

## CHAPTER 2

Relationship between the British Government and the Indian Native State with particular reference to Baroda State, as based on Treaty, Engagements and Sanads as well as on usage, sufferance and other causes.

With the rise of liberal forces in Britain as well as in India in the beginning of this century and the growing political consciousness in the Indian Empire of His Majesty's Government, the British Government were forced to look more to the problems of India for their solution. The demand of increasing participation of the Indian people in the day to day Government of their country and gradual establishment of representative institutions under Dominion States became more consistent. Even the responsible British opinion in England as well as in India believed that no future Indian Policy could be complete without the partnership in the Imperial business of two distinct Indias, as existed then. A very picturesque description was given by the Report of the Butler Committee of these two Indias.

"Interwoven in the pink map of India are large patches of yellow which represent Indian States. These States survived the establishment by the British of their Dominion on the ruins of the Moghul Empire and the Maratha Supremacy. They cover an area of 598,138 Sq.miles with a population of 68,652,974 people or about the <sup>2</sup>/<sub>5</sub> of the area and one fifth of the population respectively of India including the States but excluding Burma. Politically there are thus two Indias, British India governed by the Crown according to the statutes of Parliament and enactment of Indian Legislature, and the Indian States under the suzerainty of the Crown and still for the most part under the personal rule of their

"Princes. Geographically India is one and indivisible, made up of the pink and the yellow. The problem of the statesmanship is to hold the two together." (P.10).

The story of the British rule in India is the story of this great effort of statesmanship. Thus, the attempt to hold two Indias together had continued to be made since the attaining of the supreme position on this vast sub continent by the British power. At the same time writers have given their attention to fit in some theory this relationship of the British Government on the one side, and the Indian Native State Governments on the other; with their eye particularly on the nature of political relationship that had come to be evolved. But all these theories have not been able to explain all the facets of this relationship completely whether it was federal or feudal in its nature or governed on International law or had a structure of a confederacy in its constitution. Sir William Lee Warner, the writer of some consequence in this period in his book "The Native States of India" tackled the question of the constitutional position of the Native States in relationship with the British Government and claimed unlimited rights of authority for the British Government which he said was the Paramount Power. Another theory was that the rights and privileges of States are derived directly or indirectly from the Paramount Power. This position was taken up by Lord Curzan. But it also crumpled down.

But whatever may be the constitutional position with regard to theory, we may not worry now till we go through the history of the association of the British power with India since 1800 A.D.

Retrospect of growth of relations between  
States and British Government.

From the Governors of mercantile factories to Governors of territories teeming with civilized and industrious populations and masters of a rich sub continent of Asia - this may sum up the rise and growth of the British power in India.

From independent powers enjoying equality of status among themselves and superiority of position with regard to the British Factory Governors to the position of allies of equal status, by Treaties and Engagements and conventions with British East India Company, from the position of allies with international status to that of States in subordinate alliance, with no international relations, that is to say, from political and international equality to subordination and dependence - this in a way might sum up the History of the Native States in reference to their then existing political condition before their effacement altogether from the map of India.

In making the above general statement we may not forget that the history of most of the Native State was not similar but that it varied. Each State was brought into relation with the British Government separately not under circumstances not exactly alike nor all at one and the same time, but gradually, as circumstances developed. Speaking <sup>on</sup> this Political diversity of States the Indian States Committee says:-

"Diverse as the States are geographically and historically, they are even more diverse politically. Of the total number of States forty only have treaties with the Paramount Power, a larger number have some form of Engagement or Sanad;\*

"Sanad\* ; the remainder have been recognised in different ways. The classification of the States has given rise to some discussion and there is naturally a strong desire on the part of the lower graded states to rise higher. x x x  
x x x The great variety of Indian States and the differences among them render uniform treatment of them difficult in practice if not impossible." %

and thus thought it better not to touch this problem.

Lord Cornwallis dealt with independent Native Powers. Lord Wellesley brought them into his system of subordinate alliances and of what is called the "King Fence" whereby they were Politically isolated and debarred from holding communication between themselves except through the British Government. Sir William Lee Warner gives a very vivid picture of this transition of the policy of the British Government towards the Indian State .

"34. Some idea of the treaties concluded in the period preceding 1814 will have been gathered from the account just given. The treaties negotiated by Lord Wellesley anticipated to a certain extent, both in matter and form, the engagements of the Governor General, who deserves the title of the Treaty-

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\*Sir Henry Maine defined the term Sanad as "an ordinary instrument of contract , grant or cession used by the Emperors of Hindustan." He points out that Sanads may have the same effect as Treaties or engagements in imposing obligations for "they are not necessarily unilateral." In Political Parlance the term Sanad (spelt in old documents and pronounced Sunnud) is used generally as indicating a grant or recognition from the crown to the ruler of a state.

% Butler Committee Report P. 12.

maker, Lord Hastings. But generally the point of view from which the British regarded the Native Princes, to whom they offered alliances upto the beginning of the nineteenth Century, was that of equal and independent States. The terms and the forms of the negotiation were reciprocal. x x x

When the Triple Alliance against Tipu Sultan was in 1790 reduced to writing reciprocity was the spirit in which it was drawn. Due attention was to be paid in the event of acquisitions, "to the wishes and convenience of the parties", a representative of each signatory was to reside in the Army of the other, and " the representations of the contracting parties to each other shall be duly attended to." If peace was judged expedient "it shall be made by mutual consent. "

"Gradually both the spirit and the form of the Company's engagements changed and before the close of the first period of their intercourse with the Native States their mutual relations stood as follows. The Company had advanced from the position of primus inter pares to an assertion of superiority.

It required its allies to surrender their rights of ~~recogni-~~negotiation with Foreign nations and with States in alliance with the Company, but it still left them with full powers of dealing with certain other States in India, which were specially named, as in the case of the Rajput and Sikh States. It recognized their right, except in Oudh and a few other cases, to maintain such armies as they pleased and only sought to compensate the balance of their Military organisation by subsidiary forces placed under the Company's control with

the internal sovereignty of the States, except under special circumstances as in Cutch, the Company not only did not pretend to have, but it formally disavowed any manner of concern. Its external policy was dictated by military necessity and fear of French intrigue. It therefore placed restrictions on the rights of its allies in making war or alliances and imposed on them certain military obligations, and the duty of excluding from their service British subjects and the subjects of European powers at war with the English. But as yet the principle of subordinate isolation and cooperation was not unreservedly asserted. The Peshwa's Sovereignty was impaired but not formally resigned and so far as it was consistent with the limitations placed upon the independence of the Country Princes, the forms and spirit of an international tie were still preserved." \*

Thus when the subsidiary alliances were entered into, they, while guaranteeing to the Native Princes security from the external as well as internal enemies, assured them freedom from interference on the part of the British Government in regard to internal administration. But in the course of ~~the~~ time on the ground of mis-government in the States and from benevolent intentions on behalf of their oppressed subjects, this assurance of neutrality in regard to internal administration became very much modified until at last Lord Dalhousie decided to extinguish the Native States as opportunities offered, in the interest of peace and order and progress of India. This process would have been continued if the 1857 mutiny would not have intervened. At this stage the Indian Native States served as

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\*Native States of India. P.90

'break-water' to the enormous tidal wave that swept up the whole country. And the British Government took a different attitude towards the Native States thereafter and saw the wisdom of maintaining in tact their continued existence and started taking greater interests in the problems of the States. If this would not have occurred the Policy of Dalhousie would have been carried on and the number of Indian Native States would have been quite small, so as not to present any difficulty when the Free India in 1947 started integrating these States in <sup>viable</sup> units. However during Dalhousie's regime, in fact, the British Government assumed to itself the power of a Judge in each case and became the de facto Paramount Power.

However, since the Sepoy Revolt or the Indian Mutiny as it is called, the policy of the extinction of the Native States, as stated before underwent a change and they received the assurance of continuance of their existence, but with it the system of control supervision and interference in their internal affairs not only did not slacken but became humiliating and intense to an extent which only raised in the minds of intelligent observers all the more forcibly the worse fears of the extreme results of the subsidiary system foretold by an eminent Political officer in his evidence before the Parliamentary Committee of Inquiry into Indian affairs in 1832, viz. that the system of subsidiary alliances would reduce the Rulers of the Native States to the position of the Raja of Tanjore who was allowed a Palace and a pension! Small wonder that many of the Rulers of these States lost all zest for the work of administration, which they neglected and left it to their Dewans or Karbharis of various degrees of ability and honesty. They took

absolutely no intelligent interest in affairs. The position was very sad and unnerving. The greater the apathy on their part, the more minute and irritating became the interference on the part of the British Political officers.

The Government of India could not have been unaware of this state of things, and it may be stated of their excellent intentions to remedy to some extent this undesirable state of affairs that some of the Viceroy's notably Lords Lytton, Curzon and Minto had in their public utterances, given evidence of their anxiety to allay certain fears on the part of the Ruling Princes and to enlarge them to assume their natural position in the governance of India as colleagues and partners in the administration of the British Empire in India; it was Lord Lytton who initiated the constitution of princes into a body of counsellors of the Empire and on some Rulers were actually conferred the honorary dignities of "Counsellor of the Empire"=(The late Maharaja Tukojirao Holker) "General"=(The Late Maharaja Jayajirao Scindhia) "Farand-i-Khas" = (The Maharaja of Baroda) and so forth, thus clearly incorporating them into the system of the Indian Empire and at the same time pointing out their status and function, while titillating their amour propre.

Such in brief were the vicissitudes of fortune which had overtaken the Native States. They showed the grounds which had been lost for the process of disintegration of the prestige, prerogative and power for usefulness of the Rulers of these States, continued unabated, perhaps under cover of political euphemisms, tending to ultimate absorption.

It must be mentioned that the treaties and engagements between the rulers of the Native States and the British Government were in many cases between equal parties viz. between the Ruler in each case on the one part, and the East India <sup>Company</sup> Co. on the other part. After the Mutiny the Crown stepped in to the position of the East India Company, and naturally one might suppose that the Treaties stood good as they were, between the Rulers on the one hand and the Crown of England on the other as equal parties however presumptuous ~~and~~ <sup>or</sup> impertinent ~~such~~ <sup>such</sup> an idea might appear to the British Political department. But the Delhi Darbar of 1877 held by Lord Lytton was calculated to dispel the idea by the Proclamation of the assumption of the title of Empress of India by the Queen, that is to say, that the Crown of England assumed Paramountcy over the Rulers of the Native States by their assent and without protest on their part. The change may be described as from de facto to de jure. The British Government thereafter claimed without question to exercise the power to depose the Rajas (1) after trial by their peers, (2) without such a trial, (3) merely by an executive order, to accept their abdication, to regulate their successions to the Gadi, by natural inheritance, by adoption ~~and~~ or by nomination, to receive their Nazranahs as a sign of their inferior and dependent position, the political officers attached to their Court, variously designated as Resident, Agent to the Governor General, Superintendent, Agent to the Governor and so forth; offer advice in regard to measures of internal administrations with the object not only of promoting peace and progress in the Native States but of safeguarding the various fiscal, judicial, police, railway, post and telegraph, jurisdictional and such other interests of British Indian administration which 'advice' if not promptly acted upon, landed the Ruling Prince or his responsible advisors into

difficulties. The position was altogether irritating and humiliating for the Prince. These Residents and Agents to the Governor Generals sometimes with special designations as 'Special Commissioners also presided over the Commission or Regency to rule over a State in case of minority of the Prince and took utmost advantage of curtailing the powers of the Prince. Treaties had become to no small extent mere dead letters or in the nearest phraseology mere scraps of paper.

Now the position was that when the treaties were considered mere scraps of papers and not heeded to when regulating the relation, what was the guiding principle that was operating behind the Political relationship between the British Government ~~and~~ and the Indian Native State? It can be fairly admitted now that Political practice evolved from time to time and based on usages, sufferance and other causes like the paramountcy functions was the guiding principle of the relationship between the two, when the efficacy of usages and sufferance was doubted ~~by the~~ ~~Kingdom~~ was described as 'sterile' by the legal counsel on behalf of the Native States before the Butler Committee to have any power to modify materially the treaties and engagements, the Committee in their Report unequivocally upheld the validity of these two in such express terms:

"40. We cannot agree that usage in itself is in any way sterile. Usage has shaped and developed the relationship between the Paramount Power and the States from the earliest times almost in some cases, as already stated, from the date of the treaties themselves. Usage is recited as a source of jurisdiction in the preamble in the Foreign Jurisdiction Act,

1890 (53 and 54 Vict .C. 37) and is recognised in the decisions of the Judicial Committee of the Privy Council. Usage and sufferance have operated in two main directions. In several cases, where no treaty, engagement or sanad exists, usage and sufferance have supplied its place in favour of the States. In all cases usage and sufferance have operated to determine questions on which the treaties, engagements and sanads are silent; they have been a constant factor in the interpretation of these treaties, engagements and sanads and they have thus consolidated the position of the Crown as Paramount Power." \*

As stated in the last sentence the usage and sufferance have contributed to the consolidation of the position of the Crown as Paramount Power, and thus interpreted treaties and engagements in such a way that the British interest was preserved even at the cost of the important right of the Ruler being lost by it, and thus not once but many a time the Political officers did so as to create arbitrarily a usage wherein the consent of the Native State may be obtained under duress or may not be obtained at all. Thus it was a one sided act <sup>on</sup> ~~and~~ the part of the British Government and to this the Native States demanded a remedy.

With this much preface, we may now see what were the treaties and engagements which regulated the political relationship of the British Government and the Baroda State and how much they were adhered to on both sides and to what extent they were modified by usage and sufferance .

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\* Butler Committee Report P. 24.

Relation with Baroda State.

The relations of the Baroda Government with the East India Company date from 1802, when Ravji Appaji, the Minister of Anandrao Gaekwar, invoked the assistance of the British troops against the insurrection of Malharrao of Kadi and for the reduction of Arab forces which had become powerful and insubordinate in the State. The East India Company was then only one of the Powers in India and it was striving to maintain itself and to extend its sphere of influence like others. Article 5 of the Articles of Agreement dated 6th June 1802 provided:

"There shall be a true friendship <sup>and</sup> ~~at~~ good understanding between the Hon'ble English East India Company and the State of Anandrao Gaekwar in pursuance of which the Company will grant the said Chief its countenance and protection in all his public concerns according to justice and as may appear to be for the good of the country, respecting which he is also to listen to advice." \*

As regards the concluding part of the above sentence it may be noted that the Marathi counterpart of the original treaty which is extant on the archives of the State, and to which the signatures of the contracting parties were affixed does not contain any reference to the Company's Government granting its protection and advice to the Gaekwar Government. We have noted previously what form this 'advice' used to take. The words in Marathi are:

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\* H.P.O. Sele. 26 P. 11.

गायकवाड सेनाखासखेल समशेर बहादुर व कंपनी ईंग्रज बहादुर यांची परस्पर  
दास्ती पुस्तदरपुस्त चालावी. वाजवीचे सुईने मयत करीत जावी. ज्यांत  
सेनाखासखेल यांचे बरे तरे करतील. \*

These words may be translated as follows:-

"There should be continuous mutual friendship between the  
Gaekwar Sena Khaskhel Shamsheer Bahadur and the Company  
Ingrej Bahadoor and assistance should be rendered (by the  
Company's Government) according as may appear proper. They  
will do what may be good for the Sena khaskhel."

Article 6 mentioned :-<sup>§</sup>For the cultivation and promoting the  
permanency of the good understanding between the two States, there  
shall be a constant good correspondence kept up between them, and  
Agents reciprocally appointed to reside with each." The tone of  
the Definitive Treaty of 1805 is similar. It was a treaty of general  
defensive alliance. The convention and Agreement of 1802 were  
referred to as "tending to improve and increase the friendship and  
alliance between the contracting parties," and the avowed object  
of the Treaty was to consolidate the separate engagements all tending  
to improve and increase the friendship and alliance between the  
contracting parties and "further to improve the state of alliance  
of the contracting parties." (\* )

Article 2 of the treaty provided: - "The friends and enemies  
of either party shall be friends and enemies of both; and if any  
Power shall commit any act of unprovoked hostility or aggression  
against either of the contracting parties or against their respective  
dependants or allies and after due representation shall refuse to

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\* H.P.O. Selection No. 26 तहनाम करार वगर.

§ Ibid P. 12

(\*) H.P.O. Selection 26 Pp.40-41.

enter into amicable explanation or shall deny the just satisfaction which the contracting parties shall have required, ~~the contracting parties shall have required~~, the contracting parties will proceed to prosecute such further measures as the case shall appear to demand\*!

Article 10 recites that "by the present Treaty the contracting parties are bound in an alliance for mutual defence and protection."%

This position of a State in friendly alliance was maintained and reiterated in the supplement to the Definitive Treaty in 1817.@

Since the above treaties were entered into, the Baroda State had remained a faithful Ally of the East India Company and afterwards of the British Government and never showed a hostile or unfriendly attitude towards the said Company or the British Crown. During the troubled times of the Mutiny in 1857-58 Maharaja Khanderao rendered good help. In recognition of this, Lord Canning wrote:- " I have learnt with great satisfaction, from the reports which the Resident at Your Highness's Court has, from time to time, submitted to me, the acts by which Your Highness has shown in an unmistakable manner through out the late disturbances that Your Highness has identified your own cause with that of the British Government. On behalf of the authorities in England and myself, I thank you heartily for the proof of friendship with which you have afforded during a time of trouble"£

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\* Ibid P. 42 A.T. Vol. VIII 4th Edition Pp. 61.62.

% Ibid P. 49.

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@ Ibid P.73

£ H.P.O. File No. 341/61.

Since the above treaties were entered into, the British Government, from being only one of the several powers in India, gradually acquired a dominating supremacy over the others and the natural tendency was to regard all the States in India as being in subordinate union, irrespective of the period and the express provisions of their individual Treaty relations. This change of attitude in the relations and the policy towards the States came about in spite of the gracious proclamations of Her Majesty Queen Victoria in 1858. The Proclamation solemnly announced:- \*

"We hereby announce to the Native Princes of India that all Treaties and Engagements made with them by or under the authority of the Hon'ble East India Company are by us accepted and will be scrupulously maintained; and we look for like observance on their part. x x  
We shall respect the rights, dignities and Honour of Native Princes as our own."

Subsequent proclamations in 1877 %, in 1903 % and 1911 % were also to the same effect.

Mr. Lovat Fraser in his book on "India under Curzen and After" observes in this connection @ :-

" In one respect the attitude of the Government of - India towards Native States requires frank comment. I have shown, in this rough sketch of the position that in the case of many of the States, the rights of the British Government are to some extent determined by Treaties, which are occasionally antiquated. The development of the

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\* H.P.O. File No. 341/9

% Ibid

@ 'India under Curzen and After' By Lovat Fraser - Published by William Heine Mann 1911. P. 216

British system has rendered the provisions of some of these treaties a little irksome, and there are times when they block the completion of Government projects. New Departments arise and inaugurate new policies which pay very little regard to prescriptive rights of Native States. A growing corollary of the theory of Imperial partnership seems to be that the Government is not necessarily bound by treaties, which are considered obsolete; or, on occasion, the Government will only admit the validity of treaties with great reluctance, after after compelling Native States to fight in defence of treaty rights which ought to have been recognised without demur; or to mention another situation which sometimes arises, the Government will shelter themselves behind the letter of a clause, taking the possibly disputable opinion of their law officers as final, and will pay no regard to the manifest spirit in which the treaty was originally framed. In all such controversies, the States fight at a severe disadvantage. The growth of such an attitude on the part of Government cannot be too strongly deprecated. All treaties with Native States, unless abrogated by mutual consent should be binding on both parties, and there should be no attempt by departmental officials to evade them by indirect methods. To ministers with a policy these treaties may seem of little moment, but to the states they are sacred. At any cost, they should be upheld. The rounding off of a great scheme may seem urgently desirable and the opposition of a State may seem frivolous; but a far greater principle is really at stake, and that is the honour of Great Britain. The one guiding policy when

such issues arise is to keep faith <sup>in</sup> with the Native States at any sacrifice. x x x x "

To be more elaborate or how the new departments of the Government of India worked with regard to their new policy is this: The department formulates a policy with particular advantage to the British India under the guise of Imperial policy with scant regard to the treaties with the States, and put it into effect. With a scheme already in working condition the Native State protests with regard to its working to the detriment of interests of the States, and points out some stipulation of the antiquated treaty or engagement, by which the British Government could not unilaterally decide without the prior consultation with the States. The treaty under question then comes under interpretation. The legal opinion considers first the letter and spirit of the Treaty but at the same time takes into account its actual working with modifying usages and customs ; reads it whole and thus gives a different version, of course, mostly favourable to the British Government and thus adds to the accretion of such usages. In short the policy was not formulated taking into consideration the already existing treaties, but was fitted in it, later on, and then modified-ingx a great deal its nature. Currency questions, problems regarding Railway jurisdiction were some of the examples to that effect.

Writing particularly about the Baroda State Col. R. Wallace, in his book "The Gaekwar and his relations with the British Government" page 211, remarks as follows:-

"The habit of giving advice had induced a tone more lordly and an impatience more impatient, and an assumption more aggressive than in the days of Governor DUncan and Col.

Walker."

However, with the announcement in the House of Commons, so far as British India was concerned on the 20th August 1917\* a new change of policy was forecast which was to be more liberal and sympathetic henceforward. This was followed by the arrival of Rt. Hon'ble Mr. Montague, the Secretary of State for India for gathering first-hand information which might give concrete shape to the intended new policy. The pronouncement was that "The goal of British Rule in India was the progressive realisation of responsible self-Government in India as the integral part of the British Empire"%

On behalf of the Baroda State it was claimed that if that was the goal for British India, consistency of policy would justify an equally honourable goal for the States who have been in friendly alliance with the British Crown. Their unswerving fidelity and the loyal support they have rendered to the British Crown in times of crisis should dispel any vestige of ~~distia~~ distrust regarding them. With self governing India, the States should also rise as perfectly autonomous entities free to develop their own resources and to manage their own internal affairs and able to take their proper place befitting their old status in the confederacy of the Empire."@

This aspect of the question found due notice in the Joint Report

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\* History of India. Part III P. 323 by Nilkant Sastri.

% Ibid.

@ H.P.O. file No. 341/46

of the Right Hon'ble Mr. Montague and H.E. the Viceroy Lord Chelmsford on Indian Constitutional reforms. The following passages from this report may usefully be quoted:-

"304. Moreover we find that the position hitherto taken up by Government has been that the conditions under which some of the treaties were executed have undergone material changes and the literal fulfilment of the particular obligations which they impose has become impracticable. Practice has been based on the theory that treaties must be read as a whole, and they must be interpreted in the light of the relations established between the parties not only at the time when a particular treaty was made, but subsequently. The result is that there has grown up around the treaties a body of case law which any one who is anxious to appreciate the precise nature of existing relations must explore in Government archives and in text books. The Princes viewing the application of this case law to their individual relations with Government, are uneasy as to its ultimate effect. They fear that usage and precedent may be exercising a levelling and corroding influence upon the treaty rights of individual States.

"305 It is thus clear that some ~~ambigue~~ ambiguity and misunderstanding exist as to the exact position. The Government of India has already taken cognisance of this and is affording opportunity for the verification of any specific complaint that may be made. We do not desire to say anything that might prejudice the issue of these inquiries. In the meanwhile, however, we suggest that the time has come when it would be well to review the situation, of course only by consent of

the parties, not necessarily with a view to any change of policy but in order to simplify, standardise and codify the existing practice, for the future. Before we pass on to state our own proposals, we wish to say that we think that the princes should be assured in the fullest and freest manner that no constitutional change which may take place will impair the rights, dignities and privileges secured to them by treaties, sanads and engagements or by established practice." \*

This is a proper place to note where and how such violation of the spirit of letter of the treaties took place with regard to Baroda State, and the stand taken by the State.

Violations of Treaty, Engagements and  
the stand taken by the State.

Article 10 of the Definitive treaty of 1805 announced that "In as much as by the present Treaty the contracting parties are bound in an alliance for mutual defence and protections, Anand Rao Gaekwad, Senakhas khel Shamsher Bahadoor, engages never to commit any act of hostility or aggression against any power whatever, and in the event of difference arising, whatever adjustment the Hon'ble Company's Government weighing matters in the scale of truth and justice may, in communication with the Gaekwad Sarkar, determine, shall meet with full approbation and acquiescence."(\*)

In conformity with this stipulation the Gaekwad even though he did not commit any act of hostility or aggression, in the event

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\*H.P.O. File No. 341/46 Baroda's views on the Chapter X Pp.143-144.

(\*) H.P.O. Selection 26 Pp.49-50.

of difference of opinion in the disputes that arose, the Company's Government did not appear to have many a times, consulted his Government and obtained his consent and did not weigh, always the matters in the scale of Truth and Justice and we may casually refer the specific instances where these violations took place.

and  
Subsidiary Troops ~~to~~ the Contigent Force.

The object of the supplemental Treaty of 1817 was to provide effectually for the maintenance of the interests of the alliance in Gujarat. By this treaty the Baroda Government agreed to augment the subsidiary force to 4000 infantry and 1000 cavalry with one company of European Artillery with their proportion of gun lascars with the necessary ord<sup>er</sup> and war like stores and ammunition. In ordinary times, this force was to perform certain stipulated services in the State and in time of emergency with the exception of a reserve sufficient<sup>\*</sup> for the Security of Gujarat" the whole of it was available for operations in India against any common enemy. For the regular payment of this force districts then yielding a net revenue of Rs. 24,31,969 % were ceded to the British Government. Besides the subsidiary force, the whole military resources of the State were also to be at the disposal of the British Government in times of emergency. This was sufficiently exemplified during the 1914 World War. A contingent of 3000 Baroda Horse was to be at the disposal of the British Government when the subsidiary troops took the field. @ But problems regarding these forces were arbitrarily decided by the British Government without heeding to the Gaekwad's Full internal sovereignty guaranteed. interests

These treaties were deemed to recognise the full internal sovereignty of the State and in all matters not covered by the

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\* H.P.O. Selection 26 Art. 2 on Page 76 % Wallace P. 237  
@ Gazetteers of the Baroda St. Vol. I. P. 643.

treaties, ~~the treaties~~ the residuary powers of sovereignty was supposed to be vested in the State. This position was explained in the following extract from a letter dated the 16th March 1816. from the Government of India to the Government of Bombay.

"7. With reference to the observation that our connection with the Baroda State is of a peculiar character and entirely different from any of the alliances subsisting with other Native powers. I am directed to observe it is the existence of the Bhandary alone that constitutes that difference. The Treaty itself which must be received as the interpreter of relations between the two States, is framed on the model of the Treaty of Hyderabad and if the obligation of the Bhandary were to cease, our connection with the Gaekwad would not differ in principle from our subsidiary alliance with the Nizam or the Peshwa." \*

Again on the occasion of the transfer to His Highness Maharaja Sayajirao II of the administration of the State which was being carried on under the supervision of the British Government owing to the infirmities of the previous Ruler the Governor of Bombay, in his letter dated 3rd April 1820 stated : "With regard to internal affairs , Your Highness is to be unrestrained provided you fulfil your engagements to the bankers of which the British Government is guarantee. % The proviso related to circumstances of a temporary nature which ceased to exist soon after the date of

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\* H.P.O. From a reply to the States Committee P. 2.

% Wallace P. 293.

the above letter; but the Bhandary <sup>or</sup> ~~and~~ the guarantee system did not end with them.

**Baroda's Distinctive Treaty Rights.**

The Baroda Government urged that their position of complete internal autonomy with liberty to develop the resources of the State to the fullest extent should be maintained by a strict adherence to the letter and spirit of the treaties. "In adjusting the future relations of the Indian States with the Government of British India, in light of Indian Constitutional reforms, it must be recognised that," the Darbar stated, "the history and circumstances of the States are not similar. Each state was brought into relationship with the British Government separately at different times and under dissimilar circumstances and each is entitled to the rights which its treaties guarantee to it." In 1854 in connection with the question of adoption of heirs by Indian States, Sir Charles Wood, then President of the Board of Control divided the Indian States in relationship with the East India Company into three classes. He observed:-

"To prevent mistakes I shall tell you how I distinguish them.

"Firstly, States which have from time antecedent to our rule been independent or quasi independent, not tributary or owing more than nominal allegiance to any superior.

"Secondly, states dating from a similar period, but owing their origin distinctly to a grant from some authority to which we have succeeded and tributary.

"Thirdly, states owing their origin to our grant or gift.

"In the first class, I apprehend that an adoption properly

ought, as a matter of course, to be recognised. In the second, we may or may not recognise it as we choose, recognition being the general practice. In the third, if heirs fail, according to the terms of our grant we annex." \*

Baroda, it was maintained, was one of the States coming under the first category which had been independent " from a time antecedent to our rule", and hence demanded that its treaties should be scrupulously adhered to. The tendency to consider them antiquated and obsolete and then taking shelter under the body of case-law opposed to these spirit was unwarranted and unjustified. In support of this stand of the Baroda Government a quotation of the Marquis of Hastings who entered into the majority of treaties with the Indian Princes from his private Journal dated the 15th September 1813 may be given:-

"A treaty plighted the public faith of the nation, so that it must be my duty to maintain its terms according to their true spirit which ought always to be construed most favourably for the party whose sole dependence was on the honour of the other." %

The same view was expressed with greater emphasis by Lord Auckland, in a minute dated the 2nd January 1842:- @

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\* H.P.O. from a "Reply to the States Committee" P.3  
% Ibid P.4.

"I cannot for a moment, admit the doctrine that because the view of the policy upon which we may have formed engagements with Native Princes may have been by circumstances materially altered, we are not to act scrupulously upto the terms and spirit of these engagements."

But inspite of these good intentions on the paper the actual good intentions story <sup>was</sup> ~~is~~ quite different, and the Baroda Government expressed their strong faith that no obligations should be imposed, as arising from usage and sufferance and other causes unless:-

- " (a) Such obligations are consonant with the spirits of the treaties and engagements, and
- (b) The usage has been adopted with the full and explicit consent of the state. "\*

Important rights of the State had in the past been decided on political usages not strictly in accordance with the inherent rights of the State. The following examples may be given.

- (1) Construction of Railways.
- (2) Posts.
- (3) Telegraphs.
- (4) Cantonment Jurisdiction.
- (5) Jurisdiction over Foreigners.
- (6) Jurisdiction over Railways.
- (7) Extradition. \*

Arrangements introduced during the Minority Administration.

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\* H.P.O. Ibid - P.5.

In their Proclamation \* dated the 19th April 1875, the Government of India declared:-

" In conferring the sovereignty of the Baroda State no alteration will be made in the Treaty engagements which exist between the British Government and the Gaekwads of Baroda, and the new Gaekwad will enjoy all the privileges and advantages which were conveyed to the Gaekwad of Baroda in the Sunnud of ~~Earl~~ Earl Canning, dated the 11th March 1862."

But during the minority of Sayajirao III the State's rights were reduced in the following matters:-

- (1) The right of the State to regulate the strength of its military and Police forces was restricted.
- (2) The right of the State to manufacture arms and ammunition required for its administrative needs or to obtain them from such sources as appeared suitable to the State authorities was curtailed.
- (3) The contingent of State cavalry maintained under Article 8 of the Treaty of 1817 was disbanded, and an annual payment of 3½ lakhs of rupees substituted in lieu thereof.
- (4) The right of the State to open ports and manufacture and excise salt in Gujrat portion of its territory was vetoed.
- (5) The right of the State to export salt produced in its territories to other ports in India was refused recognition.

Temporary arrangements continued after their justification disappeared.

Another manner in which the rights of the State suffered was by the continuance after their raison d'être had disappeared or arrangements initiated to meet circumstances of a special/<sup>or</sup>temporary character. The questions of the relations between Baroda and the tributary States furnished an instance in point. The arrangement made in 1820 was temporary in nature - based on the disturbed State of the Country at the time - but had been continued after the specific circumstances under which it had its origin ceased to exist.

In these circumstances the Baroda Government submitted as a remedy to the ills over and above faithful adherence to the treaty engagements, irrespective of usages that ~~go~~<sup>went</sup> against them, the strengthening of the department advising the viceroy on political matters, and secondly reference to arbitration, in cases of disputes, to the extent of Judicial Committee of the Privy Council.

At this stage it will be proper for us to examine how far Baroda's stand that the relationship between them and the British Government should be based on a faithful adherence to the Treaties and engagements, without reference to subsequent developments which might affect their provision materially.

#### Definitive Treaty of 1805 and its supplement of 1817.

Now this treaty made a very curious reading nearly after more than hundred years of its signing. All that we could say was that since there appear<sup>ed</sup> to have been no later treaties with Baroda State ~~that~~ relation of the State de facto with the British Government which had declared itself to be the ~~Exe~~ Paramount Power

could not be said to rest after a century upon treaty at all. For these early treaties <sup>were</sup> plainly as noted above, inter pares. It did not appear ~~that~~ anywhere in them that we could discover, any suggestion that Baroda was being dealt with as a feudatory by an overlord. All the terms <sup>were</sup> ~~was~~ agreed to, as between equals. There were faint indications as for instance, where Baroda bound itself not to make any way of aggression, that it was to some extent under the control of the East India Company, but such indications if they deserved the name, could not change, hardly modify, the character of these treaties as a whole. Nevertheless it was certain that in the intervening years, and probably by reason of the Crown taking over the Government of India, from the Company in 1858, these treaties had fallen entirely into desuetude and, therefore, must be regarded, except of course, as regards territorial exchanges and distributions as virtually obsolete. What surprised one was that they did not seem to have been replaced and Baroda was therefore in the 20th century without any treaty right, at all in many particulars. It was really extraordinary. It was, however, equally clear that in the events that had happened, as lawyers said, Baroda could not reasonably claim on this ground to be an independent sovereign power in friendly alliance with the British Government and in no other respect subordinate to it. For example, Baroda would not, we know it for certain, claim to be able to make independent treaties and alliances with European <sup>States</sup> or America or any other foreign powers. At the same time it is quite certain that were Baroda unwise enough to put forward any such claim, it would not have been favourably entertained by the Paramount Power i.e. the British Government. The plain truth was then that the

position of Baroda was a little bit anomalous. At most every thing in the nature of constitutional law in India, we could dare say, was more or less anomalous, because there was no parallel to be found any where to the position of the British in India. Since the British Crown took over the Government of this vast sub continent in 1858, One thing however was pretty certain that no State in India, however important could on the ground that its only treaties represented it as being in friendly alliance with the East India Company claimed so complete independence of the supreme power as to make war on the neighbouring State or any part of the British territory. This is merely to take extreme case to indicate the difficulty if not the impossibility of extracting anything like a logical constitutional relation between Baroda and the ~~Pr~~ Paramount Power from these ancient treaties. One could positively say that there were terms in these treaties which Baroda, after a century would not care to have enforced. However that may be, we have to deal with the facts as they are. The general profession as expressed from time to time of the Government of India that it desired as far as possible, to maintain and abide by all treaties made with the protected Indian States, appeared to be quite sincere, but it had to be taken subject to actual conditions and mutatis mutandis. There could be no doubts that these old treaties would have at least given Baroda the strongest claims to be granted the largest and completest internal autonomy. But to a certain extent it had long ~~engaged~~ <sup>enjoyed</sup> it. It grew more sensitive only upon the extent to which the Paramount Power claimed to supervise, control successions, investitures and such other subjects. But if the State meant to approach the discussion of any such

questions upon the basis that by its treaties it was absolutely independent of the British Crown, it might make a mistake and land itself into an awkward position. Every chief of any note in India had over and over again professed his loyalty to, and rendered homage to the King-Emperor or the Queen-Empress of Britain and gave as convincing proofs, e.g. during the War of 1914, of the sincerity of such professions. Surely, that was utterly inconsistent with any claim to be in no way subordinate to or dependent upon, except as an ally and an equal, upon the British Crown. And that was why, wherever and whenever Baroda tried to ~~take~~ talk from equal platform it had to make a retreat or lose a cause or a right.

However, this absence of any definite constitutional relationship between the British Government and the Governments of the Indian Native States, helped Indian Government in 1947 when India achieved independence, to solve the States issue without much serious handicap and thus smoothened their effacement from the Indian map.