Development of Modern International Law and India
Development of Modern International Law and India
Studien zur Geschichte des Völkerrechts

Herausgegeben von
Armin von Bogdandy
Max-Planck-Institut für ausländisches öffentliches Recht und Völkerrecht, Heidelberg
Michael Stolleis
Max-Planck-Institut für europäische Rechtsgeschichte
Frankfurt am Main
Wolfgang Graf Vitzthum
Juristische Fakultät der Eberhard Karls Universität Tübingen

Band 9
Table of Contents

Preface ................................................................. IX

I. Introduction
   Origin of International Law ........................................ 1
   International Law in Historical Perspective ..................... 3

II. India: A "Land of Desire"
   India: A "Land of Desire" and Known since Time Immemorial .......................... 6
   Europe-Asia Trade during Fourteenth and Fifteenth Centuries ......................... 7
   Search for India Intensified ...................................... 9
   Introduction of Ships Armed with Cannons in the Indian Ocean ......................... 12
   Portuguese Seek to Control Navigation in the Indian Ocean ........................... 13
   Decline of the Portuguese Empire ................................ 17
   The Dutch Arrive in the Indian Ocean ................................ 18
   Grotius' Mare Liberum .............................................. 20
   Dutch attempts to Create Monopoly of Spice Trade ................................. 22
   English Enter the F ray ......................................... 23
   French and Danish in the East ..................................... 25

III. Divided India Attracts Foreign Invasions
   India: A Divided Subcontinent ................................ 27
   Rules of Inter-State Conduct in Hindu India ...................... 29
   India on the Eve of Muslim Contact ................................ 30
   Muslim Invasions of India ........................................ 31
   Muslim Rulers from Abroad Get Absorbed in India ................. 32
   Weak Rulers Encourage More Invaders ................................ 33
   South India and Islam .............................................. 34
   Mughal Empire in India ............................................. 35
   Economic and Industrial Condition of India during Mughal Times ...................... 38
   Rules of Inter-State Conduct during the Mughal Period ......................... 39
   Disintegration of the Mughal Empire ................................ 40
   Yet Another Attack from North-west ................................ 41

IV. European Struggle for a Share in the Pie
   Power Struggle Continues ...................................... 43
   Fight for Empire .................................................. 44

V. European Domination and Development of International Law or Rulers' Law
   Commercial and Industrial Revolutions in Europe ............................. 62
   Europeans Claim Natural Right to Rule over Asians .............................. 64
   International Law of the European States ................................ 65
   Phenomenal Growth of Modern International Law ................................. 69
   Family of "Civilized" States ....................................... 70
   Standard of "Civilization" in International Law ............................... 73
   Capitulations in India and the East Indies .................................. 74

VI. India: Towards Recovery
   Unrest in Europe .................................................. 76
   India and the Paris Peace Conference ................................ 77
   India's Anomalous Position under International Law ............................ 78
   Demand for Self-governing Status .................................... 84
   Failure of the League of Nations .................................... 87
   Second World War and Freedom Movement in India ............................. 87
   Independent India and Princely States ................................ 90
   India and the Making of the UN Charter ................................ 94
   London Conference .................................................. 96
   San Francisco Conference .......................................... 97

VII. India Joins the Family of "Civilized" Nations
    Post-World War Society: A New World ................................ 99
    Independent India and its Perception ................................ 101
    Nehru Calls Asian Relations Conference ................................ 103
    Liberation of Goa .................................................. 104
    Racialism Decried .................................................. 107
    India Accepted and followed International Law Rules .......................... 108
    Nehru Pleads for Peace and Condemns Nuclear Weapons and Tests .......... 109
    Power Blocs and India's Policy of Non-alignment ............................. 110
    Nehru Opposed to Military Alliances ................................ 112
Table of Contents

Principles of Peaceful Co-existence or *Panch Sheel* ............... 113
In Support of the United Nations ........................................ 113
India’s Policy on Recognition of States and Governments ............. 114
Nehru Supports Communist China’s Recognition and
Representation in the United Nations ...................................... 115
Reference of Kashmir Dispute to the United Nations ..................... 116
India Acts as a Bridge between the Power Blocks
in the United Nations ....................................................... 118
“Group of 77” in the United Nations ..................................... 118

VIII. Summation

Sea-Route to India and Competition for Trade with the East Indies .... 121
Rules of Inter-State Conduct in India .................................... 122
India: A Divided Subcontinent ............................................ 123
India Becomes a British Colony ........................................... 124
World Wars, Establishment of International Organizations
and India ........................................................................... 126
India in the United Nations .................................................. 128

Selected Bibliography ........................................................... 131
Index ................................................................................... 139
Preface

This study is part of my on-going project on the History of International Law from an Asian perspective. With the exception of the pioneering work of Professor Charles Henry Alexandrowicz, *An Introduction to the History of the Law of Nations in the East Indies: 16th, 17th and 18th Centuries* (Clarendon Press, 1967), his lectures at the Hague Academy of International Law in 1960 and 1968, and some studies made under his supervision and published under his sponsorship in India more than thirty years ago, the subject has been largely ignored so far. Although the present attitude of the so-called ‘new’ states, or states which attained independence after the Second World War, towards contemporary international law, which is still presumed to be merely a product of the Western European Christian civilization, cannot be clearly understood or appreciated without looking at their colonial past, few scholars have cared to pay much attention to it. While the Asian countries have been justly proud of their ancient civilizations and several Asian scholars have written monographs and books about the rules of inter-state conduct in ancient times, which were quite similar to the tenets of modern international law, there is little doubt that much of the present system of international law emerged only during the nineteenth century and later in response to the needs and practices of the European countries after the industrial revolution. Most of the Asian and African countries played no part in the formulation and development of this law simply because they had been colonized and were merely ‘objects’ of international law. But what was the law which applied between Asian states and European companies, or representatives of European countries, when they went to Asia for their own reasons to trade with the Asians? During the course of three centuries and more after they arrived in the fifteenth century in India, before the present system of international law emerged, Europeans developed quite extensive and intimate commercial relations with independent Asian countries, signed treaties, fought wars, and concluded peace.


2 Professor Alexandrowicz started an Indian Yearbook of International Affairs after he joined Madras University as a Professor of International Law in 1950’s and published several papers, written by him, his students, and some other scholars on the history of international law in India. The Yearbook is still being published by Madras University in India.

Western, especially European, writers have no doubt that modern international law is no more than four or five hundred years old and is a product of the European or western Christian civilization. Legal speculation as well as the growth of customary and conventional law in this field, we are told, are the product of “European mind” and “European beliefs” and “wholly the outcome of or … dominated by Western European influence.” Practically all the European writers endorse or support this view. Thus, in one of the most authoritative and leading international law treatise in the twentieth century, Oppenheim’s *International Law*, it is stated:

“International law as a law between sovereign and equal states based on the common consent of these states is a product of the modern Christian civilization.”

“The necessity of a Law of Nations did not arise until a multitude of states independent of one another had successfully established themselves.”

“The seventeenth century found a multitude of independent states established and crowded on the comparatively small continent of Europe. Many interests and aims knitted these states together into a community of states. International lawlessness was henceforth an impossibility … Since a Law of Nations was now a necessity, since many such principles of such a law were already more or less recognised and appeared again among the doctrines of Grotius, since the system of Grotius supplied a legal basis to most of those international relations which were at the time considered as wanting such basis, the book of Grotius obtained such a worldwide influence that he is correctly styled as the ‘Father of Law of Nations’. ”

Even the latest ninth edition of Oppenheim’s *International Law*, published in 1997, confirms this opinion but adds some later developments. Asserting that international law now “does not recognize any distinction in the membership of the international community based on religious, geographical or cultural differences”, it points out:

“Nevertheless, the predominant strain of modern international law was in its origins largely a product of Western European Christian civilization during the 16th and 17th centuries. The old Christian states of Western Europe constituted the original international community within which international law grew up gradually through custom and treaty. Whenever a new Christian state made its appearance in Europe, it was received into the existing European community of states. But, during its formative period, this international law was confined to those states. In
former times European states had only very limited intercourse with states outside Europe, and even that was not always regarded as being governed by the same rules of international conduct as prevailed between European states.10

But gradually, Oppenheim goes on to record, the international community expanded by the inclusion of Christian states outside Europe, like the United States of America, which became independent in 1776, and in the nineteenth century, by inclusion of non-Christian states, like Turkey, which was admitted as a member of the international community by Peace Treaty of Paris of 1856. However, “there were numerous states outside the international community” and “international law was not as such regarded as containing rules concerning relations with such states, although it was accepted that those relations should be regulated by the principles of morality.”11

As late as the First World War, we are told, “the position of such states as Persia, Siam, China, Abyssinia, and the like, was to some extent anomalous.” There was considerable international intercourse between these states and states of the Western civilization – treaties had been concluded, full diplomatic relations had been established, China, Japan, Persia and Siam had even taken part in the Hague Peace Conferences. But since they belonged to “ancient but different civilizations there was a question how far relations with their governments could usefully be based upon the rules of international law.”12

International Law in Historical Perspective

As we approach international law from historical perspective, especially in the context of the role of Asian and African countries in its origin and development, there are several questions which have been raised, but which have not been satisfactorily answered. If present system of international law is indeed only four or five hundred years old, what kind of rules of inter-state conduct applied in their intercourse among the Asian states themselves for centuries? These relations could not be based entirely on religious precepts or moral principles because these Asian states, which had very intimate trade, commercial and even political relations, belonged to different religions and different societies. Even more important, what law applied to the intercourse between Asian states and European countries, with which they had had trade and commercial relations since time immemorial? It is just not possible to either ignore those relations or be told that they were held in a legal vacuum without any rules of conduct. Even if we ignore rules of inter-state conduct in ancient times in old countries, like India and China, because during those times each civilization developed its own legal system and there was very little contact between different civilizations, this is not true during the medieval period. From fifteenth century onwards, the Europeans went to Asian countries for their own needs and developed not only trade and commercial relations, but very intimate political relations as well with these independent Asian communities. What rules of inter-state conduct applied between these European countries and Asian states? Without some rules of international law, Europeans could not have survived in Asian countries. And if some rules of international law and comity did apply between them and their relations, did these rules have any influence whatsoever on the emerging international law among European countries during that period?

It is hardly controversial that one of the primary driving forces of colonial expansion was trade. It is also well-known that historically much of the trade had been conducted by trading companies such as the British East India Company, Dutch East India Company, French India Company and so on. The characteristics and functions of such companies were clearly summarized by M.F. Lindley:

“Formed in most cases, at all events from the point of view of the shareholders, for the purpose of earning dividends, these corporations have proved to be the instruments by which enormous areas have been brought under the dominion of the states under whose auspices they were created, and in this way they have been utilized by all the important colonizing powers. The special field of their operations has been territory which the state creating them was not at the time prepared to administer directly, but which offered good prospects from the point of view of trade or industrial exploitation.”13

Law was formed to give trading companies some measure of legal personality by characterizing them as extensions of the Crown by virtue of royal charter. These trading companies were capable of asserting sovereign rights over non-European peoples and their charters granted them not merely right to trade in particular areas, but the right to make peace and war and even the power to coin money. The control of territories by companies that were established for the explicit purpose of making money, meant therefore that the territories were administered simply for profit. It is not surprising that governance for money and profit resulted many a time in excesses that led to wars in the host countries. During the nineteenth century European countries assumed direct responsibility for colonial territories. Thus, the British East India Company was dissolved, as we shall see, and British Parliament took direct control over India in 1858.14

11 ibid, p. 88.
12 Oppenheim’s International Law, ibid, p. 89.
Introduction

It is all too well-known, as we shall see in detail in the following pages, that after a few centuries of their relations with the Asians, the Europeans, especially England in the first instance, became the dominant power, defeated all the other powers in India, and made it a part of the British Empire in the middle of the nineteenth century. But this took, it is important to note, not a few years, a few decades or even a few generations. It took more than three centuries for England to defeat and subdue Indian rulers. But once India was under their control, England extended its empire even further in other Asian and later African countries. After British victory, other European countries started acquiring colonies in Asia. New relations developed now among European countries and Asian states, most of which had become colonies of European powers. What happened to international law which earlier applied between Asian countries and Europe, or which had emerged and was developing among the European countries?

Most of the European international lawyers talk about the development of international law during this period and later without any reference to Asian states or their role in the development of what is called modern international law. They insist that it is a product exclusively of the European Christian civilization without any reference to Asia or Africa. We shall try to look at this history from an Asian perspective with special reference to the relations between Europe and India. As we shall see, the present system of international law largely developed in the context of European countries’ needs and demands and struggle to have trade and commercial relations with India and other Asian countries. International law clearly and surely applied in their relations in the beginning. But once British and other European powers defeated Indian rulers and other Asian countries, they ignored their own international law principles under one pretext or another and there was no one to question this Victor’s Justice until Europe’s authority came to be challenged by extra-European countries after the Second World War.

There are a few more questions which need answers. When did European international law become universally binding? Can states which did not, or could not, participate in its origin and development, question some of its rules which are inimical to their interests or very survival? How can and does this law change, or be modified, in the absence of any supra-national legislature or other authority? Has the present system of international law, which was nothing but European law writ large until the Second world War, changed or is changing from the European law of nations to a common law of mankind?

II

India: “A Land of Desire”

India: A “Land of Desire” and Known since Time Immemorial

When Europeans arrived in India by sea route for the first time in the late fifteenth century on May 27, 1498, they did not come to an unknown, ‘uncivilized’, no-man’s land. India had not only been known for centuries to Europe, but European countries had had trade relations with several Indian states for a long long time. According to some historians, the commerce between India and Babylon must have been carried on as early as 3000 B.C. Apart from land routes, one of the most important and well-known trade routes joining India and the West was that which ran from India to the Red Sea up the Arabian coast. It linked India not only with the gold fields and rich incense country of southern Arabia, but with Egypt and Judea. From Judea, Indian goods found their way to the Mediterranean through the adjacent ports of Tyre and Sidon. There is said to be convincing evidence of maritime trade existing in 600 B.C. between ports of Gujarat in India and Babylon. The regularity of monsoon winds in the Indian Ocean as a reliable and pleasant source of power came to be known to Indian and Arabs from time immemorial. The north-east monsoons, used properly by mariners, who understood the art of sailing, simplified voyages up and down the coast of Arabia, up the Persian Gulf and as far as the mouth of the Red Sea. The same monsoons enabled voyages to be made with large ships from the Indian coasts to Burma, Malaya and all the East Indies. Beyond these, other good and seasonal winds could be used to go to Indo-China, the Philippines, and China. Indian ships voyaged regularly to the Burmese coast and the Malay Peninsula and Indonesia to the East and to Persia and Socotra in the West. R. Swell, the famous authority on the early history of South India, records:

"The Andhra period seems to have been one of considerable prosperity. There was trade, both over land and by sea with Western Asia, Greece, Rome and Egypt, as well as with China and the East. Embassies are said to be sent from India to Rome. Indian elephants were used for Syrian warfare ... Roman coins have been found in profusion in the Peninsula, and especially in the South. In A.D. 68 a number of..."
The Roman conquest of Egypt (in 30 B.C.) gave new impetus to direct maritime relations with India and led to the first Indian embassies sent to Rome. After Augustus became Emperor of Rome, several embassies from various Indian states visited Rome “frequently”. Augustus built new and especially large ships for the Indian spice trade which he is said to have financed with the best gold and silver currency available, inaugurating a direct service between Egypt and India.

Known to Europe from the earliest days of history, the fabled land of India had always excited the imagination of the West. Throughout history “it has ever been a fateful magnet, drawing to it mariner and explorer, soldier, and adventurer”. Strabo, the great Roman geographer, without knowing much about India, called it “the greatest of all nations and the happiest in its lot”. It was indeed, we are told, “the dream of every age and land since the days of Solomon and Semiramis”, a country the lure of which changed to a great extent the course of history. As Hegel said:

“India as a land of Desire formed an essential element in general history. From the most ancient times downwards, all nations have directed their wishes and longings to gaining access to the treasures of this land of marvels, the most costly which the earth presents, treasures of nature – pearls, diamonds, perfumes, rose essences, lions, elephants, etc. – as also treasures of wisdom. The way by which these treasures have passed to the West has at all times been a matter of world historical importance bound up with the fate of nations.”

Europe-Asia Trade during Fourteenth and Fifteenth Centuries

Although flourishing trade had developed between Roman Empire and the states of South India since first century A.D., and the Roman ships based in Egypt regularly visited Indian ports, during the so-called “dark ages” of Europe the contacts were neither so regular nor so intimate. But India still continued to excite the imagination of Europe. After the early Crusades Europe’s interest in Asia increased even more and during the thirteenth century several European travelers, Marco Polo, Friar Odoric and Monte Carvino, to mention only a few, visited India and other parts of Asia. But ever since 1187, when Saladin recaptured Jerusalem from the Crusaders, Islam based in Egypt had been organized as an extremely powerful barrier between Asia and Europe. The victory of Saladin established Muslim predominance in the vital area of the Syrian and Egyptian coasts and even after 200 years of effort by the unified forces of Christendom, Egypt and the vital coast line remained firmly in Muslim hands. The Turkish conquest of Constantinople in 1453 finally resulted in the blockade of commercial traffic between Europe and India.

But even after Arabs shut off all access to the Indian Ocean for the Europeans, Asian goods were greatly in demand and Europe continued to supply herself for some time from the markets of Asia through the caravan routes of the Levant. But even this had become ever more difficult in the fourteenth and the fifteenth centuries because of religious wars between the Muslims and the Christians. Aromatic spices from India and the East Indies had been and were in greatest demand and yielded the largest profits to merchants and could come only from the Indian ports across the territories controlled by the Muslim rulers. The spice trade with the East was one of the great motivating factors of history. Pepper may seem insignificant today, but we are told that “in that age it ranked with the precious stones. Men risked the perils of the deep and fought and died for pepper.” Giving the rationale for this situation, Professor G.F. Hudson, in his learned study on Europe and China, explained:

“Spices which became more and more essential for European cookery could not be obtained except from India and Indonesia and most came through Persia and Egypt; this indispensable and naturally monopolistic trade came to be the chief bone of contention in the politics of the Levant and was the most powerful single factor in stimulating European expansion in the fifteenth century. The Tatar ascendancy in Persia, before the conversion of the Ilkhanate to Islam, allowed Italian traders to go direct to India and cut prices against the Egyptians, who were wont to raise them 300 per cent as middlemen between India and Europe; as a result Europeans knew where spices were produced and at what cost, so that when they were again cut off from the Indian market by a hostile Islam and by incessant wars in the Levant, they were well aware of the opportunities awaiting any power that could find a new route to the ‘Indies where the spices grow’.”

It is also important to note that in the fourteenth and fifteenth centuries, Arabs were the great intermediaries of trade between Europe and India. Spice trade of...
the Malabar coast of India had been more or less monopolized by the Arabs and they had a number of colonies in Calicut, Cochin, Quilon and other parts on the western Coast of India. From the marts of the Red Sea coast, the Venetians who had the control of the Mediterranean, carried the goods to markets in the West. Due to their skillful diplomacy, adventurous spirit and far-sighted policy, the Venetians had for a long time established a strong influence in Egypt and other Muslim areas in the Levant and had become monopolistic agents of Eastern trade in Europe. As a result Venice had emerged as the greatest emporium of Eastern trade in Europe and subject of strong rivalry and conflicts with Genoa. The continued preponderance of their hated rivals in this most profitable of all trades was the main reason for the Genoese to try to break out from the Mediterranean. With their sight fixed on India, an all-sea route to India seemed to Genoa to be the only answer to Islam’s power and Venice’s monopoly.

Search for India Intensified

Unable to find a sea route to India on their own, Genoese entered the service of Spain and Portugal, the two Iberian nations, which, besides their interest in spice trade, had a real crusading spirit still alive to fight the Muslims. Having fought endless wars with the Muslims (‘Moors’ as they called them) from tenth to the thirteenth century, fight against Islam was considered as a religious duty and patriotic necessity. Finding a sea route to India and taking Christendom directly to the Indian Ocean came to be adopted by the Portuguese King, Prince Henry the Navigator (1394–1460), as part of the grand strategy to turn the tide of Islam. Although religion was important, the immediate objective was, of course, the spice trade and to capture at least a part of the wealth that was pouring into the coffers of Venice as well as the Muslim treasuries. This combination of greed and godliness – lust for riches and passion for God – drove the Portuguese and the Spanish relentlessly into the torrid, fever-ridden seas that lapped the coast of tropical Africa and beyond. The idea of reaching India became almost an ‘obsession’ for the Portuguese king, Dom Henry, and with all the resources at his disposal, he collected around him the best mathematicians, cartographers, astronomers and even Moorish prisoners with knowledge of distant lands, and devoted himself to the study of maritime navigation. He improved ship building and built galleons capable of carrying cannons and he sent out expeditions that were to systematically explore the African coast. Portuguese even persuaded Pope Nicholas V to issue a Bull granting them title to the territories they were discovering up to India. The Bull, which was of fundamental importance and supposed to be binding on all the Christians at that time, declared:

“We ... have by our apostolic letters conceded to King Alfonso, the right, total and absolute, to invade and conquer and subject all the countries which are under rule of the enemies of Christ, Saracen or Pagan, by our apostolic letter we wish the same King Alfonso, the Prince, all their successors, occupy and possess in exclusive right the said islands, ports and seas under-mentioned, and all faithful Christians are prohibited without the permission of the said Alfonso and his successors to encroach on their sovereignty. Of the conquests already made, or to be made, all the conquest which extend to Cape Bajador and Cape Non to the coast of Guinea and all the Orient is perpetually and for the future the sovereignty of King Alfonso.”

On March 13, 1456, Pope Calixtus III promulgated a second Bull confirming the grant of Pope Nicholas V. This was supposed to be “an absolute and incontestable legal title” in fifteenth century Europe. When Columbus returned from his historic voyage to America, on behalf of the Spanish Crown, with the conviction that he had reached India or the Indies, the Spanish Court feared Portuguese counterclaims. Equally eager to reach India first for which they had been earnestly trying, Spain pressed Pope Alexander VI for recognition of its sovereignty over the new continent. On May 4, 1493, the Pope divided the world between Spain and Portugal and defined a line of demarcation running 100 leagues west of the Azores and Cape Verde Islands and granted to Spain all lands west of it, and to Portugal all lands of its east. He thus gave Spain the right and jurisdiction over Pacific Ocean and the Gulf of Mexico and made Portugal the lord of the Atlantic south of Morocco and the Indian Ocean. The two Iberian powers later sought to fortify their legal titles by concluding the Treaty of Tordesillas on June 7, 1494, by which they fixed a line 370 leagues west of Cape Verde Islands as the demarcation of their respective zones. The treaty was confirmed and blessed by Pope Alexander VI and thus became the final line of division of the “unknown” and unexplored world for the discoveries of the two Iberian states.

In the meantime, the naval expeditions started by Prince Henry continued unabated although he died long before his well-laid plans could come to fruition. Ultimately, after seventy-five years of intense efforts, a 200-year old dream of the Portuguese was fulfilled when Vasco de Gama, the celebrated Portuguese Naval Commander, reached at the Port of Calicut on the southwest coast of India on May 27, 1498. Thus Portugal was able to break through the Venetian monopoly and Muslim blockade by rounding the Cape of Good Hope. In the process,
Europeans also reached the Pacific across the American continent and discovered an entirely new world.  

After a long and arduous journey, in which his brother died, when Vasco da Gama reached Lisbon on August 20, 1499, it was indeed a great achievement. Whether or not his feats were as great as those of Columbus or Magellan, life in the world of Europe or Asia was never to be the same again. Not only was da Gama received as a great national hero and numerous honours and titles conferred on him, but King Manuel assumed for himself the title of “Lord of Guinea and of the Conquests, Navigation and Commerce of Ethiopia, Arabia, Persia and India.”

From the commercial point of view also, da Gama’s voyage was a great success. Despite all the losses that the expedition suffered, even the little cargo that they brought was worth 60 times the cost of expedition. King Manuel lost no time in following up the opportunity offered him by opening up the sea road to the Indies. A new expedition, with thirteen vessels, was prepared with Pedro Alvarez Cabral as Commander. After an eventful voyage in which chance led him to the coast of Brazil, which was thus “discovered and taken possession of” by the Portuguese, Cabral reached India with only six ships on September 13, 1500.

Although da Gama was considered as a great hero in Portugal having found the sea route to India, “he had left everywhere resentment and hatred, both on the coasts of Africa and in India”, because of “his arrogance and ruthlessness, his unbridled temper, and his ignoring of the truth when lies seemed better to serve his purpose”. But if da Gama lacked shrewdness, tact and patience, the Portuguese King could not have selected a worse officer as his successor. Unable to compete with the Arabs, who had been trading peacefully in the Indian Ocean for centuries and had several colonies on the Indian coast, he indulged in piracy in the Indian Ocean and attacked and seized Moorish ships loaded with spices for the Red Sea route to Europe. This unwarranted aggression caused anger and consternation among the people of India who for centuries had been accustomed to complete security of property and person.

—

36 See Hart, n. 21, p. 201.
37 Lindsay, n. 23, p. 23.
38 Hart, n. 21, p. 211.
39 Hart, ibid. p. 201.
42 Panikkar, n. 24, p. 29.

Introduction of Ships Armed with Cannons in the Indian Ocean

It is important to note that the arrival of the Portuguese with their warships introduced another revolutionary factor in the Indian Ocean, viz. ships carrying guns. This was entirely new in the Indian seas and totally unexpected and gave an immediate and decisive advantage to the Portuguese over the Indian opponents. Before they arrived the Indian Ocean had never been the theatre of very serious naval conflicts. No doubt piracy had always taken place in some areas though it was always considered as a crime. Whenever a strong kingdom emerged, it suppressed piracy. But the Asians were generally land powers and never cared to have big navies. Nor had they “any knowledge of naval warfare as a science” and could never “understand that a mere mob of ships without organization or power to maneuver as a fleet is not a certain instrument of victory.”

The only non-European power which developed warships and gunnery on the sea was the Ottoman Empire. But when the Portuguese arrived in Calicut the Turks had no navy in the Indian Ocean. By the time the Sultan realized the menace, Portugal had not only gained a foothold but was able to reinforce its navy which the Turk, with his naval power concentrated in the Levant, was unable to do.

It is also pertinent to point out that the period of Hindu supremacy in the Indian Ocean was one of complete freedom of trade and navigation. Even the Arabs and Muslim traders of the coast of Gujarat, who followed them, never attempted at any time to exercise naval control. In fact Arab navigation, like Indian Hindu or Muslim navigation, was never the outcome of any state policy, but was developed by traders through the centuries. Fortunately for the Portuguese at the time of their appearance in Asian waters, there was no armed shipping in the Indian Ocean. Neither the Malabar rulers, nor the empires of Vijayanagar, Persia and Egypt had any armed ships. Even the wealthy entrepôts of Hormuz and Malacca, whose prosperity entirely depended upon their sea borne trade, possessed no ocean-going warships. The Arab, Gujarat, and other Muslim-controlled shipping which dominated the trade of the Indian Ocean, consisted of large ocean-going vessels, as well as small coastal ships. But even the largest ones were not provided with artillery, and no iron was used in their hull construction. They were, therefore, much frailer than the Portuguese carracks and galleons which they had to encounter.

Indian powers, accustomed to look only to dangers from land forces coming from the north-west, did not realize the menace to their security implied by a few Portuguese ships which had reached the Malabar coast in the south. This was the end of India’s political isolation from Europe. So far India’s encounter with
outside peoples was confined to those who came from her northwest frontier. Indians did not realize the possibilities of sea power and the political strength it could bring. In this sense, Vasco da Gama created for India a new frontier and with it new political and commercial problems.45

Portuguese Seek to Control Navigation in the Indian Ocean
Although King Manuel of Portugal asserted for himself sovereignty of the seas, it was not long before he came to realize that it would not be accepted by the Asian rulers. Not only did he want to seize the fruits of spice trade with Europe but he also wanted to attack the Muslims from the rear. Determined to achieve his goals he sent various expeditions fitted with the latest warships and trained soldiers. The Portuguese also came to realize that they could not compete with Arab, Indian and other Southeast Asian traders in the Indian Ocean. There was peace in the Indian Ocean and nobody indulged in any illegal activities. Under these circumstances, they sought to destroy that trade by brute force and to create a monopoly for themselves by an effective control of the sea. On his second expedition to the Indian coast after Cabral in February 1502, “a savage and relentless Vasco da Gama”46 committed several acts of piracy in order to enforce the claim of his sovereign to be “the Lord of Navigation” and his right to have monopoly of spice trade.47

After several barbarous acts of piracy, the news about which had already reached the Indian rulers, they were prepared for the worst. Although the Zamorin sent several messages of friendship, da Gama “treated the envoys with contempt” and demanded immediate banishment of every Muslim in Calicut.48 Since such an impossible and improper demand was rejected, da Gama engaged in a fierce battle with the Zamorin of Calicut’s Admiral off the coast of Cochin. Despite the fire power of the Portuguese ships which were fitted with heavy artillery, Calicut forces were able to manoeuvre their small ships so effectively that the Portuguese were unable to direct their fire against them. Surrounded by a large number of Calicut ships like wasps, da Gama broke off engagement and sailed away with his ships to Europe. The Indian ships were unable to chase da Gama which largely nullified the fruits of their victory. Near the coast they could meet the Portuguese on more than equal terms. But the Calicut vessels were wholly unsuitable for operations at any distance from their base. At the Cochin battle the Portuguese discovered this secret and later exploited it to the fullest advantage.49

Although Portuguese could not challenge Zamorin’s naval power for another ninety years (until 1599) and his supremacy was unassailable in the coastal waters of Malabar, on the high seas the Portuguese established an unchallenged authority which made the seaborne commerce of India at their mercy for more than a century and a half.50 But Portugal realized that dependence on scattered factories and looting of native vessels could not continue for ever. If Portugal wanted to maintain a regular Indian trade and assure a steady stream of merchandise coming to Lisbon, some system had to be created. For this purpose King Manuel appointed in 1505 Dom Francesco d’Almeida as the first Viceroy and empowered him to make treaties, wage wars, build fortresses, and hold strategic centers, from which seas could be commanded in to secure monopoly of the export trade of India for Portugal. On reaching the Indian coast he built forts at Cannanore and Cochin, whose rulers had become friends of the Portuguese because of their own quarrels with the Zamorin of Calicut, and started looking for Muslim traders on the high seas and killing them indiscriminately.51 Soon he found himself embroiled in fights against the Zamorin of Calicut, who sought and got help from the Sultan of Egypt,52 and achieved nothing of consequence.

In 1510 Almeida was succeeded by Alfonso d’Albuquerque and, with all the help he received from the Grand Marshal of Portugal specifically sent by King Manoel to destroy the power of Zamorin and reduce Calicut, he attacked Zamorin’s fleet and landed in Calicut. But the Portuguese forces were cut to pieces, Grand Marshal along with seventy hidalgos lost their lives, and Albuquerque was himself so seriously injured that he barely survived. As Panikkar relates: “Thus ended in disaster the first attempt to challenge the power of an Indian ruler on land.”53 In fact, as Panikkar goes on to point out, the ignominious Portuguese defeat had far-reaching consequences and “for 230 years after this, no European nation attempted any military conquest or tried to bring any ruler under his control”54.

Later, in 1510, Albuquerque occupied Goa and converted it into a great base, with the help of the Hindu chief of the area, Tulaji, who was an enemy of the Muslim Sultan and joined the Portuguese in order to weaken the Adil Shah Sultan’s authority. Although he was driven out by a counter attack, he came back

45 Panikkar, Malabar and the Portuguese, n. 40, pp. 32–33.
46 Villiers, n. 40, p. 134.
49 Panikkar, n. 24, p. 36.
50 See Panikkar, ibid, pp. 37–38.
51 See Hart, n. 21, pp. 243–244.
52 See for details of various naval encounters between the Portuguese and the Indian rulers ibid; Panikkar, Malabar and the Portuguese, n. 40, pp. 67–68.
54 Panikkar, ibid, p. 39.
After six months, captured it again and took a terrible vengeance on the population. As he himself boasted in a letter to his king:

"Afterwards, I burnt the city and put all to the sword ... Whenever we could find them no Moore was spared, and then filled the mosques with them and set them on fire." 55

After taking over Goa and making it the seat of Portuguese power in India, Albuquerque turned towards south-east Asia and concluded treaties with kings of Ceylon and Pegu. But his main objective was the emporium of Malacca about which Tom Pires, the Portuguese scribe said in his report in 1515: "Men cannot estimate the worth of Malacca, on account of its greatness and profit. Malacca is a city that was made for merchandise, fitter than any other in the world." 56 Its natural situation made it the key of the Pacific Ocean. As the main entrepôt of trade of the Archipelago, of rare and desired spices that grew in Java, Moluccas and other islands, as Albuquerque himself noted, it was regularly frequented by ships from China, Japan in the east, India, Persia, Arabia and Egypt in the west. 57 Albuquerque attacked and captured Malacca in 1511 because, as he said, "I hold it certain that if we take this trade of Malacca away from them (The Moors) Cairo and Mecca will be entirely ruined and Venice will receive no spiceries unless her merchants go and buy them in Portugal." 58 He converted Malacca town into a strong fortress and appointed to its government an able captain before he returned to Goa. He thus created the structure of Portuguese maritime empire in Asia based on an unchallengeable position in the Indian Ocean. By the annexation of Socotra, political influence in Hormuz, by capturing Goa and holding Malacca, he established a control which remained unshaken as long as Portuguese naval power remained strong in Europe. 59 Albuquerque's strategy consisted not at territorial conquest, which he just could not do; but only at the control of trade routes by occupying a number of strategic points which, once fortified, could easily be defended from the sea by armed men-of-war. As Tome Pires, the Portuguese author and admirer of Albuquerque, said in 1512:

"In the same way as doors are the defense of houses, so are the seaports the help, defense and main protection of provinces and kingdoms; and once these are taken and subjugated, the provinces and kingdoms are put to great suffering, and if they...

55 Panikkar, India and the Indian Ocean, n. 43, p. 52; see also Anand, n. 48, pp. 76-77.  
57 In Albuquerque's words, "Every year there used to come to Malacca ships of Cambay, Chaul, Dabul, Calicut, Aden, Melaka, Sichor, Jedda, Coromandel, Bengal, of the Chinese, Goers and Japanaese, of Pegu and all these parts". See quoted in Panikkar, n. 24, p. 40.  
59 Panikkar, n. 24, p. 41.

have quarrels among themselves or with their neighbors, they are immediately lost because they have no help ... A kingdom without ports is a house without portals." 60

This grand scheme, conceived by Albuquerque, was later adopted in the beginning at least by almost all the western peoples who followed Portuguese in the Indian Ocean. Similarly, the fortified trading posts, as conceived and applied by Albuquerque, remained the standard type of European establishment in the Asian seas until the nineteenth century. Strange as it might seem to the Orientals, the fortified trading post was a real stronghold and had a life of its own completely apart from the territory surrounding it and constituted a perpetual threat to that territory. 61

Thus seizing three of the principal entrepôts, the Portuguese tried to enforce a monopoly system of their own. Trade with certain ports and in certain commodities (chiefly spices) was declared as a Portuguese monopoly. Asian shipping was allowed to ply as before provided that a Portuguese license or cartaaz (similar to the British navicent of 1939-1945 World War) was taken out on payment by the ship owner or the merchants concerned, and provided that customs dues were paid on spices and other designated goods at Goa, Hormuz or Malacca. Unlicensed ships were liable to be seized or sunk if they met the Portuguese ships, especially if such ships belonged to Muslim traders. 62 By placing Portuguese patrols close to every other harbour in southwestern India, Albuquerque compelled all incoming freights to be diverted to Goa for discharge. Moreover, to provide return freights for these ships forced to unload he established a supply market stocked with all the main products of South India. In this trade, Portuguese agents acted as middlemen with great profit to the Lisbon treasury. 63

It is important to note, however, that despite all these violations of Indian Ocean customs and practices by the Portuguese and their attempts to control free navigation in the East Indies, they did not create any widespread reaction in India. With the sole exception of the Zamorin of Calicut, the Indian rulers generally had an attitude of friendliness and tolerance with the newcomers in the Hindu courts. The Hindu Empire of Vijayanagar maintained cordial relations with the Portuguese and permitted them to carry out their business in its extensive territories. With the rulers of Cochín, where the Portuguese had their first establishment, the Portuguese kept their cordial relations. With several other smaller chiefs along the southern coast they traded freely and without any political complications.

60 The Suma Oriental of Tome Pires, n. 56, pp. 56-57.  
63 See for more details, Boxer, n. 44, pp. 42-43.
The Zamorin of Calicut was a special case. He had considerable naval power on the coast and could not tolerate Portuguese claims of supremacy and illegal activities along the Indian coast which conflicted with his own authority. For a century naval fighting between the Zamorin’s fleet and the Portuguese from Goa and Cochin continued and it was only in 1599 that a treaty was signed between them. Moreover, for over 400 years, the prosperity of the state of Calicut depended upon the activities of Arab merchants trading in spices. He, therefore, could not tolerate the intolerable attitude of the Portuguese toward the Arab Muslims.

For others, the activities of the Portuguese affected only the Muslim traders. After the conquest of Malacca, Hindu, Chinese and Burmese traders were left unmolested by Albuquerque. Before the Europeans arrived, the carrier trade in the Indian Ocean had become a monopoly of the Arabs. Determined Portuguese attempt to dispossess them of it did not affect Indian rulers or their merchants. The Indian rulers did not care whether their merchants sold their goods to the Portuguese or to the Arabs. In fact the Portuguese had an advantage since they could sell to Indian rulers arms and equipment. Breach of the Arab monopoly was not “unwelcome to the Hindus and does not seem to have been actively opposed by the non-Arab Muslim merchants of Cambay and Gujarat”.64

It may be mentioned that the Portuguese also realized their limitations. After their disastrous defeat at Calicut they divested themselves of any territorial ambitions they might have entertained earlier on the mainland of India. The islands of Diu and Bombay, trading posts at different places on the coast, the territory of Goa and a fort in Cochin, were all that they possessed and were more or less satisfied with these. Although the Viceroy’s kept great pomp and style in Goa, “they were realistic in their relations with Indian rulers. They exchanged embassies and missions, received and returned presents, and on the whole maintained the decencies of inter-state intercourse. They had become a minor ‘country power’ except, of course, on the sea where their claims were truly universal and authority undisputed.”65

Decline of the Portuguese Empire

Although the Portuguese were able to control the Indian Ocean to a large extent under Albuquerque, they did not succeed in ousting the Muslims and completely annihilating the Hindu naval forces on the Malabar Coast. They controlled trade from Mozambique to Hormuz to Malacca, but east of Malacca they had little or no control over shipping. In 1521 and 1522, when they tried to apply in the South China Sea the strong-arm methods that had served them well in the Indian Ocean, they were decisively defeated by the Chinese coastguard fleets. When they later gained admission in the coveted Chinese trade, it was on the terms laid down by the Chinese authorities.67

Whatever the reasons for their initial success, the Portuguese sought to destroy the freedom of the seas and navigation that had been the unchallenged law in the Indian Ocean and Southeast and East Asia for thousands of years. In an attempt to have monopoly of trade, Albuquerque established a chain of fortresses from Hormuz to Malacca to stop the ships plying in these waters without Portuguese cartazes. But the chain of fortresses required military force at each place and a permanent squadron on the seas. This, however, was getting beyond the capacity of tiny Portugal. Moreover, Albuquerque was succeeded by Governors who were incompetent and greedy. Corruption and intrigue became the chief characteristics of their government. The seaborne empire of the Portuguese was not only disastrous for the East, but also appeared of little avail to Portugal itself. It enabled the mother country to enrich itself and provided sons of the gentry a career. Yet Portugal proved capable neither of forming a well-knit empire, nor of organizing and administering it effectively, so that its days of greatness were soon over. It was not long before Portugal was outranked by other Europeans—the Dutch and then the British—even in navigation and shipbuilding. It could no longer hold the tide and was soon swept over.68

The Dutch Arrive in the Indian Ocean

The Portuguese carracks, piled high with eastern spices, had already aroused the lust of Europe. As a recent historian observed: “The Portuguese made the breach through which the jackals raced to get their fill.”69 When the increasingly weakened and corrupt Portuguese Empire could not hope to exclude the other European countries from the Indian Ocean, the Dutch, the French and the English all wished to crack Portugal’s monopoly in the East Indies. The Dutch were the first to challenge it. During the sixteenth century, Europe was torn by religious strife and dynastic rivalries and conflicts. In 1556, King Philip II of Spain not only inherited the vast Spanish Kingdom, but also acquired Portugal in 1580 after the defeat and death of King Sebastian of Portugal. He was a Catholic, fervid and fanatical, and committed to upholding the Universal Church against Protestantism which had spread from Germany to other parts of northern Europe. Philip’s troops had occupied Antwerp and forbid access of Iberian ports to the Dutch ‘heretics’. Having been driven off from Lisbon and denied access to the spice countries in the East, they decided to send their own vessels to the Indian Ocean.

64 See Panikkar, ibid, p. 43.
65 Panikkar, ibid, p. 44.
66 Panikkar, ibid, p. 44.
67 See Boxer, n. 44, pp. 48–49.
68 For a detailed discussion about the reasons and consequences of the Portuguese decline see Amin, n. 48, pp. 57–67.
69 J. H. Plumb, n. 31, p. xxiv.
Queen Elizabeth of England helped the Netherlands both for economic and religious reasons and together they attacked Spanish ships, captured the treasure ships, and even pillaged the Spanish colonies in South America. Philip II retaliated against England by attacking it with his famous invincible Spanish Armada. But English ships, commanded by Sir Francis Drake, destroyed the Spanish Armada and with it Philip's hopes for a Catholic Spanish domination over Europe, and opened the vast seas both for the English and the Dutch.\(^{70}\)

The Portuguese had zealously guarded and managed to keep the geographical knowledge about the sea route to India and the East Indies secret for nearly a century. But all the secret documents, charts and Portuguese pilots' rutters were graphically disclosed and published by an energetic and adventurous Dutchman, Jan Huygen van Linschoten, who went to Lisbon in a Portuguese ship and lived in Goa, the exotic Indian Empire of the Portuguese, from 1583 to 1592. He published in 1595 his first guide to navigation to the East Indies, Reysgeschrifft called Rutter or Pilot's Guide, in English, which later formed part of his magnum opus, The Itinerario, or "Seavoyage of Jan Huygen van Linschoten to the East or Portuguese Indies", published in 1596.\(^{71}\)

Equipped with this invaluable guide, and armed with their determination, the Dutch sent their first expedition to the Indies in 1596 which was led by Cornelius Houtman. Despite some harrowing experiences that the expedition had to undergo, when it returned after 28 months from Java, Lombok and Moluccas with a cargo of spices, the trade was so lucrative and cargo so precious that a substantial profit was made even after suffering all the losses in man-power and equipment. It is not surprising that the Dutch sent more than fifteen expeditions in the next five years which made King Philip so angry that he ordered the seizure of all Dutch ships in Spanish waters. In order to avoid debilitating competition among several Dutch companies which sprang up like mushrooms in Holland, a united Dutch East India Company (Vereenigde Oostindische Compagnie or V.O.C.) was instituted in 1602 with a complete monopoly of trade with the East Indies. It was empowered to establish colonies, to make peace or war, to raise whatever funds it might need and to construct military establishment in the East.\(^{72}\) With tremendous resources and backing of the government, the new company commenced its operations with enthusiasm and speed and met with a lot of success in early years. From Hormuz in the Persian Gulf to China and Japan, its ships cut deeply into the Portuguese trade. Claiming to be "gentlemen merchants," ready to help the small states of the Spice Islands and the Malabar Coast of India in their struggle against the Portuguese, the Dutch began to conclude political alliances and trade agreements with local rulers. They captured the principal Spice Islands in 1605 despite strong Portuguese resistance. One after another the Portuguese posts fell. The Dutch captured Ceylon and established themselves in Java and other Indonesian Islands. They occupied ports in India, entered into friendly relations with Cochin and Calicut, blockaded Goa, and attacked Malacca in 1604, though they failed to occupy it. Even a 12-year truce that was arranged in Antwerp between the Netherlands and Spain, did not deter the Dutch company from pursuing its course.\(^{73}\)

**Grotius' Mare Liberum**

It was during these early struggles and conflicts with Portugal that a great controversy arose amongst the Dutch shareholders of the East India Company about the lawfulness of prize from captured Portuguese ship. The controversy came to the fore when Admiral Jacob Van Heemskerck captured a richly laden Portuguese ship in the Strait of Malacca and brought it home. When the ship, Santa Catharina, was proposed to be sold in Amsterdam as a prize and its proceeds distributed as part of the profits of the East India Company, several shareholders strongly objected to it because it would be an act of war against a friendly Christian state and was not befitting to merchants. In order to allay the fears and objections of its shareholders, the company asked a young brilliant jurist associated with the Company as a lawyer, Hugo Grotius, to defend the Company's action "as a paid counsel." Taking his cue from the Asian maritime practices of free navigation and trade, Grotius propounded his doctrine of the Freedom of the Seas in a brief he prepared for the East India Company to contest the Portuguese monopoly. Learning as much as he could about India and the East Indies, their traditions of free trade and commerce throughout history, and the Portuguese attempts to stultify the traditional freedom to these countries, Grotius wrote De Jure Praedae (or Commentary on the Law of Prize). He tried "to show that war might rightly be waged against, and prize taken from the Portuguese, who had wrongfully tried to exclude the Dutch (and others) from Indian trade."\(^{74}\) His greatness lies in keenly observing the maritime customs of the Asian countries; presenting them in the form of a doctrine supported by logical arguments, Christian theology, and the authority of venerable Roman law; and recommending these views to the European countries which had forgotten these traditions. This fact of history has been generally ignored by historians of international law.\(^{75}\) It is important to note that although De Jure Praedae was

---

\(^{70}\) See for detailed discussion about these European struggles Anand, n. 48, pp. 72–73.

\(^{71}\) See for interesting and detailed account of Linschoten's journey Anand, ibid, pp. 74–76.

\(^{72}\) See for details about the Dutch expeditions Anand, n. 48, pp. 76–77.


\(^{75}\) Alexandrowicz, n. 62, p. 44.
not published until 1868, a part of it (Chapter XII) was published anonymously in 1609 under the title *Mare Liberum*.  

Besides Asian traditions, Grotius relied on logic. He argued that what "cannot be occupied, or which has never been occupied, cannot be the property of any one, because all property has arisen from occupation". Further, he said with disarming logic of his time: "The sea is common to all because it is so limitless that it cannot become a possession of any one, and because it is adapted for the use of all, whether we consider it from the point of view of navigation or of fisheries."  

It must be pointed out, however, that in spite of all this learning and logic, neither Grotius nor Holland were actually in favour of freedom of the seas as a principle. Grotius conveniently forgot the "Freedom of the Seas" principle he had propounded with such fervour in 1609, and went to England in 1613 with a Dutch delegation to argue in favour of a Dutch monopoly of trade with the Spice Islands. In fact he was surprised to find that his own book, published anonymously, was being quoted by the British against him.  

Successive attempts by each European nation to demand freedom of the seas for the lucrative spice trade of the East Indies, and later attempts by each one of them to create a monopoly for itself, led to a spate of books by numerous scholars in Europe. In this battle of books and wits, it was not Grotius who won, as is generally assumed. The real victor was John Selden, a brilliant British scholar and statesman whose *Mare Clausum seu de Dominio Maris Libri Duo* (The Closed Sea: or Two Books concerning the Rule over the Sea), written at the behest of the English Crown, remained the most authoritative work on maritime law in Europe for the next 200 years. Although several other publicists countered Selden's arguments, all of the European countries continued to follow his prescription in controlling as much ocean as their power would permit. Selden won this protracted battle not by the brilliance of his arguments but by the "louder language" of the powerful English navy, as it developed.

---


77 Grotius, ibid., pp. 28 ff.


83 The Portuguese treaties with South Indian rulers in the early decades of the sixteenth century contained a stipulation that all spices in the land should be sold to the King of Portugal. See Portuguese-Quilon treaty of 1520 and several other treaties between 1504 and 1518 in K. P. P. Menon, *History of Kerala* (1929), quoted in Alexandrowicz, n. 62, p. 128.


85 See Panikkar, n. 24, pp. 46-47.


shores of the Indian Ocean and their opposition was less to be feared owing to the distance from Goa and the weakness of their outposts. Moreover, just as the initial success of the Portuguese over the Asians was mainly due to their technical, naval and military superiority, the decisive factor in the Dutch success over the Portuguese lay in their improved maritime techniques and military strategy. They arrived in Asia with lighter and better constructed ships, easier to maneuver than the large and heavy Portuguese vessels, but equipped with heavy artillery and superior guns.

After displacing the Portuguese from the islands of Indonesia where the Portuguese were still weak, in 1641 the Dutch wrested from the Portuguese their bastion in the East, Malacca, and thereby breached Albuquerque’s defense system. Then they turned their attention to the trade of India proper which the Portuguese still controlled. In 1654 they took over Colombo from the Portuguese after prolonged siege. With Malacca and Colombo in the Dutch possession, the downfall of the Portuguese commercial empire in the Indian water was rapid. Cochin was occupied in 1660 and other smaller trading stations fell one by one to the Dutch. The Portuguese were systematically eliminated from the maritime trade of India. Except for Goa and small islets of Daman and Diu (Bombay had been given in dowry by the Portuguese to the British King in 1665) nothing was left of the great maritime empire built by Albuquerque.

English Enter the Fray

Although England’s quest for the Orient and its riches had started as early as 1537, it was only in 1601, a year before the Dutch Company was established that the English East India Company received from Queen Elizabeth the charter giving it a monopoly of trade in the East. To the English spiceries were particularly important. When the Dutch, as middlemen, raised the price of pepper from three to eight shillings a pound, the English decided to send an expedition of their own. The Company’s first vessel sailed on January 24, 1601 under Captain Lancaster with letter from Queen Elizabeth “To the great and mightie King of Achen … Our Loving Brother”. It reached Achin in Sumatra and Bantam, and returned two and a half years later with a cargo of 1,030,000 lbs of pepper. Although it was very satisfactory trade, there was nothing available in England to sell in exchange for the spices. But the Company discovered that there was a great demand for Indian textiles in Indonesian islands. Thus it was to buy textiles that the British sought to establish a trading post in India and the place selected for the purpose was Surat in 1612. The first to arrive in India was Captain William Hawkins in 1607 who tried to negotiate a treaty with Emperor Jahangir, but failed in his efforts.

In 1612, King James was persuaded to send an ambassador to the Court of the Great Mughal in India, Jehangir. Thomas Best was commissioned by the King of England to renew negotiations. By that time they had been more or less forced out of the Indonesian islands, although they continued to have factories in Macassar till 1667 and Bantam till 1885. They, therefore, wanted to concentrate on India for their commercial adventures where the Dutch or Portuguese hold was not so strong. Despite strong opposition from the Portuguese, they obtained permission from the Indian Emperor to establish their factories (or small trading posts) on the Indian coast in Surat and other places on the Gulf of Cambay. In 1615, Sir Thomas Roe arrived as formally accredited ambassador of King James I. In a letter he requested “the mightie monarch, the Mogar, king of Oriental Indies, of Chandahar, Chismer and Corazon” to affirm the agreement reached between Thomas Best and the governor of Ahamadabad and to place the commercial relations on a treaty basis. The ambassador was allowed all his privileges, order of search of his luggage was revoked, and he “bowed to the king in a manner fitting the dignity of an English ambassador”. Although the ambassador was received with much favour and more outward grace than was ever shown to any ambassador either of Turkey or Persia, the King did not sign a treaty with the English Company, but permitted the Company to trade and gave it other necessary privileges it requested by issuing a firman (royal order) issued by Prince Khurram (who later became Emperor Shah Jahan).

Cautiously extending their trading posts, they settled down at Masulipatam in 1641, and in the same year obtained from the Raja of Chandragiri, successor to the Empire of Vijayanagar, the right to build a fort at Madras. By 1647 they had twenty-three trading posts and ninety employees, by no means a very notable achievement. In 1665, when Charles II received Bombay in dowry from the

---

86 See for detailed discussion of the Dutch superiority against the Portuguese Anand, n. 48, pp. 91–92.
87 See Panikkar, n. 24, p. 47.
88 See early attempts by the English to reach East Indies in Anand, n. 48, pp. 94–95.
Portuguese with Princess Catherine, he transferred to the Company full rights of jurisdiction over the port. The Company moved its headquarters to that port which began to prosper along with the affairs of the company. But the new Governor of the Company, Sir Josiah Child, “an unscrupulous, arrogant and tempestuous” man, who had a deep contempt for everything Asian, dared to “declare war” against the Mughul Empire. As a result, the Company’s establishment in Bengal were occupied by the Mughal Emperor Auranzeb’s forces and what the Company built up with so much effort was all lost in one blow. The Company was forced to apologize and to humbly sue for peace. Emperor Aurangzeb imposed a fine on the ‘presumptuous merchants’ but excused them after the English promised “to behave themselves for the future no more in such a shameful manner.”

When the Company’s representatives came back to Bengal they settled down in a fishing village on the River Hoogly (named Calcutta) which they were permitted to fortify six years later. Thus by the end of the seventeenth century, the English East India Company had practically no political influence and had their factories or trading posts in Bombay, Madras and Calcutta, the three coastal centers from which the British were able to penetrate into the interiors a hundred years later.

French and Danish in the East

The riches which the Portuguese brought from the East had caught the attention and envy of all the Europeans. The first French East India Company for the Asian trade was formed as early as 1604, but the French were too preoccupied with the European developments. It was not until 1664 that the French became serious about eastern trade and a new East India Company was established for trade with India. The first French factory in India was established in 1668 at Surat and another at Masulipatam in 1669 by obtaining a patent from the Sultan of Golkunda. In 1673 the French obtained a small village from the Muslim governor of Valikondapuram and laid the foundation of Pondicherry in a modest manner. In 1688 Pondicherry was conceded to the Company by the Mughal King Aurangzeb and it was developed as an important French settlement and a bridgehead for the conquest of southern India. In Bengal, Nawab Shaista Khan granted to the French a site in 1674 on which they built the famous French factory of Chandernagore in 1690–1692. But by the end of the seventeenth century, the French had not made much progress in the East India trade.

94 Panikkar, ibid, pp. 50–51.
95 Panikkar, ibid, p. 51.
Divided India Attracts Foreign Invasions

India: A Divided Subcontinent

In order to understand how a small European state, England, with a small almost insignificant force, came to subjugate a large country like India, which had been a land of desire for centuries for Europeans, and made the subcontinent its colony and part of the British Empire and thereby became Great Britain, it would be pertinent to look at the general political, social, and economic conditions of India on the eve of the European arrival. The reasons for India's downfall, as we shall see, lie in its own history which we shall briefly examine in order to understand its degradation and subjugation by a small European power.

India is a large subcontinent with a long history. It is important to note that although culturally and philosophically united with common beliefs and a wide universal religion, especially during the Hindu period up to the end of the tenth century, India was not always a united country. There were very few rulers, in its long history, who could even attempt to subdue and control the whole subcontinent under their rule. It is only stating the obvious to assert that geographical factors affect the course of history. The geography of India, its physical configuration, its mountains and rivers have had a decisive influence on its history. Protected by almost impenetrable Himalayan range in the north and flanked on the sides by lesser ranges, India enjoys a practically isolated position in relation to the continent of Asia. But the main wall of the Himalayas is pierced at the north-western corner by famous passes through which India's contact has been maintained with Central Asia and it is through these passes that northern India received its invaders. Below these mountain ranges lies the wide plain stretching with unbroken surface for some 1700 miles west to east, watered by three great river systems: the Indus, the Ganges and the Brahmaputra. The mountains and rivers thus combined make this part of the country extremely fertile and rich. But it is not easy to control such a vast area, especially in the absence of fast means of travel and communications. That is the reason why in every direction a large number of semi-independent chiefs and rulers were almost always allowed to exist and maintain their power and local influence. But there were several very strong empires in northern India, from Gupta period to Chandragupta Maurya, Ashoka, Harsha, and later, Mughal Empire (from Akbar to Aurangzeb), which controlled large parts of India. The empires were held together almost entirely by the personality and the might of the emperor. The whole edifice crumbled and broke up when a line of 'supermen' finished. As soon as the Center became weak, empires disintegrated into small states and kingdoms. Even under these emperors, a diversity of autonomous states constituted the mosaic of an empire. The emperor claimed suzerainty over these rulers and they offered allegiance to him, subordinated their foreign policy to suit the emperor's interests, usually helped him in war and paid him tribute. But in other respects they retained their independence. Whenever the authority of the emperor weakened, there was a struggle for supremacy. This explains the existence of military chiefs or small kingdoms in Northern India at every stage of its history. Mutual jealousies and conflicts made the country an easy prey to foreign invasions.

Beyond north India (lying between the Himalayas and Vindhyas), is the Deccan plateau lying to the South of Narmada river as far as the Krishna and the Tungabhadra rivers and then the far South beyond these rivers. Southern India was comparatively different with their own flourishing kingdoms, such as the Cholas, the Pandyas and Pallavas, which never came under the full control of the Northern Empires.

Washed by the Indian Ocean on the south, west and east, India had from the earliest periods of her history dominant interest in the sea. But with waters of the ocean separating her from Africa on the one side, and Malaya and islands of the Indonesian Archipelago on the other, India never faced any threat from the sea until modern times when the Europeans arrived on her shore in late fifteenth and sixteenth centuries. The accidents of geography have had a powerful effect on the history of India and national character of Indians. The fact that India was cut off by the great barrier of the Himalayas on one side, and by the sea on the other, produced a sense of unity in this vast area, and at the same time bred exclusiveness. A vivid and homogeneous civilization grew up in the vast territory, which had tremendous scope for expansion, and which continued to preserve a strong cultural unity. But within that unity geography produced diversity. Huge northern and central plains differed from the hilly and variegated areas of the Deccan, and the people living in different areas developed different characteristics. Vast spaces of the north required powerful empires and central governments for protection against foreign aggressions. Empires also flourished in the south, though often the two overlapped and even joined hands.

It is important to note, however, as we shall see later, that except for short periods of history when large Empires ruled over major parts of the subcontinent, India was almost always divided in small and large kingdoms each vying with the

---

100 See Jawaharlal Nehru, The Discovery of India (New York, 1946), p. 460.
other, and always prepared to take benefit of the weaknesses of others and ready to fight. No wonder war was always given so much prominence in Indian polity and warriors or kshatriyas enjoyed a place of great honour in the society. Monarchy was the preferred, or perhaps politically necessary, form of government among the Hindus and kingship was restricted to a caste of warriors whose ideal was a ‘desire not to die in bed’ and achieve supremacy. A king’s duty was to progress. From being a Raja (king), he ought, if he could, to try to be a Maharaja (a great king), or a Samrat (strong emperor), or, finally, a Chakravartin (an emperor who ruled the entire known world). The inactive king, satisfied with the territories of his father, relying on Destiny to look after him, was indeed despised. All kings were supposed to aim at and desire to rule not a limited area of the Earth, but the whole of it, or at least the natural confines of India. They were encouraged to subdue others and keep them in their political circle or mandala, and influence. The adulation of Chakravartin king encouraged a king to defeat others in wars, or challenge them to fight if they did not accept his subservience, and become a Chakravartin.

Rules of Inter-State Conduct in Hindu India

A society thus divided within itself, giving so much importance to warfare, was bound to suffer a lot. According to A. L. Basham, “conditions in India were not unlike those in medieval Europe, where there was a broad and recognized cultural unity accompanied by inter-state anarchy resulting in perpetual warfare”. But even in these chaotic situations, Indians had developed sophisticated rules of war and peace, distinctions between combatants and non-combatants, prohibited times of battle in a war, and weapons of war, treatment of prisoners of war, and so on. Although there is perhaps no sign in Indian history of a force to prevent war, or to sanctify peace, diplomacy was obviously a fine art, and the wealth of literature on the qualities of the ideal duta or ‘envoy’ indicates that his duties were at least as important and ample as those of the modern ambassador. While no permanent ambassadors were kept in the courts of foreign kings, although commercial agents were employed, the success of embassies generally depended upon the skill and cunning of an individual temporarily accredited to a court. There were developed rules for peace and even situations less than peace. It was understood that peace should be granted as soon as the other side offered acceptable terms and only the ‘demon-victor’ would go on and loot the country after submission. How far these rules were followed in practice is a different question which cannot be answered adequately.

India on the Eve of Muslim Contact

The glory of the rules of Chandragupta, Ashoka, and Harsha, which gave Northern India a unity unparalleled in history, had become dim by the later half of the seventh century A.D. The unity disappeared with the central power that had created it. The disintegrating forces began to take their normal course, and the country became divided into numerous states, big and small. Their boundaries were determined by their military power, and their aggressions were checked only by the power of their rivals. But in spite of all its divisions, India still progressed economically and socially because of its unique social and political system. The strength and perseverance of India, it is pointed out, “seem to have lain in her widespread system of village republics or self-governing panchayats.” There were no big landlords. Says Jawaharlal Nehru in his famous Glimpses of World History:

“Land belonged to the village community or panchayat or to the peasants who worked on it. And these panchayats had a great deal of power and authority. They were elected by the village folk, and thus there was a basis of democracy in this system. Kings came and went, quarrelled with each other, but they did not touch or interfere with this village system or venture to take away from the liberties of the panchayats. And so while empires changed, the social fabric which was based on the village system continued without great change. We are apt to be misled by the accounts of invasions and fighting and change of rulers into thinking that the whole population was affected by them. Of course, populations were sometimes affected, especially in the north of India, but on the whole it may be said that they worried little and carried on in spite of changes at the top.”

India was, and is, a country of hundreds of thousands of villages. The towns and cities sat on the surface as it were, but the real India was village India. The village India was not much changed by Islam.

102 See Derrett, n. 101, p. 380.
103 Derrett, ibid, pp. 368–369; see also, K. A. Nilakanta Sastri, “Inter-state Relations in India”, Indian Year Book of International Affairs (1953), pp. 137–138.
104 A. L. Basham, The Wonder that was India (London, 1954), p. 128; also quoted in Derrett, n. 101, p. 373.
105 Poisoned weapons or weapons causing unnecessary injury were prohibited; magical methods which are underhand must be avoided; devastating the country, poisoning wells etc was proscribed; all non-combatants, or combatants in difficulties or at a disadvantage, must be spared; and those laid down their arms or surrender were to be allowed to live. See Derrett, n. 101, p. 381.
106 See P. V. Kane, History of Daharmastra III (Poona, 1946), pp. 129, 226; R. Bhaskaran, "The Duta or Envoy in the Ramayana and the Kural", Indian Year Book of International Affairs (1953), pp. 154 ff.; Derrett, ibid, p. 373.
107 See Derrett, ibid, p. 373.
108 Derrett, ibid, pp. 381–382.
110 Nehru, ibid, p. 250.
Though India was divided in small or large kingdoms, there was no threat of external aggression to any part of India for more than five hundred years from seventh to eleventh centuries. This not only made Indians complacent but arrogant. As Alberuni, a most observant Muslim traveler and scholar noted:

"The Hindus believe that there is no country but theirs, no nation like theirs, no kings like theirs, no religion like theirs, no science like theirs ... If they traveled and mixed with other nations they would soon change their mind for their ancestors were not so narrow-minded as the present generations." 111

The general picture of India at the end of the tenth century when it first came in collision with an organized Islamic kingdom was as follows. The Hindu social structure was strong and economic life was prosperous, with the accumulated wealth of five centuries of peace, commerce and colonization in south-east Asia. But the political structure was weak and the country was divided into small and not so small kingdoms. There was no sense of India as a unified one country. There was no feeling of patriotism and "even the idea of unity to resist the foreigner was non-existent. The political structure of the states was based on a corrupt bureaucracy and united only by dynastic interest." It was not strong enough when India had to meet the first shock of Mahmud's invasions. The South was, however, somewhat different since there were strong national kingdoms of the Cholas, the Pandyas and earlier the Pallavas which received tremendous support from their peoples. 112

Muslim Invasions of India

Within fifty years of the establishment of Islam in Arabia, the Muslims had conquered half the known world. With its capital in Baghdad, in 711 the Empire of Islam extended from the frontiers of China to the shores of the Atlantic. It possessed a military strength which in one sweep destroyed the Empire of Persia, annexed the north of Africa, conquered Spain, and took the arms of the Khalif into the heart of France. In 712 Mohammad Bin Kassim gained for the Khalif a foothold in Sind in extreme north of India, which extended by slow degrees to Multan, a great center of trade and industry. But there it remained as a small Muslim independent state. 113 For the next 300 years there was no invasion of or an incursion into India. 114

In 991 A.D., Sultan Mahmud of Ghazni in Afghanistan, a Turk who had risen to power in central Asia, began his raids into India. There were many such raids and they were bloody and ruthless, and on every occasion Mahmud carried away with him a vast quantity of treasure. With every successful raid his appetite for the accumulated riches of the states and temples of Hindustan increased. "His were merely raids of devastation, looked upon by the Hindus of the time as acts of God, like plague, before which they fled." 115 Though he met with some strong resistance in some of his expeditions, he annexed Punjab in north India to his empire. But he made no attempt to conquer any other part of India and the heart of India remained untouched. 116

From the death of Mahmod in 1030, for a period of hundred and sixty years, apart from Punjab, India was undisturbed by Muslim invasions. With a foreign power established in Sirhind and holding the land of five rivers, the danger to the Ganges plain was obvious. But the Hindu monarchs did not seem to have realized the danger and were engaged in internecine conflict which involved much mutual slaughter. In 1191, Mohammed Ghori, an Afghan, displacing the Ghuznalive dynasty in Ghazni, marched to Lahore and then to Delhi. But he was utterly defeated by the king of Delhi, Prithvi Raj Chauhan. He retired to Afghanistan but came back next year and this time triumphed. In 1192 he sat on the throne of Delhi. He left behind his governor Kutubuddin Aibak who made Delhi the Center of Muslim power in India. In a period of five years Mohammed Ghori, through his Governor, Kutubuddin, expanded an empire in India which included the Punjab, the Gangetic plains and Bengal. "The dynastic history of Delhi Sultans", it may be noted, "from Kutubuddin's death in 1210 to Babar's conquest of Delhi in 1525 is one of dull monotony, of wars of succession, murder of nobles and leading men and a few able men succeeded by weak and licentious potentates." 117

Muslim Rulers from Abroad Get Absorbed in India

It is important to mention that although the Muslim invaders occupied Delhi and destroyed the Hindu monarchies in the Gangetic valley, the land and economic system of the country did not change much and "the Hindus in general in the countryside led fairly the same life as they had led before." 118 There was no such large-scale conversion as to displace the Hindu zamindar (landlord) and cultivator, and commerce and trade remained in Hindu hands. Further, while the higher officials were all Muslims, the lower ranks of bureaucracy had of necessity to be Hindus with their ancient and elaborate forms and procedures. Only judicial administration was taken over by the Islamic rulers and Qazis administered Muslim law. The despotism of the Sultans fell mainly on the amirs and nobles and sometimes party factions led to massacres and gruesome

111 See K. M. Panikkar, A Survey of Indian History (Bombay, 1971), pp. 116-117.
112 See Panikkar, ibid, pp. 122-123.
113 See Panikkar, n. 111, p. 113.
114 See Jawaharlal Nehru, The Discovery of India (Bombay, 1961), p. 246.
115 Panikkar, n. 111, pp. 127-128.
116 Panikkar, ibid; see also Nehru, n. 109 pp. 248-249.
117 Panikkar, ibid, p. 131. See for details ibid, pp. 128-148.
118 Panikkar, ibid, p. 139.
atrocities. But they were against Muslim nobles themselves. The Hindus in the conquered areas were no doubt depressed without any political power. They were excluded from high offices, were not treated equally with the Muslims, and were subject to discrimination. But still there is no reason to believe that their life was too hard. The strength of the Hindu religion was indeed surprising. It is significant to note that while the new Muslim rulers who had come to India from the north-west, like many of their predecessors in more ancient times, it was not long before they "became absorbed into India and part of her life. Their dynasties became Indian dynasties and there was a great deal of racial fusion by intermarriage. A deliberate effort was made, apart from a few exceptions, not to interfere with the ways and customs of the people. They looked to India as their home country and had no other affiliations. India continued to be an independent country."

Weak Rulers Encourage More Invaders

Weak and divided within itself as the Delhi Sultanate was, in the late fourteenth century, Timur, the Turk or Turco-Mongol, came from Mongolia with a Mongol army and smashed up the Delhi Sultanate because there was no resistance whatsoever. Attracted by the wealth of India, he was in the country only for a few months. He came to Delhi and went back within fifteen days. But all along his route he went on gaily with his massacres and making pyramids of skulls of those he had slain. Delhi became a city of the dead. Both Hindus and Muslims were slain without any distinction. The prisoners becoming burden he ordered all of them, more than 100,000, killed. Famine and disease followed Timur's army. There was no ruler or organization in Delhi for two months. Later he went west spreading desolation across Persia and Mesopotamia and in 1402, defeated Ottoman Turks.

In such a situation, for a ruthless aggressor, rules of inter-state conduct, law or morality, however well-accepted they might be, did not mean anything. The only consolation was that Timur did not go beyond Delhi and most of the country was left totally unaffected. Only Punjab and Delhi suffered most and there too along the route taken by Timur. The vast majority of the people even in "Punjab carried on their ordinary work without interruption".

119 Everything—high positions or positions of dignity—were open to a Hindu who changed his religion and accepted Islam. But in spite of all this, in 1947, Muslims numbered only 14 per cent in Uttar Pradesh which was continuously under Muslim rule for six hundred years. It clearly shows that forcible conversions were few and the lot of Hindus was not exceptionally hard. Panikkar, ibid, pp. 141-142.

120 Nehru, n. 114, p. 250.

121 See Nehru, n. 109, pp. 247-248.

122 Nehru, n. 109, pp. 349-350.

123 In the early fourteenth century, as Pandyas were engaged in a war of succession, Delhi Sultan Malik Kafur attacked Madurai in 1311, conquered it and returned to Delhi with booty. But the northern expansion was checked by the rise of the Muslim Brahmini Kingdom, founded by Hassan Gangu in 1347 A.D., and almost simultaneously (in 1346) the Hindu kingdom of Vijayanagar which continued for nearly 300 years. However, there was an unending struggle for nearly hundred and forty years between the Brahmani Sultanate and the Vijayanagar Empire which always kept both of them in a state of military preparedness. By the end of the fifteenth century, Vijayanagar defeated the Deccan Sultanate which led to the break up of the Sultanate kingdom into five states. Despite all this warfare, it is important and interesting to note, that "life in Deccan villages seems to have followed a course of normal activity, without fear of invasions."
The great monarch of the Vijayanagar dynasty, Krishnadeva Raya (1509-1550), conquered even Orissa and extended his kingdom up to Cuttack. He was a great administrator, maintained the most cordial relations with the Portuguese, received friendly embassies from Persia and other foreign countries and enjoyed a prestige which few medieval kings before Akbar enjoyed.128 South India under the Vijayanagar emperors attained a remarkable level of prosperity, as can be seen from the records of Portuguese and Muslim writers. There were said to have been "no less than three hundred ports carrying on maritime commerce, and regular trade was maintained with Persia and countries of the west. In fact, much of the prosperity of the Portuguese depended on their commerce with the empire. The provincial capitals were themselves centers of great commercial activity and with the arrival of the Portuguese, as the carriers of world trade, the markets of Europe also were opened to the products of India and the products of the West flowed into Indian ports continuously. The great prosperity which amazed foreign observers was reflected in the style and splendour not only of the monarch but also of the nobility ... the magnificent temples which the great emperors and their officials built, with which the whole south is studded, bear witness to the greatness of a civilization which successfully maintained in art the traditions of its predecessors."129

Mughal Empire in India

While Vijayanagar was flourishing in the south, the petty Sultanate of Delhi had to face another invader from northern mountains. In April 1526, on the famous battlefield of Panipat, near Delhi, where so often India's fate had been decided, the weak Sultan succumbed to the onslaught of Babar, the Turco-Mongol and prince of the Timurid line in central Asia. Babar won the throne of Delhi and started the Mughal Empire and a new epoch in India which, with a brief interval, lasted for 181 years from 1526 to 1707. Overcoming strong resistance from Hindu princes and Muslim kingdoms, who joined hands to face an outsider, Babar consolidated his hold on Delhi. But Babar died in 1530 and was succeeded by his son, Humayun, who faced tremendous difficulties in retaining his kingdom. Defeated by the Afghan governors, and after living in exile for fifteen years, he returned in triumph to Delhi in 1555 carrying with him his son, Akbar, aged fifteen, born in exile.

Akbar succeeded to the throne in 1556. Despite all the internal divisions and jealousies, the boy-king had a remarkable personality. Served loyally for the first four years by a capable regent, Bairem Khan, Akbar took over the reins in his own hands in 1560. Within twenty years after his accession, Akbar had become master

of an empire which extended from the borders of Central Asia to Assam in the east and to the Vindhya mountains in the south. The great ports of Gujarat and Bengal were within the Empire and the only small state in north India which refused to accept his authority was Mewar. With practically no opposition to his rule in any part of his empire, Akbar initiated his new policy of friendship and conciliation with Hindus. He married a Hindu princess from Rajasthan and laid the foundation of lasting alliance with the Rajputs, who constituted the most powerful political organization in north India. Akbar's aim was a national monarchy which his Hindu subjects did not consider a burden on them. His policy of opening ranks of higher office for the Hindus and encouraging talent irrespective of religion converted the Mughal empire in one generation from foreign government to a national state. For nearly fifty years that Akbar ruled (from 1556 to 1605), India reached new heights of prosperity.130

His son, Jahan (1605-1628), and grandson, Shah Jahan (1628-1658), who succeeded him, consolidated the empire even further. In 1633 Shah Jahan started a campaign in the south and the Deccan Sultans of Golkonda and Bijapur accepted Mughal paramountcy and suzerainty. Describing the life and time of Shah Jahan, eminent Indian historian, Sir Jadunath Sarkar, points out that Shah Jahan's

"reign had been as prosperous as it had been long. The 'wealth of Ind' under the Great Moghals dazzled the eyes of foreign visitors, and on gala days ambassadors from Bukhara and Persia, Turkey and Arabia, as well as travelers from France and Italy, gazed with wonder at the Peacock Throne and Kohinoor and other jewels ... the nobles of the empire eclipsed the kings of other lands in wealth and pomp. Within the country itself a profound peace reigned. The peasantry was carefully cherished; harsh and exciting governors were in many cases dismissed on the complaint of the people. Wealth and prosperity increased on all hands;"131

Whenever an emperor died, there was an unseemly scramble among his sons for the throne. There were palace intrigues and wars of succession, and revolts of sons against fathers, and brothers against brothers, and blinding of relatives. Aurangzeb deposed his father Shah Jahan in 1658, and succeeded to the throne after a disastrous fratricidal war and arresting his father and keeping him in jail. Perhaps the ablest of the Mughal sovereigns, a capable general, a good administrator, and one who reveled in the details of organization, Aurangzeb, who ruled for sixty years from 1658 to 1707, was determined to restore the Islamic character of the state. He not only strengthened his empire but expanded

129 Panikkar, n. 111, p. 156.
130 See Panikkar, ibid, pp. 167-171; Nehru, n. 109, pp. 305 ff.
131 Sir Jadunath Sarkar, A Short History of Aurangzeb 1618-1707 (Calcutta, 1930), p. 44. All the Mughals were builders but Shah Jahan was the greatest of them all in this respect. A hundred years of settled government and prosperity had made the Mughal empire the richest state of the time. The Taj Mahal at Agra, the Red Fort at Delhi, the Jama Masjid and the Moti Masjid—these are only a few of the numerous magnificent buildings he built. See Sarkar, ibid; see also Panikkar, n. 111, p. 172.
it to include practically the whole subcontinent of India. As the great historian on medieval India, Sir Jadunath Sarkar, points out:

"Under him the Mughal empire reached its greatest extent, and the largest single state ever known in India from the dawn of history to the rise of the British power was formed. From Ghazni to Chotafoo, from Kashmir to Karnatak, the continent of India obeyed one scepter. Islam made its last onward movement in India in this reign. The empire thus formed, while unprecedented in size, was also one political unit. Its provinces were governed not by the mediation of sub-kings, but directly by servants of the Crown. Herein Aurangzeb's Indian empire was vaster than that of Asoka or Samudra-gupta or Harshvardhan."132

But Sarkar correctly states that "the reign that saw the formation of the greatest Indian empire of pre-British days, witnessed also unmistakable signs of its commencing decline and disruption."133 In a complete reversal of Akbar's policy of national state, Aurangzeb issued instructions to demolish all temples and schools of the infidels, and re-imposed poll tax on the Hindus more than a century after Akbar had abolished it. By re-imposition of the poll tax on Hindus he broke the Mughal-Rajput alliance on which the empire had been built up. He refused to recognize a successor to Maharaja Jai Singh of Marwar, one of the most respected Rajput kings, and this led the united forces of Rajput leaders to challenge the empire. Ever since 1679, when he embarked on spoliation of the kingdom of Marwar, his reign was one of long warfare.134 In Punjab there appeared the Sikh sect in the role of warriors and armed opponents of the ruling power. But the strongest challenge came from the Deccan and the Marathas under the leadership of Shiva ji. The incessant warfare in the Deccan and inflated expenditure adversely affected the situation in northern India. The older, and more settled peaceful and prosperous provinces of the empire were drained of their manpower, wealth, and talent. Their best soldiers, highest officers, and all their collected revenue were sent to the Deccan, while the provinces of Hindustan were henceforth left to be governed by minor officers with small contingents and incomes quite inadequate for maintaining viceregal authority. All classes of lawless men began to raise their head in the north as well as in the south. As Sarkar relates again:

"Even before Aurangzeb closed his eyes the Mughal empire had turned bankrupt in finance and prestige, the administration had broken down, the imperial power had confessed its failure to maintain law and order and hold this vast realm together."135

---

133 Sarkar, ibid, p. 1.
134 Sarkar, ibid, p. 447.
135 Sarkar, ibid, p. 2.
136 Sarkar, ibid, p. 2. "The moral weakness of the empire was even greater than the material: the government no longer commanded the awe of its subjects; the public servants had lost honesty and efficiency; ministers and princes alike lacked statesmanship and ability; the army broke down an instrument of force." See also Panikkar, n. 111, pp. 172–181.
137 Sarkar, ibid, p. 3.
quality cloth, Masulipatam for its prints, Surat for its borders, Banaras for its rich brocades which were much in demand, and Dacca for its fine muslins. India was the sole supplier of cotton cloth to countries east of Cape of Good Hope, west Asia, Burma, Malay, Java, and so on. Kashmir shawls were then, as now, a luxury product. The manufacture of carpets was introduced by Akbar. Silk-weaving was a localized industry and seems to have flourished greatly from very early times.

Among other industries, ship-building deserves to be mentioned. The Mughals maintained a naval station in the Bengal waters and constructed their own ships. In Cutch, Cambay and other port town, ship of considerable size were also built. India was reputed for its ship-building and even the Portuguese had some of their best ships built in India. 138

There is no question India's prestige stood high in the outside world, including Europe. Several European travelers had visited India though their knowledge was hazy. With the arrival of the Portuguese more about India came to be known in Europe. But the connection of the Portuguese was mainly with powers on the west coast, Bijapur, Calicut, and the empire of Vijayanagar. After Akbar invited Jesuit priests to his court and encouraged merchants to visit Agra, information about the great monarch reached Europe also. As Panikkar summarizes:

"During the hundred and fifty years of the rule of the great Mughals, India's name stood high in the world and she took rank with the most civilized countries and with the most powerful nations." 139

Rules of Inter-State Conduct during the Mughal Period

All evidence leads to the unmistakable conclusion that there was well-established system of inter-state rules of conduct in India. While wars between various rulers and kings went on unabated, most of the civilian population was generally left unaffected. Commercial and diplomatic relations were maintained with several important Asian states. There is no question that the Mughals "respected the institutions of embassies, treaties, and laws of peace and war." They had a written code of law, applied by their judges, called kazi, "which regulated relation between state and subject and subjects inter se". Their notions of sovereignty and kingship had been inherited from their predecessors, the Hindu empires like Guptas and Mauryas, and the Sultanate of Delhi. The Mughals were really not a unit of Islamic family of nations, but essentially "occupied a pivotal position in the Indian subcontinent and gathered around them the semi-sovereign rulers of India". Even the English East India Company "later entered the political scene of India as one of the many vassals aspiring to be Chakravartin (Emperorship) of India. Its rise to power took place with the family of emancipated vassals, the Indian Family of Nations." 140

Disintegration of the Mughal Empire

Aurungzeb's death in 1707 led to utter degradation and disintegration of the country in a very short time. The ceaseless warfare in the Deccan had exhausted the empire and bankruptcy became inevitable. The Mughal Empire rapidly fell to pieces and the imperial viceroyos and governors began to function as semi-independent rulers. The Marathas consolidated their power and conquered and annexed Gujarat. The Rajput princes, which had been the props and pillars of the Mughal Empire, withdrew to their own states and settled down to active government. In the north, in Punjab, imperial authority totally broke down and Sikhs revolted against the empire. It is interesting to note, however, that in spite of all the disintegration of the Mughal Empire, "so great was the prestige of the descendant of Mughals in Delhi that a formal allegiance was paid to him even when he was powerless and a prisoner of others". 141 The emperor remained the sole source of legitimacy. "The powerful Muslim dynasties of Avadh (Oudh), of Bengal, and of the Deccan felt secure on their thrones only by virtue of a firman (royal decree or order) from the imperial power which they steadily despoiled. Duplex and the French Company, Clive and the English Company alike addressed themselves to that power for the sanction of their conquests and aggressions under the guise of jagirs, nawabships, and divanis." 142 As Panikkar points out:

"The poor emperor of Delhi counted for nothing; but the tradition of Akbar, the idea of the national state had survived, so that the head of the Maratha confederacy, which ruled without any question most of Hindustan as an independent sovereign power and held the person of the emperor as prisoner, was honoured to accept a title from him ... The empire by ceasing to be a fact had become an accepted idea." 143

According to Panikkar, the reason for the unparalleled breakdown of administration of the Mughal empire, which resulted in so much chaos and anarchy, were not hard to understand. He points out that unlike Hindu empires, in which local

139 Panikkar, ibid, p. 196.
Yet Another Attack from North-west

As the central authority was crumbling and new centrifugal forces were indulging in their own power games, there appeared another menace from the north-west. In 1739, invited by the weakness of the central government, and tempted by the fabulous wealth of India, Nadir Shah, who had ascended the throne of Persia, descended on the plains at the head of a great army. There was hardly any resistance in Punjab which had become a scene of anarchy. Nadir Shah entered Delhi, put a large part of its population to the sword to satisfy his whim, and quietly appropriated to himself the treasures of Delhi, including the Peacock throne and Kohinoor diamond, and left Delhi shortly thereafter. 146

It was an easy raid for Nadir Shah. He met no resistance in Punjab and the Delhi rulers were “effete and effeminate wholly unused to warfare”; and he did not come into conflict with the rising power of the Marathas. 147 In fact, in a sense his raid facilitated the Marathas who in subsequent years spread their hold in Punjab. Nadir Shah’s raid had another important consequence. As Jawaharlal Nehru put it:

“He put an end completely to any pretensions that the Delhi Mughal rulers had to power and dominions; henceforth they became vague shadows enjoying a ghostly sovereignty, puppets in the hands of any one who was strong enough to hold them. To a large extent they had arrived at that stage even before Nadir Shah came; he completed the process. And yet, so strong is the hold of tradition and long-standing custom, the British East India Company, as well as others, continued to send humble presents to them in token of tribute right up to the eve of Plassey; and even afterwards for a long time the Company considered itself and functioned as the agent of the Delhi emperor, in whose name money was coined till 1835.” 148

146 See Panikkar, ibid, pp. 208-209.
147 Nehru, n. 111, p. 289.
148 Nehru, ibid, p. 289.

administrations continued in the hands of the local Rajas who had accepted the suzerainty of the empire and obeyed orders from the center, the centralization of Mughals, initiated by Akbar, added to the strength, resources and prosperity of the empire. But once the central authority ceased to function, there was no local authority which received the unquestioned loyalty of the people. The bureaucratic administration of the provincial governors counted for little. With no dynastic loyalties, succession always became a matter of dispute and the viceroys tried to convert their offices to hereditary princedoms but did not have the loyalty of the people, or the support of strong armies. Thus, in the great provinces of the empire, the Deccan, the Carnatic and Bengal, the administration was nominal and of weakest character when the great personalities who had originally come down from Delhi left. 144

During this period of disruption, in 1725, besides numerous adventurers trying to carve out principalities for themselves, there were also a number of fortified places on the coastline of India, occupied by foreign merchants. The most important of these, apart from the Portuguese possessions, were Surat, Madras, Masulipatam and Fort Williams, all centers of trading activity of the English East India Company which also owned, as we have noted earlier, the island of Bombay which had been received by Charles II in his dowry. In Pondicherry and Chandernagore the French were settled. Cochin, Tranquebar and Negapatam and certain station on Hooghly were the Dutch settlements. In Surat, Company’s factory was strongly built which had withstood the threat of Shiva ji. Similarly, Fort St. George in Madras and Fort William were strongholds which could be defended, especially with the support of a navy. Pondicherry was well guarded by the French. Behind these fortifications, it may be noted, “the foreign merchants, with their accountants, writers and packers lived a life unconnected with the main currents of Indian life, and dealing only with the crowds of banias that collected to do business with them, and not interfering with what was happening around.” 145

Yet Another Attack from North-west

As the central authority was crumbling and new centrifugal forces were indulging in their own power games, there appeared another menace from the north-west. In 1739, invited by the weakness of the central government, and tempted by the fabulous wealth of India, Nadir Shah, who had ascended the throne of Persia, descended on the plains at the head of a great army. There was hardly any resistance in Punjab which had become a scene of anarchy. Nadir Shah entered Delhi, put a large part of its population to the sword to satisfy his whim, and
IV

Europeans Struggle for a Share in the Pie

Power Struggle Continues

The Marathas were consolidating their power not only in the south but in the north as well. The Maratha dominions were divided into a number of independent states joined together in a confederacy under the leadership of Peshwa at Poona. Although they met with a defeat from another invader from Afghanistan, Ahmad Shah Durrani, in 1761, at Panipat, they soon recovered from it. However, the Panipat defeat of the Marathas weakened them just when the English East India Company and French East India Company, leaving their pretensions of only trade in India, had started interfering in the political affairs of the country and were emerging as important territorial powers. 149

The French settlement was under Dupleix, who had been appointed governor of Pondicherry in 1742. Soon after his installation to power, he started interfering in the political affairs of others. As war was going on between England and France in Europe, La Bourdonnais, the French Governor of Mauritius, arrived in Indian waters to attack English shipping. He was successful in driving the English squadron back into Hooghly and then captured Madras. But then the French leaders fell out. La Bourdonnais agreed to return the town of Madras to the British on payment of a ransom, but the Governor, Dupleix, repudiated the treaty and took measures showing his hostility towards the English company.

The rivalry and intense fight between the French and the English continued between 1746 and 1761. On both sides there were bold and unscrupulous adventurers, over-eager to gain wealth and power. On the French side, Dupleix started the profitable game of taking part in local disputes between two states, hiring out his trained troops, and grabbing afterwards. It may be mentioned that both the French and the English trained Indian troops - sepoys as they were called, from sipahi (soldier). Since they were better armed and disciplined than the local armies, their services were in great demand. As Jawaharlal Nehru points out: “Both sides, like hungry vultures, looked for trouble, and there was enough of it to be found. Whenever there was a disputed succession in the south, you would probably find the English supporting one, and the French another.” 150 In this game, Dupleix interfered with the succession to Carnatic governorship of the Mughal emperor for which there were two claimants -- Muhammad Ali and Chanda Sahib. Dupleix installed Chanda Sahib as Carnatic governor receiving in return a Mughal title, a profitable jagir (estate) and magnificent presents. The English at Madras, feeling that if political influence passed to the French, the British position in South India would become untenable, Robert Clive of the English company intervened to support the claim of Mohammed Ali. He also captured the fort of Arcot which surrendered without a fight to the motley force that accompanied Clive. Dupleix retaliated by attacking Madras, but that proved abortive. A British puppet was installed safely as the Mughal Governor.

After his failure in the Carnatic, Dupleix also failed in Hyderabad where he supported one Muzzafar Jung for Nizamship and received from him governorship of the South over the lands extending from the Kistna to Cape Comorin. But Clive’s intervention upset all this.

After these failures and defeat from the British, French could never play an effective role. The English were encouraged by their victories in Carnatic and became a political force. They also discovered a method by which political power could be exercised through puppet monarchs. They learnt the art of indirect rule through accidental circumstances of the intervention in Arcot. 151

Fight for Empire

While the French were thoroughly defeated, there were several other formidable opponents that the British have. There were of course the Marathas in western and central India and even in the north; there was a new and powerful opponent in the south, Haider Ali in Mysore who had become master of the remnants of old Vijayanagar Empire, besides the Nizam of Hyderabad, who had really become a puppet in their hands. In the north, Bengal was under Siraj-ud-Daula, a thoroughly incompetent governor of the Delhi Sultan. Delhi Empire, as we have seen, existed in name only. Yet, the English continued to send humble presents in token of submission to the Delhi Empire till long after Nadir Shah’s raid which had put an end to even the shadow of the central government. It may be recalled that they had been badly defeated by Aurangzeb once, as we have mentioned earlier. 152 That “defeat sobered them so much that they hesitated for a long time before venturing out again.” 153

Besides political adversaries, there were some unconventional forces which were emerging in India. The growth of European companies and their trade in the main towns of India had brought into prominence a class of bania merchants who were extremely wealthy and were in close contact with the European factories, for the Companies’ enormous business passed through their hands. They were mainly Gujaratis in Surat, Chettis in Madras, and Marwaris in Bengal who had all started playing political games for their economic interests. As the power of the

149 See Nehru, ibid, p. 289.
150 See Nehru, Glimpses of World History, n. 109, p. 322.
152 See supra text relating to note 76.
153 Nehru, n. 109, p. 324.
Mughal governors declined, these Hindu banias or merchants started exercising a lot of influence and power.\textsuperscript{154}

During the first half of the eighteenth century, the position of Calcutta improved and the banias crowded into it. The English East India Company’s position as against the Nawab Nazim of Bengal was “that of the humblest servant”. In 1715 John Russel, the Company’s President, in addressing the Mughal governor, described himself as “the smallest particle of dust … whose forehead rubbed on the ground … on receiving the word of command.”\textsuperscript{155} The Company’s prosperity increased further when an imperial firman (order) permitted them to buy land and were confirmed in their zamindari (landlordism). The Hindu banias were getting closer to the English for their business reasons and were not happy with the governor. A quarrel arose between the Company and the Nawab over the fortification the English were erecting. In the fighting that ensued, Calcutta was captured and the Englishmen who had remained there were imprisoned and are alleged to have been locked in a small room where many of them suffocated and died.\textsuperscript{156} As war had broken out with the French, a new force under Watson and Clive also arrived in Bengal. In the meantime, Jagat Seth, a very wealthy Marwari Millionaire was insulted by Nawab Siraj-ud-dowla and he offered, through Om Chand, another Marwari in close relations with the Company, to have the Nawab replaced. An alliance was made between the head of the English East India Company and the Marwari merchants who commanded the wealth of Bengal. The Nawab’s fate was sealed.\textsuperscript{157}

In the battle of Plassey in 1757, which is said to mark the establishment of the British Empire in India, between the English forces led by Clive and the army of the Nawab, the Nawab was betrayed and defeated because his general, Mir Jafar, who had already been bribed by Clive, played the traitor and made no attempt to fight. It is said that the victorious commanders met at Jagat Seth’s house to celebrate the victory.\textsuperscript{158} Battle of Plassey was a small battle and, as Jawaharlal Nehru said in his Glimpses of World History:

“It had been practically won by Clive by his intrigues even before the fighting began. But the little battle of Plassey had big results. It decided the fate of Bengal, and British dominion in India is often said to begin from Plassey. On this unsavoury foundation of treason and forgery was built up the British Empire of India.”\textsuperscript{159}

The Company became the zamindar of 24-Parganas, nearly nine hundred square miles of territory to the south of Calcutta and became also the king maker in Bengal. Although legally the Nawab Nazim continued to rule from 1757 to 1772, it was only in name as he was no more than a puppet. The result was that – “for a period of fifteen years, we have the unparalleled instance of a country subjected to organized loot and plunder by a mercantile company and its servants, assisted and encouraged by the Hindu commercial classes who shared the loot with them. There is no instance known in history when a great province was swept so clean of its wealth.”\textsuperscript{160}

Exploitation of Bengal and other Provinces

Indian historians are generally extremely critical of the East India Company and its governor, Clive, who had come to India only for trade but started unscrupulously and shamelessly exploiting the country. They became masters of Bengal and with no one to hold their hands “they dipped into public treasury of the province and completely drained it.”\textsuperscript{161} Robert Clive, deemed as a great hero in England and the empire builder, is particularly damned for his role. As Panikkar, describing Clive as an anti-hero, said:

“That he had accepted bribes he did not deny. That he had forged Watson’s signature and cheated Om Chand is also undoubted. His military achievements, compared to those of the generals of the time, were not worth mentioning. The state he founded and administered for seven years was nothing more than a robber state, the one object of which was to extract as much as possible from the territories it was supposed to administer … it has to be emphasized that at no period in the long history of India, including the reigns of Toramana and Mohammad Tughlaq, did the people of any province suffer so great a misery as the people of Bengal did in the era of Clive.”\textsuperscript{162}

In 1765, the Company’s forces won another battle at Buxor against the Mughals, and Clive, who had come out as governor of Bengal, obtained from the Emperor the diwan or the right to administer the revenues of Bengal, Bihar and Orissa, which was superior to zamindari or being a zamindar. But he agreed to pay to the Emperor twenty-six lakhs of rupees a year besides giving him the possession of Allahabad and the bordering district.\textsuperscript{163} The East India Company thus became in effect a sovereign power on the mainland of India. They had power and wealth without any responsibility. They were not satisfied with the vast plunder they

\textsuperscript{154} See Panikkar, n. 24, p. 78.

\textsuperscript{155} Quoted in Panikkar, n. 111, p. 216.

\textsuperscript{156} This is the story of the so-called “Black Hole” tragedy which is strongly denied by Indian historians as merely a fabrication and not reliable. See Nehru, n. 109, p. 324. See also Panikkar, n. 111, p. 215.

\textsuperscript{157} See Panikkar, ibid, pp. 215-216.

\textsuperscript{158} Panikkar, ibid, p. 216; Panikkar, n. 23, p. 79; see also Nehru, n. 109, p. 325.

\textsuperscript{159} Nehru, n. 109, p. 325.

\textsuperscript{160} Panikkar, n. 111, p. 216.

\textsuperscript{161} Nehru, n. 109, p. 325.

\textsuperscript{162} Panikkar, n. 111, p. 217.

were taking from the country and set about finding new ways of making money. Thus far they had nothing to do with internal trade. But now they insisted on doing this trade without paying the transit duties which all other merchants dealing with home-made goods had to pay. This was one of the first blows struck by British at India’s manufacturers and trade. Most of the English merchant adventurers of the East India Company indulged in unfair trade and plunder pure and simple. So many of these Englishmen returned to England from India “overflowing with Indian money, and were called ‘Nabobs’ ”.164

Political instability and troubles, lack of rain, and the British policy of grab, all combined to bring about a most terrible famine in Bengal and Bihar in 1770, in which more than a third of the population of India is said to have perished. But the English Company, as zamindars of the states, collected the full amount of revenue and more and they did this, as the British “official report” put it, “violently”.165

The East India Company, as is well-known, was originally established for trading purposes, and its military establishment was meant to protect this trade. Gradually, and almost unnoticed by others, it had acquired a lot of territory under its control, chiefly by taking sides in local disputes, helping one rival against another. The Company’s troops were better trained and were an asset to any side, and the company started extracting heavy payment for the help it would render to local powers. The Company’s military establishment increased in the process and the Company’s power grew. People looked upon these troops as mercenaries to be hired. No one took them seriously or considered them as possible contestants for the sovereignty of India. This delusion lasted till long after Plassey, and their functioning in formal matters as the agents of the shadow Mughal Emperor at Delhi helped them to further this false impression. The plunder that they carried away from Bengal and their peculiar methods of trade led to the general impression that these foreigners were out for money and treasure and not for dominion in India, and that they were a temporary though painful infliction, like Timur or Nadir Shah. By the time it came to be realized that the British were playing nobdy’s game but their own, and were bent upon political domination of India, they had already established themselves firmly in the country.166

English East India Company Continues its Struggle

In spite of all their cunning and better military establishment, the British succeeded in dominating India by a succession of fortuitous circumstances and lucky flukes. They had to face defeat so many times but were able to come back again and again. In the south Haider Ali had consolidated his power in Mysore. He repeatedly defeated the English forces and in 1769, he dictated the terms of peace under the very walls of Madras. Ten years later, he was again successful, and after his death his son, Tippu Sultan, became a thorn on the side of the British. It took two more Mysore wars (1790-1792 and 1799) and many years to finally defeat Tippu. The Nizam, shorn of much of his territory, was still an important power, with considerable French forces at his command.167

In the Maratha homelands, life flowed normally. They defeated the British in 1782. In the north, another Maratha ruler, Scindia of Gwalior, was dominant and controlled the hapless Emperor of Delhi.

Meanwhile, the British Parliament started taking interest in India and appointed Warren Hastings as the first Governor-General of Bengal. But even in his time the English Company’s government was well known to be corrupt and full of abuses. In fact on his return to England, Hastings was impeached before the Parliament for his Indian administration and, after a long trial, was acquitted. But despite this censure, there is little doubt that Hastings was British empire builder. He started the policy of having puppet Indian princes under British control. As the British Empire grew in India, there were many more wars with Marathas, Afghans, Sikhs, Burmans, etc. into the details of which it is needless to go. The British were obviously the best-equipped power. They had better weapons and better political and military organization, well knit together and had very able leaders. Above all, they had sea-power to fall back upon. Even when defeated, as they often were, they were not eliminated, as they could draw upon other resources because of their command over the sea routes. But for the local powers, defeat often meant a disaster which could not be remedied. The British were also cleverer than their rivals, and took every advantage of their rivalries. Slowly the British power spread and the rivals were knocked down one by one, and often with the help of those whose turn to go down came next. Their possession of Bengal after Plassey gave them enormous resources to carry their warfare with the others, and each fresh conquest added to these resources. It is really surprising how shortsighted these feudal chieftains of India were at that time. They never thought of uniting against a foreign enemy. Each fought a lone hand for himself and lost. In fact they deserved to lose.168 Thus, the Marathas which remained the strongest to challenge the British supremacy, were totally divided once their two statesmen Mahadaji Scindia of Gwalior died in 1794, and Nana Farnvis, minister of Peshwa, died in 1800. The Maratha chiefs were defeated separately each watching the other go down without helping. Scindia and Holkar became dependent rulers accepting the suzerainty of the British, as did earlier the Gaikwar of Baroda. Marathas were totally defeated by 1819.169

164 Nehru, n. 109, p. 325. Clive was censured later by the British Parliament and he committed suicide. See Nehru, ibid, p. 326.
165 See Nehru, ibid, p. 326.
166 See for excellent analysis of the British tactics and their role, Jawaharlal Nehru, The Discovery of India, n. 114, pp. 292 ff.
167 See Nehru, n. 109, p. 326.
168 See Nehru, ibid, p. 409.
169 Nehru, ibid, p. 409.
The Mughal Empire had vanished. The descendent of Akbar and Shah Jahan exercised his sovereign powers within and surrounding Delhi under advice from a British Resident. But even in this capacity, the decadent Mughal developed a great trade in titles with the fiction of a national state still continuing. There was no ruler in India in 1803 who did not accept the sovereignty of Delhi. Even the East India Company, the real sovereign of most parts of India, outside the Punjab, claimed its authority legally under Mughal Irmanas (Imperial orders) and called itself the East India Company Bahadur. The British Governor-General, Warren Hastings, admitted during his impeachment trial in 1783 that the Emperor’s “name and family subsist with all the latent rights inherent in them”, and “the current coin of every established power was struck in the name of (Emperor) Shah Allum”. 170 Lord Hastings, as Governor-General of the Company, stopped annual payment by the company to the Mughal Emperor due under the Treaty of Allahabad, alleging as an excuse the famine conditions of the province. But even then his seal revealed the significance given to the connections with the Emperor. It read: “The Governor-General, the servant of the Emperor.” 171

Indeed, “the doctrine of the unity of India was taken over by the British from the disembodied idea of national state which the Mughals represented at the beginning of the nineteenth century.” 172 In 1812, the Company’s trading activities were terminated by the British Parliament and the East India Company became merely a machinery by which the Parliament of England administered India. 173 In 1833, the East India Company was eliminated as a trading corporation and the British took over the responsibility for its government in India. 174 The sovereign rights claimed by the British East India Company were based on treaties, whatever their form might have been, and these rights were now taken over by the British Parliament. 175

In the Punjab a great Sikh state had emerged under Ranjit Singh in 1820. After Ranjit Singh died in 1839, the Sikh state weakened and began to break up. There were two wars between the British and the Sikhs in 1845–46 and 1848–49. In the second war the British were totally defeated. But they came back and triumphed later and Punjab was annexed. It is interesting that the British sold Kashmir, then part of Punjab, to one Raja Gulab Singh of Jammu for seventy-five lakhs (a lakh means 100,000) of rupees and it later became one of the states dependent on the British. 176

---

171 See Kemal, n. 163, p. 156.
172 See Panikkar, n. 111, p. 221.
173 Panikkar, ibid.
174 Panikkar, ibid.
175 See Kemal, n. 163, pp. 161, 167.
176 See Nehru, n. 109, pp. 411–412.

---

One Last Attempt by Feudal India to Recover

Just before the British conquered so many Indian chieftains, large parts of India were free from disorder, in spite of disruption of the Mughal Empire. In Bengal, for instance, during the long reign of Allawardi, the semi-independent Mughal Viceroy, peaceful and orderly government prevailed and business flourished. After the East India Company took over, there started the pillage of Bengal on behalf of the Company and their agents. But while Bengal and Bihar were under the new deteriorating rule of the English Company and there was organized plunder and political and economic chaos, central India as well as other parts of the country were still in prosperous condition. 177

Once the British Company began to rule large parts of the country, there was a great deal of dissatisfaction and discontent against the British. The East India Company’s policy was only to make money and to do little else and this had resulted in widespread misery. Even the British Indian army was affected and there were many petty mutinies. Many of the feudal chiefs and their descendants were naturally bitter. The Muslims of upper India felt miserable because in one generation they had become from ruling class to a dispossessed and uninfluential population. Of the great Mughal Empire, only the king in Delhi remained a pitiable pensioner and even his innocent trade in titles had been prohibited (since 1830) and his dignity humiliated by the authority exercised in the capital itself by the British Resident.

So a great revolt was organized secretly. This organization spread especially around United Provinces and in Central India. Apparently, a date had been fixed for the revolt to begin simultaneously at many places. But some Indian regiments at Meerut went too fast and mutinied on May 10, 1857. This premature outburst upset the programme of the leaders of the revolt and put the government on guard. The revolt, however, spread all over the United Provinces and Delhi and partly in Central India and Bihar. Within forty-eight hours, Delhi had been occupied and Shah Alam, the Mughal, proclaimed himself the Emperor of India. The whole of north India, except Punjab, threw off the British yoke.

But unfortunately, it was a general disorder, not an organized rebellion. At different places different leaders held authority each on his own. In Delhi itself, there was no unity of leadership. But disorders engulfed practically the whole of Hindustan or India. During the first four months, the British authorities, taken by surprise at wide-spread support for the revolt, were paralysed and unable to act. If the activities of the rebels could be coordinated and a reasonable central government established during this period, the British would have found it difficult to control this what has come to be known in India as the first war of independence. But the fate of the Revolt was settled by the Indians themselves. 177

177 See Nehru, The Discovery of India, n. 114, pp. 295–296.
The Sikhs and the Gurkhas supported the British, as did the Nizam in Hyderabad and Scindia in the north, along with many other Indian states which lined up with the British. With a hindsight one can find all the mistakes. It has been rightly pointed out that “every enterprise that does not succeed is a mistake.” E. H. Carr pertinently remarks that “if the American War of Independence had ended in disaster, the Founding Fathers of the United States would be briefly recorded in history as a gang of turbulent and unscrupulous fanatics.” In fact nothing succeeds like success.  

The movement produced some remarkable Indian leaders who fought well to throw out the foreigners: Tantia Tope, Azimulla Khan, Lakshm Bai of Jhansi, and Khan Bahadur Khan. Once they were defeated, the military aspect of the rebellion ended. The white terror that followed was mainly political and meant to strike a fear in the heart of Indians so that another such rising might not take place. The Revolt or the so-called Mutiny, as the British called it, was the last flicker of feudal India, one last effort of the old order to regain national independence and honour, and a heroic effort by the dispossessed to reassert their national dignity. It ended the line of the Great Mughal. While Shah Alam was made a prisoner, his two sons and a grandson were shot down, without any provocation, by an English officer, Hodson, as he was carrying them away to Delhi. He was tried by the British after the failure of the rising.  

The Revolt also put an end to the rule of the East India Company in India. The British Crown now took direct charge and the British Governor-General was changed to a “Viceroy” of the British Government. The East India Company vanished from the stage of history. Nineteen years later, in 1877, the Queen of England took the title of “Kaiser-I-Hind”. Although the Mughal dynasty was no more, as Nehru remarks, “the spirit and even symbols of autocracy remained, and another Great Mughal sat in England.”

Princely States and their Status

Besides a large part of India which came under the British rule after 1857, about a third of India was divided into more than 600 princely states ruled by local kings who were not directly under the British Government. Their relationships with the British were based on numerous treaties concluded between the rulers and the East India Company during the nineteenth century which had been accepted by the British Government. Most of these rulers were the tributaries of the Mughal empire or its viceroy’s and governors, which had assumed independence after the decline of the Mughals. In fact the position of the East India Company as an

Indian power was the same as other rulers. The grant of the Diwani by the Mughal emperor had converted the Company into a Governorship in Commission, and the treaties of alliance signed with the other rulers was as between equals. In the early stages of its fight for dominion, especially with the French and the Mysore Sultan, the Company was to a large extent dependent upon the cooperation and support of the Indian rulers who were, in the strictest sense, independent and sovereign within their territories.  

The change in the fortunes of the Company within a short space of fifty years later led to the subordination of most of the states and slowly new treaties became treaties of subordinate co-operation and one-sided obligation, or the grant by grace of the ‘sovereign’ power by the British Company. Once the Company became dominant it insisted on every state in alliance maintaining a body of British troops at its own expense. The Company resolved that an indirect extension of sovereignty in this manner was to be preferred to a direct exercise of dominion. Most of these states gave up their right of external sovereignty. But while guaranteeing their internal sovereignty, all of these treaties with the princes became treaties of subordinate co-operation, allegiance and loyalty. The position of the Company changed in ten years from that of being one of the powers of India to that of being a paramount power, and in the treaties signed after 1803 this became perfectly clear. There was a “progressive degradation in the legal and constitutional status of the ‘native states’ whose relations with the Company’s Government were at first regulated by principles of International Law, but in the end became metamorphosed into those a Paramount Power with its vassals and subordinates.” Thus in 1826, in a treaty with Nagpur, the Raja was accused of an attack on British troops “in violation of public faith and the Law of Nations”, indicating clearly that even according to the British, international law was applicable in their relations with the native states. But by 1891, the legal position had changed. Thus, the Gazette of India in 1891 announced:

“The principles of International Law have no bearing upon the relations between the Government of India, as representing the Queen-Empress on the one hand and the Native states under the suzerainty of Her Majesty on the other. The paramount supremacy of the former presupposes and implies the subordination of the latter.”

The doctrine of paramountcy, by which the British Government claimed overriding powers over the states as also authority for the Crown over the rulers was the method and machinery by which this change was effected. The process was completed by the cryptic statement in 1926 of the Viceroy, Lord Reading, to the

---

179 See Nehru, n. 109, p. 415; see details of struggles and wars during the Revolt, Panikkar, n. 111, pp. 221-225.
180 Nehru, ibid, p. 415.
182 Quoted in Nilakanta Sastri, ibid, p. 151.
183 Quoted in Nilakanta Sastri, ibid, p. 151.
Nizam of Hyderabad: “Paramountcy must remain paramount”.\(^{184}\) Analyzing the British Government’s power over the princely states, Westlake observed:

“There is paramount power in the British Crown, of which the extent is wisely left undefined. There is a subordination in the native states, which is understood but not explained. The paramount power intervenes only on grounds of general policy, where interests of the Indian people or safety of the British power are at stake.”\(^{185}\)

He further explained:

“A paramount power such as this is defined by being, wisely or not, left undefined. That to which no limits are set is unlimited. It is a power in India like that of the parliament in the United Kingdom, restrained in exercise by considerations of morality and expediency, but not bounded by another political power meeting it at any frontier line, whether of territories or of affairs.”\(^{186}\)

The assumption of imperial title by the Queen and three imperial Durbars (open courts) at Delhi demonstrated to the world the achievement of the unity of India.\(^{187}\)

This kind of subsidiary Indian state system which was built up, brought inevitably corruption and tyranny in its train. The presence of a British force to support the prince on the throne against every foreign and domestic enemy ensured the prince that he could not be removed whatever he did. It rendered him indolent and trust the strangers for his security, and cruel and avaricious, for he had nothing to fear from the hatred of his subjects. The governments of these states were often bad enough, but they were almost powerless. The British residents or agents in these states had a privilege of having power without responsibility. Private English adventurers, secure in the knowledge of their race, rules of international law were applicable between the independent states in India and between the Indian states and the European companies acting on behalf of their countries. As we have seen, embassies had been sent to the Mughal court by Portugal and Holland, England and France seeking trade and commercial facilities for their companies in India. When Sir Thomas Roe was sent in 1615 with letters of credence by King James I to the court of Emperor Jahangir, Alberico Gentili, a Professor of International Law at Oxford, had clearly declared that “the law of nations applied to all independent nations of the world, whether they were Christian or not”. Referring to Asian state practice, especially to Islamic powers and Persia, he pointed out that non-Christian states enjoyed full sovereignty and exercised the right of sending and receiving ambassadors. Such views had earlier been expressed by Jean Bodin, and were later endorsed by Hugo Grotius in his famous *Mare Liberum*, published in 1609. Nobody ever questioned the right of the Indian states to make war or peace, conclude treaties, send embassies, or exercise their sovereign jurisdiction within their territories.\(^{190}\) Grotius accepted and recognized the sovereign status of the Indian rulers although they were “infidels”, and argued that Portugal had no right over them on account of their

---

\(^{184}\) See Sastri, ibid.


\(^{186}\) Emphasis in original.


\(^{188}\) See Shevlankar, quoted in Nehru, n. 114, p. 330; For a more detailed discussion of the princely states in India, see Nehru, ibid, pp. 324–330.

\(^{189}\) See Nehru, *The Discovery of India*, n. 114, pp. 326–327.

religious beliefs. No constituent theory of recognition existed before the nineteenth century which considers recognition by the existing powers as essential for the birth of a state as a member of the family of nations. Emeric Vattel, writing in the eighteenth century, also accepted the view that de facto birth of a state amounted to its legal birth in the eyes of the universal law of nations.

In practice, the Indian rulers acted as sovereign entities, made war and peace, concluded treaties, and exchanged embassies. The European counties participated with them without questioning their legal status. When Sir Thomas Roe arrived in India, he found himself amongst states which commonly exchanged ambassadors. He asserted his right to diplomatic privileges not on the basis of the custom of England or Europe, but on the basis of "consent of the whole world." He received all the facilities with customary courtesy because the receiving Empire was well conversant with the universal rules of inter-state conduct. Although the Emperor gave trade facilities to the East India Company by an imperial firman (order), he was well aware of the procedures of treaty making as known to the law of nations, but did not think it was necessary to conclude a treaty with the Company. This type of diplomatic exchange and treaty making between European powers and Asian rulers became quite common throughout south and southeast Asia. There is no question that all these mutual dealings took place on the basis of reciprocal recognition of sovereignty and principles of the law of nations applicable to all the states.

The most important questions that arose at that time related to the internal sovereignty of the Mughal Empire and the suzerain-vassal relationship between the Emperor and the dependant rulers which remained as the basis of its constitutional structure up to the end of the eighteenth century. With the decline of the Imperial authority in the eighteenth century, as we have seen above, the institution was deprived of political substance and effectiveness. But even the weak Mughal Emperor continued to be acknowledged by all the subordinate powers, including the English East India Company, as the originator and grantor of legal titles to local territories all over India. But in this capacity, it should be remembered, even the weak Emperor represented the unity of India in the last phase. The last vestiges of Mughal sovereignty disappeared by the end of the eighteenth century and with the disintegration of the empire from within, its sovereignty as a member of the family of nations was lost.

With the establishment of the British rule in India, India in a sense lost its identity and became just a part and parcel of the British Empire. It was a novel experience in its whole history and could not be compared with any other invasion or political and economic change. As K. S. Shelvankar pointed out:

"India had been conquered before, but by invaders who settled within her frontiers and made themselves part of her life. (Like the Normans in England and Manchus in China.) She had never lost her independence, never been enslaved. That is to say, she had never been drawn into a political and economic system whose center of gravity lay outside her soil, never been subjected to a ruling class which was, and which remained, permanently alien in origin and character." Thus, as we have noted earlier, even all the Muslim invaders who came from outside, whether from Turkey, Ghazni or Afghanistan or Persia, and behaved in the beginning as conquerors over the rebellious people, they all toned down. India became their home and Delhi was their capital. The process of Indianization was rapid and many of them married Indian women. All the previous ruling classes, whether they came from outside or were indigenous, accepted the structural unity of India's social and economic life and tried to adjust themselves into it. They had become "Indianised and had struck roots in the soil of the country. The new rulers were entirely different, with their base elsewhere, and between them and the average Indian there was a vast and unbridgeable gulf - a difference in tradition, in outlook; in income and ways of living." The British always kept themselves aloof, apart from Indians, feeling that the ruling class must maintain its prestige, living in a superior world of their own. There were two worlds: the world of British officers and the common world of India's millions, and there was nothing common between them except a common dislike against each other. Races had met and merged into one another earlier. But now racialism became the acknowledged creed and it was intensified by the fact that the ruling dominant race had political and economic power without check and hindrance at the cost of Indians. It may also be mentioned that racialism in India was not so much English versus Indian; it was European as opposed to Asiatic. In India every European, be he French or German, Pole or Rumanian, was automatically a member of the ruling race. Railway carriages, station retiring-rooms, benches in parks, etc. were marked 'For Europeans only'.

192 Alexandrowicz, n. 170, p. 317.
193 See quoted in Alexandrowicz, n. 170, p. 317.
194 Sir W. Foster (ed), The Embassy of Sir Thomas Roe to India, 1615-1619, quoted in Alexandrowicz, ibid, p. 319.
195 See Alexandrowicz, n. 170, pp. 319-320.
196 See Alexandrowicz, ibid, p. 322.
198 See text with reference to footnote 120.
200 Nehru, ibid., pp. 319-320.
201 Nehru, ibid, p. 320.
202 Nehru, n. 114, p. 311.
The whole ideology of the British rule in India was that of the master race, and the structure of the government was based upon it. There was no subterfuge about it. It was proclaimed in unambiguous language by those in authority. Even louder than their language was their behaviour and their practice. As Nehru points out,

"generation after generation and year after year, India as a nation and Indians as individuals were subjected to insult, humiliation, and contemptuous treatment. The English were an imperial race, we were told, with the god-given right to govern us and keep us in subjection; if we protested we were reminded of the 'tiger qualities of an imperial race.'" 203

As the British Foreign Secretary to the Government of India, Seton Kerr, said in 1883, that every Englishman in India, from the highest to the lowest, shared the "cherished conviction" that he belongs to a race whom God has destined to govern and subdue. 204 Similarly, Lord Kitchener, a distinguished Commander-in-Chief of India, declared:

"It is this consciousness of the inherent superiority of the European which has won for us India. However well educated and clever a native may be, and however brave he may have proved himself, I believe that no rank we can bestow on him would cause him to be considered equal of the British Officer." 205

All through the nineteenth century, and even afterwards until the First World War, "it was impossible to secure criminal justice against a European." 206 In fact, racialism continued to be the official policy until 1940's. 207

India Becomes Economic Appendage of England

After the establishment of British supremacy, for the first time in Indian history, her political control was exercised from outside and her economy was centered in a distant place. The British made India a typical colony of the modern age and a subject country for the first time in its long history.

India had been all through its history a great industrial country, a highly developed manufacturing nation exporting her manufactured products to Europe and other countries in south-east and east Asia. Before the nineteenth century, her textiles were famous all over the world. Her production of iron and steel was notable. Ship-building flourished in the ports of the west coast. Her unique banking system was efficient and well-organized throughout the country, and the "hundis" or bills of exchange issued by the great business or financial houses were honoured not only throughout India, but in Iran, Kabul, Herat, Tashkant and other parts of Central Asia. India was as advanced industrially, commercially and financially, as any country prior to industrial revolution. There is little doubt that such development could not have taken place unless the country had enjoyed long periods of stable and peaceful government and its highways were safe for traffic and trade. 208 Inter-state rules of conduct for diplomatic, trade and financial relations among states within India were widely accepted and honoured and these rules were generally applied among neighbouring countries in Asia. Without such important system and rules relating to navigation, shipping and trade in the sea, Asian countries could not prosper.

As we have seen above, as soon as the English East India Company came to acquire power after the battle of Plassey in Bengal in 1757, the merchant adventurers of the Company traded and plundered indiscriminately. The English historians of India, Edward Thompson and G.T. Garrett, tell us that -

"a gold-lust unequalled since the hysteria that took hold of the Spaniards of Cortes' and Pizarro's age filled the English mind. Bengal in particular was not to know peace again until she has been bled white ... For the monstrous financial immorality of the English conduct in India for many years after this, Clive was largely responsible." 209

This plunder in the name of trade continued for generations and gradually took the shape of legalized exploitation "accompanied by corruption, venality, nepotism, violence and greed of money." The result of all this was the terrible famine of 1770, which wiped off over a third of population of Bengal and Bihar. 210

But the Bengal exploitation helped greatly in giving birth to industrial revolution in England which began in 1770. As an American writer, Brooke Adams, explained:

"The influx of Indian treasure, by adding considerably to the nation's cash capital, not only increased its stock of energy, but added much to its flexibility and the rapidity of movement. Very soon after Plassey (in 1757), the Bengal plunder began to arrive in London, and the effect appears to have been instantaneous, for all authorities agree that the 'industrial revolution' began with the year 1770 ... probably nothing has ever equaled the rapidity of change that followed. In 1764 Hargreaves invented the spinning jenny, in 1776 Crompton contrived the mule, in 1783 Cartwright patented the power loom and in 1768 Watt matured the steam engine ... Before the influx of the Indian treasure ... no force sufficient for this purpose existed ... Possibly since the world began, no investment has ever yielded..." 211

---

203 Nehru, ibid, p. 345.
204 Quoted in Nehru, n. 114, p. 345.
205 See quoted in Panikkar, Asia at I Western Dominance, n. 24, p. 116.
206 Panikkar, ibid, p. 117.
207 Panikkar, ibid.
208 See Nehru, n. 114, p. 300; Panikkar, n. 111, pp. 239–240.
210 Nehru, n. 114, p. 314.
the profit reaped from the Indian plunder, because for nearly fifty years Great Britain stood without a competitor.²¹¹

The chief purpose of the East India Company in its early years was to buy Indian manufactured goods, like textiles, as well as spices, and carry them to Europe where they were in great demand. The East India Company, before it gained dominion in India, carried a very profitable business by selling Indian made linens and woolens and silks and embroidered goods. In particular, a high degree of efficiency had been reached in India in textile industry, i.e., in the making of cotton, silk and woolen goods. They were exported to Europe, to China and Japan, Burma, Persia and parts of Africa. But with the development of industrial techniques in England, the British market was sought to be closed to Indian products and Indian market opened to British manufactures. The British Parliament, persuaded by the East India Company and new demands, excluded by legislation Indian goods from England and this exclusion influenced other foreign markets as well. Further, vigorous efforts were made to restrict and crush Indian manufactures by various measures and internal duties. British goods, on the other hand, had free entry. So efficient was the Indian textile industry that the rising English machine-industry could not compete with it, and had to be protected by a duty of 80 per cent. But with all this discrimination, Indian cottage industries could not long compete. The Indian textile industry, the most vibrant industry for ages, collapsed rapidly in Bengal and Bihar, affecting a very large number of weavers and artisans. With the expansion of the British rule the cottage industries could not long compete. The Indian textile industry, the most vibrant industry for ages, collapsed rapidly in Bengal and Bihar, affecting a very large number of weavers and artisans. With the expansion of the British rule the process continued throughout the nineteenth century breaking up other old industries as well, ship-building, metal working, glass, paper and many crafts.²¹²

The British did not want India to become an industrial country and did not encourage factories. They tried to make India a purely agricultural country producing raw materials for their industries. To prevent factories coming up in India they put duty on machinery entering India. The cost of building a factory in India was at least four times that of building a factory in England, although labour was far cheaper in India. So the poor, homeless, workless, starving artisans fell back on the land, or many of them simply starved to death. India became more and more rural as people were leaving the towns and going to the village and the land. The pressure on land became intolerable, and yet it still went on increasing. This is undoubtedly, as Nehru points out, the foundation and the basis of the Indian problem of poverty.²¹³ As a result terrible famines occurred occasionally in 1861 in north India; in 1876 for two years in north and central and south India; in 1896 and again in 1900 in north, central and south India) which wiped off millions and millions of the population.²¹⁴

Even a more serious blow came when the British introduced the landlord system. They appointed revenue-farmers for short periods to collect revenue or land tax and its payment to the government. But later these revenue-farmers developed into landlords depriving village community of all control over the land. This was an end to the joint life and corporate character of the community. Instead, the British accepted the newly-formed landowners and land their private property. These big landlords were created by the British because it was easy to deal with a few individuals than with a vast peasantry. The purpose was to collect as much money and as speedily as possible. If an owner failed at the stipulated time, he was simply pushed out and another took his place. The British thus consolidated their rule by creating new classes and vested interests which were tied up with that rule and privileges which depended on its continuance.

The British also collected a strong Indian Army consisting of British and Indian troops, but officered only by Englishmen. The primary function of this army was partly to serve as an army of occupation consisting mainly of the British soldiers. But the other part, the Field Army, consisting of chiefly Indian soldiers, was meant for service abroad and it took part in numerous British Imperial wars and expeditions. It is important to mention that once the British occupied India, it used its vast resources, immense manpower and tremendous economic resources, to subjugate other Asian countries like Burma, Ceylon, Malaya, Singapore, Persia, China, and even Africa. India was transformed into an imperial structure, “a great land power from which Britain’s authority radiated to all parts of Asia” and even beyond.²¹⁶ As Panikkar says:

“Undoubtedly it was the India-based strength of Britain, as a great Asiatic power, that enabled it to force open the doors of China, establish European predominance in the Yangtze Valley, reduce the power of the Great Manchus, and help to convert the rest of Asia into a European dependency. It is the military conquest of India which, though completed only in 1858, had given to the British unshakable

²¹⁴ See Nehru, ibid, p. 427.
²¹⁵ Quoted in Nehru, ibid, p. 481.
²¹⁶ K. M. Panikkar, Asia and Western Dominance, n. 24, pp. 122–124.
foundation by 1818, that enabled the industrially revolutionized Britain in the post-Napoleonic period to project her political and economic power into the Pacific.  

This period also witnessed the emergence of 'overseas India'. Large Indian labour was exported to many of its newly-acquired colonies as coolies or labourers as far as South America (West Indies), and later Africa, thus making Britain Great Britain in whose empire the sun never set. This period witnessed the growth of an 'overseas India', a large-scale emigration of Indian people into the tropical areas of the Empire. The Indians carried with them their agricultural and labour skills, Indian social system, India's religious temples and festivals. In South Africa, in East Africa, in the distant lands of British Guiana, Trinidad and Jamaica, flourishing Indian colonies came into existence. India itself became a major British Indian Empire in Asia.

Thus, India had to bear the cost of its own conquest, its transfer from the East India Company to the British Crown, and then for the expansion or extension of the British Empire to Burma, Southeast and East Asia, to West Indies and even later Africa. She was not only used as a base for imperial expansion, but had further to pay for training of the British Army in England, called 'capitation' charges.

In order to keep the Indians subjugated and suppressed for ever, the British were not really interested in any educational system or other means for dissemination of knowledge. Explaining the attitude of the British toward education, a senior British officer said:

"It was our policy in those days to keep the natives of India in the profoundest state of barbarism and darkness, and every attempt to diffuse the light of knowledge among the people, either of our own or of the independent states, was vehemently opposed and resented."

Europeans Struggle for a Share in the Pie

V

European Domination and Development of International Law or Rulers' Law

Commercial and Industrial Revolutions in Europe

India was not only a British possession now, but "a country 'owned' by the British people and governed primarily in their interests". Ever since Roman times, Europe needed Indian spices, muslins, cloth and other exotic things, while India did not need anything from Europe and demanded only gold and silver bullion. Even in the seventeenth and eighteenth centuries this trend continued, and it attracted metal currency and money Europe received from the New World. But now for the first time, a European nation did not need to send metals to India and, by establishing sovereign jurisdiction there, it possessed enough resources and taxable commodities to enable it to take desired Indian goods without bringing capital into India. It was not long before the general interest of Europe came to be identified with that of England and it became in the interest of all Europe to maintain the British power in India. As the French historian, Abbé de Pradt, pointed out, the more English sovereignty spread into India, the more it exempted even other European countries from the needs to send capital into that country. Therefore, even other European countries felt that "their empire is more common than particular; more European than British; as it expands, Europe benefits, and each of their conquests is also a conquest for the latter."

The economic growth and enrichment that resulted from the commercial expansion of Europe was so pronounced and spectacular that it is generally referred to as the Commercial Revolution. The eastern world – India, China, South-east Asia – the Americas and later Africa, were large enough to be exploited by everybody, and together. It is important to note that, although the Dutch, French and English were often at war with each other in Europe, nationalism did not enter into their relations in the East. As Toussaint points out, "the Europeans were far less busy killing one another in the Indian Ocean during the eighteenth century than they had been in the seventeenth, and they should be seen rather as a large international association, in which business came before everything else."

Under the general overall control of the British Empire in India and protection of its strong navy in the Indian Ocean, all Europe

217 Panikkar, ibid, pp. 74–75, 82–83.
218 See K. M. Panikkar, Asia and Western Dominance, n. 24, pp. 122–128.
220 See Kaye’s Life of Metcalfe quoted in Nehru, n. 114, pp. 323–324.
221 K. M. Panikkar, Asia and Western Dominance, n. 24, p. 112.
223 Toussaint, ibid, p. 170. Emphasis added.
profited and all Europeans supported it. It is not surprising that, as the British position became stronger in India and the Indian Ocean, its support for the doctrine of *mare clausum*, propounded with much fanfare by Selden and supported by England for nearly 200 years, weakened. As Fulton noted:

“As maritime commerce extended and the security of the sea became more established, it was felt more and more that claims to a hampering sovereignty and jurisdiction were incompatible with the general welfare of nations; and as the states interested in the commerce had the greatest power, the assertion of a wide dominion was gradually abandoned, surviving only in remote regions or in enclosed seas, like the Baltic.”

For Britain and France in particular, the eighteenth century was an age of phenomenal rise. The main feature of the Commercial Revolution was the increased volume of trade, which increased in the case of England by 500 to 600 per cent, and even more in the case of France.

There is little doubt that the riches of Asian and American trade flowing to Europe enabled the great Industrial Revolution to take place in Europe. By the end of the eighteenth century, England had conquered a huge colonial empire not only in Asia, but in America as well. They could sell more, only if more could be produced. They had customers, they had the ships, and even more important, they had the capital with which to finance new ventures and new demands. To meet the demands of the new markets, the industries had to improve their organization and technology. It is not surprising that the breakthrough in scientific inventions leading to the development of big industries – especially in the textile industry – and the rise of production first came in England. Protected by law and helped by the new inventions, the textile industry progressed tremendously with accompanying developments in the exploitation of iron and coal. After 1830, roads and waterways were challenged by railroads. Steamship came and proved better and faster than the sailing ship. The power industry was revolutionized after 1870 by the harnessing of electricity and the invention of the internal combustion engine which used oil and gasoline. Communications were transformed by the invention of the wireless in 1896.

The Industrial Revolution which took place first in England, gradually spread to the continent of Europe. But Britain faced no competition until 1870 and had a virtual monopoly in textiles and machine tools. British capitalists were accumulating surplus capital and were on the lookout for investment opportunities. London became the world’s clearing house and financial center.

The needs and demands of the Industrial Revolution were largely responsible for the creation of huge European colonial empires in Asia and later Africa. Several European countries had developed substantial industries. The close relationship between the new imperialism and Industrial Revolution may be seen in the growing need and desire to obtain colonies which might serve as markets for the rising volume of manufactured goods. Several Europeanized countries outside Europe, like the United States, Canada and Australia, had also developed tremendous industries and begun to compete with the European countries for new markets. They had raised tariffs to keep out each other’s products. The only alternative was to provide “sheltered markets” for each industrialized country.

The Industrial Revolution also created a demand for raw materials to feed the machines. Many of these materials – cotton, jute, rubber, petroleum and various metals could be obtained from Asia and Africa. In most cases, heavy capital outlays were required to secure adequate production of these commodities, and these were available in Europe. These factors were largely responsible for the spread of imperialism which is defined “as the government of one people by another.”

Europeans Claim Natural Right to Rule over Asians

There were, of course, other factors which helped in the spread of imperialism over the Asian and African countries. Practically all the Asian political entities, weakened by internal dissensions and outside pressures, were crumbling. There arose by this time an enormous difference in wealth and power between the decaying Asian empires and growing European states, enriched through Commercial Revolution, and bubbling with new strength provided by the Industrial Revolution in the form of iron and steel ships, heavier naval guns and more accurate and powerful rifles. While Queen Elizabeth had dealt with the great Mughal with genuine respect, and even Napoleon had said that he regarded the Shah of Persia as equal, coloured peoples now came to be considered as “inferior”, “backward” and “uncivilized”. In this age of European ascendancy and Asian decline, Europeans started feeling that they were invincible and had a natural right to rule over the Asian and African peoples. In the vogue of social Darwinism, with its doctrines of struggle for existence and survival of the fittest, there arose the pride of racial superiority of the white race and the white man’s “burden” of ruling over the “inferior” coloured peoples of the earth. As Cecil Rhodes, the British Empire builder, said:

224 Ibid, p. 175.
225 See text reference to note 80 above.
229 See Palmer and Colton, ibid, p. 614.
"I contend that we are the first race in the world, and that the more of the world we inhabit the better it is for the human race ... If there be a God, I think what he would like me to do is to paint as much of the map of Africa British red as possible."

In the history of man, it was pointed out, as throughout nature, stronger races have continually trampled down, enslaved and exterminated other races. And there was nothing wrong in it. "The good of the world, the true cause of humanity", it was suggested, demanded that this struggle, physical, industrial, political, continue. This explained and justified, it was said, "the appropriation by Europeans of territories of Asia, Africa, and Oceania, and the whole of our colonial development." 231

From this so-called "natural history" emerged the "mission of civilization", when it was thought to be the "duty and responsibility" of the white races to teach the "arts of good government" and "dignity of labour" to the "uncivilized" peoples of Asia and Africa. 232 This is what Kipling called "The White Man's Burden" which was basically to "govern and civilize the Asiatics and Africans, the backward peoples of the world who are half devil and half child, sullen and wild". 233 The French believed, as Jules Ferry said, that the "superior races", including France, had "the duty of civilizing the inferior races". Germans "devoutly believed in their call to give German Kultur to the hapless negroes of Africa, -- or, more accurately, to impose it upon them by force". 234 Justifying the annexation of Philippine Islands, President McKinley of the United States said that "there was nothing left for us to do but to take them all, and to educate the Filipinos, and uplift and civilize and christianize them as our fellow men for whom Christ also died." 235 The civilized and civilizing nations would not, and did not, hesitate to use force or shoot Hindus, or Zulus, or Filipinos, or Mexicans, to civilize them and to 'teach' them their 'superior culture'. 236

**International Law of the European States**

International law which had started developing among the numerous European states which had emerged after the disintegration of the Holy Roman Empire and the Treaty of Westphalia in 1648, began to be consolidated only after the Industrial Revolution in Europe. Although Hugo Grotius and his contemporaries, like the Spanish theologians and other classical jurists, are said to have been the initiators and founders of international law, they were "largely speculative thinkers and rationalizers" of the natural law principles and had hardly any influence on the conduct of states. 237 Amidst terrible internal dissensions in Europe and bitter rivalries in Asia, Africa and America during the seventeenth and eighteenth centuries, there was little scope for the growth of international law. During the eighteenth century, Holland was left behind Britain and France. The Dutch were weakened by a series of exhausting wars with Britain from 1652 to 1674 over mercantile disputes and with France from 1667 to 1713 over the territorial ambitions of Louis the XIV. The eighteenth century was marked by an intense struggle between England and France for colonial supremacy in North America, in Africa and India. After seven years war, when the Treaty of Paris was signed between the two powers in 1763, France suffered a humiliating and overwhelming defeat. But peace and international law were again in abeyance during the Revolutionary and Napoleonic wars between 1792 and 1814 after which Britain emerged as the supreme power in Europe and India. 238

At the Congress of Vienna, which met in May 1814 to redraw the map of Europe after Napoleon's downfall, although all the states sent representatives, the procedure was so arranged that important matters were decided by the four triumphant powers – Austria, Great Britain, Prussia and Russia – which had formed the anti-Napoleonic coalition. Thus, while theoretically the doctrine of equality of states was supposed to be the underlying principle of the system of international law propounded by the naturalists like Hugo Grotius, at the Congress of Vienna the Great Powers, the so-called "tetrarchy", rearranged the map of Europe, confirmed the partition of Poland, united Belgium with Holland, neutralized Switzerland, created German confederation, and laid down rules of international law with respect to free navigation of international rivers, the rank of diplomatic representatives and the suppression of slave trade. 239

For about fifty years the political affairs of Europe remained nearly completely in the hands of the Great Powers which was extended to France in 1818 when she was admitted to the dominant group, turning a "tetrarchy" into a "pentarchy". Called the "European Concert of Great Powers", or the "European system", and acting mainly through "congresses", they decided the fate of the small countries, intervened in their affairs, defined boundaries, exercised all manners of guardianship over states weaker than themselves, formulated rules, rendered judgments in...
controversies, and enforced their decisions. In the name of maintaining peace in Europe, the Concert powers enforced open dictatorship over other states without giving them any right to participate. They formed an exclusive club and established themselves as founder group of the modern international society and assumed authority to admit new member states or re-admit old members who did not participate in the foundation of the closed group. They claimed a right “to issue, or deny, a certificate of birth to states and governments irrespective of their existence”. The result was, in the words of Professor Alexandrowicz, that

“Asian states who for centuries had been considered members of the family of nations found themselves in an ad hoc created legal vacuum which reduced them from the status of international personality to the status of candidates competing for such personality.”

The absurdity of such a situation was recognized even by a few European writers as well. But it was glossed over or ignored by the powers that be. As Antony Anghie says, “legal niceties were hardly a concern of European states driven by ambitions of imperial expansion.” It may be noted that there was no theory of recognition in international law before the nineteenth century. De facto sovereignty of a state automatically meant de jure sovereignty. As Alexandrowicz points out, “no constitutive theory of recognition ever made its appearance in any of the classics of the law of nations up to the end of the 18th century. It did not exist in the works of the Spanish writers; nor did Bodin, Gentili, Grotius (and the Grotians) or even Moser and Martens ever conceive such a theory ... However, the positivists of the early 19th century destroyed this co-existence and started combining their universal positivism with constitutivism.”

Henry Wheaton was one of the first prominent writers of this period to split sovereignty into internal and external sovereignty, and maintained that a state might acquire internal sovereignty but that its external sovereignty would be dependent on recognition by states of existing family of nations. Thus was introduced the “new international ‘caste' system”, according to which the old Christian powers of Europe formed “the nucleus of the family of nations”. They

admitted the extensions of this family to North and South America; and some of them argued that Haiti and Liberia were the first sovereign non-European countries with a Christian but non-European population. As we have mentioned earlier, Ottoman Empire was the first non-Christian candidate state. Other states east of Turkey found themselves in the same situation. This applied not only to states which survived the collapse of the Asian state system, such as Siam or Persia, “but also to those countries which in the 19th century disappeared from the political map of the world such as Burma, Ceylon, Marattas, the Mogul Empire and independent Kingdoms of Indonesia. Those which vanished into oblivion had to wait until the end of the second world war.”

Without passing judgment on the past, Alexandrowicz reasonably questions the validity of the “positivist view on the development of the family of nations and the law of nations.” Because, “if the Asian states which existed prior to the 19th century were generally acknowledged as capable of concluding treaties, maintaining diplomatic relations, waging war, making peace and participating in a spectacularly expanding world trade, limitations imposed on their legal capacity by ideological change (without their participation in such change) could not produce such far reaching results as their reduction to a sort of extremity – a status which implied a serious restriction of their position in international law.”

There is little doubt, says Alexandrowicz, that “replacement by a European Club of States endowed with power of constitutive recognition of non-members of the club outside Europe, provided a new legal pressure mechanism in the hands of the great powers”. Since the International Court of Justice held a treaty concluded in 1779 by a Maratha ruler with the Portuguese as valid in the Right of Passage over Indian Territory case. Alexrodrowicz goes on to say:

“the Maratha Empire must have been in the sphere of international existence (as expressly stated by the judges) and thus the same must be said about other Asian entities in the 18th century such as Ceylon, Burma, the Mogul Empire, the States of the Deccan and Mysore, not to mention Persia, Siam or the Ottoman Empire. Those which survived in the 19th century, could not have been reduced to the status of candidates for admission to the family of nations and for recognition. If in fact they were re-admitted or recognised (always with emphasis on the problem of capitulations as raised by the European powers) these acts of readmission or

240 See Karol Wolke, Great and Small Powers in International Law from 1814 to 1920 (Wrocław, 1961), Chapter I, pp. 9–32; see also John Westlake, Chapters on the Principles of International law (Cambridge, 1894), pp. 92–101.
245 Alexandrowicz, ibid.
246 Alexandrowicz, ibid, p. 9. Emphasis in original.
248 This did not apply to China and Japan since “they did not (with a few exceptions) maintain intercourse with European powers prior to the 19th century”, Alexandrowicz, ibid, p. 10 footnote.
Phenomenal Growth of Modern International Law

As the diplomatic and commercial relations between nations multiplied and intensified between 1814 and 1914, the period is marked by a phenomenal growth of international law. Not only freedom of the seas and other norms of maritime law, but most of the important rules of modern international law came to be formulated and developed in the second half of the nineteenth century and later according to the needs of the European business and political interests. These rules originated and developed in treaties and customs amongst European countries, or countries of European origin in North America. Thousands of treaties, many of them multipartite or "law-making", came to be concluded after the Congress of Vienna and they assumed a more businesslike and technical character. International conferences proved to be efficacious in the establishment of international cooperation and agreements.252

It is important to note, however, that while the classical jurists — Spanish theologians, Gentilis, Grotius, and others — in their teachings had laid stress on the religious and moral precepts of the so-called 'natural law' as the authority for the conduct of international relations, with the rise of nationalism in Europe and influence of Enlightenment, the adherence to natural law gradually declined. It was replaced by positivism or positivist philosophy, relying more on the practice of states and conduct of international relations as evidenced by customs and treaties, as against derivation of norms from basic metaphysical principles. This also led to publication of numerous collection of treaties concluded by a certain

249 Alexandrowicz, ibid, p. 10.
250 Antony Anghie, n. 243, p. 38.
251 Anghie, ibid, p. 40.
252 See Nussbaum, n. 239, pp. 196-203.

country or a group of countries. Several such collections had already started appearing from the late eighteenth century253

One important consequence of the positivist philosophy was the development of Eurocentrism in legal and political thinking and regionalization of international law. The classical jurists, like Gentili, Grotius, and Freitas, had emphasized the universal law of the family of nations rooted in natural law doctrine and the principle of non-discrimination. Grotius, in his Mare Liberum, challenging the Portuguese monopoly of trade in the East Indies, appealed to law which, he said, "is the same among all nations", and which "no Christian ought to refuse to a non-Christian".254 Even Vattel, who gave more prominence to custom and treaties than to natural law, recognized the validity, indeed superiority, of natural law and the universality of the family of nations.255 But with the new emphasis on the practice of states, several writers started arguing that international law was confined only to the European countries. Thus, in one of the most important treaty collections in the 18th century, G. F. Martens, in his Recueil des Traités (1791), while including several treaties between Asian rulers and the European countries, denied the existence of a universal positive law of nations which he believed was confined to European countries. Though he admitted "that there are nations outside Europe which cannot be denied the character of civilized nations", be was reluctant to call the law applicable to European-Asian relations the law of civilized nations.256

Family of "Civilized" States

By the end of the eighteenth century, under the current of positivism, there had developed a "provincial outlook" in Europe.257 In the nineteenth century, these views came to be strengthened and under a new constitutive theory of recognition, all non-European nations and peoples, as we have mentioned earlier, were

254 Hugo Grotius, Mare Liberum (The Freedom of the Seas or the Right which belongs to the Dutch to take part in the East Indian Trade) (Tr. by Ralph Van Deman Magoffin), (New York, 1916), p. 5.
were at best to be treated according to “principles of Christian morality”. “It is
discretion”, said Oppenheim in his famous treatise in 1905, “and not international
law, according to which the members of the Family of Nations deal with such
states as still remain outside that family”. 266 Hall, noting that there was a
tendency on the part of the non-European, “semi-civilized” states, like China,
to expect that European countries would behave with them “in conformity with
the standard which they themselves have set up”, said that treaties concluded by
them created obligations of “honour” on the part of the European states, and not
reasonable expectation of “reciprocal obedience”. 267

The result of non-recognition of Asian and African states was that practically
any conduct toward their peoples, or aggression of their territories, could not be
questioned according to the European law of nations. As John Stuart Mill, the
great British empire builder, said in 1867:

“To suppose that the same international customs, and the same rules of inter­
national morality, can obtain between one civilized nation and another and between
civilized nations and barbarians is grave error, and one which no statesman can fall
into ... To characterize any conduct whatever towards a barbarous people as a
violation of the law of nations, only shows that he who so speaks has never
considered the subject.” 268

Thus, it was pointed out that “the conquest of Algeria by France was not ... a
violation of international law. It was an act of discipline which the bystander was
entitled to exercise in the absence of police.” 269 Indeed, it was reiterated that it
was for their own benefit that barbarous nations “should be conquered and held in
subjection” by Europeans. 270 Referring to “colonial law” between “uncivilized
areas” and the “civilized nations”, a modern writer points out that there was no
“common or mutual law” between the them:

“There was, instead, an extremely one-sided and precedence oriented law brought
erover by the European powers and the USA. The worst effects of these legal double
standards were felt in Africa. Africa’s inhabitants were seen as unfit to rule
themselves and in this respect ‘powerless’ i.e. without recognised legal rulers,

p. 34; see also John Westlake, Chapters on the Principles of International Law (Cambridge,
1894), p. 29.
266 See quoted in B.V.A. Rihl, International Law in an Expanded World (Amsterdam,
267 Lorimer, n. 265, p. 161; see also Lorimer, Vol II, p. 28, for defense of war against Chin
and Japan to compel them to open their ports for European trade.
268 Mill, p. 29; see also Westlake, n. 266, p. 139.
areas part of the territory or its inhabitants citizens of the colonising state. This model mirrors the preceding epoch and the procedure applied by Europeans in America. Thus the concept of 'civilized nations' led to a factual and legal division of the world in two.\textsuperscript{271}

Standard of "Civilization" in International Law

It was basically due to the superiority of the European civilization over other civilizations, it was assumed, that Europeans had international law. With the rapid progress in European economic and military power in the nineteenth century, this sense of superiority became more and more pronounced. International law, earlier characterized as the law of Christian European nations, or Christian European nations and nations of European origin in America, or public law of Europe, now came to be defined as the law of civilized nations with the assumption that European civilization was the only civilization worth acceptance and projection in international law. If the ignorant, 'uncivilized' countries were unable to understand the intricacies of European system and law, and were not able to provide internal or municipal law to protect the Europeans in their countries according to European standard, they could not be accepted as members of the "civilized" family of nations and must sign capitulation treaties with the European states giving up their right to have jurisdiction over the Europeans. The main purpose of this policy adopted by the European countries and the United States was, of course, to provide protection to their citizens in this period of active international trade and investment in the late nineteenth century. Instead of Christianity, it came to be insisted by most European writers in the nineteenth century that in order to be accepted as a "civilized" state, the country must have the capacity of protect life, freedom and property of aliens. Considered as "an elastic but, nevertheless, objective standard for the treatment of foreign nationals", the standard of civilization demanded that foreigners receive treatment consistent "with the rule of law as understood in Western countries".\textsuperscript{272} This meant, according to Schwarzenberger,

"a modicum of respect for the life, liberty, dignity, and property of foreign nationals, such as may be expected in a civilized community, freedom of the judiciary from the direction of the executive, unhindered access to the courts and reasonable means of redress in the case of manifest denial, delay, or abuse of justice."\textsuperscript{273}

This "standard of 'civilization' became an integral factor in the changing domain and rules of international law."\textsuperscript{274} As Gong goes on to tell us, non-European countries had to learn the hard way. Because,

"until they fulfilled the standard's requirements, these non-European countries remained outside the law's pale and protection. Until granted 'civilized' legal status, they seemed vulnerable to the power and caprice of those countries to which the material benefits of industrial 'civilization' had come first."\textsuperscript{275}

For the European states, the local systems of justice were completely inadequate, and there was no question of submitting one of their citizens to these systems. Europeans "insisted that 'unequal treaty', 'capitulation', and 'protectorate' systems, all with extraterritorial provisions, be maintained until the non-European countries of Africa and Asia conformed to 'civilized' standards. European extraterritoriality thus became a badge of inferiority for many of the non-European countries, a sign of their 'uncivilized' legal status."\textsuperscript{276} A number of such treaties were concluded with the Asian countries, including Turkey and Japan, although the former had inter-acted with the European countries for hundreds of years and had long-standing relations with them. But Turkey was admitted into the European Family of "Civilized" States only in 1856, and then too only provisionally. It was only Japan in Asia, which 'Europeanized' itself, learnt European ways, adopted European laws, strengthened itself militarily, learnt the art of domination and colonization from the western 'civilized' states, and was admitted into the family of nations in its own right as a 'civilized state' after it defeated China in 1894 and Russia in 1904.\textsuperscript{277}

Capitulations in India and the East Indies

It is important to mention, as we have noted earlier, that there was a widely recognized custom in India and other parts of Asia, especially in the coastal areas, according to which settlements of foreign merchants were granted substantial concessions.\textsuperscript{278} As Professor Alexandrowicz has also pointed out in his pioneering work, An Introduction to the History of the Law of Nations in the East Indies (16th, 17th and 18th Centuries):

\textsuperscript{275} Gong, ibid, p. 6.
\textsuperscript{276} Gong, ibid, p. 8.
\textsuperscript{278} See K. A. N. Sastri, "Inter-State Relations in Asia", Indian Yearbook of International Affairs (1953), pp. 142-143.
Foreign settlements, duly admitted by the receiving Sovereign, were allowed to govern themselves by their personal laws and habits, and they constituted a sort of miniature society within the larger community whose hospitality they enjoyed.279

Foreign traders generally had their separate quarters and “they were under the jurisdiction of their own heads of settlements who exercise quasi-consular functions”. They were allowed to live according to their own law and habits and enjoyed freedom of religion and internal autonomy in their settlements which the local authorities did not interfere unless their actions affected the peace and order of the state.280 This custom was also extended to the European traders who found it possible therefore to set foot in the territories of one or another local ruler and to open new trade relations. But, says Alexandrowicz, “The privileges granted by the particular ruler to European traders were in course of time converted into “capitulations” which became ultimately derogatory to his sovereignty.” Referring to a treatise by a great German political writer, Johann Heinrich Gottlieb von Justi, published in 1762, who was well aware of the European trade settlements in Asia, Alexandrowicz pointed out how trade monopolies enforced by the European companies in Asia “led from power economics to power politics, and the contracting Asian country tended to be cut off from relations with other countries” which affected their sovereign status.281 Despite all the differences between European and Asian states, according to Alexandrowicz, Justi classified the Asian states of India and China “as civilized states, not inferior to European notions of civilization.”282 Even when the Europeans converted the ‘capitulations’ into instruments of exploitation and managed to make their concessions as irrevocable, according to Professor Alexandrowicz, “this legal development can hardly testify to the inferiority of civilization within the countries whose hospitality the Europeans enjoyed.”283

282 Alexandrowicz, ibid, p. 141.
283 Alexandrowicz, n. 279, p. 11.

VI

India: Towards Recovery

Unrest in Europe

Surveying the state of international society and law at the turn of the twentieth century, acute observers even in Europe found the situation rather gloomy. There was increasing use of force in the determination of the fate of the peoples. No real international society had come into existence beyond Europe and Europeans acted from a position of superiority towards others. Capitulation regimes, consular jurisdiction, and brutal colonial wars were the order of the day. Advancing “civilization” oppressed and impoverished indigenous populations in Asia and later Africa. In 1885, the dark continent was divided by the ‘civilized’ states between themselves without the presence or participation of any African representative. Even in Europe, powerful states had set up a permanent reign of control over the continent and the smaller states enjoyed less autonomy than ever. International law was developing “in accordance with the law of the struggle for life and the survival of the fittest.”284 Some European publicists did regard the “contemporary language of civilization as pure hypocrisy that sought only the advancement of commerce”, and admitted that countless crimes had been committed in the name of civilization, but thought that “it was inevitable that the weaker races should, in the end, succumb.”285

It was an age of intense rivalry between European states. It was a world of empires, gained and maintained by military power. It was a world managed by the powerful, the so-called Great Powers. In the age of continuous warfare, and unrest, there was hardly any regard for law. It was a world with an arms race going on, and with military-industrial complexes to feed it. It was at this time that the Tzar of Russia proposed an international conference to make war to some extent less awful. He wanted a conference to call a halt to the arms race by some measure of general disarmament. The first attempt to codify rules for peaceful settlement of disputes and laws of warfare in the first international conference, organized under the auspices of the Tzar of Russia, which met at the Hague in May 1899, had very limited success. Mutual suspicion between European states was so strong and captivating that nobody could think in terms of reductions of

285 See Koskenniemi, n. 284, pp. 106–107, quoting several European writers, like Charles Solomon, Jeze, Engelhardt and others.
armaments or peaceful settlement of disputes. A Permanent Court of International Arbitration was established for the peaceful settlement of international disputes, which was in truth neither permanent nor a court, but only a list of names from which the parties, if they decided to settle their dispute through arbitration, could choose their arbitrators. The Second Hague Peace Conference, called in 1907, did not add much. War continued to haunt Europe. The preoccupation of the European international law with war may be gauged from the fact that of the 14 documents signed at the Second Hague Peace Conference in 1907, only two dealt with the peaceful relations among states. The other 12 dealt with the problems of war.

At the First Hague Peace Conference in 1899, only 26 states were represented, including two from America, United States and Brazil, and five from Asia, China, Japan, Persia, Siam and Turkey. This number increased to 44 in the Second Hague Conference in 1907 with the participation of other South American States. The five Asian states took part in a major international conference for the first time in 1899. India was lost as British India, and Africa was unrepresented because it was outside the "charmed circle".

As the clash of aspirations increased amongst European countries, peace came more and more to depend on the so-called balance of power and an uneasy equilibrium of forces. The scramble for colonies as protected overseas markets not only led to repeated clashes in Asian and African regions, but contributed to the forging of conflicting alliance systems which, in turn, led in 1914 to what is sometimes referred to as European "civil war", commonly called the First World War.

India and the Paris Peace Conference

With all the terrible destruction during the war, by the time the war came to an end the entire continent of Europe was almost in total ruins. The war had been long: 4 years, 3 months, and 13 days. Nearly ten million soldiers had died in action. Twice that many were wounded. Five million had simply disappeared. The sacrifice of all in blood and treasure was enormous. Practically all the scholars and statesmen in Europe and America were convinced that if fighting in future was to be averted, some kind of an international organization for prevention of war and cooperation among states must be established. President Woodrow Wilson of the United States took lead in this direction. To President Wilson, the

291 India's position changed only after the First World War because of her tremendous contribution in the war effort which led her to become member of the British Imperial Conference in 1917, earlier strongly opposed by the other white British Dominions. See D. N. Verma, India and the League of Nations (Patna, 1968), pp. 1–9. It may also be mentioned that India had already become member of such international organizations as Universal Postal Union (in 1876), Conference of the International Union for the Publication of Tariff Customs (in 1890), and International Telegraph Conference in 1912. See Verma, ibid, p. 10.

World War "signified the moral bankruptcy of the old continent with its rival ambitions and age-long hatreds." Among all the statesmen at the Paris Peace Conference, the President of the United States was most serious and earnest about setting up a League of Nations and insisted that the League Covenant should be devised even before the peace treaty was drafted. Whatever their international legal status earlier, with the establishment of the British rule in India, various Indian princely states had all been merged into British empire and they had lost their identity. They were only a part of the British empire under international law. Subordination of India was complete and absolute. India Office in London conducted her external relations and systematic attempts were made by the British authorities to prevent India from any responsible participation in world affairs.

The First World War, however, changed this position. For its own reasons - obviously to get more than due representation and voting strength - the British government wanted to get separate representation for its Dominions, including India, at the Paris Peace Conference and, even over the objection of several other participants, it succeeded in getting it. India, like other British Dominions - Canada, Australia, New Zealand and South Africa - got its own representation at the 1919 Paris Peace Conference and its plenipotentiaries actively participated in its deliberations. This created a rather anomalous situation since a dependency of a foreign power, which could not control its internal affairs, was accepted as a sovereign state by an international treaty. Indian plenipotentiaries, holding full power on behalf of India, took part in the discussions and signed the peace treaties, along with the representatives of other sovereign states, on the basis of 'legal equality'. India thus acquired a right to become an original member of the League of Nations, (since League Covenant was part of the Peace Treaty), and, for the first time in modern period, came into direct and formal contact with the outside world.
practice of entering into international agreements is sometimes the only test that can be applied to determine whether an entity has such a personality." 293 Although Lord McNair asserts that the "criterion is really international recognition", 294 according to Schwarzenberger, "an intermediate state on the road from dependence to independence may also lead to a stage of limited international personality". 295 In fact he states that "international personality may be accorded provisionally or definitely, conditionally or unconditionally, completely or incompletely, and expressly or by implications. The scope of the international personality granted is a matter of intent." 296 Normally when states lose their international personality, they are called vassal states. The Indian Princely states, under the Paramountcy of the British Crown, provided the best example of vassal states. 297

But India's position from 1919 to 1947, when she was declared and recognized as an independent state, was "that of an anomalous international person." 298 As Oppenheim explained:

"The position of India as subject of international law was for a time anomalous. She became a member of the League of Nations; she was invited to the San Francisco Conference of the United Nations ... She exercised the treaty-making power in her own right. However, so long as the control of her internal and external relations rested ultimately with the British Government and Parliament, she could not be regarded as a sovereign state and a normal subject of international law. In 1947, she became a fully self-governing Dominion and independent state." 299

But after 1919, India began to function as a separate entity in her external relations. So far as the membership of the League was concerned, at the Peace Conference, President Wilson proposed that "only self-governing states shall be admitted to membership in the league; colonies enjoying full power of self-government may be admitted." President Wilson said that although he had great admiration for India, "the impression of the whole world is that she is not self-governed, that the greater part is governed by the laws of Westminster, and lesser part is governed by the Princes whose power is recognised and supported by the British government." 300 But in response, the British Government representative, Lord Robert Cecil, assured the conference that "the British Government is trying just as rapidly as possible to advance India into a self-governing colony; and anything to happen which would exclude India would be unfortunate." 301 In any case, it was pointed out that since India had signed the Peace Treaty (which also included the Covenant of the League of Nations), India could become a member of the League independent of any condition which might be laid down concerning subsequent membership. 302 Ultimately, Britain succeeded and India was included among the original members of the League, 303 although Miller called it "an anomaly among anomalies". 304 Out of 31 original members of the League, India was the only state which was not self-governing. 305

It is significant to note that it was India, and not "British India", which was admitted to the League of Nations. It may be recalled that India was divided into two parts - British India and 562 Princely states, which were under the suzerainty of the British Crown. But at the Peace Conference it was felt that it was "India", and not "British India", without the princely states, which should become member of the League; otherwise the Indian states would remain out of the orbit of the League except to the extent that they could be regarded as represented through the British Government. They could not be eligible for separate membership as they were precluded from foreign relations. Thus at the Paris Peace Conference and in the Covenant of the League of Nations, India was accepted and recognized as a composite state. But this gave princes an opportunity to be represented on the Indian delegation and every year the Indian delegation included one of the ruling princes as India's delegate. In fact at the Paris Peace Conference, it was a prince, the Maharaja of Bikaner, who also signed the Treaty of Versailles as one of the plenipotentiaries to act on behalf of India. 306

The membership of the League of Nations was not something which the Indians liked or appreciated. India was seething with political unrest after the First World War and the Indian nationalist movement, seeking independence of India, was gaining momentum. The nationalist opinion in India felt that the British were merely trying to "hoodwink and camouflage" the world opinion regarding the real state of affairs in India. As an Indian member of the Legislative Assembly of India, M. Asaf Ali, said:

"We became a member of the League of Nations at a time when the victorious powers were trying to rob the vanquished powers of their colonial possessions. That could not be done easily ... because unfortunately at that time, President Wilson ... was thinking in higher terms and the victorious wanted to pacify him."

293 Lisitsyn, ibid.
296 Schwarzenberger, ibid, p. 70.
298 See Pouloue, ibid, p. 204.
300 See quoted in Verma, n. 291, p. 16.
302 Miller, ibid, p. 166.
304 Miller, n. 301, Vol I, p. 493; Verma, ibid, p. 20.
305 Verma, ibid, p. 21.
306 See Verma, ibid, pp. 239--241.
They could not justify swallowing ... practically half of Africa without showing some reasonable position as far as they themselves were concerned in their relationship to India. It was just before then that we received in India a message from His Majesty George that we had the beginning of Swaraj (self-rule) in India. This message was flashed across the world, and it was under those circumstances, to pacify the powers of the world, that India was made an original member of the League. All these facts were made to present a wholly camouflaged state of affairs to the world, and this is how we became a member of the League of Nations.\(^{307}\)

But besides the Indian national opinion, the membership of India and other British Dominions in the League of Nations was strongly resented in the United States. Thus, the *Majority Report of the Committee on Foreign Relations of the US Senate* said:

"Great Britain now has under the name of the British Empire one vote in the Council of the League. She has four additional votes in the Assembly of the League for her self-governing dominions and colonies which are most properly members of the League and signatories to the treaty. She also has the vote of India, which is neither a self-governing Dominion nor a Colony but merely a part of the Empire and which apparently was simply put as a signatory and member of the League by the peace Conference because Great Britain desired it."\(^{308}\)

It was stressed in the US Congress that a League vote for India is absolutely and completely a second vote for England "... absolutely and exclusively under British control. When other British colonies signed the preliminary Covenant they signed through native statesmen. When India signed, she signed through 'The Right Honourable Edwin Montagu, Member of the British Parliament, and the King's Secretary of State for India.' ... The Maharaja of Bikaner, who signed below was only a rubber-stamp, because these native princes are specifically barred from peace-making authority."\(^{309}\)

Opposing United States joining the League in US Senate, Senator James A. Reed from Missouri argued that Great Britain, by including the Dominions and India in the League, would have six votes, as against one vote for the US and other members, which was totally unreasonable. Referring specifically to India, he said:

"India would have a vote in the League. Is that the vote of an independent democracy? Eleven hundred Britishers constitute the governing class in India, where there are 290, 000,000 people. I wonder if that Government ... is entitled to a representation as an independent people. Does he doubt that those 1100 Britishers all of them officers of the Crown, will fail to do the bidding of the Imperial Government of the Empire?"\(^{310}\)

Senator Norris ridiculed the British claim which they had pressed at the Peace Conference that India was democratically governed. Referring to Jallianwala massacre at Amritsar, he said:

"India furnished more than a million men upon various battle fronts on behalf of England's cause, and when the soldiers of India went home, imbued with a spirit of liberty, believing in proclamation of self-determination that were made by England and her Allies, believing thereby that she had fought to make the world more free and that in the end she might share the freedom; when those soldiers went home and undertook to demand it in a peaceable assembly, they were shot down in cold blood by British machine guns."\(^{311}\)

President Wilson, in a speech at Cheyenne Wyo, referred to India's vote and said:

"The only other vote given to the British Empire is given to that hitherto voiceless mass of humanity that lives in the region of romance and pity that we know as India. I am willing that India should stand up in the Councils of the world and say something."\(^{312}\) But that was just not possible. Even after India's admission into the League of Nations, Great Britain completely controlled her external relations. From the constitutional point of view, India was still "an integral part of the British Empire."\(^{313}\) A. B. Keith observed:

"The justification for League membership was autonomy, it could fairly be predicated of the Great Dominions; of India it had no present truth, and it could hardly be said that its early fulfilment was possible. In these circumstances it would have been wiser candidly to admit that India could not be given then a place in the League, while leaving it open for her when autonomous to be accorded distinct membership ... As it is, in the League India's position is frankly anomalous, for her policy is determined and is to remain determined indefinitely by the British Government."\(^{314}\)

While the Dominions enjoyed freedom of action with respect to policy matters affecting them in the League as well as in other international organizations, India did not have much say on major policy matters or political questions affecting it or the British Empire.\(^{314}\) Some Indian nationalist leaders, including the Indian National Congress, urging the application of the Wilsonian principle of self-determination, appealed to the Americans to reject the Versailles Treaty. A

\(^{307}\) *Legislative Assembly Debates in India* (1936), Vol I, pp. 895-896; also quoted in Verma, n. 287, p. 25.

\(^{308}\) See quoted in Poulose, n. 297, p. 207; see also T. T. Poulose, *Succession in International Law: A study of India, Pakistan, Ceylon, and Burma* (New Delhi, 1974), pp. 23 ff.

\(^{309}\) See quoted in Poulose, n. 297, p. 207.


\(^{311}\) Quoted in Poulose, n. 297, p. 207.

\(^{312}\) Lanka Sundram, *India in World Politics* (1944), p. 27.


respected Indian national leader, Lala Lajpat Rai, asked the American public to reject the Covenant because the League of Nations was a "fraud" and was meant for the "perpetuation of imperialism."315

It is interesting to note that although India had not been formally recognized as an independent state by any other member of the family of "civilized" nations, was not a self-governing member of the British Commonwealth of Nations, was committed to the First World War by the unilateral declaration of the British Government, several British publicists argued that India had achieved an international status because of its membership of the League of Nations. Thus Professor A. B. Keith said that membership of the League gave India a "quasi-independence in her international relations" and, therefore, India had a definite measure of international status.316 W. E. Hall had no doubt that the British self-governing Dominions and India had acquired something of an international personality through the League, "but how much is not so evident."317 Oppenheim felt that India stood in a special position. By virtue of her membership of the League, India, he said, "certainly possesses a position in international law," "It is sui generis", he maintained writing in 1928, "and defies classification."318

With her newly-acquired status, India participated in the Washington Conference on Naval Armament in 1921, and her delegate, Srinivas Sastri, signed the Washington treaties on February 5, 1922, which was separately ratified by the King on India's behalf. Further, as a member of the League, India was automatically admitted to the International Labour Organization, the Permanent Court of International Justice, Committee of Intellectual Cooperation at Paris, the International Institute of Agriculture, and several other League or semi-League organizations. She was also represented on her own at almost every international conference after 1920. India also signed numerous multilateral treaties, including the Kellogg-Briand Pact of 1928.319 Although India was still a colony and part of the British Empire, it started participating, albeit through representatives selected by the British Government in India, in international conferences and signing treaties as a member of the international community. This was surely helpful to some extent. As the Report of the Indian delegation to the 9th session of the Assembly of the League (1928) pointed out:

"Nothing that we have said should be taken as supporting the view that the advantages which India already derives from the League are negligible. These advantages have always, on the contrary, been considerable and they are becoming more so. They include in particular a degree of international status which India would not now enjoy, nor be able to obtain, if her separate signature to the Treaty of Versailles had not made her an original member of the League."320

Demand for Self-governing Status

India's membership of the League and her participation in international affairs prompted several Indian statesmen in India to demand a self-governing status like other British Dominions. A. B. Keith had said, "by securing admission of India to the League, the British Government bound itself to the task of creating a self-governing India."321 Pointing to India's anomalous position, Phiroz Sethna, an Indian member of the Council of State in India, said in 1930: "India cannot take her rightful place in international affairs unless she has her rightful place as a nation here in India. Until that is done Indians will regard their representation in the League of Nations as a mockery."322

Following, as they did, the repeated wartime declarations of Allied leaders, especially President Woodrow Wilson of the United States, that war was being fought to safeguard democracy and the principle of self-determination, some Indian political leaders were excited and hopeful during the war about India's status in the post-war settlement.323 But India's enthusiasm was abated when they saw the imperialistic attitude of the British Government. It was an alien bureaucratic, autocratic government that got the membership, and not a self-governing India which the Indian leaders had imagined. So long as India was ruled by the British, it mattered little as to what happened in the outside world. Indians were mainly interested in their freedom. When the United States refused to join the League, they were convinced there was something radically wrong with the League.

There was a strong criticism and resentment against the manner in which India was represented. India's representatives to the League and other international conferences were nominated by the Secretary of State for India, or by the British Government, or at most by the British Viceroy in India.324 The so-called "representatives of India", it was pointed out by Indians, had "always been the nominated tools and mouthpieces, megaphones and microphones of the British Government" and this was considered as a "shameful and disgraceful position

315 See for more discussion on India's membership and reaction in US Senate, Verma, n. 291, pp. 27-29.
319 See numerous other conferences India attended and treaties she signed, Verma, n. 291, pp. 33-36.
320 See quoted in Verma, ibid, p. 36.
323 Bal Gangadhar Tilak even wrote a letter to Clemenceau, the President of the Peace Conference, outlining India's prospective role as a leading power in Asia in the post-war world affairs. See Verma, ibid, p. 270.
with which no self-respecting Indian could be happy." Indian delegations, it was demanded, should not be represented, or at least not always led, by Englishmen. India, it was said by Indian nationalist leaders, "must be represented by the people, by members elected by the Central legislature. If we are not in a position to do this there is no use of India taking part in the League of Nations." 325 A typical comment on the issue of India's representation in the League was:

"India may be an original member of the League of Nations, but all the world know that this means an additional voice and vote for the British Foreign Office. The people of India have no say in the matter and their so-called representatives are nominated by the British government." 326

To many Indians, the League of Nations was nothing more than an instrument of imperialism, a "Society for the exploitation of the East and protection of the West". Instances of Britain's conduct in Egypt, outrages in China, Iraq and other colonies, were sufficient to prove the utter helplessness of the colonized, oppressed peoples under the rule of the League. The League appeared to Indians as a sort of balance of power or alliances between European nations for the maintenance of status quo. Although the League talked of honour and justice between nations, as Jawaharlal Nehru said, "it does not enquire whether existing relationships are based on justice and honour ... The dependencies of an imperialist power are domestic matters for it. So that, as far as the League is concerned, it looks forward to a perpetual dominance by these powers over their empires." 327

The League had not accepted the principle of self-determination outside Europe. The so-called Mandate system of the League in Indian view was nothing more than "colonialism" and "oppression" of the territories taken from Germany and Turkey and given to the imperialist powers where the conditions had further deteriorated. A leading newspaper in India said:

"The League's Mandates can be otherwise described as the control of the European powers over the weaker nationalities in Asia and Africa and from our experience of such control in Egypt, India and elsewhere it can only be said that incessant strife, racial bitterness and intrigues ... are the almost inevitable concomitants of the League of Nations." 328

The League was said to be primarily an organization of the white peoples and it worked primarily for the European countries and their problems. While the League took prompt action in Greco-Bulgarian dispute, it ignored Asians

325 See several Indian leaders quoted in Verma, n. 291, pp. 270ff.
328 Amrita Bazar Patrika (Calcutta), 23 June, 1921, also quoted in India and the United Nations, n. 324, p. 7.

altogether. "Whites must not fight Whites -- this is the business of the League to see", said an Indian newspaper on March 24, 1927:

"But the importance of the League is nowhere [more] marked than when Asiatic nations have appealed for protection against white imperialism. The bombardment of defenceless Nanking by British and American warships has not been challenged by the League." 329

The East, it was thought, was deliberately ignored. "It was not surprising", said an Indian political journal, "that the League had in no way interfered to prevent war in Syria or put a stop to recent British aggression in China for the sufferers there were Asiatics and not Europeans." 330 The failure of the Disarmament Conference and League's utter helplessness to protect China and Abyssinia from the aggressions of Japan and Italy respectively caused feelings of disappointment and revulsion amongst the Indian people and there were demands for India's withdrawal from the League of Nations, and even liquidation of the League. 331

Although in theory India's membership of the League was based on the principle of sovereign equality of states, it was really meant to help the British gain more weight in the League. The fact that the British Dominions -- Canada, Australia, New Zealand, South Africa and India -- which appeared for the first time as members of the international community, did not figure in their proper alphabetical place among other signatories, but were grouped together under the rubric of the "British Empire", clearly showed that they were not regarded as independent sovereign states. Article 1 of the Covenant, permitting "any fully self-governing State, Dominion or Colony" to become member of the League, was evidently designed to take account of the their special status. 332 India by and large spoke at Geneva in "her master's voice". Britain did not want India to contest for a non-permanent seat of the Council of the League. The practice of giving an Indian prince representation, first at the Peace Conference and later in the annual sessions of the League Assembly, aroused the suspicion of the Indian people and, it was felt, was meant to emphasize the political disunity of the country using the princes against the rising tide of Indian nationalism. India's financial contribution was by far the largest of any of the non-permanent members of the Council, not because India was a rich country, but despite the poverty of her vast population. On the other hand, very few Indians had been appointed in the League secretariat. 333

Failure of the League of Nations

The primary purpose of the League was to preserve peace which it could not do. From the beginning it was hampered by the absence of the United States. Symptoms of weakness soon appeared and they were accentuated toward the end of the first decade of the League’s existence. With the onset of the Great Depression after 1929, and the outbreak of the economic crisis, a rapid decline began. The first serious challenge to the League came in 1931 when Japan invaded Manchuria. The League took no action. When it did take a stand, at least in words, in 1933, Japan gave notice of her withdrawal. The League proved powerless even when little Paraguay in her war with Bolivia took possession of Chaco in 1934. The most serious blow to the prestige of the League came in 1935 when it failed to take action against Mussolini’s invasion and conquest of Ethiopia.334

Only seven Asian-African countries, some of them mere European colonies, China, Japan, Siam, Persia, British India, Liberia, and South Africa, were included among the original 45 members of the League, and five, Afghanistan, Egypt, Ethiopia, Iraq and Turkey, subsequently joined it. Although the League gave the first opportunity to countries like Afghanistan, Egypt, Iraq, and India, to appear on the modern international stage, its centre of gravity remained in Western Europe.

Second World War and the Freedom Movement in India

Europe had hardly recovered from the first World War in late 1920’s when it drifted towards the second holocaust in 1939. If quarrelling and fighting among themselves, Asians could not withstand the pressure of aggressive European States in the eighteenth and nineteenth centuries, Europe could not remain unaffected by these continued bickering and wars amongst the European states. Asian peoples were also not expected to be subdued when they came to know and understand Europeans and their weaknesses from close quarters. Several Indians, like other Asians, had gone to Europe and had been educated in their universities. They realized the injustices which had been committed on Asians which were being continued. Under the leadership of European-educated Indian dynamic leaders, there had started a strong freedom movement in India. All the atrocities by the English rulers could not contain this movement and suppress the new demands for independence and self-rule.

When Britain declared war on Germany on September 3, 1939, India was automatically involved in the war. Britain was naturally anxious to utilize India’s abundant resources for the prosecution of the war. But the Indian political leaders, while sympathetic to the cause of democracy and freedom for which the Allied Powers said they were fighting, made it clear that India and its people should not, and could not, be expected to join up and help in any war until they got self-rule and independence. In fact they complained that Indian troops had earlier been “sent abroad for imperialist purposes and often to conquer or suppress other peoples with whom we had no quarrel whatever, and with whose efforts to regain their freedom we sympathized. Indian troops had been used as mercenaries for this purpose in Burma, China, Iran, and the Middle East, and parts of Africa. They had become symbols of British imperialism in all these countries and antagonized their peoples against India.”335 Indians did not want Indian resources to be used for “maintaining (British) imperialist domination” and did not want British Government to “impose war on India” as they had done in 1914.336 On September 14, 1939, Indian National Congress passed a resolution in which they declared that:

“India cannot associate herself in a war said to be for democratic freedom when that very freedom is denied to her ... If the war is to defend the status quo, imperialist possessions, colonies, vested interests and privilege, then India can have nothing to do with it ... a free democratic India will gladly associate herself with other free nations for mutual defence against aggression and for economic cooperation ... India is the crux of the problem, for India has been the outstanding example of modern imperialism and no refashioning of the world can succeed which ignores this vital problem. With her vast resources she must play an important part in any scheme of world organization. But she can only do so as a free nation whose energies have been released for this great end. Freedom today is indivisible and every attempt to retain imperialist domination in any part of the world will lead inevitably to fresh disaster ...”337

The British government, of course, would not accept any such demand and rejected the Indian leaders’ petition. The British Prime Minister, Sir Winston Churchill, had said in unequivocal terms:

“The British nation has no intention whatever of relinquishing control of Indian life and progress ... We have no intention of casting away that most truly bright and precious jewel in the crown of the King, which more than all our Dominions and Dependencies, constitutes the glory and strength of the British Empire.”338

336 See Nehru, ibid, pp. 430–432.
337 See Nehru, ibid, pp. 432–434.
338 See quoted in Nehru, ibid, p. 445.
Churchill did not want to give India even Dominion status. As he said, "I did not contemplate India having the same constitutional rights and system as Canada in any period which we can foresee ... England, apart from her Empire in India, ceases forever to co-exist as a great power."

But while the Indian nationalist leaders refused to cooperate with the British in its war efforts, the Indian Princes stood solidly behind the government, which had no difficulty in securing sufficient recruits without any compulsion. England's efforts were greatly enhanced by the man-power and material resources of India. The Indian states supplied more than 375,000 recruits for the fighting forces of India, provided men for technical work, and important materials, such as steel, blankets, webbing cloth and rubber products. Since the British refused to accept the Indian demand for freedom, there started civil disobedience movement in India. But when it did not succeed, in August 1942, the Congress Committee demanded immediate withdrawal of the British power from India. When the government responded by arresting the Indian leaders, it led to tremendous revolt which was ruthlessly suppressed. While most of the world leaders, including US President Roosevelt, refused to intervene, Prime Minister Churchill declared that he had not become the King's first minister "to preside over the liquidation of the British Empire." In saying so, Churchill undoubtedly represented the view of the vast majority of his people. The architect of the Atlantic Charter, US President Roosevelt, perhaps found it advisable not to press Britain on an issue on which her Prime Minister and his countrymen held so strong views.

It is important to note that, before the entry of the United States in war, the British colonial empire "cracked up with amazing rapidity." The Indians sometimes wondered if this outwardly proud structure "was just a house of cards with no foundations or inner strength." Although Japan was not particularly liked in India, especially because of its aggression against China, as Nehru said, "there was a feeling of satisfaction at the collapse of old-established European colonial powers before the armed strength of an Asian power. The racial, Oriental Asiatic feeling was evident on the British side also. Defeat and disaster were bitter enough, but the fact that an Oriental and Asiatic power had triumphed over them added to the bitterness and humiliation. An Englishman occupying a high position said that he would have preferred it if the Prince of Wales and Repulse had been sunk by the Germans instead of by the yellow Japanese." Although the British Government had suppressed the 1942 unrest in India, it was soon faced by another serious danger. A revolutionary Indian leader, Subhash Chandra Bose, who had escaped from India in 1941, made contacts with Germany and Japan. When the Japanese conquered the Malay Peninsula, a large number of Indian soldiers fell prisoners in their hands. Under an agreement with the Japanese Government, Bose, respectfully and lovingly called Netaji (Leader), organized them into an Indian National Army, and in 1943 his soldiers advanced with the Japanese army up to the very frontier of India. The Indian National Army surrendered to the British after the collapse of Japan, and a number of its officers were tried in India for treason. But this led to a wave of enthusiasm in India and demonstrations were held in many parts of the country. On 18 February, 1946, the ratings of Royal Indian Navy rose in open mutiny which, for a few days, assumed serious proportions. Later, the Court Martial found the Indian National Army Officers guilty, but their sentences were remitted and they were all released.

No wonder, on February 19, 1946, the newly-elected Labour Government in England announced that three members of the Cabinet would visit India "to promote, in conjunction with the leaders of the Indian opinion, the early realization of full self-government in India." The Freedom of India could not be postponed for too long. After almost endless discussions and acrimonious negotiations in India, the British Parliament passed on July 1, 1947, without any dissent, the India Independence Act and fixed August 15, 1947, as the date of the transfer of authority. Accordingly, at midnight on 14th–15th August, a special session of the Constituent Assembly was held in Delhi. It solemnly declared the independence of India as a part of the British Commonwealth and appointed Lord Mountbatten, the last British Viceroy, as the first Governor-General of India.

Independent India and Princely States

In the face of growing internal struggle for independence by the increasingly restive Indian people, and the general international environment after the war when Europe was trying to recover from a prolonged, bloody, costly war, the already weakened British Government could not help but accept the independence of India. But as a parting gift, Britain tried to make sure that Independent India was left as weak and divided as possible. Based on their century-old policy of creating division in India, and relying on the internal divisions in the Indian society amongst Hindus and Muslims, Britain divided British India into two independent states, India and Pakistan. The Muslim majority areas in the west of India, consisting of Baluchistan, the North-West Frontier Province, Sindh and a

---

339 Quoted in Nehru, ibid. Emphasis added.
342 See Nehru, p. 335, p. 501.
343 Nehru, p. 457.
344 See Majumdar et al, pp. 977–978.
345 See Karunakaran, p. 19.
346 See for details, Majumdar, n. 340, pp. 978 ff.
part of the Punjab, and on the east, the larger portion of Bengal, were constituted
as the new state of Pakistan. The creation of Pakistan as an Islamic state had
large-scale repercussions in the sub-continent as it led to the uprooting of millions
of people on both sides of the border, creating stupendous refugee problem in the
newly-created states, destabilizing their economies and generating acute political
tensions between them.

To make the situation even more difficult and complicated for the emergent
two new states, which could have led to utter chaos if not handled properly, it
declared that 600 and odd Princely States in India, which were under the British
suzerainty, had, with the lapse of the British suzerainty, become independent and
were not part of the newly created states of India or Pakistan. But the British
Government did not accept them as separate international entities. In fact, the
new Government of Independent India made it abundantly clear that they could
not recognize the Princely states as independent who could have any contact with
a foreign state or entity. As Jawaharlal Nehru declared in the Parliament:

"I should like to say and other countries to know that we will not recognise any
independence of any state in India; further, that any recognition of any such
independence by any foreign power, whichever it may be, and wherever it may be,
will be considered an unfriendly act." 348

B. R. Ambedkar, the Law Minister of the Interim Indian Cabinet, also declared
that the hope of the Indian Princely states to get admitted to the United Nations
was merely a wishful thinking on their part. He advised the Government "to
declare that the Government of India will never recognise any Indian state as
sovereign independent state and to inform the UNO that admitting an Indian state
which declares itself as sovereign independent state to the membership of the
UNO would meet with the strongest objection from the people of India as
violation of the sovereign rights of the Union of India." 349

The Princely states, therefore, according the Indian Government, had the
option either to join India or Pakistan on the basis of geographical contiguity,
composition of population and economic factors. The Princely states varied in
size, population and resources from Hyderabad with over eighty thousand square
miles of area, a population of 18 million and very considerable material
resources, to small petty chiefs of a few square miles in Kathiawad and Simla

347 See statement by Prime Minister Attlee in the British Parliament explaining the Indian
Independence Bill when he said that "with the ending of the treaties and agreements, the states
regain their independence", quoted in Poulose, n. 308, p. 45. This view was, however, strongly
criticized and contested in India. See Poulose, ibid, pp. 45-50.
348 See quoted in Poulose, n. 308, p. 48.
349 See quoted in Poulose, ibid, pp. 47-48. See also statement by V. K. Krishna Menon in UN
Security Council while discussing the Kashmir question. Ibid.
350 See for a discussion about the status of Princely states and their treaties with the British
Government, Poulose, n. 308, pp. 31 ff.

Hill areas. It was unimaginable that 327 rulers of petty states, whose average area
was about 20 square miles, average population about 3,000, and average annual
revenue about Rs. 22,000, would overnight become independent and acquire the
power of life and death over their subjects 351 and create unimaginable problems
for the two newly-independent states. The British Cabinet Mission in a
Memorandum on States' Treaties and Paramournty presented to the Chamber
of Princes on May 22, 1946, said:

"When a new fully self-governing or independent Government or Governments
come into being ... His Majesty's Government will cease to exercise the powers of
Paramournty. This means that the rights of the states which flow from their
relationship to the Crown will no longer exist and that all the rights surrendered by
states to the Paramount power will return to the states. Political arrangements
between the states on the one side and the British Crown and British India on the
other hand, will thus be brought to an end. The void will have to be filled either by
the states entering into a federal relationship with the successor Government or
Governments in British India, or failing this, entering into particular political
arrangements with it or them." 352

The Princes, while accepting the Cabinet Mission's plan, declared that, "(1) The
entry of the states into the Union shall be on no other basis than that of negotiation,
and the final decision will rest on each state ...; (2) All the rights surrendered by
the states to the Paramount power will return to the states. Every state shall
continue to retain its sovereignty and all rights and powers except those that have
been expressly delegated by it ...; (3) The constitution of each state, its territorial
integrity and the succession of its reigning dynasty ... shall not be interfered by
the Union." 353 Some of the big states, like Travancore and Hyderabad, however,
declared that they would not accept even this plan and had a right to declare
independence and talked of entering treaty relations as between sovereign
states. 354 Their lead was followed by several others causing a lot of anxiety for
the new Government of India. 355 The messy situation, which could have led to
total disintegration of India and an utter chaos was largely solved after July 5,
1947, when India's new Home Minister, Sardar Vallabhbhai Patel, assisted by his
Secretary V. P. Menon, took charge of the newly created Indian States Department.
On his advice, as well as that of Lord Mountbatten, practically all the states, with
a few exceptions, decided to accede to the Indian Union in accordance with an
Instrument of Accession. Thus, before the end of November, 1949, the integration

352 See Majumdar, n. 340, pp. 982-983.
353 Majumdar, ibid.
354 See V. P. Menon, n. 351, pp. 90-91; Majumdar, ibid, p. 983.
355 See Menon, n. 351, p. 113.
of the Indian Princely states was completed with the exception of Hyderabad and Kashmir. This was a spectacular achievement indeed.

In Hyderabad, the largest Indian state which had a Muslim ruler over a very large Hindu population, a very difficult situation arose when Nizam’s Government refused to accede to the Indian Union, made warlike preparations, started recruiting a large state army, and smuggling arms and ammunition. India had no choice but to march Indian troops into the state on September 13, 1948, declaring that it was not an “act of war”, but only a “police action” to “restore peace and tranquility inside the state and a sense of security in the adjoining Indian territory”. The state government, which had filed a complaint against India before the UN Security Council, resigned. The Nizam’s forces surrendered, and the Nizam cabled on September 22, that he had withdrawn the case from the Security Council and agreed to cooperate. On January 26, 1950, Hyderabad acceded to the Indian Union.

While the Hyderabad issue was settled, the situation in the state of Jammu and Kashmir remained grave and critical. Situated in the extreme north of the Indian sub-continent, Kashmir had a Hindu king ruling over a population of whom 77.11 per cent were Muslims, and 20.12 per cent Hindus. The state of Jammu and Kashmir was subjected to repeated tribal raids from across and within the Pakistan area soon after partition. Seeking help from India, on rapid advance of raiders threatening the capital Srinagar itself, the Maharaja of Kashmir formally acceded to the Indian Union on October 26, 1947. On October 27, the Indian forces reached Kashmir and successfully resisted tribal raids. Pakistani forces had not only encouraged and supported the tribal raids, but helped them occupy an area called Azad Kashmir. On December 31, 1947, the Indian Union sent a memorandum to the UN Security Council urging the latter “to call upon Pakistan, (a member state), to put an end immediately to the giving of such assistance, which is an act of aggression against India.” After a lot of acrimonious discussions and debates inside and out of the United Nations, as we shall discuss later, a ‘cease fire’ agreement was concluded on January 1, 1949, between India and Pakistan. We may just add here that even after three wars between the two countries, the issue is still not settled and is hanging fire.

India became a founding member of the United Nations in 1945 even though it was still under the British rule. In fact its membership flowed from its membership of the League of Nations, and also as a signatory to the Declaration of war-time coalition of the "United Nations" of January 1, 1942, in Washington D.C. It was invited to the United Nations Conference on International Organization (UNCIO) in 1945, and it participated in the historic conference but only as a British colony, called British India. Except for Byelo-Russia and Ukraine, admitted on the initiative of Russia though they were only members of the then Union of the Soviet Socialist Republics, India was the only non-sovereign state in the United Nations.

The Indian national public opinion was not very hopeful or enthusiastic about the new conference on international organization during the war years because of their bitter experience in the past. The Atlantic Charter, the declaration of four freedoms and other war-time declarations regarding the war and peace of the Allies, like the Teheran Declaration of 1943 were all taken with scepticism. When the draft proposals for the establishment of a new international organization, or the United Nations, known as Dumbarton Oaks Proposals (DOP) were issued by the United States, Soviet Union, Great Britain and China, on October 7, 1944 they were not received with much hope. It was pointed out that "territorial ambitions of the big powers were responsible for most of the conflicts in the world and that the Dumbarton Oaks proposals made no attempt to reconcile the conflicting interests of different states in various fields." It might, therefore, be just "another futile attempt for the achievement of the world peace." By the time the San Francisco Conference was convened, the questions of transfer of power in India, and the proposed partition of India attracted so much attention that discussions and comments on future international organization were meager. But the opinions that were expressed were not very optimistic. Thus it was said that "imperialists were crying and clamouring for dominating the weaker nations for all time to come", and "measures were being adopted to suppress the voice of the enslaved nations of the world". The Conference, therefore, “cannot produce much hope in the minds of Indians, still in bondage.”

Indian national opinion was very critical of the selection process of the Indian delegation by the Viceroy-in-Council to the San Francisco Conference, especially

---

356 See for a most exhaustive and authoritative story about the integration of the Indian Princely States with the Union of India by India’s highest official in the Government who was largely responsible for the job, Menon, n. 351. See also Majumdar, n. 340, pp. 983–985.
357 See also K. M. Panikkar, A Survey of Indian History (Bombay, 1964), p. 260.
361 See Goodrich, ibid, p. 305.
362 Goodrich, ibid, p. 307.
363 Goodrich, ibid, pp. 308 ff.
because the British and the American delegations included representatives of the major political parties in their countries. The selected Indian delegates were Sir A. R. Mudaliar (leader), Sir Feroz Khan Noon, and Sir V. T. Krishnamachari (as representing the Princely States), all supposed to be mere spokesmen of the British Government.366 The most prominent Indian national leader, Mahatma Gandhi, said that there were two essential conditions for peace so far as India was concerned, namely, that India should be free from foreign control, and that the peace should be just. “If these foregoing essentials of peace are accepted”, he said, “it follows that the camouflage of Indian representation through Indians nominated by British imperialism will be worse than no representation. Either India is represented by an elected representative, or represented not at all.”367

Supporting Gandhi’s views, Hindustan Times commented editorially: “Rather than be a mere appendage to the British Government, we feel India should stand aloof from all international organizations till she can enter them as a free and sovereign state.” The paper pungently remarked in another editorial that “the Government would rather keep up their pretence and allow one of the most important [Members] of the United Nations to have the most unrepresentative of delegations.” And added, “It will be a hoax on San Francisco.”368 Some other Indian national leaders from other parties were equally critical.369

Indian nationalist elements took the fight against the unrepresentative character of the Indian delegation to the United States. In an advertisement in Washington newspapers, National Committee for India’s Freedom said the members of the delegation represented only their “British employers” and that “their masquerade in San Francisco as India’s representatives becomes a bitter mockery and a brazen affront to the intelligence of authentic delegates.”370 Mrs. Vijayalakshmi Pandit, a respected Indian political leader and sister of Jawaharlal Nehru, said in a press conference two days after the UNCIO opened that “the so-called Indian representatives” did not have “the slightest representative capacity.”371

366 It was not easy for the British Government to select members of the Indian delegation because of serious criticism coming from Indian national leaders. See another article by Professor M. S. Rajan based on British sources, “India and the Making of the UN Charter – II”, International Studies (1999), pp. 3–16. Both the articles complement each other.
367 Hindustan Times, 7 March, 1945.
368 See quoted in Rajan, n. 366, p. 434.
370 The Hindu 13 April 1945, quoted in Rajan, ibid, p. 435.
371 One year later she led the Indian delegation to the UN General Assembly and she was elected President of the eighth session of the Assembly in 1953. See Rajan, ibid.

London Conference
As a preliminary to the San Francisco conference, the Indian delegation, along with other members of the British Commonwealth – Australia, Canada, New Zealand, South Africa, and the U. K. – participated in a Conference in London from 4 April to 13 April, 1945, to exchange ideas and consult one another on the draft proposals for the establishment of the world organization. Speaking for the Indian delegation, Sir Feroz Khan Noon, obviously referring to the criticism about the unrepresentative character of the delegation, pointed out that “We are here to represent India and not His Majesty’s Government”; that HMG had not given any instructions to them but they had “instructions from our government”; and that India had quietly grown into a Dominion without the British Government actually knowing it.372

Discussing the role of the small versus big powers in the proposed world organization, the leader of the Indian delegation, Sir A. R. Mudaliar, agreed with the Canadian contention that in DOP the five great powers had safeguarded their position at the expense of the smaller powers. From the point of view of India, he said, the draft provision regarding the nature of representation of states other than the Big Five was one of the most important. Mudaliar said:

“India felt that the present position was almost intolerable. China had been classified as a Great Power at the instigation of the United States. It only required a moment’s comparison to realize the anomaly of this situation. On the test suggested by Australia and New Zealand, of past and potential contributions to the war effort, India deserved better representation.”

Mudaliar also pointed out that in the previous twenty-five years, India had not once been elected to the Council of the League. In the future, however, it was likely that a great deal would be expected of India, militarily and economically, by the new world organization. Therefore, the position in the DOP was not, he thought, “one which his countrymen could accept.” It was not a question of prestige, he said, “it was merely an extension of the logical decision reached in regard to the Great Powers, namely, that power and responsibility should count.”373

The Indian delegation, while supporting the “Yalta Formula” and the right of veto to some Big Powers, however, found “particularly unpalatable” giving such power to China and France. It agreed that it was consistent for a permanent member to exercise veto in a dispute to which it was not a party; and it was also desirable that the veto should be applicable in some other matters also.374

The Indian delegation also took a lot of interest in the future of the League of Nations mandates. Mudaliar reiterated Indian opposition to the restoration of
colonies to the original owners, because such a policy would "encourage the belief which was held in Eastern countries that the object of the struggle [i.e. the Second World War] was to bring about the re-establishment of colonial rule by the European powers." He suggested that these colonial territories should be put under international trusteeship with a view to removing "a fundamental cause of future wars." 375

San Francisco Conference

The London conference was considered as a "useful rehearsal" for Commonwealth delegations before going on to the San Francisco Conference. The Indian delegation was one of the smallest at San Francisco and, according to the Indian Report, there was a great deal of stress on its members and pressure to attend several committees which met simultaneously.

In his preliminary remarks the leader of the Indian delegation referred to the part played by India in the First and the Second World Wars. While commending the four Sponsoring Powers for their contribution to victory in the Second World War, Mudaliar added: "We talk of the Great Powers and of small powers; we talk of the special responsibility of the Great Powers, and the special privileges of the Great Powers also. I should therefore like to put in its appropriate perspective what India has done in this war. Two and a half million sons of India ... drawn on a voluntary basis, are today fighting in the different parts of the world". He pointed out that, next to the armed forces of the Sponsoring powers, the Indian army was the largest in the field. He stated that none of the Great Powers, by themselves alone, could have stood against the aggressor nations. He reminded the Great Powers of the great contribution of the smaller nations. 376

The Indian delegation sponsored four amendments to the DP relating to 1. Human rights; 2. Penalizing of a member that might fail in its financial obligations; 3. Criteria for the selection of the non-permanent members of the Security Council, and 4. Inclusion of observers in the Security Council. The Indian delegation was quite concerned about the selection of states to sit in the Security Council which, it argued, should be based, inter alia, on population, industrial potential, willingness and ability to contribute to international security arrangements and past performance. It supported the Yalta formula on veto but suggested that the provision should be open to revision after ten years. Since the Big Powers were determined to get the Charter as they wanted, India or other smaller countries hardly mattered. In the end, as Mudaliar said, "We realize as earnestly as anyone else in this conference that it is vital to bring into existence an organization, however defective, on which the hopes, the aspirations of the people of the world depend." 377

It may be mentioned that, not only India which was not even independent at that time, but Asian nations, as such, played a very small and insignificant role in the formulation of the UN Charter. 378 In the UNCIO, there were only six of them, and two of these - India and Philippines - were not yet independent. The Indian delegation did not even have the support of the nationalist India. They realized their limitations and marginal role they, or any other small state, could play. In spite of all these handicaps, they participated as well as they could without compromising the Indian nationalist opinion. 379 An Indian newspaper correspondent, reporting from San Francisco in the UNCIO, summed up the Indian delegation's role as follows:

"India has been a good little boy among the 45 [delegations] never saying an important thing likely to offend Britain and the other Big Four, meek and content to stand and wait, because that, too, is service. She has lost an opportunity which will never come again." 380

With most of the nationalist leaders in prison, and the interests of the people and press being focused on achieving independence, this was bound to be the case.

375 See Rajan, ibid. p. 441.
377 Quoted in Rajan, ibid. p. 449; see also p. 40.
379 See Rajan, ibid. p. 455. Professor Rajan does not agree with Arthur Lall's criticism that India's role in the UNCIO "was disappointingly and disproportionately small".
India Joins the Family of "Civilized" Nations

Post-World War Society: A New World

Although the Allies won the Second World War, the world that emerged from the holocaust was a new and different world. The European powers, which had dominated the world scene for nearly three hundred years, had been pushed aside and were no longer at the centre of the world stage. Out of the ruins of the world holocaust of 1939–1945, the United States and the Soviet Union emerged to dominate the international scene and seriously challenge each other. Since then the world, divided into two groups, plunged into a 'cold war' and the most dangerous armament race.

There was another significant change. With the weakening of Europe, colonialism collapsed and, as we shall see, there emerged numerous independent countries in Asia and later in Africa which for a long time had no status and no role in the formulation of international law and, as we have seen, were considered as no more than its objects. For one thing, the erstwhile "backward" and "uncivilized" China emerged as a Great Power under the patronage of the United States. Although in 1945, of the 51 members of the United Nations, only 13 were from Asia and Africa, their number was bound to and did increase in a phenomenal manner, especially after 1955. It may be mentioned in passing that India was accepted as an original member of the United Nations. However, Pakistan, which had been carved out of the British Indian territory was declared as a new state and had to be admitted as a new Member of the United Nations in 1947 itself. In response to Pakistan's claim for original membership in the United Nations, the Sixth Committee of the General Assembly expressed the view that a Member state of the United Nations "does not cease to be a Member simply because its constitution or its frontier has been subjected to changes ..." According to the legal opinion of Ivan Kerno, then Assistant Secretary General of the United Nations, "there is no change in the international status of India; it continues as a State ..." Referring to the separation of Pakistan from India, he said:

"In international law, the situation is analogous to the separation of the Irish Free State from Britain and Belgium from the Netherlands. In these cases the portion which separated was considered a new state, and the remaining portion continued as an existing state with all the rights and duties which it had before."

The question, however, is not free from controversy. In all the cases referred to in Europe, there emerged new states after separation from an already existing and independent state, which was not true of India. The Indian National Congress party suggested to the British Government in 1946 that instead of a single bill providing simultaneously for the independence of India and the separation of Pakistan, two bills should be introduced in the British Parliament, one for setting up India as an independent state, and the other for the separation of Pakistan from India. But the proposal was not acceptable to the British Government. Lord Stowell, the Secretary of State, said in London in a press conference on July 4, 1947: "The name 'India' has certain practical advantages, as the name has been used in treaties and international documents. Retaining the name India will make it easier for the Dominion to continue as a member of the United Nations."

Since the Indian Independence Act provided that "two independent Dominions shall be set up simultaneously in India to be known respectively as India and Pakistan", Pakistan argued that both the newly-emergent states were co-successor states and that Pakistan should be treated as an original member of the United Nations along with India, whose original personality disappeared in 1947. Although Pakistan's claim was supported by Chile, Australia, Argentina, Haiti, Philippines, Egypt, Iraq, El Salvador, USA, and others, it was not accepted and Pakistan was admitted as a new member.

Under a strong current of self-determination, in which India played not a mean role, as we shall see, aided by the unusual conditions of the cold war, most of the Asian-African and Pacific countries acquired independence and became members of the "civilized" international society. So that it was not long before Europe formed a small minority of this group and a vast majority of the UN membership consisted of the thus far neglected and dominated countries of Asia, Africa and other parts of the world. Needless to say, the criterion of "civilized nation" as a basis for participation in the community of nations has come to be abandoned. After the eras of "European nations", "Christian nations", and "Civilized nations", as Professor Roling has acutely remarked, we have entered the "era of peace­loving nations". The family of nations in the form of the United Nations has become practically universal, open to every "peace-loving" state, "able and willing" to carry out the Charter obligations under Article 4 of the UN Charter. The democratization of the international society has become almost complete.


382 See V. P. Menon, The Transfer of Power (Princeton, 1957), Appendix XII.

383 See quoted in Menon, ibid, p. 391. See for some discussion why the British Government wanted India to maintain its original international personality, see T. T. Poulose, Succession in International Law: A Study of India, Pakistan, Ceylon and Burma (New Delhi, 1974), pp. 12–15.


Independent India and its Perception

On the eve of the Indian independence, on September 2, 1946, some of the Indian nationalist leaders, led by Jawaharlal Nehru, were appointed members of the British Viceroy’s Executive Council. Soon after acquiring power, Pandit Nehru (as he was popularly known), who was appointed Member for the External Affairs and Commonwealth Relations in the Governor-General’s new Executive Council, outlined free India’s foreign policy which would have tremendous effect, as we shall see, on India’s attitude towards contemporary international law. He said:

"In the sphere of foreign affairs, India will follow an independent policy, keeping away from the power politics of groups aligned one against the other ... India will uphold the principle of freedom for dependent peoples and will oppose racial discrimination wherever it may occur. She will work with other peace loving nations for international cooperation and goodwill without exploitation of one nation by another ... Towards the United Nations, India's attitude is that of wholehearted cooperation and unreserved adherence, in both spirit and letter, to the Charter governing it. To that end, India will participate fully in its various activities and endeavor to play that role in its councils to which her geographical position, population and contribution towards peaceful progress entitle her." 386

It is important to remember that Asia, and later Africa, had lost their independence and importance once India was defeated, occupied and colonized in the nineteenth century. As India got out of the shackles of colonialism and became independent, it gave impetus and momentum to the collapse of colonialism and reawakening of Asia and Africa. As Michael Brecher said, "with the loss of its imperial bastion [India], England could no longer retain its paramount influence in the Arab world" of the Middle East. 387

India, under the dynamic and progressive leadership of Jawaharlal Nehru and other enlightened leaders, like Mahatma Gandhi, Sardar Vallabhai Patel, Maulana Abul Kalam Azad and others, played an important role in the process. But it is important to mention here specifically about the role Jawaharlal Nehru, as the first Prime Minister of Independent India, played in the formulation of India’s policy in international relations and law. Although he was not an international lawyer, as a keen observer and practitioner of international affairs, as the Foreign Minister of India and chief spokesman of the newly-independent Asian countries, he influenced the development of international law in no uncertain degree. There is no doubt at all about his influence in the formulation of India’s foreign policy. As Michael Brecher, his political biographer, said:

may satisfy our vanity. We cannot escape the various responsibilities that arise out of our geography and history."  

Nehru Calls Asian Relations Conference

Even before India became formally independent, Nehru called the Asian Relations Conference to emphasize that "imperialism" of Europe was over and "as that domination goes, the walls that surrounded us fall down and we look at one another again and meet as old friends long parted." He asserted:

"For too long have we of Asia been petitioners in Western courts and chancelleries. The story must now belong to the past. We propose to stand on our own legs and to co-operate with all others who are prepared to co-operate with us. We do not intend to be the playthings of the others ... The countries of Asia can no longer be used as pawns by others; they are bound to have their own policies in world affairs."  

He further stressed that India and Asia must help others to get the political freedom they deserve:

"We of Asia have a special responsibility to the people of Africa. We must help them to their rightful place in human family. The freedom that we envisage is not to be confined to this nation or that or to a particular people, but must spread out over the whole human race."  

The Dutch were reluctant to relinquish their control over the colonies in Asia and India felt a special involvement in the Indonesian struggle. The Interim Indian Government, under the leadership of Nehru in September 1946, withdrew Indian troops from Indonesia where, as part of the Allied forces of occupation, they had clashed with the nationalist forces. Seeing that no solution to the Indonesian problem was imminent, two years later, Nehru organized another emergency Conference of Asian States in Delhi to bring pressure to bear upon the Dutch and the United Nations and champion the independence of Indonesia, which was sought to be re-occupied and re-colonized. Nehru called it a "challenge to a newly awakened Asia which has so long suffered under various forms of colonialism. It is also a challenge to the spirit of man and to all the progressive forces of a divided and distracted world."  

Nehru, To the Overseas Club in New York on 19 October 1949, quoted in Brecher, n. 362, p. 503.


Nehru, ibid, p. 301.

Nehru, ibid, p. 303.

Nehru, "Crisis in Indonesia", Presidential speech delivered in New Delhi inaugurating the 18-nation conference on Indonesia, January 20, 1949, ibid, p. 324.

He warned the international community that "Asia, too long submissive and dependent and a plaything of other countries, will no longer brook any interference with her freedom."  

In fact acting as a representative of the newly-independent Asian countries, he was determined to speed up the end of colonialism and left no one in doubt that Asia was wide awake and could no longer be taken for granted. End of colonialism was his goal because he and India deemed colonialism as a permanent form of aggression under international law, which could no longer be tolerated. Law must change with the changing circumstances and could not remain static. But although India considered colonialism not merely as illegal in an age of freedom under the United Nations Charter, but immoral, Nehru was very much against the use of force for the achievement of freedom for the colonized countries unless there was absolutely no other choice. Under the mounting international pressure, Dutch withdrew and Indonesia joined the family of independent nations in 1949, and also became a member of the United Nations in 1950.  

India, along with 41 other countries, later moved a Declaration on the Granting of Independence to Colonial Countries and Peoples which was unanimously adopted by the General Assembly on December 14, 1960.  

Liberation of Goa

Realizing the changed international situation, France amicably agreed by Treaty of Cessation, concluded in November 1954, to hand over to India Pondicherry and its other small territorial possessions, Kalkil, Mahe and Yanam. However, the small Portuguese colony of Goa on the West Coast of India was a test case for Nehru and India's patience. While France agreed to give up its colonies in India, Portuguese had no such intention and refused to see reason. Although Nehru strongly felt that "there is nothing more scandalous on God's earth today than the Portuguese occupation of Goa, historically, factually, religiously if you like or from any point of view", and there was a lot of internal pressure on him to use military force which would be the easiest and fastest solution, Nehru was strongly against the use of force as a matter of policy. He argued for patience and "was not to be stampeded into forgetting or..."
bypassing” India’s basic principles of foreign policy.\textsuperscript{402} He admitted that “Goa continues to be a headache” and “it is natural for people to demand strong action” but stressed that “we should not, in the excitement of the moment or because of anger and resentment, undertake any action without thinking out all the consequences.”\textsuperscript{403} Pressed even more, he made it clear:

“If you are under the impression that the Government will take police action or use force to liberate Goa from Portuguese domination, you are entirely mistaken. I am not going to do any such thing. Wars and armed actions have never solved any problem anywhere in the world.”\textsuperscript{404}

He insisted that “we have set our face against the solution of problems by warlike methods, and we intend to adhere to that decision. Once the necessity of war on some occasions was accepted, who was to define the occasion? Every country would decide for itself, and floodgates would be opened.”\textsuperscript{405} He honestly felt that if the Government of India were to use force, they would be regarded as “deceitful hypocrites” and “opportunist” with no principle.\textsuperscript{406}

Idealist as Nehru was, he waited for fourteen long years and more in the hope that Portugal would accept the spirit of the time and leave peacefully. Or perhaps, other Western countries would put pressure on Portugal to see reason. But that was not to be. On the contrary, Nehru’s policy was regarded as a weakness.\textsuperscript{407}

Ultimately when there was no choice left, India used minimal force on 17 December 1961 to throw out the Portuguese. There was practically no resistance, no casualty, and the whole ‘action’ was over in 24 or at the most 36 hours. India annexed Goa on December 19, 1961, and later in 1962, formally absorbed it as a Union Territory by the Constitution (Twelfth Amendment) Act, passed by the Parliament on March 27, 1962.\textsuperscript{408} Lack of action on the part of India would have led to “terrible repression” of the people of Goa who wanted to join India and could have resulted in “absolute chaos in Goa.”\textsuperscript{409} Besides solid support of all sections of the society in India and Goa itself, all the countries in Asia and Africa “rejoiced at this action” of India.\textsuperscript{410} But some of the Western powers, which, despite realizing the gravity of the situation, had done nothing all these years to solve the issue, now criticized India’s action as “aggression” and a gross violation of the United Nations Charter. They contended that the merits of the dispute over Goa were not the issue, but the issue was the use of force forbidden by the Charter. As Stevenson of the United States, discounting the problem of colonialism altogether, said:

“What is at stake today is not colonialism; it is a bold violation of one of the most basic principles in the United Nations Charter.”\textsuperscript{411}

He went on to give the grim warning:

“Tonight we are witnessing the first act in a drama which could end with the death of the organization. The League of Nations died, I remind you, when its Members no longer resisted the use of aggressive force ... we have witnessed tonight an effort to rewrite the Charter, to sanction the use of force when it suits one’s own purposes.”\textsuperscript{412}

Apart from the fact that such a warning did not sound very convincing in a world where countries, especially the big powers, give little heed to the principles of the Charter when their own interests are involved, the newly-independent states were more inclined to agree with Soviet Ambassador Zorin, who said:

“If the United Nations does not defend the colonial countries and peoples, but tries to defend the colonial system and the most reactionary representative of that system, then this indeed may mean the collapse of the United Nations.”\textsuperscript{413}

India refused to accept the Western contention that the use of force in Goa by India was an “aggression” under the Charter and claimed that it had acted only in self-defense against the long-standing ‘aggression’ of Portugal against India and its people. As India’s ambassador, C. S. Jha, trying to drive home the real issue, said:

“It must be realized that this is a colonial question. It is a question of getting rid of the last vestige of colonialism in India. That is a matter of faith with us. Whatever anyone else may think ... that is our basic faith which we cannot afford to give up at any cost.”\textsuperscript{414}

The newly independent Asian-African states, comprising a vast majority of the new international community, have made it clear beyond doubt that whatever the legal validity of colonialism under traditional European international law, it can

\textsuperscript{402} Gopal, ibid, p. 217.
\textsuperscript{403} Nehru's communication to Chief Ministers, 20 May 1955, quoted in Gopal, ibid, p. 216.
\textsuperscript{404} Nehru, speech at Poona, 4 June 1955, quoted in Gopal, ibid, p. 217.
\textsuperscript{405} Nehru, address to U.P.P.C. at Sitapur 21 August 1955, quoted in Gopal, ibid.
\textsuperscript{406} Nehru, speech in Lok Sabha, 17 September 1955, quoted in Gopal, ibid.
\textsuperscript{407} Gopal, ibid, pp. 217–218.
\textsuperscript{408} See Poulose, n. 383, p. 56. In 1960, the Indian Supreme Court upheld the Indian annexation of Goa in Monizerra's Case. See Poulose, ibid.
\textsuperscript{409} See Jawaharlal Nehru, "Background to the Liberation", in Jawaharlal Nehru's Speeches, Vol 4: Sept. 1957 - April 1963 (New Delhi, 1964), p. 36. It may be noted that the Portuguese authorities threatened to "blow up most of the important institutes, buildings etc. in Goa."
\textsuperscript{410} Nehru, ibid, p. 36.
\textsuperscript{411} Security Council Official Records, 16th year 987th meeting, 18 December 1961, para 75.
\textsuperscript{412} Ibid 988th meeting, paras 130–31.
\textsuperscript{414} Ibid, 987th Meeting, 18 December 1961, para 40.
no longer be accepted as valid. At the first Asian-African Conference at Bandung in 1953 they declared that "colonialism in all its manifestations is an evil which should speedily be brought to an end.\textsuperscript{415} In 1960 the General Assembly of the United Nations declared, without a dissenting vote, that "all peoples have an inalienable right to complete freedom" and solemnly proclaimed "the necessity of bringing to a speedy and unconditional end colonialism in all its forms and manifestations.\textsuperscript{416} In 1963, the Charter of Organization of African Unity declared as one of the objectives of the Organization the eradication of "all forms of colonialism from Africa" and the member states solemnly declared their "absolute dedication to total emancipation of the African territories which are still dependent" (Art. 3(5)). Asian and African states believe that even the use of force, if other means fail, for the elimination of colonialism is an act of "self-defense" and, being in accordance with the declared objectives of the United Nations, is not prohibited under the UN Charter.\textsuperscript{417} There is, or should be, no doubt that old European law has come to be modified and India under Nehru played no mean role in this modification.

Racialism Decried

If new India and Nehru, as its representative, could not tolerate colonialism any more, they abhorred racialism even more which had been the basis of much of modern international law during the nineteenth and the first half of the twentieth centuries. European civilization not only provided legal title to the position of dominating power, but also determined the circle within which the law of nations applied because it did not apply to uncivilized and semi-civilized nations of Asia and Africa. Unfortunately, racialism continued even after the independence of numerous Asian and African states in the worldwide community of states in the form of apartheid in a few countries like South Africa and Rhodesia. Nehru condemned this practice in unmistakable terms, especially the treatment of Indians and black people as second-class citizens in South Africa. He said:

"It is a matter which concerns us all. It is not merely a question of Indians or South Africans, but it is a matter of vital significance to the world. If that is to continue in

\textsuperscript{415} Selected Documents of the Bandung Conference (Institute of Public Relations) (New York, 1955), p. 34.

the world, then there is bound to be conflict and conflict on a big scale, because it is a continuous challenge to the self-respect of a vast number of people in the world and they will not put up with it. The matter is thus before the United Nations and I hope the United Nations will help in its solution ... there cannot be a shadow of doubt that if such a policy is continued, it will breed conflict. And that conflict will not be confined to particular areas in South Africa or elsewhere; it will affect peoples in vast continents.\textsuperscript{418}

India’s positive role in the development of international law in this respect cannot be denied.

India Accepted and Followed International Law Rules

Despite the clear bias of numerous international law rules because it was largely a “ruler’s law” during its formative years, Nehru was all in favour of accepting its tenets. In fact none of the newly independent countries rejected international law on the ground that it was European in its origin and bias. India and other newly independent countries mostly accepted the treaties concluded by the European countries on their behalf and before their independence. All they wanted and demanded was that international law, like all law, must change with the changing circumstances. For one thing, what has been called the “geography” of international law has changed. International law is “no longer the almost exclusive preserve of the peoples of European blood”\textsuperscript{419} by whose consent, it used to be said, “it exists and for the settlement of whose differences it is applied or at least invoked.”\textsuperscript{420} As it must now be assumed to embrace other peoples, it clearly requires their consent no less. The creation of international law is no more “the prerogative of countries bearing the cultural heritage of the West but the common task of all members of the international community.”\textsuperscript{421} The new majority has naturally new needs and new demands and they want international law to serve their needs and heed to their demands. The alteration in the sociological structure of the international society, it is stressed, must be accompanied by an alteration in law.\textsuperscript{422} “International law, if it is to be effective”, said Nehru, “has to be related to the realities of international life; otherwise it becomes merely an academic exercise of some professor or pandit sitting in an university.” Referring to the phenomenal developments in political, economic, scientific and technological fields, Nehru felt:

\textsuperscript{418} Nehru, “Our Objectives”, in Nehru, Vol I. n. 38, p. 265.
\textsuperscript{419} R. B. Pal, Yearbook of the International Law Commission (1957), Vol 1, p. 158.
\textsuperscript{420} Westlake, quoted in Pal, ibid.
\textsuperscript{422} See Anand, n. 33, pp. 45 ff.
"It may be said that international organization and international law have not kept pace with this advance which is posing many problems before us. We have to catch up before the gap widens, and there is always a possibility of cracking up, of disaster. This aspect of the matter is of vital significance in that the effectiveness of international law is of concern to every single individual." 

The Constitution of India, in Part IV relating to the Directive Principles of State Policy, which may be considered "as a commandment to the Union of India", provides in Article 51:

"The State shall endeavour to—
(a) promote international peace and security;
(b) maintain just and honourable relations between nations;
(c) foster respect for international law and treaty obligations in the dealings of organized peoples with one another; and
(d) encourage settlement of international disputes by arbitration."

Nehru Pledges for Peace and Condemns Nuclear Weapons and Tests
Although he was not a pacifist, and nascent India had to use force several times for the protection of its interests, as the case of Goa discussed above shows, Nehru believed in peace and peaceful settlement of international disputes and wanted to avoid war as far as possible. He made it clear:

"The objectives of our foreign policy are the preservation of world peace and enlargement of human freedom. Two tragic wars have demonstrated the futility of warfare. Victory without the will to peace achieves no lasting result and victor and vanquished alike suffer from deep and grievous wounds and a common fear of the future."

He went on to say:

"India may be new to world politics and her military strength insignificant in comparison with that of giants of our epoch. But India is old in thought and experience and has traveled through trackless centuries in the adventure of life. Throughout her long history she has stood for peace and every prayer that an Indian raises ends with an invocation to peace."

Nehru was particularly against war in the atomic age, which could bring unimaginable destruction. He said:

"This age we live in has been called the atomic age. Vast new sources of energy are being tapped but instead of thinking of them in terms of service and betterment of mankind, men's thoughts turn to destructive purposes. Destruction by these new and terrible weapons of war can only lead to unparalleled disaster for all concerned and yet people talk lightly of war and bend their energies to prepare for it. A very distinguished American said the other day that the use of atom bomb might well be likened to setting a house on fire in order to rid it of some insects and termites." Calling the atom bomb "a symbol of evil," he earnestly hoped that there would be no question now or hereafter of the use of the atom bomb.

He appealed to the leaders of America and Russia to stop all nuclear test explosions and thus show to the world that they are determined to end this menace, and to proceed also to bring about effective disarmament. That was, of course, not to be and nobody listened to his voice with the result that it has become so much more difficult to control the proliferation of these ultimate weapons of destruction. He was afraid:

"Asia has been and will continue to be the scene of hydrogen bomb experiments and of war in which Asians are made to fight Asians. It may be that it will be Asians again who will have the unfortunate privilege of experiencing the effects of atomic bombing."

Power Blocs and India's Policy of Non-alignment
As we have mentioned above, ever since the Second World War, the world had been deeply divided into two power blocs, led by the United States and the Soviet Union, preparing for war which they knew and admitted no combatant could win. Claiming to be "driven by the needs of self-defense, by noble intentions, by fear of ignoble aggression of the other", the two super antagonists, even as they talked of peace, were engaged in the preparations for war. Throughout the 1950's and 1960's, both the power groups concluded numerous collective "self-defense" alliances relying more on their ideological allies than on the United Nations' "collective security" system. Even more than that, having acquired the most fearful weapons, they were engaged in frightening each other and themselves as well. As in all wars, small newly independent states and international law itself


426 Nehru, "Asia is Renascent", Speech delivered in Canadian Parliament, October 24, 1949, ibid, p. 129.
429 Nehru in a communication to the Chief Ministers of States in India 14 April, 1954, quoted in Uganal, n. 401, p. 191.
could not but helplessly watch this new “cold war” being waged with increasing ferocity.

But Jawaharlal Nehru, even at the risk of annoying the two super-powers, refused to leave and abandon India’s newly-won independence and join any of the power groups and become their “camp followers in the hope that some crumbs might fall from their table”. Declaring that such a policy would be “a bad and harmful policy”, he said:

“I can understand some of the smaller countries of Europe or some of the smaller countries of Asia being forced by circumstances to bow down before some to the great powers and becoming practically satellites of those powers, because they cannot help it. The power opposed to them is so great and they have nowhere to turn. But I do not think that consideration applies to India. We are not citizens of a weak or mean country and I think it is foolish for us to get frightened, even from a military point of view, of the greatest powers today.”

Insisting that India need not be afraid of great powers, he said, “our policy is not a passive policy and negative policy.” Moreover, “even in getting economic help, or in getting political help, it is not a wise policy to put all our eggs in one basket ... Therefore, purely from the point of view of opportunism, if you like, a straightforward, honest policy, an independent policy, is the best.” Non-alignment did not mean ‘neutrality’, because “neutrality has little meaning except in times of war”. The purpose of the policy, in his view, was to “help as best as it [India] can to maintain world peace and also avoid, as far as possible, entanglements in world conflicts. Whether that is possible or not is another question; how far our influence can make a difference to world forces is another question. I do not pretend to say that India, as she is, can make a vital difference in world affairs.”

Despite its political and economic weaknesses, uncommitted India could still play a necessary and very useful role of “building a bridge which otherwise would not exist between the two blocs.” In doing so, it would not only serve “its own vital interests, but also the vital interest of all states.” India did play a very important and helpful role in the crises in Korea and Indo-China. Therefore, he was against India “lining up with this or that forces but try to maintain a certain friendliness and spirit of cooperation with both the great and small countries of the world.”

Nehru Opposed to Military Alliances

Nehru was very much against military alliances and the armament race, which it entailed among the two blocs in the age of atom and hydrogen bombs. He was strongly opposed to the Western-sponsored alliances, such as SEATO (1954) and the Baghdad Pact (1955), because by including Pakistan as member of both the treaties, “they brought the cold war to the very borders of India ... and thereby endangered India's security.” In fact he believed that “these military pacts represented an indirect return of Western power to an area from which it had retreated.”

Suggesting that these military alliances had returned to some extent the idea of “old holy alliance”, backed by military pacts and economic measures, they had made the world more dangerous. This was, he felt, really against the spirit of international law which “is meant primarily to prevent war. Its purpose is to settle problems and disputes by methods other than war. War is an absence of law.” It might be desirable, therefore, for these countries to consider, “whether and how far these preparations for nuclear warfare or test explosions are in keeping with any conception of international or moral law.”
Principles of Peaceful Co-existence or Panch Sheel

Nehru not only emphasized the importance of peaceful settlement of international disputes, but formulated along with China in a treaty on Tibet signed in 1954, five principles of peaceful co-existence or Panch Sheel, as they were called. Based on Article 2 of the United Nations Charter, these “wholesome principles”, in Nehru’s words, as laid down in the bilateral treaty provided:

(i) Mutual respect for each other’s territorial integrity and sovereignty;
(ii) Mutual non-aggression;
(iii) Mutual non-interference in each other’s internal affairs;
(iv) Equality and mutual benefit; and
(v) Peaceful coexistence.

If these principles were followed amongst states, he believed, “a great deal of the trouble of the present-day world would disappear.” If you want peace in the world, said Nehru, “it cannot be done through threats. Once you recognize ... that war is no solution, and that the two major protagonists are too powerful to be dismissed one by the other, then you have to coexist. you have to understand, you have to be restrained and you have to deal with each other. If you reject coexistence, the alternative is war and mutual destruction.”

In Support of the United Nations

Nehru had tremendous faith, at least in the early years of India’s independence, in the United Nations. He considered it “a great and powerful organization and it has a Charter that lays down its ideals and objectives in language so impressive that it can hardly be bettered.” He said:

We have always been a staunch supporter of the United Nations. As a member of that august body, India has undertaken its full measure of responsibility in all aspects of UN activities. The UN is the one hope of the world for bringing peace and freedom to humanity.”

The world organization had been founded, he believed, “for the great nations as well as the small.” It might not be “a perfect organization but ... it was a step in the right direction, because ... its objectives were right.” It might have made mistakes, and it was distressing to see that it moved away from its ideals, but that could not disprove “the need for such an organization”. He felt that “if the UNO ceased to function today, it would be a disaster for the world. For the world cannot afford to do without some such organization.”

It could not be denied that the UN was “dominated more or less” by certain nations of Europe and the United States with the result that the main problems discussed there were the problems of Europe and America while the other parts of the world and their concerns were generally ignored. In his address to the United Nations General Assembly on November 3, 1948, he therefore said:

“May I say, as a representative from Asia, that we honour Europe for its culture and for the great advance in human civilization which it represents? May I say that we are equally interested in the solution of European problems; but may I also say that the world is something bigger than Europe, and you will not solve your problems by thinking that the problems of the world are mainly European problems. There are vast tracts of the world, which may not in the past, for a few generations, have taken much part in world affairs. But they are awake, their people are moving and they have no intention whatever of being ignored or being passed by.”

He went on tell the UN delegates:

“Today I do venture to submit that Asia counts in world affairs. Tomorrow it will count much more than today.”

India’s Policy on Recognition of States and Governments

Realizing how Asian countries had suffered during the nineteenth century and later because of non-recognition of Asian states as members of the international community, Nehru was very much in favour of independence of the Asian and African countries and their recognition as independent states or governments as soon as it became clear that they had emerged as independent entities and were viable and effective. India therefore subscribed “to the principle of de factoism, even if it was at the risk of some misunderstanding or alienating the sympathies of her best friends.” India recognized Communist Chinese Government as soon as it became clear that the new Chinese Government was in possession of practically the entire mainland of China, when it was quite clear that this Government was stable, and that there was no force which was likely to supplant...
it or push it away." Similarly, once Israel had emerged as an independent state, even at the risk of annoying its best friends among Arab states, Nehru recognized it as an independent state though he deferred the establishment of diplomatic relations with the new state. 452

Nehru Supports Communist China's Recognition and Representation in the United Nations

Nehru was the foremost champion of the recognition of the Communist Chinese Government and its representation in the United Nations. The emergence of a united and forceful China free from Western domination was a matter of satisfaction and pleasure for Nehru. India was the second non-Communist state to recognize the government of Mao Tse-Tung. 453 Nehru was the most vociferous critic of the United States' policy of non-recognition and urged the West time and again to accept the 'facts of political life' in East Asia. 454 He helped China, supported by Chou En-lai's charm and skilful diplomacy, to emerge as an important and respected member of the Asian-African group at Bandung. 455

In fact one may surmise that in blindly cultivating China's friendship, he sacrificed India's interests and Tibet's independence. In the famous India-China treaty on Tibet concluded in 1954, he not only gave up India's largely commercial and cultural rights and interests 456 in Tibet, inherited from the British, but accepted Tibet as a part of China, or rather under the 'suzerainty' of China, in the vain hope that China would decide the problem peacefully and would not forcibly trample Tibet's autonomy and way of life. 457 In the process, not only millions of Tibetans lost their independence and homeland, but it created a lot of problems for India as well because Indo-Tibetan border came to be accepted as Indo-Chinese border. 458 For several years, China's ambivalent attitude towards the border lulled India into believing that China had no objection to Indo-Tibetan border being recognized as the Indo-Chinese border. As Nehru thought and said soon after the Indo-Chinese Treaty on Tibet was signed:

"We have only given up what in fact we could not hold and what in fact had in reality gone. We have given up certain rights that we exercised internally in Tibet." 451

451 Nehru in a speech in Parliament on March 17, 1950, quoted in Misra, ibid, p. 401.
452 See for a discussion on Nehru's policy, Misra, ibid, pp. 404-408.
453 Burma was the first. See Brecher, n. 387, p. 588.
454 Brecher, ibid.
455 See also Brecher, ibid, p. 588.

Obviously, we cannot do that. We have gained instead something that is very important, i.e., a frontier and an implicit acceptance of that frontier." 459

Within a few years, China attacked and occupied Tibet and the Dalai Lama had no choice but to leave Tibet in 1959 and take refuge in India. China also began to question the legal validity of the Indo-Chinese border and began showing, in some of its maps, parts of Indian territory as part of China. 460

Asylum given by India to the Dalai Lama made Communist China angry at India. Forgetting all the promises of friendship and cooperation since its emergence, it attacked India and occupied a large chunk of the Indian territory. Nehru was left aghast, and India had no choice but to defend itself as best as it could. But it is interesting to note that even after China changed its policy and attacked India, Nehru continued to support Communist Chinese representation in the United Nations.

Reference of Kashmir Dispute to the United Nations

Impressed by the ideals expressed in the UN Charter and its provisions to control aggression and punish the aggressors, even against the advice of some of his senior colleagues in the Government, Nehru, persuaded by Lord Mountbatten, the last British Governor-General of independent India, referred the case of Kashmir to the Security Council of the United Nations. 461 As we have referred above, soon after India and Pakistan's emergence as independent states in August 1947, a large number of infiltrators equipped with all sorts of guns and weapons, and supported by the Pakistan's armed forces, attacked the state of Kashmir to force it to join Pakistan. On receiving an urgent message from the Maharaja of Kashmir, after the latter unconditionally signed an accession instrument joining the Union of India, India sent its troops to fight the invaders on 27 October 1947. Although the accession of Kashmir with India was complete according to law, as in the cases of all other independent Princeely states which had joined India, on the suggestion of Lord Mountbatten, 462 Nehru and his Government gave an undertaking that once the invaders were cleared from India's soil and law and order was established, the question of the accession of Kashmir would be settled by reference to its people by a plebiscite. 463 Such a condition was neither necessary nor required under the instrument of accession. But "the Government of India unilaterally announced it" and declared that the accession of Kashmir...
would be "subject to the proviso that a plebiscite would be held in the state when the law and order situation allowed." 464

Nehru was utterly disappointed when he found that instead of dealing with the problem of Pakistan's aggression, the UN Security Council tried to put India and Pakistan on an equal footing and Pakistan received unexpected support. Britain and the United States, as Permanent Members of the Security Council, took extremely partisan and anti-India attitude. Some of the proposals put forward by these countries in the Security Council seemed to Nehru "monstrous". 465 Rather than "surrender either to the gangster tactics of Pakistan and the raiders or to attempts at bullying by Britain and the United States", Nehru was willing to consider defiance of the United Nations, to which he had personally taken the initiative in appealing. 466

"I must say that prepared as I was for untoward happenings, I could not imagine that the Security Council could possibly behave in the trivial and partisan manner in which it functioned. These people are supposed to keep the world in order. It is not surprising that the world is going to pieces. The United States and Britain have played a dirty role, Britain probably being the chief actor behind the scenes. I have expressed myself strongly to (the British Prime Minister) Attlee about it and I propose to make it perfectly clear to the British Government what we think about it. The time for soft and meaningless talk has passed." 467

But despite India's unhappiness and frustration, which India expressed several times in no uncertain terms, the United Nations continued to act in a very partisan manner. United Nations' handling, or rather mishandling, of the Kashmir dispute left India in a very difficult situation and many people blame Nehru for this mess. India had to fight three wars with Pakistan on Kashmir and the problem is far from being solved. From hindsight it is felt that India would have been far better off if it had never referred the dispute to the United Nations. But despite all the hostility India had to face, Nehru did not want to withdraw from the United Nations. That would be "immaturity", he said. Rejecting any such suggestion, he pointed out:

"One cannot run away like this from a problem. The United Nations, in spite of all its failings - and there are many - is a great world organization. It does contain within it the seeds of hope and peace, and it would be rather perverse for any country to try to destroy this structure because it is not to its entire liking. If a country does that, I have no doubt that it is that country which will suffer more than the organization. We cannot remain isolated in the world, cut off from everything and living our life in our limited sphere ... Therefore, to talk of getting out of the

464 See Menon, n. 461, pp. 400, 413.
465 See Gopal, n. 401, p. 27.
466 Nehru Letter to Krishna Menon, 20 February, 1948, quoted in Gopal, ibid.

United Nations or of otherwise keeping apart from all these problems is not take cognizance of the realities of the situation." 468

India Acts as a Bridge between the Power Blocs in the United Nations

But although India was totally dissatisfied with the UN role in Kashmir dispute, it did not run away from the world body. On the contrary, it played a very active and positive role in the United Nations. Non-aligned to any of the power blocs, and claiming to be on good terms with all of them, it acted as a mediator and helped reach agreements in several disputes, such as Korea, Suez crisis, Congo and Rhodesia. Even more important, for the first time in history, independent India sent its armed forces out of the country to various trouble spots not to fight any body or conquer other states, 469 but as messengers of peace, to restore peace and help the United Nations and the international community in the establishment of peace and security.

'Group of 77' in the United Nations

In many a situation India acted more or less as a spokesman of the newly independent countries. With the collapse of colonialism, as more and more Asian and African states became independent they all wanted to join the United Nations as sovereign and equal members of the international community. But in the Cold War tension, both the power blocs used veto to stop the entry of numerous states to the United Nations suspecting their affiliations and there was an impasse. Nehru believed in universal membership of the United Nations. In 1955, during the visit in India of Chairman Khrushchev and Prime Minister Bulganin of the Soviet Union, Nehru raised the question of the Soviet veto on the admission of eighteen countries to the United Nations. As a parting gift to their host, recognizing "India's importance and of Nehru's role in the world", the Soviet leaders agreed to withdraw the Soviet veto and permit the entry of all except Mongolia and Japan. 470 Once the ice was broken, almost a floodgate opened and many more Asian and African states joined the world organization. Although in 1945, of the 51 original members of the UN there were only 13 Asian-African states, it was not long after 1955 that Europe became a small minority of UN membership and the vast majority consisted of the thus far neglected and dominated countries of Asia, Africa and other parts of the world. Non-aligned as most of them were, they aligned themselves to play an important role in the

468 Nehru, Speech in Lok Sabha, September 17, 1953, Nehru's Speeches, Vol III, pp. 243–244.
469 See how British sent Indian armed forces "to conquer and suppress other peoples", Nehru, Discovery of India, n. 114, p. 448.
470 Gopal, n. 401, p. 254.
international structure to get their fair share, dignity and responsibility. They formed a consortium within the United Nations, called the ‘Group of 77’, which actually had more than 120 members. The existence of an international forum where they had scope for concerted action, enhanced their power and helped them in pursuing their purposes. They were further helped by the rivalry between the big powers. As the work of the Security Council got frozen in the chilling atmosphere of the cold war, and with the persistent use and abuse of veto its authority as well as prestige declined, the power and influence of the General Assembly began to rise. After the passage of the Uniting for Peace Resolution in 1950 it began to deal with the most serious matters of peace and security which earlier were supposed to be barred from its consideration and beyond its power. With the increase in the powers of the General Assembly, the United Nations changed, at least temporarily, from an instrument of the great powers to a forum for the smaller states to press their claims.

This is a phenomenon of tremendous significance in international law. Enjoying formal legal equality with the big powers in the new, perhaps misconceived, “Parliament of Mankind”, and of course numerical superiority, the ‘new’ Asian-African, along with the equally disgruntled Latin American states – the so-called third World as they came to be called – acquired a new influence in the post-war divided world society. They joined hands together to play an important role in the international legal structure in pursuance of their interests. It was only to be expected that the new majority should try to mould the law according to their own views and for the protection of their interests. Not only colonialism, but also several parts of international law of the colonial period were sought to be challenged, modified and codified either through the UN General Assembly resolutions or various UN sponsored conferences.

But even before the disintegration of the Soviet Union and abatement of the cold war, it came to be realized that General Assembly was not a ‘world legislature’, and was never meant to be. Its powers were limited and its resolutions recommending new rules of inter-state conduct carried little effect, if any, and could be easily disregarded and ignored. But in spite of all its limitations, the popular organ of the United Nations has been increasingly used by newly independent states for collective legitimization of certain claims, actions and policies, which represents “a political revolt” against traditional international law. But apart from informal means for changing the law, numerous “law-making” treaties have been concluded with the participation of the world-wide community of states. In all these attempts to change and modify the traditional international law according to changed circumstances, India has been playing a very active role.

---

471 This *de facto* amendment of the Charter got a powerful legal support from the International Court of Justice in its advisory opinion in Certain Expenses of the United Nations case, see ICJ Reports, 1962, p. 163.

VIII

Summation

Sea-Route to India and Competition for Trade with the East Indies

Although European writers, with a tremendous sense of pride, assert that modern international law is a product exclusively of the Western European Christian civilization, and that it is not more than four or five hundred years old, there is little doubt that ancient societies like India, China, Egypt, and Assyria had their own much older systems of inter-state conduct which had parallel, if not similar, rules of inter-state relations as modern international law. It is true, however, that these earlier systems were generally confined to their own civilizations in different geographical areas because means of travel and communications were neither so efficient nor fast. But there were occasionally inter-state trade relations, exchange of diplomats, and conclusion of agreements and treaties between countries far apart from each other. India had frequent trade relations with Western Asia, Greece, and Rome since at least the first century of the Christian era. Indian states had even more frequent trade and commercial relations with the countries in the East, like Burma, Malaya, Indo-China, the Philippines, and even China and Japan. Indian, Chinese, and Malay ships regularly voyaged each other’s coasts. There is no doubt that all of these relations were based on well-known, well-recognized, and widely accepted rules of inter-state conduct.

Known to Europe for centuries, the fabled land of India was famous for its treasures, its products, especially textiles and silk, and even more importantly, spices. Europeans had been getting Indian products and spices through the caravan routes of the Levant. But the trade route from India to Europe became inaccessible after the establishment of Islam in the Middle East and religious wars between the Muslims and the Christians. Indian spices, especially black pepper, were of great demand in Europe and could not be brought from the Indian ports across the territories controlled by the Muslim rulers.

Pepper became the motivating factor of history and led Portugal and Spain to make intensive efforts for generations to find a sea route to India. After the Portuguese reached India in 1498, it tried to monopolize the Indian spice trade and keep the route secret because the spice trade helped Portugal to become extremely rich in Europe. Portugal also tried to control navigation in the Indian Ocean by asserting sovereignty over the sea and trying to enforce it by its warships, equipped with cannons, which was unheard of in the Indian Ocean. Although the Portuguese had some limited success against the Arabs, who largely controlled shipping in the Indian Ocean, they could not keep the other Europeans out.

Rules of Inter-State Conduct in India

Europeans came to India and the East Indies for trade and had East India Companies established in their countries with Charters giving them authority under their own laws to trade with Oriental rulers, sign agreements, even fight wars in protection of their interests, and make peace. All of them sought permission from local rulers to establish factories or small trading posts and fiercely competed with each other. In fact, each one of them tried to have monopoly of trade in territories of the rulers with whom they signed agreements resulting in a lot of tension and ill will. All of them had their war ships and soldiers, and fights amongst them, especially on the high seas, were common. Later, they used to get embroiled in local disputes as well, sided with one ruler or other. It is important to remember, however, that all the Europeans and their companies lived and traded according to local laws, or rules of inter-state conduct, accepted and applicable in India and the East Indies. They sent envoys, concluded treaties with the local rulers, conducted war, and made peace, according to the widely accepted customary rules of Asian countries. They could not have survived without it.

Thus, when the Portuguese arrived in India they had to deal with well-established states with their own customary rules of conduct for foreign traders. Sometimes they violated the local laws and got embroiled in disputes. But they also concluded treaties with the local kings and established their factories. Similarly, the Dutch and later British arrived. The British Emperor sent
diplomatic envoys to the Mughal Emperor and sought permission to trade in his territory. Since the Asian rulers encouraged foreign trade, they gave them permission to establish factories or trading posts to buy and sell goods after payment of necessary duties.

India: A Divided Subcontinent

Although India was a very rich, endowed with tremendous natural resources, and an industrially advanced country in the sixteenth century, it was a vast subcontinent divided into several small and big states. All through her long history, even when India had strong and large empires ruling a large part of country, there were numerous small semi-independent chiefs and rulers who were allowed to exist and maintain their power and influence. But as soon as the Center became weak, empires disintegrated and India was divided into small states and kingdoms. It must be noted, however, that despite all the chaotic political conditions and continuous warfare, India had a well-recognized cultural unity. Moreover, Indians had developed sophisticated rules of inter-state conduct which had been clearly defined and fully explained in numerous well-respected texts dealing with law, like Arthasastra, Manu Smriti, Narada Smriti, and others. Even after a large part of India came to be ruled by Muslim rulers who generally came from outside, these customary rules were not given up. On the contrary, except for a very few invaders who attacked some parts of India to loot its wealth and left with a large booty, most of the Muslim rulers settled down in India and got absorbed into India and her culture. They married Indian women and, with the racial fusion, their dynasties became Indian dynasties. They did not apply Islamic rules of inter-state conduct applicable outside India, but adopted the Indian customary rules. Muslim law or Shariat was applicable only as personal law of Muslims. Furthermore, India was a country of hundreds of thousands of villages bound by their own village community law which did not change much by Islam.

From 1526 to 1707, India had a very large and strong Mughal Empire during which India reached new heights of prosperity. Mughals respected the institutions of embassies, treaties and laws of war and peace. They had diplomatic and trade relations with numerous Asia countries, including Persia and Turkey. So long as the Mughal Emperor Aurangzeb ruled until 1707, the country was united and the European companies had small factories in different parts of the country, but they followed the law and behaved in a proper manner as small traders. But once Aurangzeb died, within an incredibly short period of twenty years, the country was totally disintegrated and fell into a condition of masterless disorder.

Taking benefit of the situation, the French and the English East India Companies started indulging and interfering in local disputes siding with one ruler or the other, hiring their trained troops, and grabbing afterwards. They also started exercising some authority, especially tax collection, in some territories on behalf of the local rulers or more or less impotent Mughal Emperor in Delhi. After innumerable wars between themselves and other rulers, in which they were defeated several times but always recovered, political entanglements, unscrupulous intrigues, the English East India Company not only soundly defeated the French, but in the course of a little more than 100 years, by 1818, came to occupy a large part of the country. In the meantime, they had started ruthlessly exploiting the country's resources indulging again and again in organized loot and plunder by a mercantile company and its servants. It is also important to note that although the Mughal Empire had vanished and the Mughal Emperor was powerless and only a prisoner of others, he still remained the sole source of legitimacy. All the rulers in different parts of the country, including the English East India Company, felt secure only if they received a royal decree or order, called firman, from the imperial power giving them authority to rule in their territory, meaning thereby that the Mughal Emperor was still the head of a national state. In 1833, the East India Company was eliminated and the British Parliament took over the responsibility of the government in India. However, the ruthlessness of the English East India Company led to a mass revolt in the country in 1857 which was suppressed with a very hard and the British Crown took direct charge of the British government in India. The British Government also took over more than 600 Princely states as part of British India, which had signed treaties with the East India Company and later the British Government, surrendering part of their sovereignty and independence and were supposed to be within British suzerainty.

It is important to mention that even during all these turbulent times rules of international law continued to apply between the independent states in India and between the Indian states and the European companies acting on behalf of their countries. Nobody ever questioned the right of the Indian states to make war or peace, conclude treaties, send embassies, or exercise their jurisdiction within their territories. Not only Hugo Grotius, but other classical jurists of Europe, testified to this state of affairs.

India Becomes a British Colony

With the establishment of the British rule in India, for the first time in its long history, India lost its identity and became just a part of the British Empire. India had been conquered earlier several times, but the invaders, if they did not leave immediately with their loot, were absorbed into India and they all became Indians. India had never lost its independence. It had never been enslaved. She had never been subjected to a ruling class which was, and remained, permanently alien in origin and character. The whole ideology of the British rule in India was that of a master race. India became merely a political and economic appendage of
England with all the control being exercised from outside. Not only was India exploited to the hilt but its economy was transformed to serve only the interests of her masters. From an industrialized country India was reduced to an agricultural economy producing raw materials for the British industry. The village community, which was a basis of Indian political economy, was destroyed and the British introduced landlord system depriving village community and Indian farmers of all control.

The exploitation of Indian economy largely helped Britain achieve industrial revolution. Moreover, with tremendous Indian resources, Britain extended its rule to other parts of Asia and later Africa. Under the general and overall control of India and protection of its navy in the Indian Ocean, all Europe profited and Europeans started expanding into various countries in Asia. Riches of Asian and American trade led to Industrial Revolution in Europe which, in turn, was largely responsible for the creation of huge colonial empires in Asia and Africa.

Once Europe became dominant over the crumbling and disintegrating Asian states, Europeans started feeling that they were invincible, the white race was superior, and had a natural right to rule over the Asian and other coloured races. They had no doubt left that they were the only “civilized” people of the world, and they must rule over the “uncivilized” and “savage” peoples living in Asia and Africa. Indeed, they started believing that they must rule over the other races and countries to “civilize” the backward peoples who were half devil and half child. This was indeed a sort of “sacrifice” they must make, “The White Man’s burden” they must carry.

It was during this period of European domination that modern international law developed during the nineteenth century. International law was said to be applicable only among European Christian states or states of European origin in America. Asian states, with whom Europeans had been having intimate trade and political relations for the last several centuries, were suddenly declared to be outside the family of nations. In fact states outside the European Christian family of nations must be formally recognized by the European states before they could be accepted as members of the family of nations. Several Asian states on the subcontinent of India and Southeast Asia, having been defeated, had already lost their identity. But even those that survived, like Turkey, Persia, Siam, China and Japan, came to be defaced and began to be treated as outside the family of “civilized” nations. “Civilization”, undefined and as understood by the Europeans, provided the legal title and determined the circle within which international law applied. Practically any conduct towards the “uncivilized” people, or aggression of their territories, was considered as valid and was accepted beyond the scope of international law. This led to what has been referred to ruler’s law for the subjugation and colonization of Asian and African peoples.

Such a situation could not last for ever. Change is beyond any law and is the law of life. The intense rivalry between European states for extension of their rule and colonization in extra-European areas led to terrible tensions and an arms race supported by military-industrial complexes in Europe. Two Hague Peace Conferences, organized under the auspices of the Tsar of Russia, to call a halt to the arms race did not help much. As clash of aspirations increased among European countries, a European “civil war” started in Europe in 1914, which engulfed the whole world and was called the First World War.

With all the terrible destruction and loss of life, which left Europe in ruins, it was felt that an international organization must be established to avert war in future. At the Paris Peace Conference in 1919, US President Woodrow Wilson was in the forefront of statesmen who suggested the establishment of a League of Nations to avoid war in future. Although India was still a British colony, part of the British Empire, because of its tremendous contribution in war effort and supply of hundreds of thousands of soldiers who fought for the cause of peace, Great Britain insisted that India be invited at the Paris Peace Conference to sign the Peace Treaty. The purpose of Great Britain in insisting on the participation of British Dominions and India was, of course, to get more influence and votes in the Conference. Once India signed the Peace Treaty, however, India was permitted to become an original member of the League of Nations, even over the opposition of President Woodrow Wilson and several other countries. India’s anomalous position under international law as a colony of Great Britain becoming member of the League, open only to independent or self-governing states, was too conspicuous to go unnoticed. In fact several statesmen and members of the US Congress strongly objected to India becoming a member of the League, the whole purpose of which was only to provide another vote to Great Britain. Even the nationalist opinion in India was strongly against India’s membership since it would not provide any international status to India. Although the British delegate gave an assurance at the Paris Conference that the British Government was trying rapidly to advance India into a self-governing colony, nobody trusted them.

After 1919, India began to function as a separate entity, participating in some international conferences, and signing some multilateral treaties. But all this did not satisfy the national opinion in India and they started demanding, with greater vehemence, at least a self-governing status for India. There was also a great resentment in India against the manner in which India was represented in the League and its representatives chosen or nominated by the Secretary of State for India in London.

Unable to control the avariciousness and jealousies of European states and Europeanized Japan, and hampered by the absence of the United States, the
League failed miserably and Europe drifted towards the Second World War in 1939, which was even more ferocious and destabilizing. Although India was automatically drawn into the war when Britain declared war on Germany, Indians were not in favour of joining the war effort. The Indian political leaders, while sympathetic to the cause of democracy and freedom for which the Allied powers said they were fighting, did not want to join the war without declaration of their independence. They did not feel bad when Britain lost fights and felt particularly jubilated when they were defeated by the Japanese on several fronts. They intensified the freedom movement which was strongly repressed by the British in 1942. But soon thereafter, Japan helped an Indian national leader, Subhash Chandra Bose, who had escaped from India, to form Indian National Army and in 1943, it advanced with the Japanese army to the very frontiers of India. Unrest was also spreading in the Royal Indian Navy.

Indian independence could not be withheld for too long after the war by the already weakened British Government and in the new international environment when Europe was trying to recover from a devastating war. On July 1, 1947, the British Parliament passed Indian Independence Act agreeing to transfer power on 15 August, 1947. But as a parting gift, relying on internal division in the Indian society, Britain divided British India into two independent states, India and Pakistan. This led to uprooting of millions of people on both sides of the border, creating almost insurmountable refugee problem in the new states and creating extreme tension between them.

But even more difficult issue, which could have led to utter chaos in the country, arose when the Indian Independence Act declared that, with the lapse of the British suzerainty over some 600 and odd Princely states, covering almost two-fifth of the Indian territory, they had become independent and they were not part of the newly carved states. Although the Interim Government of India immediately declared and let the international community and the United Nations know that they would not recognize the independence of any Princely state in India, the Princes and former rulers were not so amenable. The Princely states had the option, it was made clear, either to join India or Pakistan. The almost intractable problem was solved by the heroic efforts of India’s new Home Minister, Sardar Vallabh bhai Patel, helped by his Secretary, and almost all the states, with a few exceptions, decided to accede to the Indian Union by 1949. But this did not end the problem of Hyderabad, the largest state, and Kashmir. India had to use force to make Hyderabad realize that it could not declare independence, and accept accession with the Indian Union. In the case of Kashmir, although the Ruler accepted accession with India, it was subjected to aggression by tribesmen from Pakistan with the help of the Pakistan army. India could have repulsed aggression without much difficulty, when the Prime Minister of Independent India, Jawaharlal Nehru, on the advice of the British Governor-General, Lord Mountbatten, agreed to submit the issue of Pakistan aggression to the United Nations. There it got stuck and, even after three wars with Pakistan, it has still not been solved.

On the basis of its membership of the League of Nations, India became a founding member of the United Nations, even though it was still a British colony. It was invited to participate in the San Francisco Conference in 1945 for drafting of the UN Charter. Although British India sent an Indian delegation, selected by the British Government, and it did participate in San Francisco, the role of the Indian delegation, as that of other smaller countries, was insignificant. Moreover, the Indian national opinion was vehemently against the Indian delegation since it had been selected by the British Indian Government.

India in the United Nations

But once it became independent, India has been a great supporter of the United Nations. Although it was a new India which emerged after independence, India was accepted as the original member of the United Nations. It was only Pakistan which was deemed a new state and had to apply for membership. India always believed in universal membership of the United Nations and helped overcome the veto of the Big Powers on the membership issue of the newly-independent countries. Prime Minister Nehru persuaded the Soviet leaders, on their trip to India in 1955, to refrain from exercising veto for admission of new members and that broke the ice and numerous newly-independent states from Asia and Africa were admitted in the United Nations. Under a new current of self-determination, in which India played a fairly active role, most of the Asian-African countries acquired independence and became members of the “civilized” family of nations.

Most of Asia and later Africa had lost their independence once India was defeated, occupied and colonized in the nineteenth century. As India emerged as an independent state, it gave impetus and momentum to the collapse of colonialism and re-emergence of Asia and Africa. Even before India became formally independent, in March 1947, Jawaharlal Nehru, India’s first Prime Minister, called the Asian Relations Conference to challenge European imperialism and to put pressure on the international community to accept Indonesia’s independence which was sought to be re-occupied by Holland after the Second World War. In 1949, Nehru organized another emergency Conference of Asian States in New Delhi to champion the independence of Indonesia. India espoused the cause of freedom for Indonesia and achieved it. Indonesia became a member of the United Nations in 1950.

India could no longer accept colonialism as valid under international law and argued that it was a form of permanent aggression against the Asia-African states and must be dispensed with. Law must change with the changing times. With India’s active sponsorship and support, the United Nations unanimously adopted a Declaration on the Granting of Independence to Colonial Countries and Peoples in 1960.
But although India considered colonialism as not only illegal, but immoral, she was against the use of force for the achievement of freedom for the colonized peoples unless there was no choice whatsoever. Within its own territory, India had small colonial enclaves of France and Portugal. While France realized the changed international situation, and was persuaded to agree to hand over Pondicherry and its other small possessions to India in 1954, Portugal refused to accept such advice. After waiting for more than fourteen years, India had no choice but to use very limited force against Portugal to liberate Goa in 1961. While most Members of the United Nations, especially the newly-independent states, supported India's action, some of the Western countries strongly criticized it as an aggression under the UN Charter and a violation of international law. India found such criticism not only unreasonable but hollow. To defend colonialism in the age of freedom is, to say the least, harping on the past European law which was always unreasonable and challengeable, and now has altogether lost its validity. International law is no longer the exclusive preserve of the European countries or countries of European origin. It must change with the changing and changed times. India has always supported international law, but it could not accept "rulers' law" which accepted colonialism and racialism as valid.

India has also been a great supporter of the United Nations and had tremendous faith in it, especially in the early years of its independence. It agreed to refer its Kashmir dispute to the United Nations Security Council. Despite its utter disappointment and disillusionment with the world body, because of the partisan and anti-India attitude of some of the Western countries, it never thought of running away from the world body. In fact India tried to play a very active, positive, and helpful role in the United Nations. It acted as a mediator and helped in reaching agreements in several acrimonious disputes, such as Korea, Suez crisis, Congo and Rhodesia. Moreover, for the first time in history, independent India sent its armed forces out of the country to various trouble spots not to fight any body or conquer other lands, but on behalf of the United Nations and as a messenger of peace.

India has also been playing a very active role as a member of the "Group of 77" in the United Nations, and outside, in the development, modification and codification of international law. Although the earlier enthusiasm for changing international law through the UN General Assembly is no longer evident, because it has come to be realized that it is not and cannot be "world legislature", it is still the only body where smaller and weaker states of the third world can have any say and influence. It is still used by newly independent states for collective legitimization of their claims, actions and policies. So, whether it is denunciation of colonialism or racialism, criticism of unwarranted use of force against the smaller and weaker states, demands for a new international economic order, calls for changes and development of outdated and outmoded rules of traditional international law, or expressions of needs for new, universal, equitable and just
Selected Bibliography

Books

Anand, R. P., Studies in International Law and History: An Asian Perspective (New Delhi, 1994)
Anand, R. P., New States and International Law (New Delhi, 1972)
Anand, R. P., Confrontation or Cooperation: International Law and the Developing Countries (New Delhi, 1986)

Basham, A. L., The Wonder that was India (London, 1954)
Bhuinya, Niranjan, International Organisations (New Delhi, 1970)
Boxer, C. L., The Portuguese Seaborne Empire 1415–1825 (Victoria, Australia, 1969)

Cardozo, Benjamin N., The Nature of Judicial Process (New Haven, 1921)

Gong, Gerret W., The Standard of Civilization in International Law (Oxford, 1985)
Goodrich, Leland M. and Hambro, Edward, Charter of the United Nations: Commentary and Documents (Boston, 1946)

Grotius, Hugo, Mare Liberum (The Freedom of the Seas or the Right which belongs to the Dutch to take part in the East Indian Trade) (Tr. by Ralph Van Deman Magoffin), (New York, 1916)
Gupta, D. C., The League of Nations (New Delhi, 1974)
Gupta, Sisir, Kashmir (Bombay, 1967)

Haines, C. Grove and Hoffman, Ross J. S., The Origins and Background of the Second World War (New York, 1947)
Hall, William Edward, A Treatise on International Law (Oxford, 1880)
Hart, Henry H., Sea Road to the Indies (New York, 1950)
Hasan, Ibn, The Central Structure of the Mughal Empire and its Practical Working up to the Year 1657 (New Delhi, 1970)
Hobson, A., Imperialism: A Study (London, 1938)


Jessup, Philip C., The Use of International Law (Ann Arbor, 1959)

Kane, P. V., History of Daharmasastra III (Poona, 1946)
Keith, A. B., Constitutional History of India, 1600–1935 (London, 1936)
Keith, A. B., Sovereignty of the British Dominions (London, 1929)
Khadduri, Majid (Tr.), The Islamic Law of Nations of Shaybain’s Siyar (Baltimore, 1966)
Khan, Rahamatullah, United Nations and Kashmir (Groningen, 1955)
Knight, W. S. M., The Life and Works of Hugo Grotius (London, 1925)

Legislative Assembly Debates in India, Vol I (1936)

Lindsay, W. S., *History of Merchant Shipping and Ancient Commerce, Vol II* (New York, 1965)


Menon, K. P., *History of Kerala* (1929)

Menon, V. P., *The Story of the Integration of Indian States* (Bombay, 1956)


Moon, Parker Thomas, *Imperialism and the World Politics* (New York, 1927)

Nambiar, O. K., *Our Seafaring in the Indian Ocean* (Bangalore, 1975)

Nehru, Jawaharlal, *Glimpses of World History* (New Delhi, 1999) (First published in 1934–35)

Nehru, Jawaharlal, *The Discovery of India* (New York, 1946)


Panikkar, K. M., *Malabar and the Portuguese* (Bombay, 1929)

Panikkar, K. M., *A Survey of Indian History* (Bombay, 1964)


Parasher, S. C., *United Nations and India* (New Delhi, 1985)


Poulouse, T. T., *Succession in International Law: A Study of India, Pakistan, Ceylon and Burma* (New Delhi, 1974)

Rao, P. Chandrasekhar, *The Indian Constitution and International Law* (New Delhi, 1993)

Rau, B. N., *India's Constitution in the Making* (New Delhi, 1960)


Sarkar, Sir Jadunath, *A Short History of Aurangzeb 1618–1707* (Calcutta, 1930)


Sundaram, Lanka, *India in World Politics* (1944)

*The Suma Oriental of Tome Pires (An Account of the East, from the Red Sea to Japan written in Malacca and India 1512–1515)* (Translated by Armando Cortesao) Vol I (London, 1944)


Tupper, C.L., *Our Indian Protectorates* (London, 1893)


Villiers, Alan, *The Indian Ocean* (London, 1952)

Westlake, John, *Chapters on the Principles of International Law* (Cambridge, 1894)

Wolfke, Karol, *Great and Small Powers in International Law from 1814 to 1920* (Wroclaw, 1961)

**Articles and Documents**


*ICJ Reports*, 1960, p. 6.


Kennedy, J., “Early Commerce between India and Babylon”, *Journal of the Royal Asiatic Society* (1898)


Selected Documents of the Bandung Conference (Institute of Public Relations) (New York, 1955), p. 34.


*The Indian Annual Register: July–December 1946* (Calcutta, 1947)


Index

Akbar 27, 35, 37, 39–41, 49
Albuquerque 14–18, 23
Arabs 6, 8, 11–12, 17, 121
Asian Relations Conference 103, 128
Asian states 3, 5, 39, 67–68, 71, 75, 77, 114, 125
Aurangzeb 25, 27, 36–38, 40, 44
Bengal 15, 25–26, 32, 36, 39–41, 44–48, 50, 58–59, 91
Breacher, Michael 101
Calicut 9, 10, 12–17, 20, 39
Capitulations 74
cartaz 16
Ceylon 15, 20, 22, 60, 68, 81, 100
Clive 40, 44–47, 58
da Gama 11, 13
Dupleix 40, 43–44
Dutch 4, 18–24, 38, 41, 62, 66, 70, 103–104, 122
East Indies 6, 8, 16, 18–23, 70, 74, 121–122
Egypt 1, 6–9, 12, 14–15, 85, 87, 100, 121
English East India Company 4, 22, 39, 41, 45, 124
Fulton 21, 63
General Assembly 95, 99, 104, 107, 114, 119, 129
Gong, Gerret 72, 74
Group of 77 118–119, 129
Hague Peace Conferences 3, 76–77, 126
Hegel 7
Hindu, G. F. 8
Hyderabad 44, 51, 53, 91–93, 127
India 1, 3–12, 14–17, 19–26, 27–62, 66, 71, 74–118, 120–129
Indonesian 6, 8, 13, 15–18, 22–23, 28, 62, 121–122
Industrial Revolution 63–65, 125
Jehovah Witnesses 87, 125
Jones, James 113, 115–116
Kashmir 37, 39, 49, 91, 93, 116–118, 127, 129
Keith, A. B. 82–84
League of Nations 78–87, 94, 106, 126–128
Lindley 4
London Conference 96
Malabar 7, 9, 11–14, 17, 19, 22, 26
Mughal Empire 27–28, 35, 40, 49–50, 55, 123–124
Muslims 8–9, 13, 17, 31–33, 50, 90, 93, 121, 123
Non-alignment 110–111
Non-Europeans 85, 87
Nuclear Weapons 109
Oppenheim 2–3, 72, 79, 83
paramountcy 36, 52–53
Paris Peace Conference 77–78, 80, 126
Persia 3, 6, 8, 11–12, 15, 24, 31, 33–36, 41, 54, 56, 59–60, 64, 68, 71, 77, 87, 123, 125
Pope 9–10
Prince Henry the Navigator 9
Princely States 51, 90–91, 93, 95, 124, 127
Recognition of States and Governments 114
Rome 6, 7, 121
Rulers’ law 62, 108, 125
Rules of Inter-State Conduct 29, 39, 122
San Francisco Conference 79, 94, 97, 128
Sarkar, Jadunath 37
Schwarzenberger 66, 73, 79
Selden 21, 63, 122
Shah Jahan 24, 36, 49
Soviet Union 94, 99, 110, 118–119
Spain 9–10, 18, 20, 31, 121
Standard of “Civilization” 73
Strabo 7
Swell 6
Tibet 113, 115–116
Turkey 3, 24, 34, 36, 56, 68, 71, 74, 77, 85, 87, 123, 125
US Senate 81, 83
Vasco da Gama 11, 13
village communities 60
White Man’s Burden 65, 125
Wilson, Woodrow 77–80, 82, 84, 126
Zamorin 13–14, 16, 22
R. P. Anand

Professor Emeritus at present in the Division of International Legal Studies of the Jawaharlal Nehru University in New Delhi, India, Professor Anand retired from the University in 1998 after serving there for nearly 33 years as Professor and Head of that Division. Anand is a well-known scholar in the field of international law and widely recognized as a spokesman of the Third World views on the subject. One of the two Indian elected members of the Institut de Droit International at present, Professor Anand has been recipient of a number of awards and honors in the field, visiting scholar in several universities and institutes of higher learning in the United States and Europe, Lecturer at the Hague Academy of International Law, U.G.C. National Lecturer in Law in India, and has served as Legal Consultant to the UN Secretary-General on Law of the Sea. Author or Editor of 18 books, Professor Anand has published more than ninety articles in professional journals in Canada, Europe, India, Japan, and the United States.

BOOKS


New Law of the Sea: Emergent Norms and Institutions, Lectures delivered at the Institute of International Public Law and International relations, Aristotle University (Thessaloniki, Greece 1996).

The United Nations and the Gulf Crisis (Published under the auspices of the International Legal Studies Division of the Jawaharlal Nehru University) (New Delhi, 1994).

South Asia: In Search of a Regional Identity (Banyan Publications, New Delhi, 1991).


