordered the Bengal Presidency. In that year, the Company concluded an agreement with its ruler, Rajah Durrinder Narain.¹⁷ The treaty mentioned that the Rajah had represented to the President and Council at Calcutta the “distressed state” of his country,

¹⁴ M. Athar Ali, *Mughal India Studies in Polity, Ideas, Society and Culture*, (Oxford, Oxford University Press, 2006), 313.

¹⁵ The treaty was signed by the Maratha Chief Shivaji and the Mughal Emperor's representative Jai Singh I following the battle of Purandar in 1665. As per the agreement Shivaji had to surrender several forts and accept Mughal vassalage.

¹⁶ It was a treaty concluded between Nadir Shah and the Mughal Emperor following Nadir Shah's invasion of India. Under its terms, the Mughal Emperor was compelled to cede all territories west of the Indus River to the Persian Empire.

¹⁷ Aitchison (n 2) 103.

which was being harassed by neighbouring powers allegedly in league to depose him. The Company agreed to dispatch a military force, four companies of sepoys and a field piece, for the protection of the Rajah and his territory.¹⁸

The treaty further stipulated that the Rajah and his heirs would remain firmly allied and subordinate to the Company, which in turn promised continued military assistance whenever necessary for the defence of the state.¹⁹ Thus, the Company stationed its troops within the state's territory in exchange for political allegiance. We will see that gradually, the structure of protection in exchange for political subordination became a more general pattern, evidenced in the treaties between the EIC and the native states.

There was another provision in which the Rajah appears to have accepted a rather stringent condition, in which the balance of power was entirely lost in favour of the company. That is, the treaty declares that the ruler would "acknowledge subjection to the English East India Company" once his country had been cleared of its enemies and would permit Kooch Behar to be annexed to the Province of Bengal. This text suggests that the Rajah, in exchange for military protection, was also prepared to accept British suzerainty to the point that annexation of the state became an acknowledged possibility. This made the power asymmetry expressed in the treaty very imbalanced, though, in fact, Kooch Behar was never annexed by the British government.

Given that Kooch Behar was a relatively small state bordering Company-controlled territory, the increasingly powerful EIC was well positioned to impose stringent terms.²⁰ Still, this treaty is evidence of an evolving structure and generalised pattern in which the existence of native states, by implication, if not always as explicitly as in the above one, was made conditional upon their concessions of sovereign powers and loyalty to the British government.

The decision of the Nizam of Hyderabad, a major political power in early colonial India (especially in the Deccan plateau), to accept British protection arguably gave this scheme to 'protect' Indian states a broader political legitimacy. Hyderabad was under existential pressure at the time from another growing power in South India, Mysore, especially under the rule of Hyder Ali and later his son, Tipu Sultan.

¹⁸ Ibid.

¹⁹ Ibid

²⁰ For the bigger and powerful states, such conditions were to come slowly and employed very cautiously.

Accepting British protection essentially turned the state into a British ally and, legally, a protectorate. While the Nizam, following his accession to the imperial framework, signed numerous treaties, we will examine for the present purpose only the agreements made in the second half of the 18th century. The first treaty by which the Nizam took British protection was signed in 1766. Article I of the treaty declared that-

The two contracting parties do, by virtue of this Treaty of honour, favour, alliance, and friendship, solemnly engage a mutual assistance to esteem the enemies of one the enemies of both, and contrariwise, the friends of one the friends of the other.²¹

Apparently, this sentence shows that the parties undertook mutual obligations and agreed that “the enemies of one as the enemies of both” and “the friends of one as the friends of the other.” This is a language of diplomacy where mutuality and trust appear to have stemmed from a sense of equality between the parties. But, reading the section in isolation would mislead one as to what was coming next. The next Article (II), in fact, was most revealing as to the cost of protection:

The Honourable English East India Company, in return for the gracious favours received from His Highness, consisting of Sunnuds for the five Circars²² of Ellour, Siccacole, Rajahmundry, Moostafurnugger and Moortizanugger, expressing the free gift thereof on them and their heirs, for ever and ever, do hereby promise and engage to have a body of their troops ready to settle the affairs of His High-ness's government in everything that is right and proper whenever required; provided that they be at liberty to withdraw the whole, or such part thereof as they shall judge proper, whenever either the safety of their own settlements and possessions, or the peace and tranquillity of the Carnatic, be the least endangered: in case of falling out of which circumstances (which God forbid) they do promise and engage to give the most timely notice thereof to His Highness in their power.²³

This segment offers a glimpse into the treaty's details. It explicitly states that the ruler of Hyderabad gifted the five circars of Ellour, Siccacole, Rajahmundry, Moostafurnugger, and Moortizanugger to the Company. The text further says that such grants would continue “for ever and ever”,

²¹ CU Aitchison (Comp.), *A Collection of Treaties, Engagements and Sanads relating to India and Neighbouring Countries*, Vol. IX (Calcutta, Government of India Central Publication Branch, 1929), 23.

²² The administration of these five districts were handed over to the EIC by the Nizam through the 1766 treaty.

²³ *Ibid.*

implying the permanence of the transfer of the five regions mentioned. In return, the Company agreed to station “a body of their troops” in support of the Nizam’s government “whenever required”. Thus, the Company secured specific, permanent territorial gains in exchange for protection.

The conditional clause in the next line appears to be more revealing; it says the Company’s troops would “be at liberty to withdraw the whole, or such part thereof as they shall judge proper, whenever either the safety of their own settlements and possessions...” This means the Company could withdraw its forces from Hyderabad at its discretion if required for its security. Taken together, these provisions reveal a clear imbalance in the treaty: while the Nizam ceded his territories permanently and allowed the EIC troops to be stationed in the state in exchange for protection, he received conditional protection dependent on the company's discretion. In simple terms, there would be no protection left for Hyderabad if company settlements were threatened, thereby making the protection so offered conditional.

Although in its earlier treaties the EIC did not explicitly describe itself as a “state,” in later agreements it adopted that terminology. This shift is evident in the 1790 tripartite treaty concluded between the Nizam of Hyderabad, the EIC, and the Maratha Peshwa, Madho Rao Narain. Article I of the agreement declared:

*The friendship subsisting between the three States agreeable to former Treaties shall be increased by this ...*²⁴

In a classical sense, the EIC, being a private corporation, was not a state, but the stipulation above, which mentions “the three states,” denotes the parties. This is legally anomalous, but perhaps a recognition of something evolving, undeniable by all means. The choice of the word “state” to refer to the Company in diplomatic negotiations or treaties appears to have been deliberate. Though the company was a registered corporation, it was empowered to act like a state. Notably, the charter of 1661 empowered the company to “make peace and war.”²⁵ with Indian princes. It enabled the company, in practice, to make treaties, wage war, negotiate peace, or acquire territories just like a state in India. Also, from the 1770s, the EIC started to function as the government of Bengal. EIC’s appearance as a state-like entity, alongside its corporate activities, was a fact *per se*. There is also enough historical record that the Indian states in practice concluded numerous agreements with the EIC, which can be translated as an implicit

²⁴ Aitchison (n 21) 44.

²⁵ Letters Patents Granted to the Governor and Company of Merchants of London, Trading into the East Indies, 1661. See, John Shaw, (Comp.), Charters Relating to the East India Company from 1600- 1761, (Madras, The Government Press, 1887), 32-46.

recognition of its state-like capacities. Hence, the EIC's move to identify itself as a "state" was more likely informed by prevailing realities, aimed at creating broader political legitimacy and formal parity with the native sovereigns.

In 1798, the Nizam of Hyderabad concluded another treaty with the EIC based on Lord Wellesley's subsidiary alliance system. This time, the EIC's vernacular treaties became more strategically calculated to reconstitute an alliance in which the native states were essentially subsidiary or subordinate. This particular treaty was for "a permanent increase of the Honourable Company's troops in His Highness's pay." In simple terms, this meant that the Nizam was required to maintain the company's troops in his territory at his own expense. Then the treaty moves on to its purpose- i.e., ensuring protection for the Nizam, his heirs, and the state- saying that the subsidiary force was to be "ready to execute services of importance," including protecting the Nizam, his heirs, and successors "from race to race," and suppressing "all rebels or excitors of disturbance in the dominions of this State."²⁶ The system of protection as outlined in this provision includes an internal aspect of protection as well, in the sense that it encompasses "all rebels or excitors of disturbance in the dominions" of the state. So, the device of strategic reliance, which appeared as protection, in fact significantly modified a principal sovereign quality of the state of Hyderabad- dealing with any threat or aggression independently for its defence.

This dependence was further reinforced in Articles 6 and 7 of the treaty.²⁷ These provisions put an obligation on the state to dismiss all French officers or any other Europeans from the state's service. They further stipulated that such persons were to be seized and handed over to the British Resident in Hyderabad. This was a deliberate move to ensure the Company's authority and monopoly over the state and to prevent its chief European rival, the French company, from gaining any influence over the state. In practice, this provision ensured that Hyderabad remained reliant on the EIC for its defence; as a consequence, aspects of the state's sovereignty in both defence and foreign affairs were to be controlled by the Company.

Likewise, in 1799, after the defeat and death of Tipu Sultan, the EIC did not annex all of its territories but allowed the state to continue, with the new ruler, under a negotiated, restructured scheme in which aspects of Mysorean sovereignty were, in fact, brought under the company's direct supervision. The EIC concluded another treaty with the newly instated ruler

²⁶ Aitchison (n 21) 50.

²⁷ Ibid, 50-51.

of Mysore.²⁸ Following the generally similar pattern already mentioned, Article 2 of this treaty states,

The Honourable East India Company Bahadoor agrees to maintain, and His Highness Maharajah Mysore Kishna Rajah Oodiaver Bahadoor agrees to receive, a military force for the defence and security of His Highness's dominions; in consideration of which protection, His Highness engages to pay the annual sum of seven lakhs...²⁹

While this Article states that it was intended for the protection of the territories of the Raja of Mysore by the Company's forces, a reading in conjunction with Article 8 reveals significant concessions of sovereignty on the part of Mysore. To understand how this was manifested, let us read this Article:

Whereas the complete protection of His Highness's said territories requires that various fortresses and strong places situated within the territories of His Highness should be garrisoned and commanded, as well in time of peace as of war, by British troops and officers, His Highness Maharajah Mysore Kishna Rajah Oodiaver Bahadoor engages that the said English Company Bahadoor shall at all times be at liberty to garrison, in whatever manner they may judge proper, all such fortresses and strong places within His said Highness's territories as it shall appear to them advisable to take charge of.³⁰

This provision suggests that the EIC, in substance, controlled the defence of Mysore, but the extent of this requires a bit more understanding. It is mentioned that the EIC had the right to garrison its troops in Mysore's territory "at all times" and "in whatever manner they may judge proper." These phrases are revealing; the Company's control over such affairs was absolute, and it could continue to hold the Mysorean fortresses and station troops, without further permission from the government of the state, "at all times." Such a scale of dependence on the company for defence essentially made the state less than what might be called independent in the classic sense. Most importantly, Article 6 concluded with the stipulation that:

...no communication or correspondence with any foreign State whatever shall be holden by His said Highness without the

²⁸ Ibid, 240.

²⁹ Ibid, 241

³⁰ Ibid, 243.

previous knowledge and sanction of the said English Company Bahadoor.³¹

This clause imposed a direct limitation (if not restriction) on the external sovereignty of the Mysorean ruler. By prohibiting independent diplomatic correspondence with any foreign state, the treaty effectively subordinated Mysore's foreign policy. This can also be translated as the transfer of Mysore's foreign affairs to the EIC; consequently, it was the company, not the state, that decided such matters.

Article 7 imposed an even deeper layer of control, particularly regarding European actors operating in India. It stipulated:

His Highness stipulates and agrees that he will not admit any European foreigners into his service without the concurrence of the English Company Bahadoor and that he will apprehend and deliver up to the Company's government all Europeans of whatever description who shall be found within the territories of His said Highness without regular passports from the Company's government, it being His Highness's determined resolution not to suffer, even for a day, any European foreigners to remain within the territories now subjected to his authority, unless by consent of the said Company.³²

This provision is essentially a repetition of a pattern illustrated above- in the 1798 treaty between the Nizam and the EIC. The repetition is important in the sense that it evidences a generalise strategy of the Company to prevent the French and other Europeans, even at the individual level, from influencing the domains under its protection. During the reign of Tipu Sultan, Mysore had close ties with the French, a rival company to the EIC. This experience perhaps triggered the necessity to impose control over the Europeans' entry to the state- a necessary extension of the EIC's scheme to control the foreign affairs of Mysore.

Read together, the above two Articles (6 and 7) reveal a treaty-based restructuring of Mysore's sovereignty. While Article 6 imposed controls on communication or correspondence with any foreign state, Article 7 extended the same controls to individual foreign elements within Mysore's territorial jurisdiction. This case further illustrates the EIC's strategy of subordinating the native states to an imperial hierarchy.

In addition to numerous treaties with similar features, to ensure unwavering obedience to the Crown from the native states, the British government made a calculated and significant move in 1863. It issued *sanads*

³¹Ibid.

³²Ibid.

unilaterally to the princely rulers; the second paragraph of these *sanads* used identical language, stating:

Be assured that nothing shall disturb the engagement thus made to you so long as your house is loyal to the Crown and faithful to the conditions of the Treaties, Grants or engagements which record its obligation to the British Government.³³

The provision, in clear and understandable vernacular, set out the fundamental conditions under which the princely states were permitted to continue. First, loyalty to the British Crown; and second, “faithful to the conditions of the Treaties, Grants or engagements which record its obligation to the British Government.” This *sanad* was essentially a precise reassertion of the already established hierarchy by the British government through numerous treaties. It promised non-interference by the government, but made it conditional upon the rulers’ loyalty and faithfulness to the established imperial framework.

British Sovereignty over Princely India and Subsequent Debate

The EIC’s Charter of 1600, like most of the subsequent charters, did not explicitly authorise the Company to establish an empire in India. Nor did it impose any clear prohibition on such expansion. A significant shift, however, is evident in the Charter of 1661, which conferred substantial political and military powers upon the Company. It authorised the Company to “continue or make Peace or War with any Prince or People that are not Christians, in any places of their trade, As shall be most for the Advantage and Benefit of the said Governor and Company and of their trade.”

Although this provision does not expressly refer to territorial sovereignty, the authority to “make Peace or War with any Prince or, People” implicitly sanctioned the EIC’s active participation in Indian power politics. It not only permitted the Company to wage war, but also legitimised its capacity to negotiate treaties in order to conclude peace or settle conflicts. The powers that ultimately enabled the construction of the British Indian Empire can be traced, if not exclusively, then certainly in large measure, to this grant of authority.

The same charter further consolidated the Company’s position by placing all its settlements and defensive establishments under its direct control:

...all Plantations, Forts, Fortifications or Colonies, where the said Company’s Factories and Trade are or shall be in the said East-Indies, shall be immediately and from henceforth under the power

³³ Ibid, 98.

and command of the Said Governor and Company, their Successors and Assigns.³⁴

Despite such authorisation, which covers expansionism as a potential, an important nuance must be acknowledged. Not everyone within the East India Company or in London supported political expansion. Presumably, engaging in politics, particularly warfare with Indian states, carried significant risks, including the potential disruption of trade and profit, which were the Company's primary objective.

It is important to mention that the Court of Directors generally prioritised commercial interests over political ambitions.³⁵ This cautious approach was also common in political circles in London. The Pitt's India Act of 1784 reflected a similar position, declaring that "...to pursue schemes of conquest and extension of dominion in India are measures repugnant to the wish, the honour and the policy of this nation....it shall not be lawful for the Governor-general and Council..."³⁶ But, reading this position in conjunction with the broader colonial history reveals a different reality. Despite such opposition in London, the EIC continued to pursue political and military campaigns across India. It suggests that the Company officials in India were guided more by practical necessity and *realpolitik* than instructions coming from London.

It may therefore be submitted that, although the charters did not clearly mention empire-building as an objective of the Company, they preserved such a possibility within their carefully framed language. Over the course of the eighteenth and nineteenth centuries, the EIC effectively realised this latent potential across much of the subcontinent. As this process of expansion unfolded, it gradually brought to the fore a significant normative question: the issue of sovereignty over British territorial possessions in India, including, in part, the status of the Princely States in international law. As already observed, through international treaties, the EIC had begun extending its authority and control over native states, substantially curtailing their sovereign powers.

Neither the EIC nor the British government formally declared sovereignty over the British possessions in India until the early 19th century. While the Crown's Charter empowered the EIC to the point that it could act like a State on foreign lands (from 1661 onwards), it was not a state *per se*.

³⁴ Shaw (n 25) 44.

³⁵ The Board of Directors who led the company, conceivably were more in favour of trade than politics; as engaging in politics would risk the profits in many ways and make powerful enemies in India.

³⁶ Mentioned in Michael Fisher (Ed.), *The Politics of the British Annexation of India, 1757-1857*, (Delhi, Oxford University Press, 1993), 15.

Following the victory at the Battle of Plassey in 1757, the EIC effectively took control of the vast territories larger than the British Isles- this dramatic expansion of its political and territorial control over Bengal sparked the ambitions of EIC's officials in India and London.³⁷ It required a deeper clarification on an aspect of sovereignty – to whom such territorial rights ultimately belonged? Kemal referred to a 1757 legal opinion provided to the English crown, which says:

.....the property of the soil vesting in the Company by the Indian grants subject only to your majesty's rights of sovereignty over the settlements, and over the inhabitants as English subjects, who carry with them your majesty's laws wherever they form colonies.....in respect of such places.....acquired or, shall hereafter be acquired by conquest, the property as well as the dominion vests in your majesty by virtue of your known prerogative....³⁸

This fairly implies that any property or territorial rights obtained by subjects of the English Crown from Indian rulers were ultimately to vest in the sovereign authority of the monarch. This development gradually displaced the East India Company from the central question of sovereignty in India. So, ultimately, it was the British government, not the EIC, upon which the decision to determine and declare sovereignty rested. Though the company was becoming increasingly powerful in India from the mid-18th century onward, the British government, in this very regard, remained cautious, slow, and selective in formally asserting its sovereign authority. By the Charter Act of 1813, more than half a century after the battle of Plassey, the British government formally asserted its sovereignty over the Company's territorial acquisitions in India. The Act declares: “....undoubted sovereignty of the Crown of the United Kingdom.....in and over the said territorial acquisitions.....”³⁹

The declaration was the first official pronouncement by the British government about its sovereignty in India. Internationally, it clarified the British government's position in this regard, and in contemporary India, there was no noticeable opposition to this claim. But there are two important nuances in this development, without which the story and its yet-to-be-unfolded consequences would not make sense. By 1813, the EIC was effectively controlling a vast portion of Indian territory and many native

³⁷ Swati Srivastava, 'Corporate Sovereign Awakening and the Making of Modern State Sovereignty: New Archival Evidence from the English East India Company', *International Organization*, Vol. 76, Issue 3, (2022), 698-699, 701-702.

³⁸ R Kemal, *The Evolution of British Sovereignty in India*, (Madras, Diocesan Press, 1957), 11. Reprinted from the Indian Yearbook of International Affairs 1957.

³⁹ s XCV of the Charter Act of 1813.

states; most notably, the only legitimate rival claimant to sovereignty, the Mughal emperor, was under its direct control for nearly a decade. This arguably created a favourable situation for the British government to declare its sovereignty. Still, the language of the declaration holds another important nuance – it proclaimed the “undoubted sovereignty of the Crown” over “territorial acquisitions” in India – but deliberately left ambiguous which territories or possessions the sovereignty extended to. Conceivably, this was a strategic omission, since any precise declaration of territorial possessions was likely to cause political tensions among the native rulers under its protection. The declaration of 1813 neither provoked any immediate controversy, nor did it help in the long run. Because, the question of sovereignty, which was still evolving, reappeared and persisted in the context of the relationship between the Crown and the native states.

In this regard, the British government did not take a clear and definite position for a long time. Contemporary British scholars and jurists, however, attempted several theoretical frameworks in which the princely states’ sovereignty was not outrightly denied but shown to be adaptable in the constitutional framework of the Empire.

For instance, in 1864, Sir Henry Sumner Maine theorised the influential doctrine of “divisible sovereignty.” By this concept, as Lauren Benton explains, sovereignty was not an indivisible and absolute attribute but a quality that could exist in degrees, with ultimate or paramount authority reserved for the crown’s government.⁴⁰ Under this formulation, Indian rulers could retain limited powers of internal administration, while the Crown exercised overarching supremacy. Maine’s theory thus furnished a jurisprudential justification for British paramountcy; Evidence suggests that the British government adopted the idea of divisible sovereignty.⁴¹

Maine’s framework was later used by Sir Charles Lewis Tupper, a British civil servant, to propose another theoretical approach to the question of sovereignty. Tupper took Maine’s proposition of divisible sovereignty and converted it to a more rationalised and befitting model. Maine had argued that sovereignty was a divisible aggregate of powers- so, sovereignties could exist in varying degrees depending on the distribution of powers. But, independence represented the complete and undivided possession of

⁴⁰ Lauren Benton, ‘From International Law to Imperial Constitutions: The Problem of Quasi-Sovereignty, 1870-1900’, in *Law and History Review*, Fall, 2008, Vol. 26, No. 3, Law, War, and History (Fall, 2008), 603.

⁴¹ Adrian Sever (Ed.), *Documents and Speeches on the Indian Princely States*, Vol. 1 (Delhi, BR Publishing Corporation, 1985), 265.

sovereignty, which, in the context of India, was held by the British government.⁴²

Tupper- then advanced his framing in which, for the Indian context, the British government alone qualified as the independent sovereign, whereas the princely states exercised only limited and derivative forms of sovereignty. In this text, he also provided a very definitive feature of an independent political community- that it could not be “subjected to punishment... or held legally liable for an offence to a penalty imposed by a political superior.”⁴³ It implies the absence of any higher sovereign authority capable of intervention in the affairs of the state. The states of princely India did not qualify by this criterion, as the British government could punish the rulers for misrule.

In this regard, the case of Malhar Rao Gaekwad of Baroda provides a prominent example. Robert Phayre, the British Resident at Baroda, learned that, on the ruler’s orders, several individuals were publicly flogged in the capital. One of whom died, this was an act Malhar Rao himself admitted. He was also accused of attempting to poison Phayre. Ultimately, the British Government deposed him on the broader charge of “misgovernment,” though charges against him were not conclusively proved.⁴⁴ Such interventions were justified according to the doctrine of paramountcy, under which the British Government in India reserved to itself the discretionary authority to intervene in the internal affairs of princely states, particularly on grounds such as “misgovernment,” maladministration, or threats to stability.⁴⁵ These terms, notably elastic in strict legal senses,

⁴² Charles Lewis Tupper, *Our Indian Protectorate, An Introduction to the Study of the Relations between the British Government and Its Indian Feudatories*, (London, Longmans Green and Co., 1893), 18.

⁴³ Ibid 5.

⁴⁴ See, Edward Calvin Moulton, ‘Lord Northbrook’s Indian Administration, 1872-1876’ (Doctoral Thesis, SOAS, 1964). 198. This episode is particularly revealing. It demonstrates that the British did not require the strict standards of legal proof that would apply between sovereign equals; rather, they exercised a prerogative power akin to that of a superior authority disciplining a subordinate. The deposition of Malhar Rao, despite inconclusive findings on the gravest charge against him, underscores the asymmetrical nature of the relationship. It illustrates that the princely states were not independent in any meaningful legal sense but were instead subordinate units within an imperial system where ultimate sovereignty and the right to punish resided unequivocally with the British.

⁴⁵ Good government” thus emerged as the principal expectation the British imposed on the Princely States; failure to meet this standard invited and effectively legitimised intervention under the doctrine of paramountcy. RC Majumdar, ‘History and Culture of the Indian People’ in RC Majumdar and others (eds.), *British Paramountcy and Indian Renaissance*, Vol. IX, Part I, (Mumbai, Bharatiya Vidya Bhavan, 2002), 966.

enabled the colonial state to impose punitive measures ranging from administrative supervision to deposition of rulers.

Hence, from Tupper's perspective, the Indian princely states under British rule were fundamentally not independent. In practice, these states existed within a framework of hierarchical subordination to the British Crown, which claimed and exercised paramountcy over them. Antony Anghie observes that the broader project of colonial scholarship was not merely descriptive but constitutive: it systematically produced a framework of legal inequality between the colonial and the colonised state, recasting domination as a function of legal doctrines and thereby entrenching hierarchy within the very structure of international law.⁴⁶

The debate over sovereignty, however, did not stop with the theoretical propositions made by British scholars of the colonial era. The princely states continued to contest and argue for their sovereignty even in the first quarter of the 20th century. In 1928, for instance, the princes' counsel published an opinion as follows:

The Indian States were originally independent, each possessed of full sovereignty, and their relationship inter se and to the British power in India was one which an international lawyer would regard as governed by the rules of international law.⁴⁷

Perhaps to find an informed resolution, in 1927, the British government appointed the Butler Committee to examine the question of sovereignty in relation to the princely states. The Committee extensively reviewed available historical evidence and published a report in 1929. The report rejected the principal contention of the native states about their sovereign status. Based on historical evidence, the report maintained that none of these states possessed genuine independence at the time of their contact with the EIC. Rather, they existed and operated in a subordinate position within the political framework of the Mughal, Maratha, and Sikh empires.⁴⁸ Despite such efforts, several major princely states, most notably Hyderabad, continued to assert claims to sovereign status even in the aftermath of the Partition of India in 1947.

Conclusion:

Therefore, it might be concluded that the treaties played a foundational role in the British Empire, in which the systematic and persistent use of the treaties was central for empire-building, its protection, and permanence. In

⁴⁶ Anthony Anghie, *Imperialism, Sovereignty and the Making of International Law*, (Cambridge, Cambridge University Press, 2004), 102-103.

⁴⁷ Sever (n 41) Vol. II 421.

⁴⁸ Ibid, 442.

the precolonial Indian political landscape, the practice of vernacular treaties among sovereigns was rare. It was during the EIC's influence and dominance in colonial India that vernacular treaties became a regular part of empire-building. As I have shown, the treaties contained explicit mandates governing the relationship between the state and the Empire, providing a legal foundation from which both the Indian states and the Empire derived their legitimacy.

The vernacular usage in the treaties, as I have shown in the above discussion, effectively created a formal yet clear power asymmetry between the parties. Through these legal instruments, the EIC offered protection to the native states in exchange for substantial concessions to their external sovereignty. While the internal aspect of sovereignty remained mostly intact, the British government could also intervene in that space, as the paramount power in India, especially if there were any allegations of misrule or maladministration. This created a discernible hierarchical order within the British imperial framework, in which the princely states were subordinated. Thus, treaties became a central tool in the British imperial architecture in which negotiated obligations seem to have shaped much of what we know as princely India.