

## **North-Western Boundary of Nepal**

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### ***Abstract***

*Following the publication of new political maps by India on 2nd and 8th November 2019, the issues related to the source of Mahakali River and Indian occupation of the Nepali territory east of the river, have, once again, come to the surface. And, the Nepali civil society has come out strongly against the newly published political maps of India, prepared a new map of Nepal, showing the whole of the territory east of Mahakali River (about 400 sq. km) as Nepalese land on the basis of Treaty of Sugauli signed in 1816 by East India Company of Great Britain and Raja of Nepal. An analysis of the maps, so far available, shows that changes have been made in the names of the river and places, and there is cartographic aggression and manipulation by India in relation to Mahakali River and its boundary with Nepal's northwest. It has also been found that Nepal has published a map in the past showing its international boundary without any basis of the treaties and other historical documents. Analysis clearly shows that the river originating from Limpiyadhura is the Mahakali (called Kalee/Kali River) as per Article 5 of the Sugauli treaty and it forms the international boundary between the two countries.*

**Keywords:** Anglo-Nepal War, Sugauli Treaty, Cartographic Aggression, Nepal-India Territorial Disputes

## 1. Introduction

India published new political maps on 2<sup>nd</sup> and 8<sup>th</sup> November 2019 after the amendment of Article 370 of its Constitution on August 9, 2019<sup>1</sup> declaring the division of the State of Jammu and Kashmir into two union territories<sup>2</sup>. They showed Nepalese territory east of the Mahakali (Kalee/Kali) River<sup>3</sup> - the boundary between Nepal and India - as per the Treaty of Sugauli, 1816, as part of India. This has brought the boundary issue between the two countries, including the Indian occupation of the Nepali territory east of the Kalee/Kali River, once again, to the surface. It may be mentioned that the territories included in these new political maps of India as its own are *Limpiyadhura, Lipu, and Kalapani*. This comes at a time when the Government of India (GoI) itself has, time and again, admitted that the upper reaches of the Kalee/Kali river are disputed areas (Rajan, 1996; JWG, 1998; and Rajan, 2000). Thus, the ongoing territorial issue between Nepal and India involving some 400 sq. km of sovereign land of Nepal on its northwest border, especially the source of Kali River, in fact, dates back to the Sugauli treaty of 1816, signed between East India Company of Great Britain and Raja of Nepal, i.e. Government of Nepal.

Once the new political maps of India came out in the public domain, the Nepali civil society came out strongly against them and came up with a new map of Nepal, showing the whole of the territory east of the Kali River as Nepalese land on the basis of the 1816 treaty of Sugauli. As a consequence, GoN did raise the issue with India. First of all, Ministry of Foreign Affairs (MoFA), through a press statement, objected to the inclusion of Kalapani in its territory claiming, “Kalapani is a part of Nepal” (The Diplomat, November 11, 2019-[www.thediplomat.com](http://www.thediplomat.com)). Prime Minister K P Sharma Oli publicly requested the government of India ( GoI) to withdraw its security forces from the

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<sup>1</sup> The amendment bill had been passed by the parliament on August 6, 2019. And it was given assent by the President of India on August 9, 2019. The Act came into effect on October 31, 2019.

<sup>2</sup> After the adoption of the amendment to Article 370 of the Constitution of India, the then State of Jammu and Kashmir was divided into two parts; Jammu and Kashmir and Ladakh. And, each was declared a separate union territory.

<sup>3</sup> Both words – Kalee and Kali are used to denote the name of the river. But in this paper, the spelling Kali is used. With regard to the nature of this river, as per the wording of Article 5 of the Treaty of Suguli, some historians are of the opinion that the whole of the river belongs to Nepal. Let this argument stand in relation to the border issue between Nepal and India. But, since this river was accepted as the dividing line between British East India Company and Nepal, it has been termed as Boundary River in this paper.

Kalapani area – the occupied Nepali land - (The Himalayan Times, November 18, 2019) and claimed that the whole of the land east of the Kali river belongs to Nepal (The Rising Nepal, December 18, 2019). Against this background, the northwestern boundary of Nepal with India is discussed in this paper in the light of Treaty of Sugauli and on the basis of historical facts, which consist of correspondences between the two governments, maps and government publications. River science is the other basis of the discussion. In addition, the institutional mechanism created by the two countries to sort out the boundary issue is also touched upon.

## **2. Anglo- Nepal War and Treaty of Sugauli, 1816**

Late 18<sup>th</sup> and early 19<sup>th</sup> centuries were periods when the Nepal was expanding its territory. She had already expanded her territory up to Tista River in the east and Sutlej River in the west and to the plains of the Ganges in the south. British India was also expanding its territory. In other words, both Nepal and East India Company of Great Britain (here in after referred to as East India Company ) were inclined towards territorial expansion. The latter had also eyes on the hills and forest resources of Nepal and wanted to use its territory as a trade route to Tibet. It may also be added that the Nepalese force had taken over Palpa, Butwal and Syuraj at the time of its unification drive. In the meantime, Lord Francis Rawdon-Hastings, 1<sup>st</sup> Marquess of Hastings : 1754 - 1826 (also known as Lord Moira), the Governor General of Bengal (<https://www.britannica.com/biography/Francis-Rawdon-Hastings-1st-Marquess-of-Hastings>), had sent a 'threatening letter to the government of Nepal for the immediate return of Butwal and Syuraj to them' (<https://www.kullabs.com/classes/subjects/units/lessons/notes/note-detail/693>). Nepal did not concede to the demand. The consequence was a clash between East India Company and Nepal on the border issue, which ultimately led to the Anglo-Nepal war of 1814-1816. In other words, 'border tensions and ambitious expansionism led to the...Anglo-Nepal War in 1814' (<https://www.globalsecurity.org/military/world/war/anglo-nepal.htm>).

The war lasted till the conclusion of the Treaty of Sugauli on March 4, 1816. The result of this Treaty was the loss of one third of the total Nepali land to East India Company (<https://www.kullabs.com/classes/subjects/units/lessons/notes/note-detail/693>). Its boundary got squeezed and confined to the hills between the Mechi river in the east and the Kali river in the west. She lost all her southern plains, some of which were later returned in two phases. The eastern Tarai was returned on December 11, 1816. The four districts of Banke, Bardiya, Kailali and Kanchanpur were returned on November 1, 1860 (Paudyal, 2013) as a goodwill gesture to

Nepal for its help in quelling the 1857 uprising against the East India Company<sup>4</sup> under the command of Prime Minister Jang Bahadur Rana.

When the war was going on, Lord Hastings had already decided that the Kali river would be the border between the territory of East India Company and Nepal in the Kumaon area. That would provide British merchants easy access to Western Tibet<sup>5</sup> (Cox, 1824), the source of super quality wool. He sent a secret letter to the Company governing board in England on June 1, 1815. The letter, among other things, stated that ... 'I propose to extend the limits of this province [Kumaon] west, as far as the Alucknunda and the Ganges, or eventually to the Bageerettee and the Ganges, comprehending, as I have reason to think, a very fine tract of country. The eastern boundary will be the Kali which rises in the Snowy Mountains, and pursues nearly a direct southerly course to the plains, where it assumes the name the Gogra' (Ibid). The Kali river, thus, got included as the eastern boundary of the Kumoun area with Nepal in Treaty of Sugauli 1816, which had formally brought to an end the Anglo-Nepal war of 1814-1815.

Article 5 of Treaty of Sugauli states:

*'the Rajah of Nipal renounces for himself, his heirs, and successors, all claim to or connexion with the countries lying to the west of the River Kali and engages never to have any concern with those countries or the inhabitants thereof* (<http://nepaldevelopment.pbworks.com/w/page/34197552/Sughauli%20Treaty%20of%201815%3A%20Full%20Text#ArticleV>)

Chautaria Bam Shah was the Gorkhali administrator of Kumaon Province from 1805 until it became British territory in 1816. From available evidence, it is proved that negotiations had taken place between Shah and Edward Gardner<sup>6</sup> with regard to the boundary with Nepal for the Kumaon area. It seems, as per historical records, that during the treaty negotiation process Mr. Gardner had been instructed to ensure that the west of Kali River remained under the control of East India Company. Mr. Gardner had insisted on having the Kali river as the

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<sup>4</sup>.An uprising against the East India Company rule took place in 1856-1857 in different places (Manandhar 1991; Digby, 1993 and Bhandari, 2016), in quelling of which Nepal had provided support to East India Company.

<sup>5</sup> The area occupies strategic position not only from the point of view of access to the western part of Tibet but also from the point of view of religious tourism to Lake Mansarovar and Mount Kailash, and water resources development.

<sup>6</sup> Mr. Gardner belonged to Bengal Civil Service and was the second assistant to Charles Metcalfe, Resident at Delhi. He was selected and sent by Governor General Lord Hastings to represent East India Company at Kathmandu or Court of Nepal after signing the treaty of Sugauli.

boundary) [https://archive.org/stream/dli.bengal.10689.18114/10689.18114\\_djvu.txt](https://archive.org/stream/dli.bengal.10689.18114/10689.18114_djvu.txt)), and succeeded in getting it included in the treaty of Sugauli. So, once the treaty came into existence, Bam Shah wanted East India Company to surrender the villages/ areas located east of Kali River to Nepal. In response, on Feb. 4, 1817, Acting Chief Secretary of Government J. Adams wrote a letter to its Resident in Kathmandu, Mr. Edward Gardner. The letter clearly stated ... *With respect to Bum Shah's claim to the track on the Eastern side of the Kali, the Governor General in Council is of opinion that according to the Letter of the Treaty, the Government of Nipaul is entitled to the restoration of it, notwithstanding its hitherto having been regarded as annexed to the British province of Kumaon. I am accordingly directed to intimate to you that the acting Commissioner for Kumaon will be instructed to surrender it to the officers of the Nepalese Government.... (Annex 1).*

Despite the fact that East India Company had clearly indicated that the area east of the Kali river belonged to Nepal, Zamindars of Pragannah Byas (Feudal leaders of Byas Pragannah) wanted their area to remain within the territorial boundary of East India Company. So, in this regard, they submitted a petition to J. Adams, Secretary to Government, Political Department, through G. W Traill, Acting Commissioner, Kumaon. On March 8, 1817, Traill, forwarded the petition to Mr. Adams (Annexes 2 and 3). Mr. Adams, while intimating the letter attached with the petition of the Zamindars of Pragannah Byas, wrote back to Traill on March 22 (Annex 4). In this letter, Mr. Adams had written that '*the letter and Spirit of the Treaty of Peace give to the Nepalese Government to the undoubtable right to all lands situated to the eastwards of the Kali whether heretofore forming the part of province of Kumaon or not and on the other hand it is extremely undesirable to manifest any reluctance to give prompt and full effect to those stipulations of the Treaty by which the extent of the remaining possessions of the Nepalese is deferred. There is little reason to suppose that the Nepalese Government would consent to relinquish the lands in question for a pecuniary payment and on the whole the Governor General in Council had determined to proceed at once to the restitution of Nepalese villages and lands in question, which you will accordingly be prepared to [hand] over to the officers of that government ... In reply to the petition of the Bhotea Zamindar..., they must now be transferred to the Nepalese Government, however, desire of the British Government may be to retain under its own ...'* (Manandhar 1996).

A study on the Nepal-India open border, which was funded by Bisheswor Prasad Koirala Foundation (BPKF), provides an inkling of the problems facing Nepal and India in reference

to some border issues including the Kali river (Baral and Pyakuryal, 2013). The report states that there has been no major border conflict between Nepal and India since the signing of Treaty of Sugauli [1816], though some occasional complaints have been made by Nepal. Even today, some disputed territories exist. Among the disputed territories, Kalapani in Far West, in reference to the source of Mahakali River, has always been in the lime light along with Susta in Nawalparasi in relation to Nepal-India border relations.

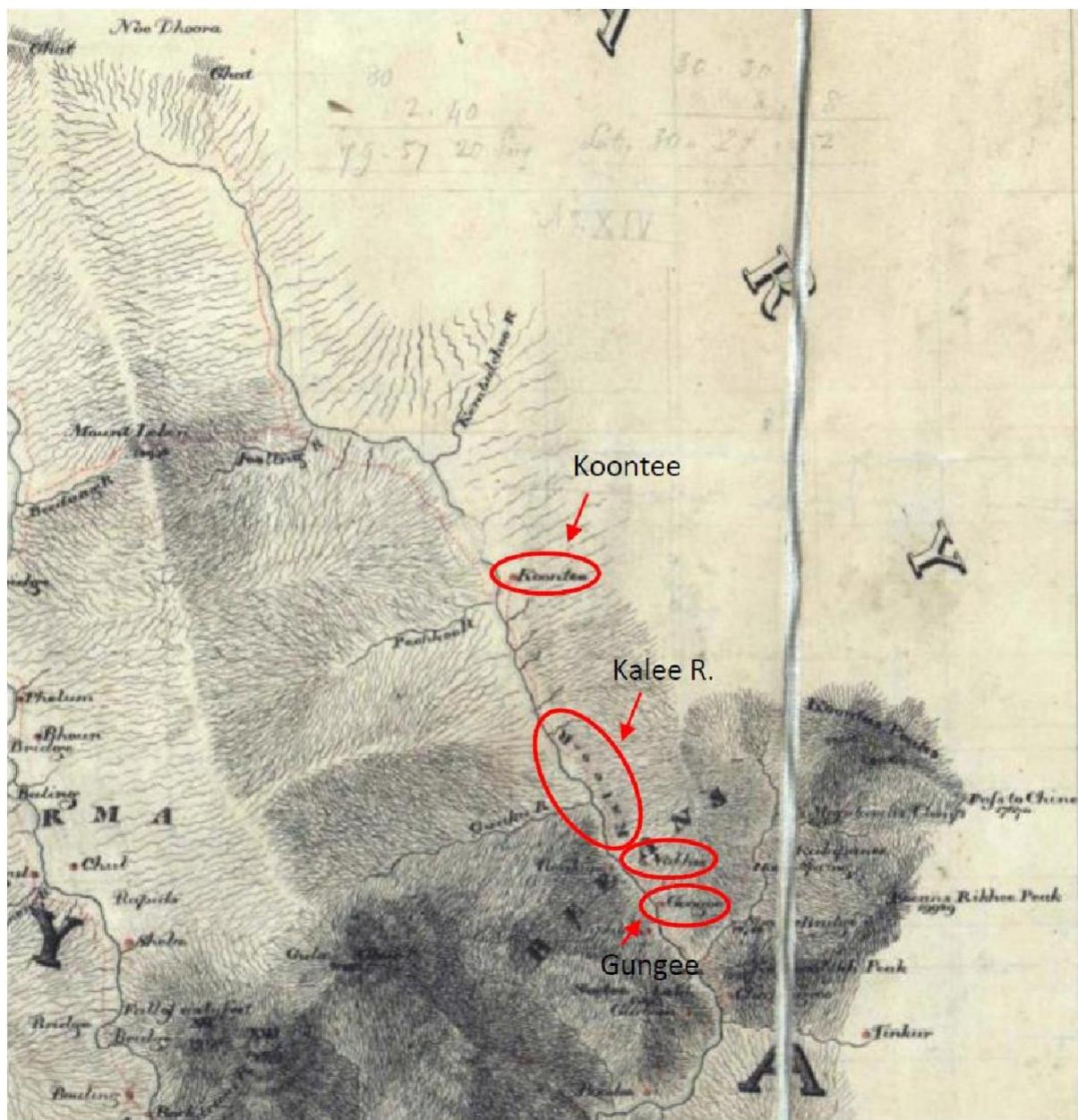
### **3. Kali River: Its source and international boundary**

It is claimed that the Sugauli treaty did not have an attached map showing the boundary between the lands under East India Company and Nepal. Indeed, such an attachment including the north western boundary showing the source of Kali River would have supported that the Kali is a border river-from its headwaters down to the plains. But a sketch map of Kumaon prepared by Captain W. S. Webb, which was published in 1819, clearly shows the river originating from Limpiyadhura as Kali River (**Map 1**). Similarly, the map of Gurhwal Kumaon surveyed by Webb and published by James Horsburgh – a hydrographer with East India Company - in 1827 (**Map 2**) also shows the river originating from Limpiyadhura as Kali River. A map published by Senior Assistant Commissioner Settlement Officer, Kumaon J.H. Batten in 1846 (**Map 3**) also named the same river as West Kali or Sama River. Another map of Kumaon and Garhwal published in 1856 (**Map 4**) contained more details and clearly showed the river originating from Limpiyadhura is Kali river. A map of Kumaon and Garhwal showing roads and government tea plantations, published in 1859 (**Map 5**), also shows the same river as West Kali, i.e. originating from Limpiyadhura. It needs to be mentioned that despite the fact that the map of 1865-69 and 1871-77 published by the Survey of India and entitled District Almora has shown the river flowing from *Lankpya* peak as the *Kutyi Yangti river* and the river flowing from the Lipu range as Kali (**Map 6**), Mr. H.M. Smith from the Surveyor General's Office, in his map published from Calcutta in November, 1867, has shown the river originating from Limpiyadhura as Kali River (**Map 6 A**).

Thus, from the maps prepared and published between 1819 and 1867, it is clearly evident that the river originating from Limpiyadhura is the Kali River. And, whatever tracts of land are located east of Kali River lie in Nepal as per Article 5 of Treaty of Sugauli. It is only after 1879 that the name of the river flowing from Limpiyadhura was changed to Kuti Yangdi and the one originating from Lipu Lekh was named Kali River (**Map 7**). The naming of river originating

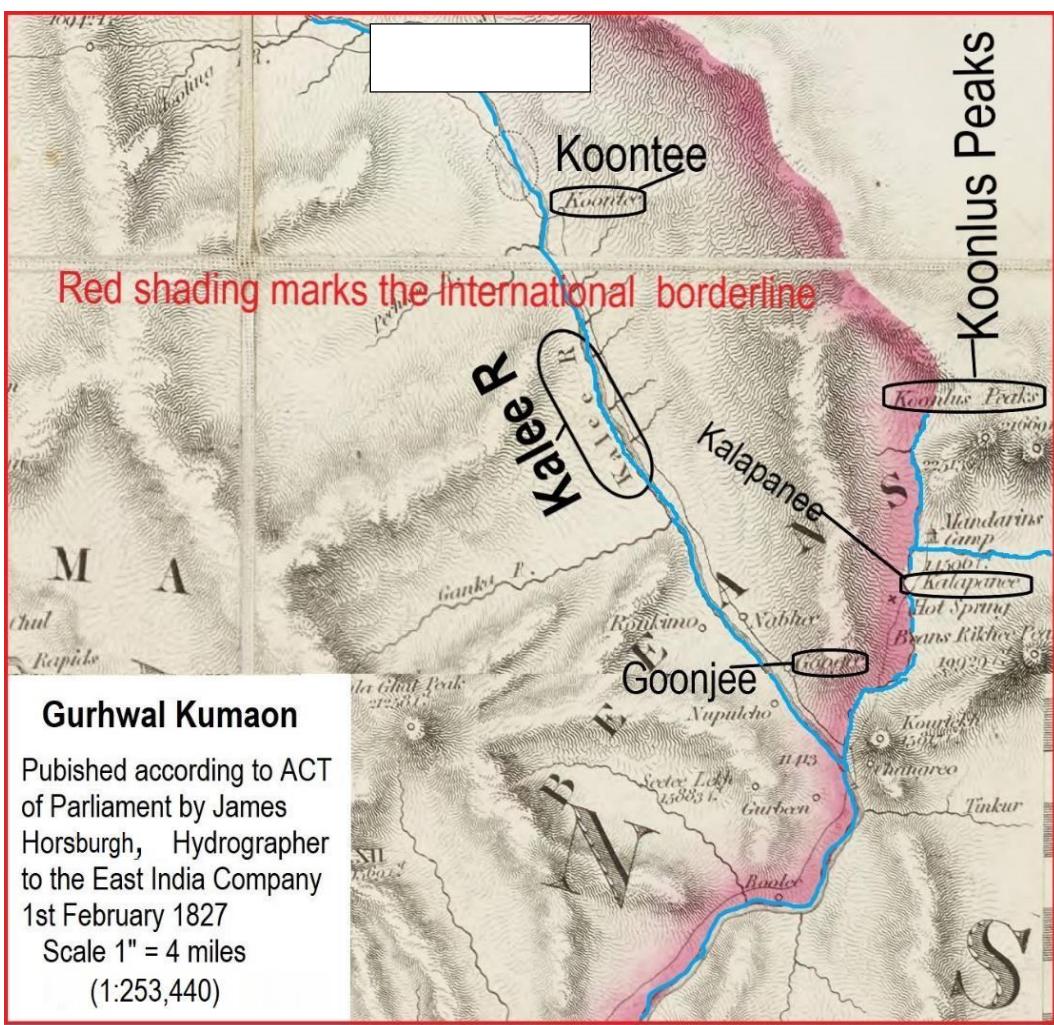
from Lipu Lekh is not in consistent with hydrological science for defining the main river and its origin. According to hydrological principle, the main river is one which is the longest, drains more area, has more average flow and attains the higher number of stream order than its other tributaries (Playfair 1802, Horton 1945, Strahler 1964). Since the river originating from Limpiyadhura fulfils all these criteria, this is the main Kali river (Bhusal 1996, 1998). Other rivers in its watershed are the tributaries, but not the main river.

**Map 1: Map of the Province of Kumaon prepared by Captain W. S Webb (1819)**



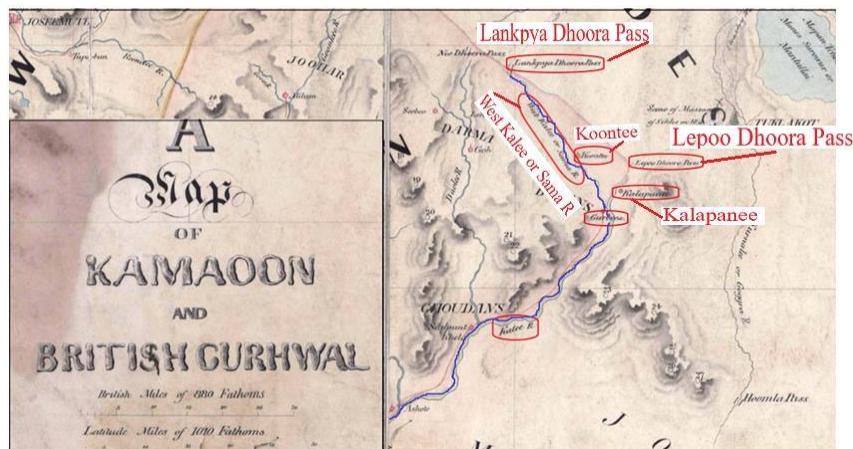
**Source:** <https://pahar.in/Indian-subcontinent-pre-1899> (1819 Map of Province of Kumaon by Webb. jpg) ( Scale: 1 Inch = 1 mile )

## **Map 2: Map of Gurhwal and Kumaon by James Horsburgh (1827).**



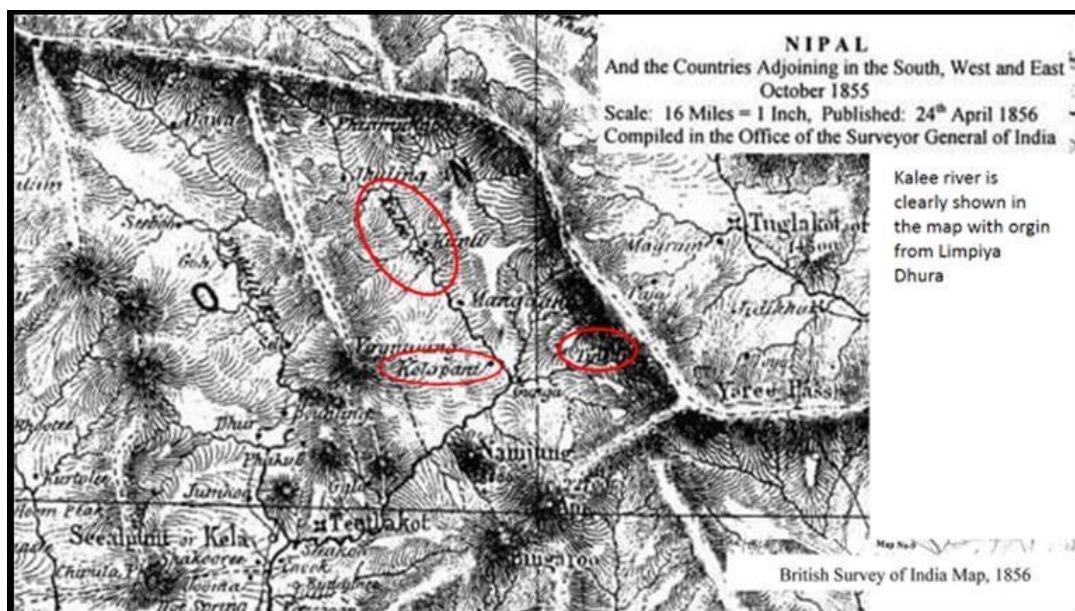
**Note:** In this map the international borderline is shown by red colour shade and it shows Kuti (Koontee), Nabi and Gunji (Goonjee) within Kunmaon region of British India.

**Map 3: Map of Kumaon and British Gurhwal by J.H Betten (1846)**



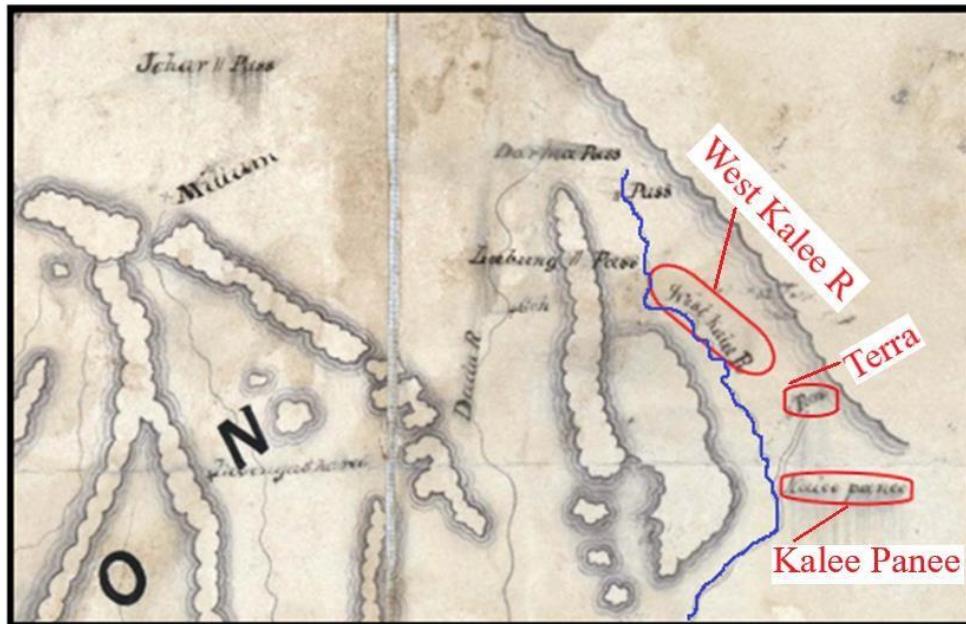
**Source:** <https://pahar.in/indian-subcontinent-pre-1899> (1846 Kumaon and British Gurhwal.jpg)

**Map 4: The Map of Nipal And the Countries Adjoining in the South, West and East (1856)**



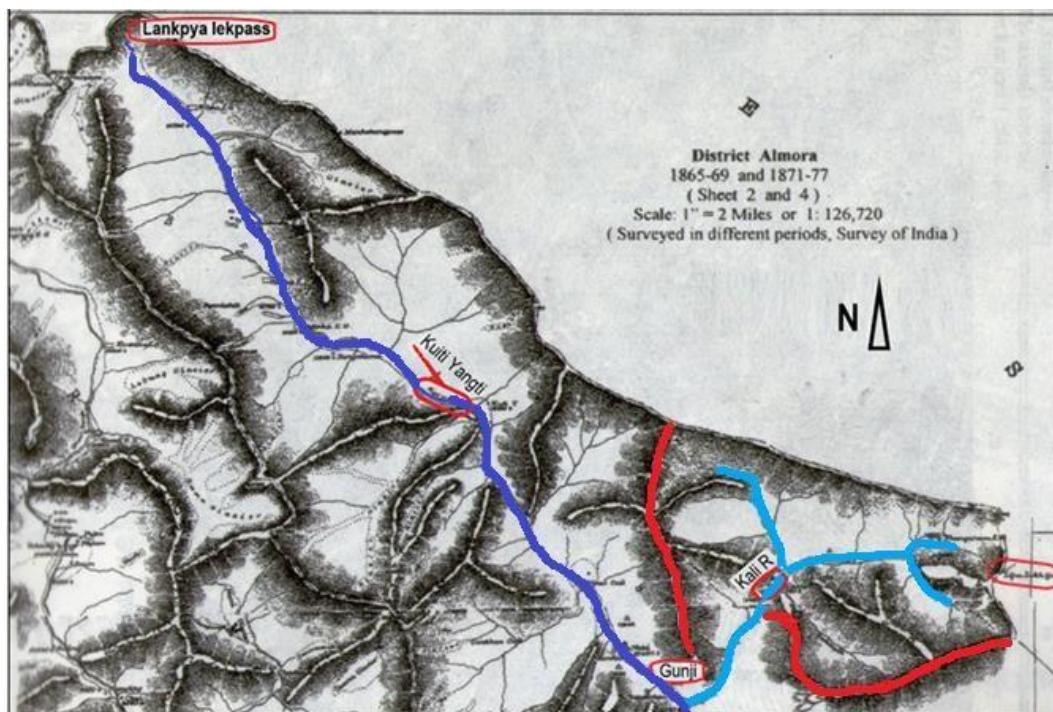
**Source:** Office of the Surveyor General of India, 1856

**Map 5: Map of Kumaon and Gurhwal (1859)**



**Source:** <https://pahar.in/indian-subcontinent-pre-1899> (1859 Kumaon and Gurhwal showing roads and tree plantation.jpg)

**Map 6: Map of District Almora**



**Source:** Survey of India

**Note:** Important rivers (blue color) and ridges (red) are highlighted by authors.

**Map 6 A: Map of Nepal, Sikkim, Bhutan and Tibet (1867)**



Source : H.M. Smith at the Surveyor General's Office, Calcutta, Nov.1867

**Map 7: Map of Kumaun and British Garhwal (1878 and 1879)**



**Source:** <https://pahar.in/indian-subcontinent-pre-1899> (1878 Kumuan and British Garhwal, No.36 by GTS.jpg and 1879 Kumaun and British Garhwal No.37 by GTS.jpg )

#### 4. Cartographic Aggression and Manipulation

Since Treaty of Sugauli, 1816, there has been no boundary treaty between then East India Company /British Indian Government/Government of Independent India and Government of Nepal. But there has been cartographic aggression through new definition of the Kali river and change in the international boundary line between Nepal and India in this area by India several times after Treaty of Sugauli. Firstly, at the beginning immediately after Sugauli treaty the river originating from Limpiyadhura was regarded as Kali river and the eastern boundary of India. Secondly, the accelerated cartographic manipulation pushing north-western border and tri-junction eastwards from Limpiyadhura after 1827 ( Bhusal 2020). Though the river originating from Limpiyadhura was named as Kali river, but the international boundary as per the map published in 1827 follows the river originating from Koonlus mountain. Thirdly, the international boundary as per the map of 1850 follows the Lipu Khola originating from Lipu

pass. Fourthly, as per map published in 1879, the international boundary follows the watershed boundary between Tinker and Lipu Khola.

The study of maps, thus, published in different period clearly shows that there has been cartographic aggression and illegal occupation of Nepali territory by India. Those aggressions have been discussed below.

As already mentioned, Bhootiya Zamindars of Byas Parganna wanted their villages, Gunji, Nabi and Kuti, to remain within the domain of East India Company and had sent a petition to East India Company on March 8, 1817 through Kumaon Commissioner Mr. Traill. Despite the fact that the Company Government did not accept the request and showed its commitment to the provision of the 1816 treaty, it seems that Zamindars of Byas continued their efforts to see that the company government would positively respond to their interest. Were it not the case, the map of 1819, published by Survey of India (Map 1) would not have indicated East India Company's intentions. First of all, the map has not shown the boundary line, despite the fact that it has named the river originating from Limpiyadhura as Kali. Secondly, the watershed areas of Lipu and Kali River have been presented differently. It may be mentioned that Captain W.S. Webb, the officer, who had fought against Nepal and was sent to Kumaon after the treaty, for barometric survey of the area, and whose work made it possible for the map of 1819 to be published by Survey of India, knew the importance of the area as a trading route to Western Tibet.

Another map was published by James Horst Burgh, East India Company's hydrographer, in February 1827 (Map 2)<sup>7</sup>. This map indicates that the river flowing from the Limpiyadhura range is the Kali river. But, instead of showing it as a boundary river, the map has shown another unnamed stream flowing/originating from the Koonlus range, which is located about 40 km southeast of Limpiyadhura, as the boundary between the two countries. This clearly contravenes the provision of Treaty of Sugauli. In other words, this map changed the borderline from Limpiyadhura - the source of Kali River- to Koonlus range/peak

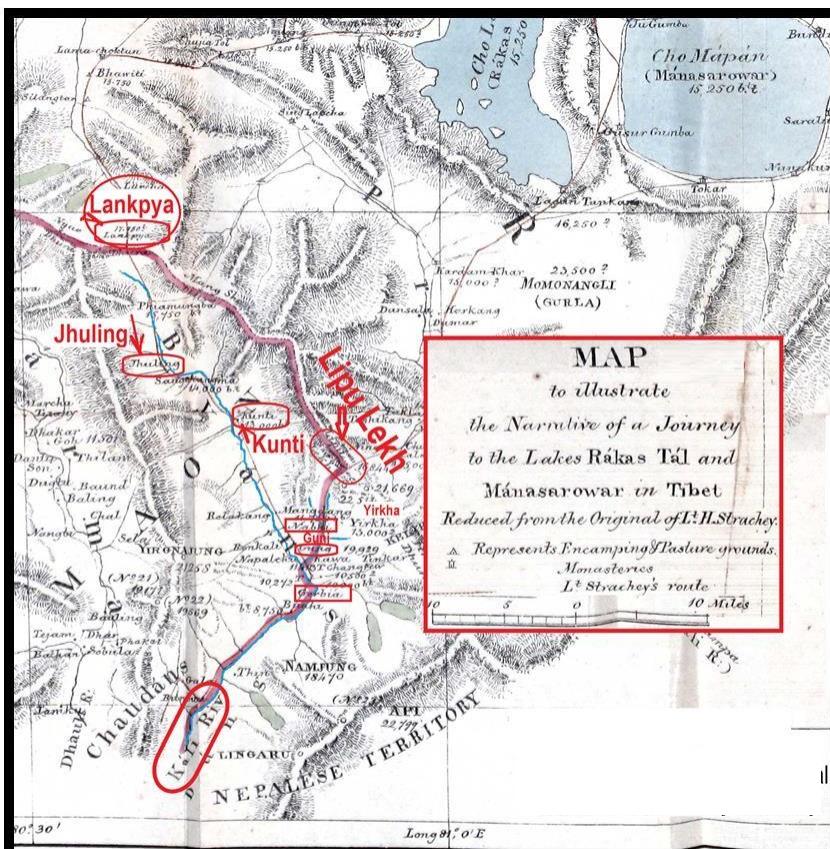
In 1846, East India Company sent Henry Strachey and Richard Strachey (both brothers were in the army) to Kumaon to survey this region, including routes to Tibet, in a scientific manner. They started publishing papers on the basis of those surveys. In 1848, H. Strachey published a route map, in which he has not given any name to the river flowing from

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<sup>7</sup> It is in the map of 1879 only that the unnamed stream was named Tera gadh [Tera gadh] (Map 7)

Lankypa *dhura* (Limpiyadhura) (Regmi, 2019). He has expressed regret for not naming the river flowing from the said *dhura* as Kuti Yangadi in the earlier maps. In addition, while using the 1827 map, which had changed the border line to the Tera Gadh stream coming from Koonlus Peak, Strachey shifted the location of Lipu about 11 kilometres west in the position of Koonlus Range and called it Lipu Lekh in his map, i.e. in the route map of 1848 (**Map 8**).

**Map 8:** Map 8: Route Map of H. Strachey to Mansarovar, Rakshes Tal and Mount Kailash (1848)



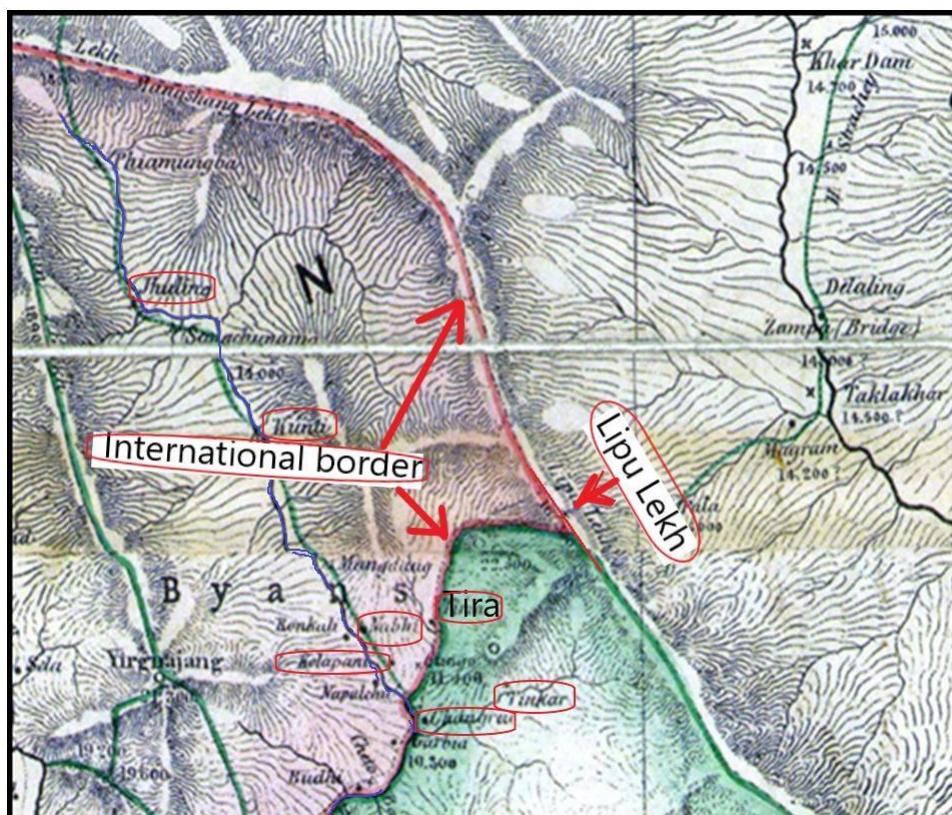
**Source:** <https://pahar.in/Indian-subcontinent-pre-1899> (1848 map of Route to Rakshes Tal and Mansarovar by Strachey.jpg)

**Note:** Blue line and red texts are highlighted by authors whereas bold red highlight was marked by the map producer to indicate as the borderline which, after Gunji, follows the course of Tera Gadh Stream.

Unlike the route map of H. Strachey (**Map 8**), published by Surveyor General of India, the 1850 map of Kumaon and British Gurwal (**Map 9**) has shown Lipu Lekh nearly brought back to its original position and it was included in the British territory. In addition, this map showed the river coming from Lipu Lekh as the border. Thus, again, the borderline was changed from

the Tera Gadh river course to the Lipu area keeping the Lipu pass under the British domain. This is what the Strachey brothers had visualized. Among the different passes along the range, Lipu is the most accessible pass to Tibet in all seasons, except during extreme weathers. So very tactfully Lipu was included in the British territory. Interestingly, this map does not give any name to the river flowing from Limpiyadhura.

**Map 9: Map of Kumaon and British Gurwal (1850)**



**Source:** Surveyor General of India, 1850 (*Scale : 1 inch to 8 miles*)

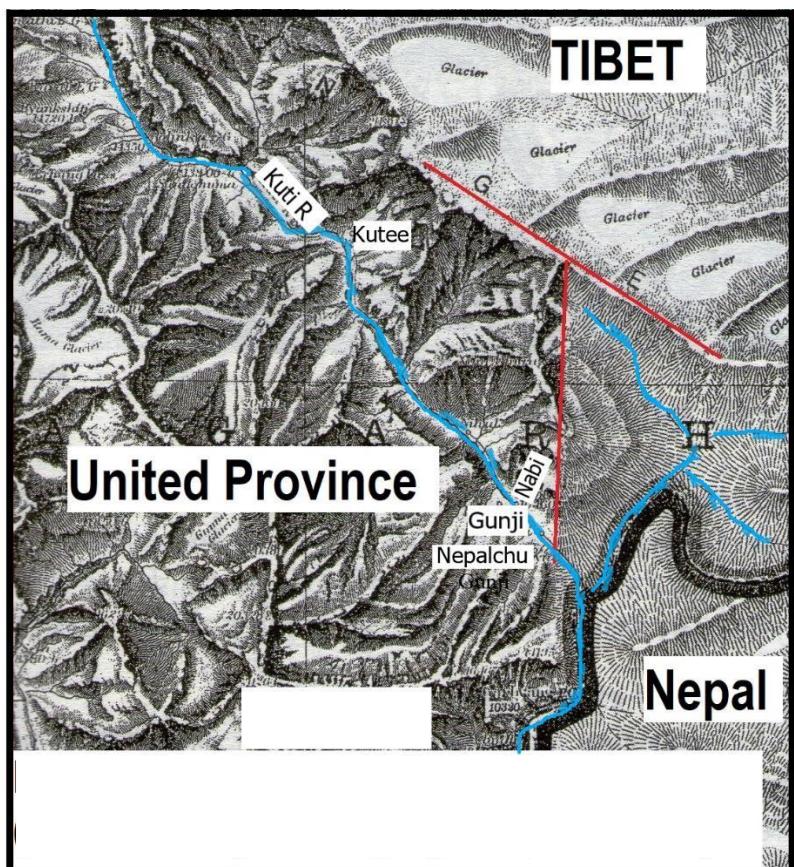
**Note:** The black dotted line along with the red highlighted marks is the borderline which, after Gunji, follows the course of the river originating from Lipu pass

Again, almost all the maps published before 1865-69 had clearly indicated Limpiyadhura as the source of Kali River. Maps published by Surveyor General of India, thereafter, changed the name of Kali to Kutiyangdi – a name which had been suggested by H. Strachey in his paper/report. The map of Nepal, Almora District and United Province published by Surveyor General of India in 1879 (**Map 7**) also names the river flowing/originating from Limpiyadhura ‘Kuti Yangti’ and the name ‘Kali’ was instead given to Lipu Khola (stream), flowing from

Lipu range. With regard to the boundary with Nepal, the map neither follows the Kali river, which is called Kuti Yangdi, nor Lipu Khola (which was named as Kali in this map) as the boundary river. Rather, the source of Kali River- the boundary between India and Nepal- has been shown about 30 meters south of Kalapani on the left bank of Lipu Khola. More precisely, a small spring at Kalapani has been shown as the source of the Kali River, which is located 10 kilometers west of Lipu Pass.

Map published in 1881 clearly shows the international boundary following watershed divide between Kali (Kuti Yankti) and Tera Gadh rivers ( Map 9 A). It is also supported by ‘The Gazette of Almora’ (UP State Archives, 1911) stating “*The Kali on the east has its true source in the Kuti Yankti which after the in fall of the Kalapani river takes the name of Kali*” (Bhusal, 2020).

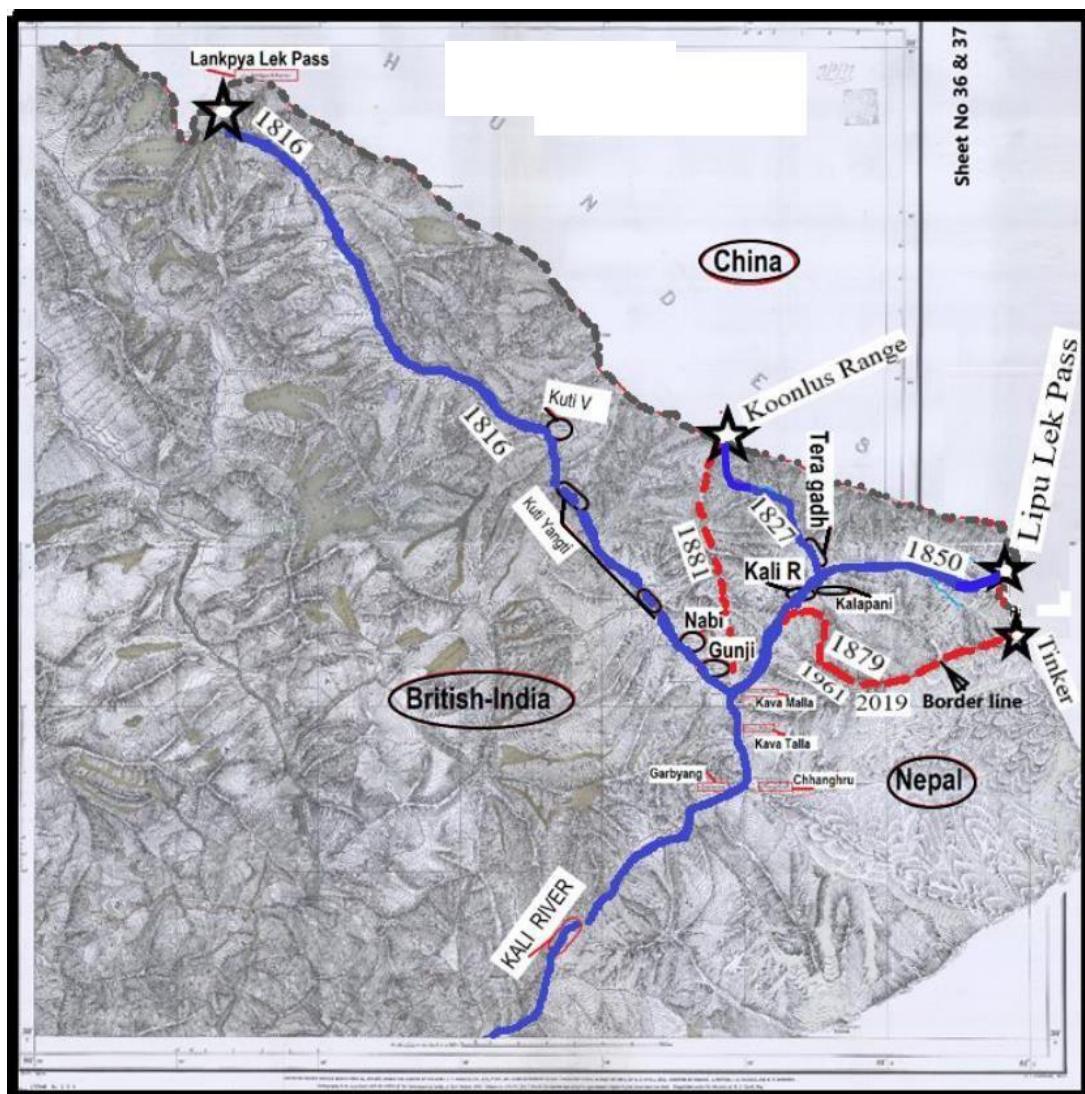
**Map 9a: Map of Nepal, Tibet and United Province (1881)**



**Source:** Shrestha, 2000.

The cartographic manipulation pushing north-western border and tri-junction eastwards from Limpiyadhura, during British rule in India has been summarized in **Map 10**. The independent India after 1947 has continued to argue the international boundary and trijunction point as shown in the manipulated map of 1879.

**Map 10: Map of Kumaun and British Garhwal (1878 and 1879)**



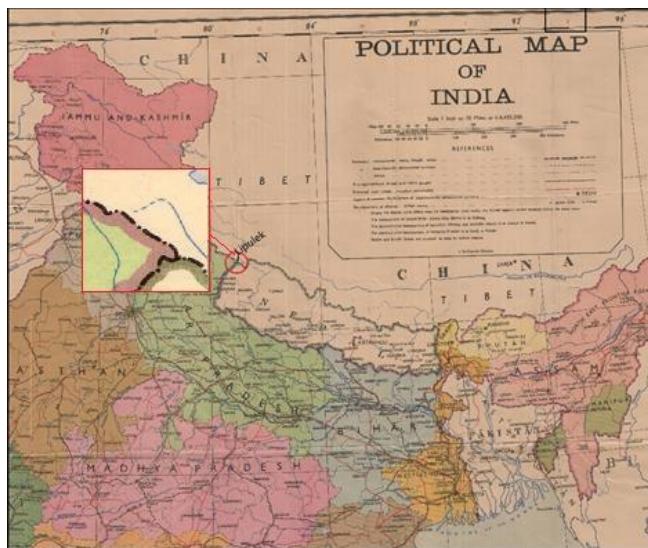
**Source:** <https://pahar.in/indian-subcontinent-pre-1899> (1878 Kumuan and British Garhwal, No.36 by GTS.jpg and 1879 Kumaun and British Garhwal No.37 by GTS.jpg )

**Notes:**

1. In the absence of accurate information the year of cartographic manipulation of international boundary lines and tri-junction locations (stars) were done based on the year shown in the maps and documents so far available during the preparation of the paper.
2. Authors have marked cartographical acceleration by India with colored lines ( river courses – blue and mountain ridges [ red dots and lines ] ).

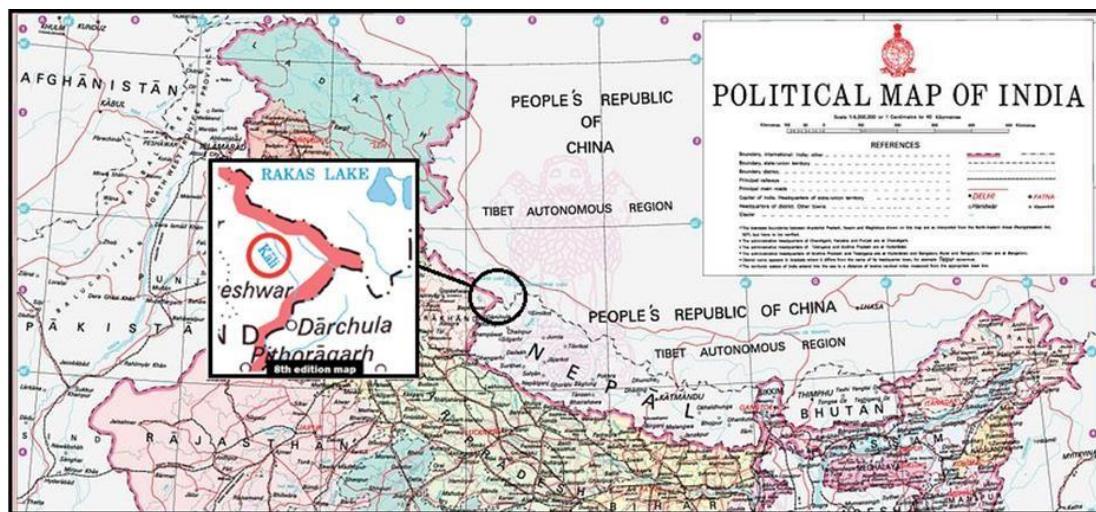
The maps published in 1961 (**Map 11**) and those of November 2 (**Map 12**) and 8 November 2019 (**12 a**) are the latest examples of that utter disregard for facts and science.

**Map 11: Map of Independent India, 1961 with Enlarged Part Showing Kali River**



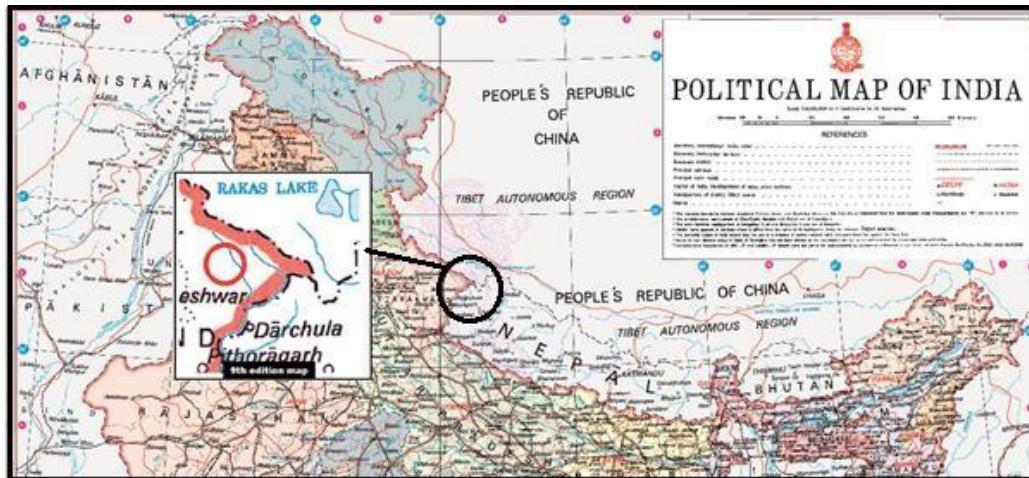
Source : Survey of India

**Map 12: Political Map of India – With the Name of the Kali River**



Source: Surveyor General of India, 2 November 2019

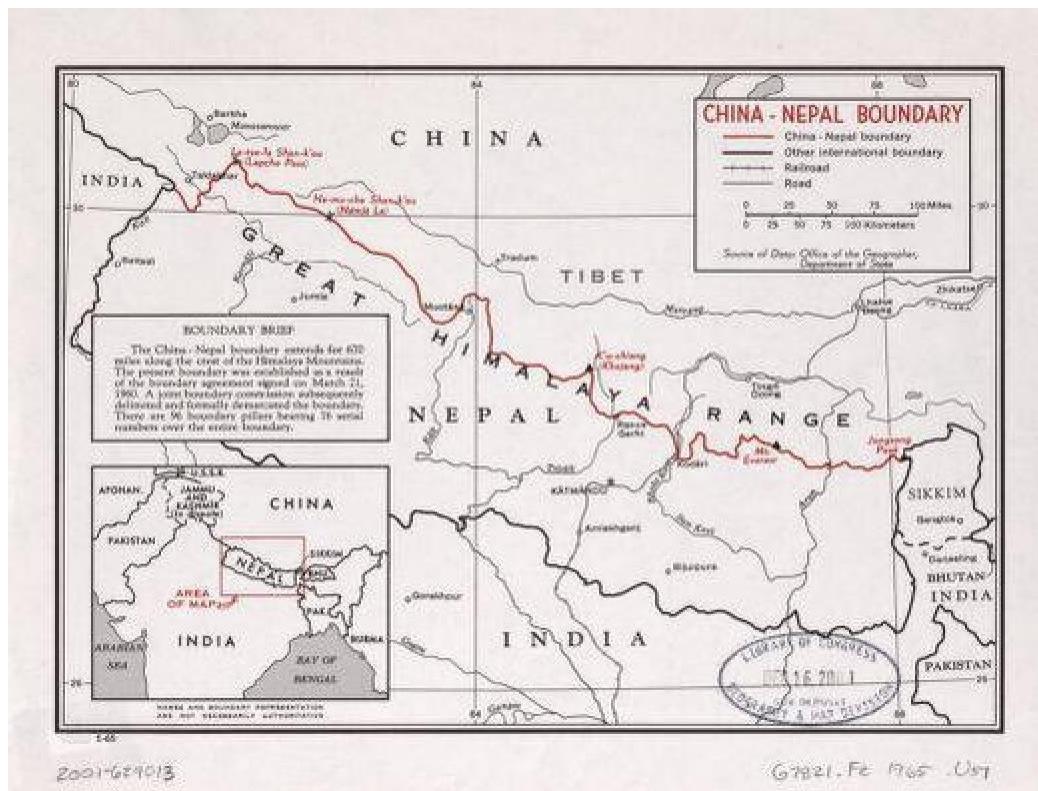
**Map 12 a : Political Map of India Without the Name of the Kali River**



**Source :** Surveyor General of India, 8 November 2019

For the border agreement with China in 1961, Nepal used the maps prepared by Survey of India which, as already mentioned, had totally forgotten the historical facts including Sugauli Treaty and river science in determining the source of Kali River. As a result, Nepal's area shrank (**Maps 13 and 14**). The shrinkage should have been identified long ago and the map of the western area withdrawn till the issue of the source of Kali River was sorted out with India. It was immediately after India came out with its new maps on November 2 and 8, 2019, the Civil Society of Nepal published a map (**Map 15**) on November 24, 2019 in order to assist the Government of Nepal (GoN).

**Map 13: Map of China –Nepal Boundary (1961)**



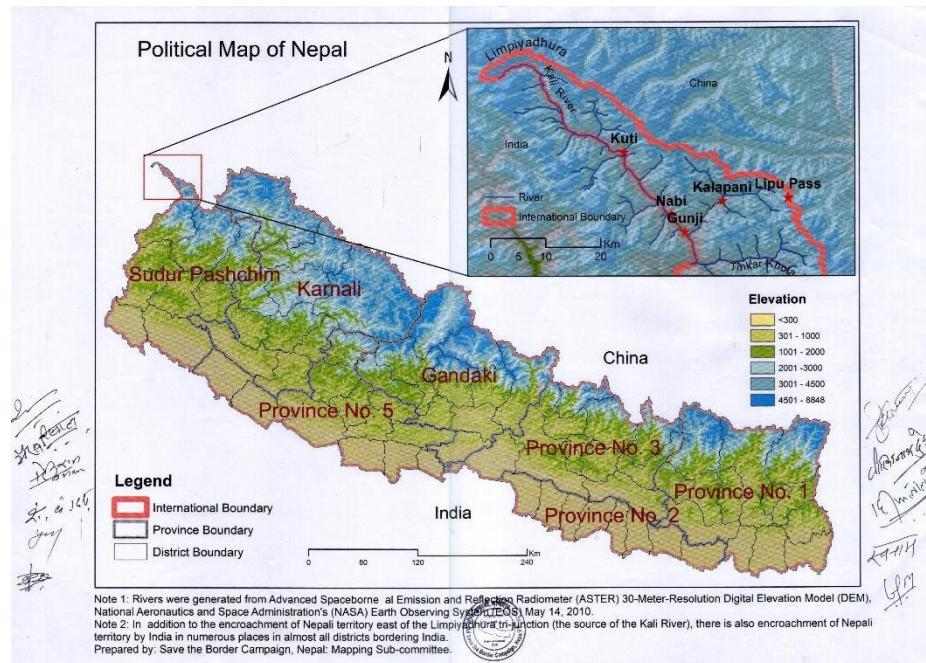
Source : Library of Congress, USA

**Map 14: Administrative Map of Nepal With Details of North Western Boundary**



Source : Survey Department of Nepal, retrieved-2019 (Scale 1=1,000,000)

**Map 15: Political Map of Nepal with Details in North Western Boundary and its Adjoining Area, Published by Save the Border Committee, 2019**



**Source:** Dwarika Nath Dhungel's collection

## 5. Border Issue Resolution Institutional Mechanism

Nepal and India had established Joint Technical Level Nepal-India Boundary Committee on Feb. 25, 1981 to deal with bilateral border related issues. In the 26 years of its existence, i.e. till 2007, it had succeeded in establishing subsidiary minor pillars and in preparing new strip maps. By the time it had completed its work in 2007, the committee had prepared 182 strip maps excluding those of Kalapani and Susta ([www.Isas.nus.edu.org](http://www.Isas.nus.edu.org)). They are yet to be formally endorsed by the two governments. We think that Nepal should not sign the newly prepared maps till the issue of Kalapani and Susta is resolved. In 2014, after a gap of seven years, both governments decided to form the Boundary Working Group at the level of the heads of Survey Departments of Nepal and India. It was expected to complete its work by 2019, but its mandate has now been extended to 2022 to do so. And, the issue related to Kalapani and Susta has been left for the foreign secretaries of the two countries to sort out. Claiming that Kalapani belonged to Nepal, Nepal had made a formal request to India for a meeting of the foreign secretaries to settle the border issues, especially those of Kalapani and Susta, (<https://kathmandupost.com/national/2019/11/10/nepal-hopes-to-resolve-kalapani-dispute->

through-a-meeting-of-the-foreign-secretaries) Even by January 31<sup>st</sup> 2020, it was uncertain when that would take place.

## 6. Discussion on the Issues

Analysis of the maps has made it clear that there is no consistency in the names of rivers and places, including the international boundary. In this context, the issues related to the northwestern boundary are discussed below.

### 6.1. Intention to prevent easy Tibetan border pass from falling in Nepal's hands

Lord Hastings, as already stated, wanted easy access for the British merchants to western Tibet for quality wool. For this, he wanted Kali River as the boundary with Nepal. He materialized the idea through the Sugauli treaty. Those negotiating the Treaty provisions (Regmi, 2019) or surveying the area after Treaty of Sugauli were aware of the thinking of their governor general. Therefore, in the post-Treaty British maps, the rivers are named differently. Likewise, the border line too is shown differently. According to Treaty of Sugauli, and on the basis of river science, the source of Kali River should have been Limpiyadhura. But, over the years, the name of the river was changed. Then the river – Tera Gadh - flowing from Koonlus was shown as the border. After that, the river flowing from Lipu Lekh was called Kali and that was considered the border. Later, in 1879, the international boundary was shifted about 30 meters to the south of Kalapani, which has been shown as the source of Kali River, a view even the local residents of Byas area do not support (Dhungel, 1981). From there, the border line is shown along the ridge a few kilometers southerly and from then onwards along the watershed divide between Tinker and Lipu Khola, which in Map 7 is named as Kali. The intention to change the border line and to show a small stream in Kalapni as the source of Kali River was to have the pass at Lipu Lekh within the British territory which, in no way, could be justified on the basis of Sugauli Treaty.

Even though most of the post-Sugauli Treaty maps published for almost 50 years (1816-1867) confirm that the river originating from Limpiyadhura is the Kali river, and that it should be the international boundary, as per the spirit of the Sugauli Treaty, the bad intention of the British was handed over to Independent India. It may be added that Kathmandu's carelessness and the

remoteness of the area, three villages of Gunji, Nabi and Kuti had been left at the mercy of the British, later Indians.

India's eyes on Kalapani stem from its strategic importance. According to a report, India started illegally occupying this area in 1952 (Joshi, 1988) by setting up a small security post. The Indians claim to have had a police post there since 1955 (Bhandari, 2016). Following its defeat in the Sino-Indian war of 1962, and realizing the strategic importance of Kalapani, India strengthened its security presence in the area. During an informal discussion in Kathmandu on September 7, 1998<sup>8</sup>, former Foreign Secretary late Jagadish Shumshere JB Rana had said that Nepal used to have its own security presence at Kalapani. Later, due to the lack of Nepal-to-Nepal road to Kalapani, requiring travellers to make a detour through Indian roads, as well as the hassle of securing permit from the Indian administration, the deployment of the Nepali security forces in the Kalapani area was discontinued.

Meanwhile, India, which had already been occupying the three above-mentioned villages, further strengthened its security presence at Kalapani . This has been substantiated by findings of a study by Baral and Pyakurel (2013). According to them, during the 1962 Sino-Indian war, Indians were looking for a safe place from where they could halt the Chinese troops were the latter to make further inroads into India. Kalapani was the perfect place to do so. 'They thought they could use the... area for effective defence against the Chinese...' They further write that 'the External Affairs Ministry in India, however, has rigidly opposed the withdrawal of [Indian] troops from Kalapani and maintains that the issue has been exaggerated'.

Thus, despite the fact that Singha Durbar knew about the Indian occupation of Nepali land east of Kali River, at least since 1970, it did not raise [unless proved otherwise] the issue of illegal occupation. If the British wanted the area for having easy access to Tibet, Independent India continued to occupy the area because of its strategic importance. From the point of view of Article 5 of Treaty of Sugauli, Indian occupation of land east of the Kali River, whose source

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<sup>8</sup> On the initiative of Dwarika Nath Dhungel and under the convenership of Dr. Mohan Man Saiju – the then chairperson of Institute for Integrated Development studies (IIDS), an informal discussion on the source of Mahakali River and the border treaty with China had been organized on September 7, 1998 on the IIDS premises at Baneshwor/ Kathmandu. Other discussants were former foreign secretaries Jharendra Narayan Singh, Jagdish Shumsher JB Rana, Major General (Rtd.) Bharat Keshar Singh and Col (Rtd.) Sambhu Shumsher J B Rana (both Singh and Rana had been involved in Nepal- China Border Demarcation working group), Dwarika Dhungel, Punya Prasad Oli, Shanta Bhakta Manadhar and Buddhi Naryan Shrestha. It was in this informal discussion that former Foreign Secretary Jadish Shumshere JB Rana had said that Nepalese army used to stay at Kalapani, but was later withdrawn from the area due to the problem of logistics supply because of the absence of a Nepal-to-Nepal road.

lies at Limpiyadhura, is illegal. The maps published by the then British India government between 1819 and 1867 consistently show that the river originating from Limpiyadhura is the Kalee/Kali river. Moreover, the Almora Gazette (1911) confirms that the river originating from Limpiyadhura is the Kali river. It states that the 'Kali on the east has its true source in the Kuthi-Yankti, which after the inflow of the Kalapani river takes the name of Kali'. It further clarifies with a statement that the 'name of the Kali is said to be derived from the Kalapani springs, erroneously reputed as the source of the river, but in fact are unimportant tributaries.' The hot spring too was overwhelmed by an avalanche many years ago and the name was transferred to another spring, which is neither black nor hot... it further states a 'remarkable collection of springs regarded as sacred by the Indians was erroneously considered by them as the source of the Kali river, though the headwaters of the latter lie 30 miles further north-west'.

## **6.2. Hegemonic Attitude**

In its meeting held at Dehradun on January 20, 1997 (i.e. Magh 7, 2053), Joint Technical Level Nepal-India Boundary Committee (JTC) agreed to prepare a map of the stretch between Brahmadev Mandi of Kanchanpur District in the plains to Kalapani in the high mountains and all other areas related to Mahakali River [Kali River] in the north. For this, a joint working group (JWG) was formed under the joint convenorship of Deputy Director General of Nepal's Survey Department and Deputy Surveyor General of India. At its meeting in Kathmandu from July 2 to 7, 1997, Nepal submitted the map prepared by Survey of India in 1856 to claim Kalapani as its territory. Instead of presenting its point of view, India refused to discuss the issue. Again, at a meeting held in Kathmandu from July 15 to 17, 1998, Nepal wanted the issue to be sorted out on the basis of the maps published by Survey of India in 1856. The Nepali side also

'sought clarification from the Indian side on the depiction of the river Kali and the boundary differently in the various versions of the maps produced by the Survey of India e.g. AD 1850, 1856 and 1879. They further sought the opinion of the Indian side whether any bilateral treaty or boundary agreement has been signed that has superseded the Treaty of Sugauli in the area to deviate the boundary from the course of Kali River'

(Minutes of the 1998 meetings ).

Nepal's question to India on whether any new bilateral treaty or boundary agreement had superseded Article 5 of Sugauli Treaty clearly shows that Nepal has categorically stated its

position that the source of Kali River lies at Limpyiadura. The minutes make it clear that India did not accept Nepal's arguments and submitted its own arguments, given below:

- (i) The treaty of Sugauli did not contain details of the boundary line in the area and cited Governor General's letter mentioning the Kalapani fountain as the source of the Kali River
- (ii) The first scientific topographical survey of the area was carried out only during 1873-77. And 'the result of this survey was incorporated in the Kumaon and British Garhwal Sheet No. 37 of 1879, which correctly depicted the India-Nepal boundary in the area'.
- (iii) The rigorous topographical surveys under the control of Nepalese Government Supervisors Lt. Col. Ganesh Bahadur Chhetri and Captain Ganga Bahadur Karki were undertaken in this area during 1924-27 at the explicit desire of the then Prime Minister of Nepal. Maps thus prepared in 1928/29 were shown to and cleared by the Nepalese Government, which only pointed out certain inaccuracies regarding the place-names. Corrections thus suggested were incorporated while printing the maps. The boundary alignment depicted in maps of 1928/29 reconfirmed the alignment shown in the map of 1879.
- (iv) The boundary alignment depicted on the Survey of India maps since 1879 was acceptable to the Nepalese side, which is also indicated in the Nepal-China Boundary Treaty of 1961 and the Nepal-China Boundary Protocol of 1963. The position of the "starting point"/ "western extremity" of the Nepal-China boundary given in the two documents coincided with the tri-junction point between India, Nepal and China as depicted on Survey of India maps.
- (v) Evidence is available of tradition, customs and administrative jurisdiction of the then Kumaon Province and now Pithoragh District of India since the Treaty of Sugauli. To justify their arguments, the Indian side stated they have the revenue records dating back to 1820s, and also census and electoral data. The other evidence cited was the existence of a police post at Kalapani since 1955

(Minutes of July 1998 meeting).

With regard to these arguments, first of all, the minutes of discussion do not have the details of the governor general's letter or ruling. Secondly, the Indian side itself has agreed that their

arguments were not a 'comprehensive summary of available data and they are ready to exchange detailed evidence at any time' (*Ibid*). This means the Indians have to show further concrete proof in claiming Kalapani and other areas east of Kali River as their territory. In this context, new political maps by India showing Kalapani within its territory was nothing but its hegemonic attitude towards Nepal regarding that section of the border and that too in the context of agreeing to get the two disputed areas, Kalapani and Susta, settled through discussions through the bilateral mechanism available at the foreign secretary level.

### **6.3. Want of Transparency**

In the minutes of the 1998 meetings, there is a reference to a presence of two Nepali officers, Lt. Col. Ganesh Bahadur Chhetri and Captain Ganga Bahadur Karki, during the 1924-27 surveys carried out in the area at the explicit desire of the then Prime Minister of Nepal. Furthermore, the minutes state that the maps prepared in 1928/29 on the basis of those surveys had been shown to the Nepalese government and that the government officials had only pointed out certain inaccuracies regarding the place-names, and which were later incorporated while printing the maps. The maps, thus produced in 1928/20, as per the minutes, reconfirmed the alignments shown in the map of 1879.

Regarding this argument of the Indian side, as per their own statements in the minutes, Government of India should let the Nepali people know whether the officers had only identified the inaccuracies in the names of the places or had also agreed that the boundary line between the two countries were on the basis of the 1816 treaty. If they had indeed done so, Nepalese would like to know on what authority they did it. Were these officers authorized to sign a border agreement for the northwestern area that could supersede Treaty of Sugauli? Also the people of both countries are entitled to know if a new treaty other than the one signed in Sugauli exists between Nepal and India delineating that part of their boundary. If it indeed existed, why would India agree that there exists a border issue at Kalapani (Rajan, 1996, 1998 and 2000; Gujaral, 1997; Scindia, 1998; Singh 1999; Saran, 2003; and Mukharjee, 2009) and why did they agree to get the issue sorted out through the foreign secretary level mechanism?

### **6.4. Existence of Revenue and other Data**

As regards the claims of the Indian side that they have the revenue records dating back to 1820s, including census and electoral data, it may be pointed, out that Byas Parganna Zamindars, right from the days of the treaty of Sugauli, wanted the tracts of land east of the

Kali to remain under British suzerainty. British officers too did not want to let the area go to Nepal because of its importance in relation to trade with Tibet. Therefore, even after the letter of James Gardner to the commissioner of Kumaon, the British officers located in the area might have continued to collect the land revenue from the area, which was given continuity by Independent India without the knowledge of Kathmandu, and the areas east of Kali river are still far away areas from Kathmandu. However, land records of Land Revenue Office, Doti show that residents living east of the river had paid their land taxes to the Nepali administration till 1905 (Bhandari, 2016) and Bhairab Risal, a veteran nonagenarian journalist, and who was a census officer in 1961, has had the census records of the area collected by his census staff.

### 6.5. Existence of Police Post since 1955

Regarding the Indian claim about the presence of a police post in Kalapani since 1955, it may be mentioned that when Matrika Pd. Koirala (the first commoner Prime Minister of the country on November 16, 1951, after the end of a 104 year old Rana rule on February 18, 1951) had invited an Indian military mission to reorganize the Nepalese army<sup>9</sup>. He also got the 'Indian military personnel to man the "17 wireless stations" on the Nepal-Tibet border' until it 'was also forced out in 1970' (Pun, 2020). One of the posts was located in Byas area, according to many, at Tinker, before they moved to Kalapani of Darchula District, in early or mid-nineteen fifties. These Indian military posts used to report all the activities taking place in the respective areas, including Chinese activities in Tibet, to Delhi<sup>10</sup> (Wignall, 1996). During their placement at Tinker, India seemed to have realized the strategic importance of the area east of Kali, which the British had also eyed for access to Tibet before starting their cartographic aggression. It was after their debacle with China in early 1962 that India not only continued to stay in the area but also strengthened its security presence there. At present, it is not only Kalapani but the whole area east of Kali River – flowing down from Limpiyadhura - is under Indian military occupation.

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<sup>9</sup> On the advise of the Indian military mission, the Nepalese government had brought down the size of the Nepali to 6,000 from a strong force of 25,000, which had fought during the Second World War and had assisted India during her critical hours (Pun, 2020)

<sup>10</sup> During the summer period of 1955, Sydney Wignall along with his friends were in spy mission to Taklakot area in Western Tibet through Bajhang district of Nepal. During the mission they were captured and detained by the Chinese for some months before releasing them. After release they returned back through Dhuli checkpost – one of the 18 checkposts - located in Bajhang and were welcomed by the Indian military personnel posted at the checkpost and their safe arrival was directly reported to New Delhi through the radio system they had in the checkpost. In this regard, Wignall in his book, has written: *His ( Checkpost in charge Major R.M Dass) second-in-command cut in. 'Our radio transmitter went on the blink yesterday. Right now we should be advising Delhi that you are out and safe.'*

## **6.6. Publication of Faulty Map by Nepal and Asserting the Country's Position**

The status of the land east of the Kali river remained ignored for a long time. People are still talking only of Kalapani and not the whole stretch lying east of the river. It was precisely because of such attitude of the rulers in Kathmandu, that British India could venture to commit the cartographic aggression and move the boundary line from one to the other. Following the path shown by the British, despite the fact that Independent India has agreed to honor the territorial integrity of both the countries under the 1950 treaty, meaning the acceptance of the provisions of Treaty of Sugauli, unfortunately insists on the false source of the Kali river, i.e. Kalapani spring, which no established river principle can substantiate.

On the part of Nepal, despite the fact that Singhdurbar has been consistently informed about the encroachment of Nepalese territory by India in Byas area (Regmi and Khatri, 1973) , the government came out with a faulty map showing Lipu River as the boundary between Nepal and India in the northwest. Also, instead of concentrating its attention on the whole area as per Article 5 of Treaty of Sugauli, in regard to the border issue with India in the north western area, Singhdubar has only thought of Kalapani – a mistake. Thus the government of the day should come out clearly as to how the decision was made and who were responsible for taking decision to publish the faulty map, so that Nepalese people could pinpoint those responsible for not taking into account the historical facts, documents and maps in relation to showing the actual source of the Kali river in the official map of the country.

Still, there are some Nepalese, who are more concerned with the security of India in relation to the issue rather than the interest of their own country. Concerned citizens must remain vigilant against activities of such persons to influence the current K.P. Sharma Oli Government (2019-2020) while asserting Nepal's position regarding Kalapani and the source of the Mahakali river on the basis of Treaty of Sugauli.

## 6.7. Tri-junction

In the minutes of the 1998 meeting, India is found claiming that the '... western extremity of the Nepal- China boundary given in the two documents coincided with the tri-junction point between India, Nepal and China as depicted on Survey of India maps' by citing Nepal–China Boundary Treaty of 1961 and Nepal-China Boundary Protocol of 1963. First of all, when Nepal signed the Boundary treaty and protocol with China, Sino–Indian relations was almost in a state of hostility. Secondly, at the time of signing the protocol, the Sino-Indian war had already taken place. In such a situation, there was no question for China and India coming together with Nepal in determining the tri-junction. So the tri-junction issue had to be left for future discussion. Thus, Zero Pillar, depicting the tri-junction, does not exist at the Tinker/Lipu range<sup>11</sup>. Furthermore, Nepal has the option to request China for a fresh border demarcation at the Limpiyadhura-Lipu Lekh range. She could also request China to sit together with India to determine the tri-junction. While talking about tri-junction, Nepal is entitled to refer to Article 5 of Treaty of Sugauli. Therefore, the Indian claim that Nepal accepts the maps produced by Survey of India in 1928/29 and 1879 is nothing but an effort to legalize the illegal occupation of the area east of Kali River, the source of which, on every basis – historical facts and the river science, lies at Limpiyadhura.

## 7. Basis for Resolving the Issue

Based on historical treaty, maps, documents and international practices, it is hoped that the two governments of Nepal and India will settle the dispute over the origin of Kali River as soon as possible (Dhungel and Pun, 2014). The most important basis to get the matter settled is the implementation of Article 5 of Treaty of Sugauli in letter and spirit. Furthermore, Nepal should request India to leave the territory located east of the Kali on the basis of the letter of J. Adams of 1817 to the commissioner of Kumaon. The letter, among others, reads '*the letter and spirit of the Treaty of Peace give to the Nepalese Government the undoubted right to all lands situated to the eastwards of the Kali.....it is extremely undesirable to manifest any reluctance to give prompt and full effect to those stipulations of the Treaty.....*' In other words, Nepal should present the following arguments to the Government of India to resolve the issue:

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<sup>11</sup> During the said informal discussions at IIDS, Major General (Rtd.) Bharat Keshari Singh had clearly said that since India and China were in a belligerent mood, there was no question for Nepal and China to decide the tri junction. Therefore, this was left to the future, when these two countries could work together with Nepal. In order to have the tri junction issue sorted out, Nepal should invite both India and China for a tripartite meeting.

- i. The 1816 Sugauli treaty barred Nepal from ‘..... all claims to or connexion with the countries lying to the west of the River Kali....’
- ii. The letter of Acting Chief Secretary of the Government of India in March 1817 to the commissioner of Kumaon ruled that the six villages (Budhi, Garbyang, Gunji, Nabi, Rokuti [Nihal?] and Kuti) in the east of Kali River categorically belonged to Nepal.
- iii. The 1856 map [and earlier maps] by Surveyor General of the Government of India categorically identifies the river originating from the Limpiyadhura range as the Kalee (Kali) (Dhungel and Pun, 2014).

In addition, the government of Nepal should withdraw the old and publish a new map of Nepal showing all land east of Kali River as Nepali territory, for the benefit of which Nepali civil society has already published a new political map of Nepal by using latest map preparation technology and also has submitted it to all the concerned ministers of the incumbent Oli government (2019-2020 ).

It also needs to be emphasized that with India occupying about 400 square kilometers of Nepalese territory, it would not be helpful to develop an atmosphere of mutual trust, confidence and understanding. It would rather remain a scar in the relationship between the two countries. If India could sort out its boundary issue with Bangladesh, why can it not sort out the Mahakali river related issues with Nepal on the basis of the treaty of Sugauli?

## **8. Conclusion**

The publication of the new political map by Government of India showing Nepalese land as its territory is an opportunity and a challenge for Nepal in sorting out the border issue with that country in the northwest. The whole country, including all the political parties, is behind the current K.P. Sharma Oli Government (2019/2020) in taking a firm stand on getting Article 5 of the treaty of Sugauli implemented in letter and spirit. India is still seen dilly dallying in sorting out the issue. She still insists that the recent map has no new element, except showing what has been under their control. Such an insistence goes against its own acceptance of the area as the disputed territory. So, first of all Nepal need to withdraw the old map and publish a new map showing the whole of the land east of Kali river as Nepali territory. And she should continue to build up pressure to India for early resumption of bilateral dialogue to sort out the issue. Equally important for her to use all available knowledge, expertise and evidences during dialogues with India. The publication of the new map by India has provided an opportunity for Nepal to get her north western border issue with India sorted out for ever, provided the incumbent government is really committed to get the matter solved and exercise sovereignty over its territory.

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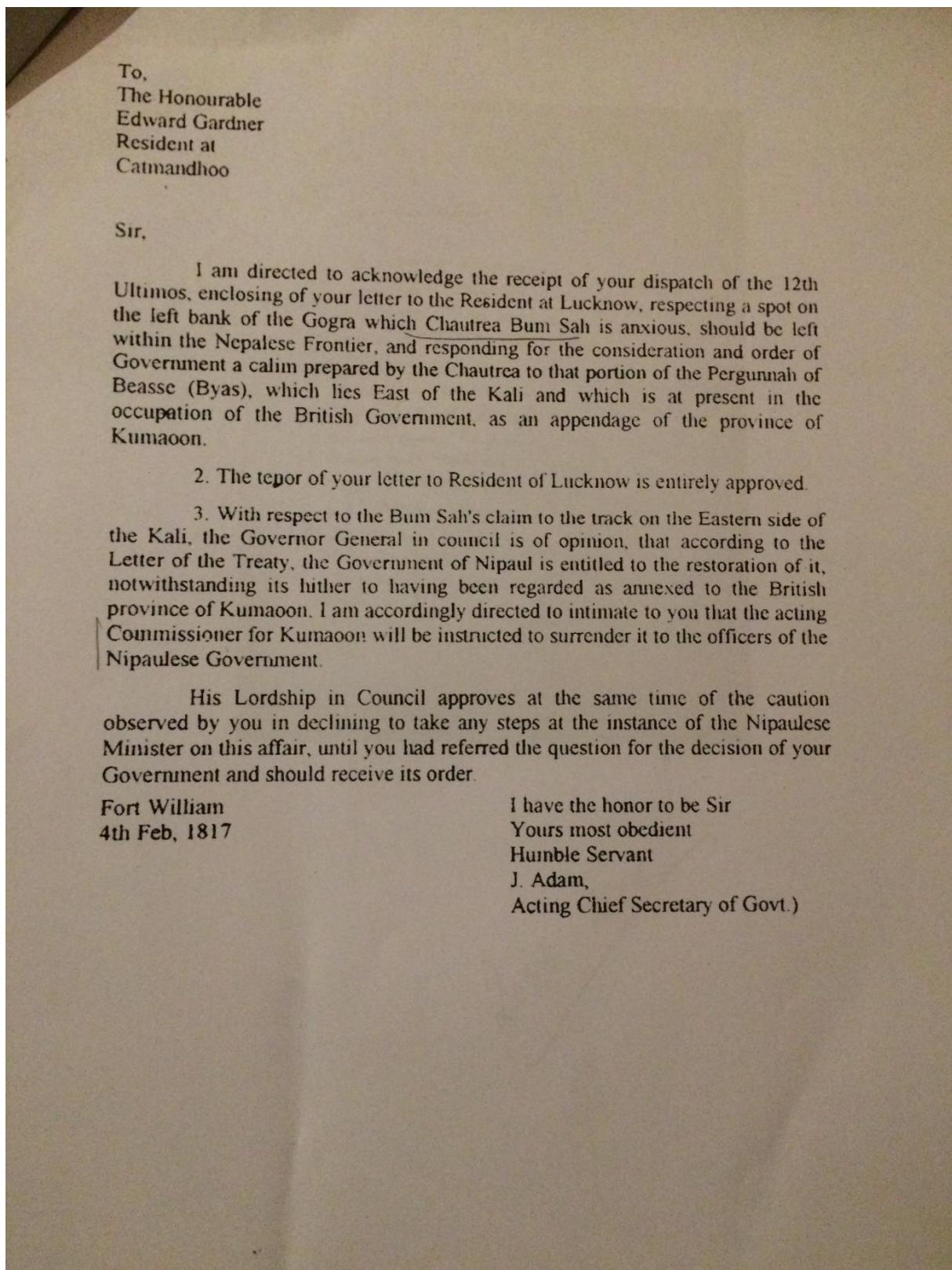
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## Annexes

### Annex 1

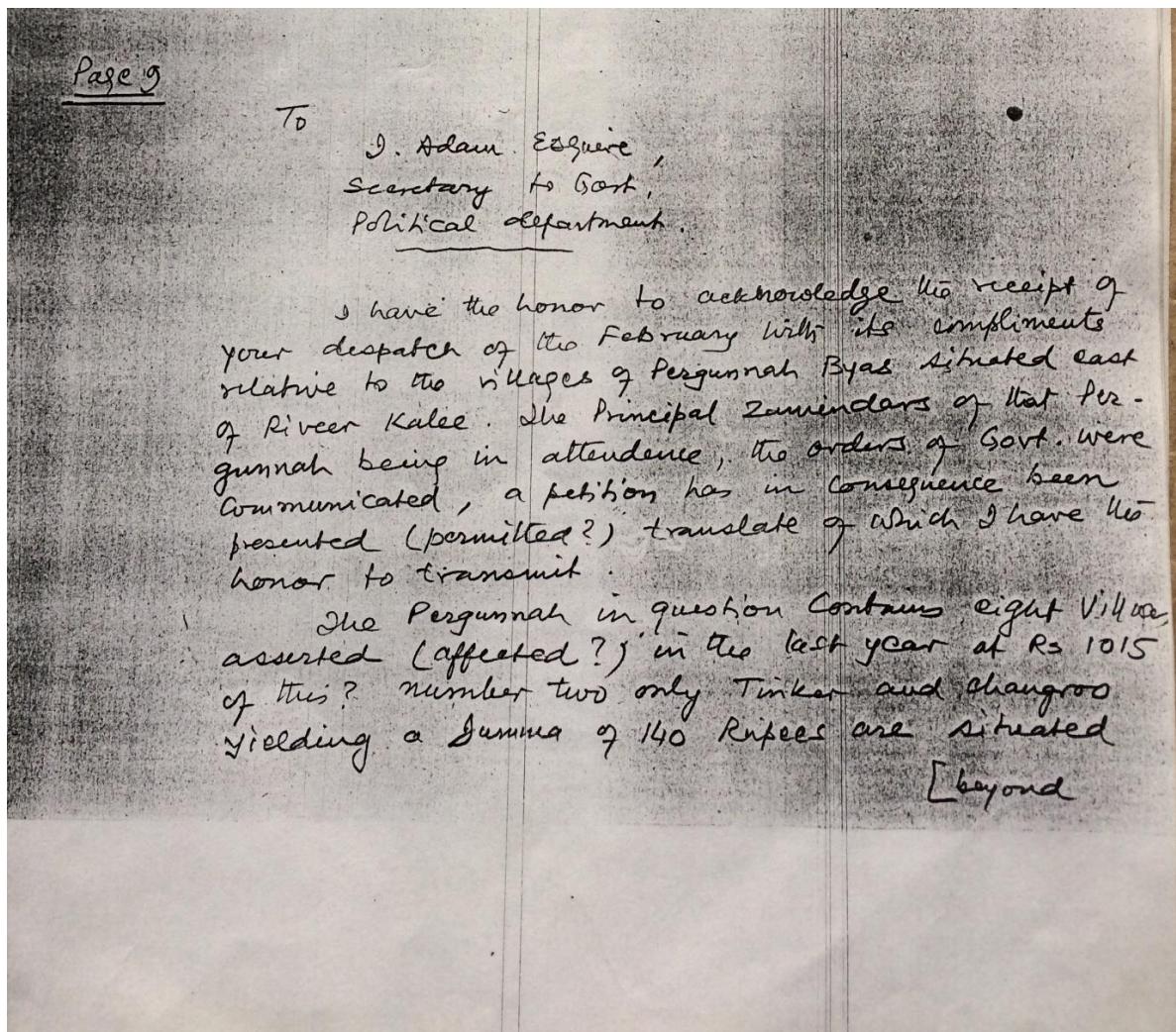
#### Correspondence between J Adams and Resident Edward Gardner



Source: Face book page of Om Raut.

Annex 2

Correspondence between Commissioner, Kumaon G. W. Traill to J Adams



J7

beyond the Kalee, the other six villages have however each (lack) a portion of land on that side, it may be more necessary to state that the Revenues of the Bhotee Pergannah are derived entirely from the profit of Trade? The productive lands in the neighbourhood of the different villages yielding no more than sufficient for the support of the inhabitants, should therefore the portions of land above allotted? to be included in the proposed <sup>Settlement</sup> Session? a great part of the inhabitants will be reduced to the necessity of <sup>on the</sup> opposite side, and nearly the whole traffic? of the Pergannah will be transferred to the Bhotee, under these circumstances I would beg have to recommend that the whole Pergannah be retained and the annual assessment of the claimed villages be paid to Nipaul Govt. From such arrangement no confusion with regard to boundaries could ensue? as the snowy mountains in which the Pergannah of Byas is situated presents an insurmountable barrier. The neighbouring Gorkha Pergannah of Jumlee there being communications I believe those two pergannah except by proceeding northwards to the Head? of the Shat? thro' the Chinese? territory to southwards to the foot of the Shat on the Kalee. The assessment? of the two villages in question as by the Gorkha Govt. is as follows. Jangoroo 105<sup>l</sup> and Tinkar 268<sup>l</sup> Rupees giving a? what? of 373<sup>l</sup> Gorkha Rupees or 280 Tshukabab? Rupees and the interest of the British Govt would be <sup>committed</sup> even should double that amount be paid. I take the opportunity of bringing to the notice of the Govt, the annual deprivations committed on this province by the inhabitants of the

of the Gorkha Pergannah of the Jumlee.

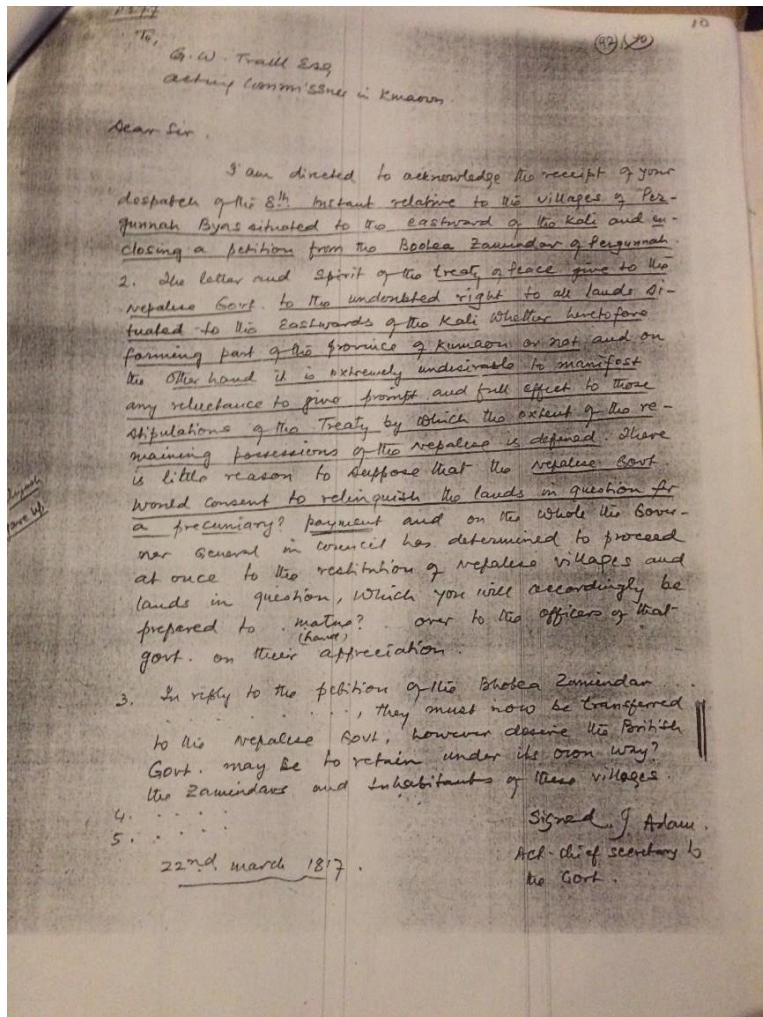
Kumaon,  
8<sup>th</sup>. Mar. 1817.

I have the honor to be  
J. W. Truill  
Sign of G. W. Truill  
Acting Commissioner.

Source: Dwarika Nath Dhungel's collection

### Annex 3

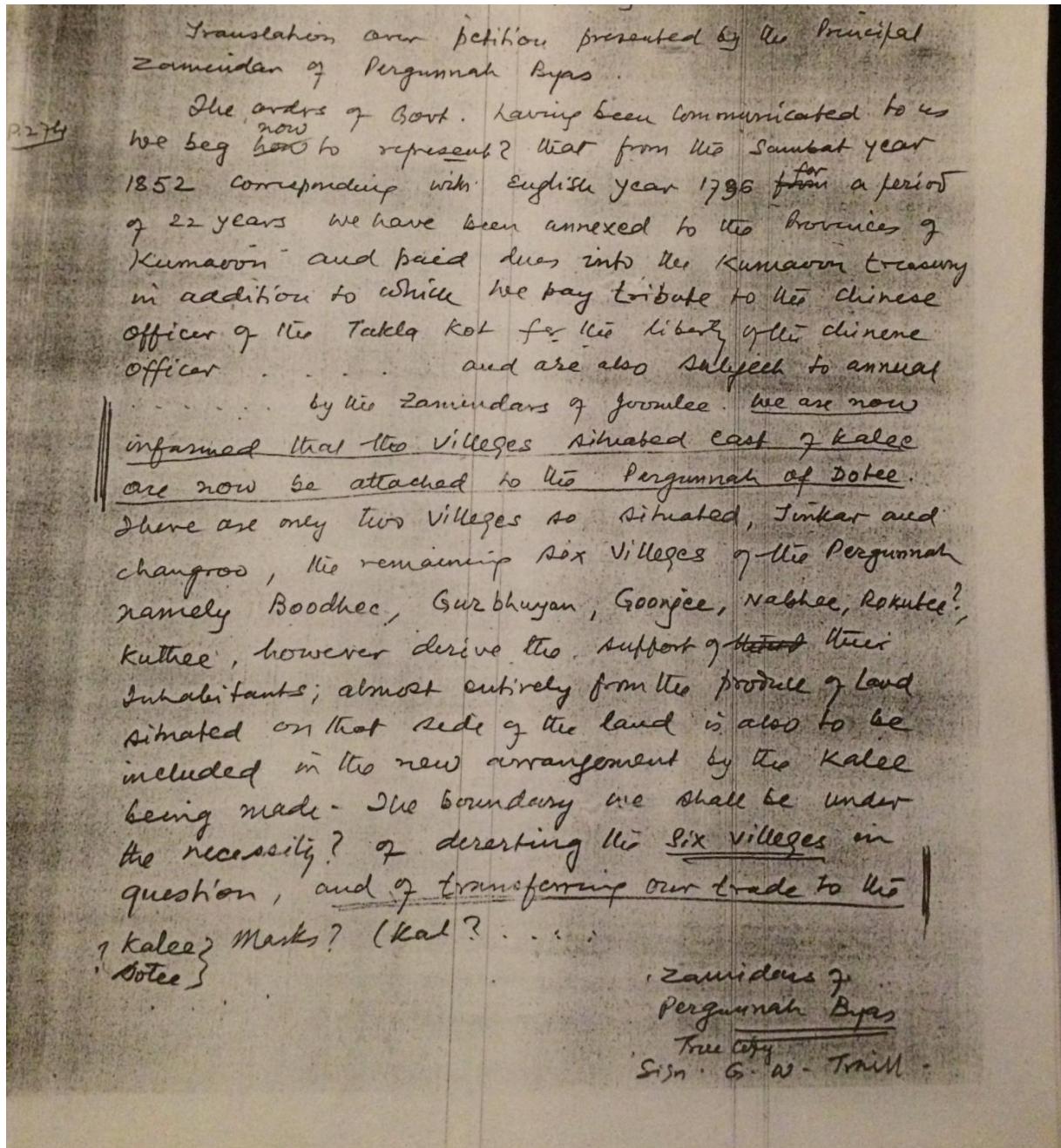
#### Correspondence between J Adams and G. W. Traill Commissioner, Kumaon



Source: Dwarika Nath Dhungel's collection

#### Annex 4

Petition of Zamindars of Pargannah Byas to East India Company through Commissioner of Kumaon



Source: Dwarika Nath Dhungel's collection

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