



PANCHAYETS UNDER THE PESHWAS

H. George Franks





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FOREWORD

**By the Hon. Minister for Local Self-Government,
Bombay**

The researches in the Poona Residency Daftar have disclosed valuable information on the working of the Panchayets under the Peshwas; and this book seeks to summarise what the British Administrators found of their actual working at the time of the British conquest in 1818.

These chapters do not seek to chronicle the real character and functions of the ancient Hindu system of Village Panchayets-the Council of Village Elders,- for the purpose of the administration of village affairs and the disposal of village disputes. They only record a phase of the Institution as it obtained under the Pesh was. The Compiler states that he has not come across any papers to show that the Panchayets functioned in any administrative capacity under the Peshwas. He has, however, found that they were utilised and favoured as the principal instrument of local judicial administration. Before the death of the Peshwa Sawai Madhavrao, the Panchayets, or Panels of Juries, seem to have worked well, for the doors of justice were open to all and redress could be had without recourse to bribery and corruption; but thereafter there was considerable deterioration and corruption. In spite of it, the Institution was in popular as well as in administrative favour. In the selection of the Panchayet and the Sar Panch there was the germ of popular suffrage. Illiteracy was no bar to the creation of

a really healthy public opinion. There was a sense of public morality and discipline as well as a desire to serve one's neighbour and the community. Justice was dispensed in the light of common sense and local knowledge and no one troubled much about forms. Their decisions were often accepted without question. Reconciliation and compromise was the guiding spirit of their work; and the hatred of caste or community was rare.

Even in 1819 Mountstuart Elphinstone wrote about the Village Panchayets that "these communities contain in miniature all the materials of a modern State within themselves, and are almost sufficient to protect their members, if all other governments were withdrawn." In fact, village communities in India seem to have survived the shock of wars, devastations and turmoil of changing Governments only on account of the ancient and indigenous Panchayet system.

In these days when one feels the need for rural uplift and to revive and intensify a sense of civic responsibility among the masses, a peep into the near past will indeed be thought-provoking and helpful. If Panchayets, or Panel of Juries, could function under the Peshwas as the principal instrument of local judicial administration, there is no reason why elected Village Panchayets on the basis of universal suffrage should not, with proper safeguards, successfully function for the administration of the village affairs and the disposal of local disputes and offences in these days of settled and well-organised administration.

I feel no diffidence about the prospects of the rehabilitation of the Village Panchayet as the unit of our modern democratic administration. The Institution deserves to be popularised and set to work in every village. With the village as the unit and the District Board at the top of it, the rural administration could, I believe, be made fully educative and efficient. I trust the public will sufficiently appreciate the importance of this valuable contribution as it seems to have been conceived in a constructive spirit.

Harilal Desaibhai Desai.

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CHAPTER ONE

A Bird's-Eye View of the Subject

Amongst the many phases or branches of local self-government in India and undoubtedly the earliest is that of the village panchayet. Because of its great antiquity and its admitted success in all parts of India previous to the British conquest, it was only to be expected that the panchayet system would be given a place in the great experiment or training course of Swaraj in India as part of the Reforms. There was, of course, some opposition to its introduction on the part of those who maintained that no matter what the panchayet system had done in the past, it could never work in a "modern" democratic system because of the fact that such a modern system of government by the people depended entirely on a literate and interested electorate. There is naturally something to say for such an argument, but against such pessimism has to be put the unassailable fact that the panchayet is not only an indigenous form of self-government in India, but one which was exceptionally successful in time; when illiteracy was even more general than it is to-day. For this latter reason alone, the experiment of introducing or

reviving Swaraj in the villages was well worth the trying, whilst the results have proved remarkably interesting. For more than half a century the eyes of administrators have been turned towards that phase of local self-government, and various efforts have been made from time to time to introduce a modern system of panchayats which would be both practical and popular. Speaking generally, however, these efforts have not been crowned with success even up to the present time, although there are several outstanding examples of village self-government schemes which have astonished even their originators by their rapid growth in influence, success, and efficiency. But on the whole, failure has been recorded. Students and politicians have succeeded in putting forward a few obvious reasons for this partial failure of an ancient institution which was so essentially democratic and so essentially a part of the Indian swaraj, but the real secret of the failure seems to have been missed. And perhaps it would have been missed for long years to come had it not been for the fortunate discovery a short time ago of a most historic and valuable document, or series of documents, in the old records of the Poona "Residency Records in the form of the original questionnaire

issued by Mbuntstuart Klphinstone to his five
 Collectors on January 5, 1810, in order that he might
 obtain the most detailed ac- count of the whole
 administration civil, judicial, criminal, educational
 many students to the ancient "guilds of Europe and
 which is. in fact, pro- bably directly related to them, as
 has been frequently shown by students of
 jurisprudence and constitutional his- tory. A striking
 illustration of i.'.is i- Sir H. Maine's assertion that the
 Indian and the ancient Europe HI systems of
 enjoyment and tillage of men grouj>ed in village
 communities are identical in most points of essen- tial
 detail, particularly in connection with the old-time
 Teutonic -md Scandinavian rural life. This similarity,
 moreover, finds a very logical explanation in the more
 recent historical discoveries that the council of village
 elders was an insti- tution which flourished freely in
 the days of the ancient Anas, some of whom brought
 it with them when tV.oy migrated into India from
 their cen- tral Asian home and some of whou: fook it
 with them further north to be developed later into
 the city repub'. 'cs of ancient Greece. The latter
 govern- ment apparently gave the greatest scope to
 republican or democratic dc- \elopnuMit, ,-md -
 radually exteivlrtU still further north into (iermany

and Scandinasia . whilst those who settled in the vast land-locked country of India fell an easy prey to misprision. Hierarchs who practically crushed the common republican spirit in the villages where the communal life was permitted to exist as such because it was the easiest way to insure a regular revenue to the State. As a general rule, it can be said that the institution of village self-government through its leading residents remained intact throughout India in every village unit, directing as a matter of custom a simple but organised system of government based on rules established by precedent or laid down by the Sovereign Ruler, although it must be admitted that in many cases the general administration of the village was conducted on the authority of traditional custom or fickle change rather than by legal contract or regular law. Ancient Swaraj For the purpose of this memoir the above brief historical survey will be sufficient, for, after all, what the modern student of democratic self-government desires to ascertain is the truth about the working of the panchayat system in later years when India really had "swaraj", and when it was carrying out a practical administration under more or less "modern" conditions that is, modern as compared

with ancient or mediaeval history. The rest of the survey, therefore, will be devoted to a detailed study of the character of the panchayat institution as it existed when the British took over the full administration of Maharashtra after the Battle of Panhale. PANCHAYETS UNDER THE PESHWAS of Kirkee at the end of 1817. And fortunately, the records of the past which have recently been elaborately sorted and closely examined by the present writer have revealed an amazing mass of information regarding the social and economic life of the Marathas under the Peshwas, which not only gives in many respects an entirely new background to modern administrative problems but also throws a flood of new light on the habits and customs of a people and an administration which have been very much misunderstood. In a nutshell it can be said that in pre-conquest days the village panchayat was the one great and stable institution which, as an ancient and time-honoured system, alone of all other social systems has survived revolutions, change of dynasties, national conquests, and all manner of other internal and external disturbances. Through it came the only regular Court of Justice during centuries of upheaval and wars, and it survived because it was so eminently

practical ;i system to prevent or to limit injus- tice and oppression in the villages fa; away from the watchful eye of the leading administrators whose atten- tion was so frequently concentrated on aggressive or defensive measure.-. Shivaji found no cause to alter the constituent elements of the panj in- yet, but rather, as an integral feature of his administration of a new empire , he saw to it that the decisions of the panchayets were enforced ; whilst even the Mahomedan conquerors of the Mahrattas left this form of vil- lage swaraj severely alone. It, should perhaps be pointed out that there appears in the mediaeval administrations really to have been two different forms of village self-govern- ment. The one was the panchayet proper, selected as necessitated to arbitrate in disputes, and the other seems to have been a sort of heredi- tary council of representatives which attended to all other matters in the village. There is no doubt whatever from the reports of the Collectors who took charge of the conquered territo- ries in Maharashtra that what was actually known as the Panchayet proper was solely a jury agreed upon by both parties in a dispute, and which automatically dissolved when the case was concluded. It is equally clear, however, that there was also a recognized

permanent council of village representatives of the classes which had traditional rights and claims. But there does not seem to be one instance of an assembly or representative body of free adult males as such, this being the outstanding difference between the Indian village community and the Teutonic community. Village Councils In mediaeval Maharashtra, for example, (and in many parts of India) this representative council consisted of twelve "officials" and twelve representatives of guilds of artisanship. The twelve "officials" or balutas consisted of (1) the Hindu priest, (2) the Muslim maulana, (3) the temple-worshipper, (4) the weaver, (5) the barber, (6) the washerman, (7) the shoe-maker, (8) the potter, (9) the carpenter, (10) the smith, (11) the messenger and postman, (12) the scavenger or disposer of dead cattle. balatas, or guild delegates, varied with the composition and needs of the villages, but were, as far as ascertained, the direct successors of the criminal body which ruled the village community unto itself. True, in some parts of India, this congregation of elders sometimes delegated its executive and administrative powers to the village headman, but even he based all his actions on the

generally art-opted procedure outlined by the council of elders for that village as the recognised authority on all social and religious customs. This council of elders varied in composition in different periods and in different districts, but it seems that in all places it conformed to the local precedent in the matter of membership. It was always a composite body consisting of the local villagers, including such people as the oilman, the gardener, and the goldsmith. The President of this council of 24 was the village Patel or headman, with his Kulkarni, or clerk, as a kind of vice-president or secretary, which meant that there was always an "official" majority. This assembly supervised all the local affairs and saw that religious and social customs and traditions were properly adhered to. It decided all points at issue on social and religious matters, but very rarely dealt with civil and criminal cases. It does not appear that there was any regular system for levying fresh taxation, although in addition to the recognised dues to the Head Government and the Traditional dues for village upkeep, the assembly frequently ordered the Patel to have a "whip-round" the village for funds if any special work had to be undertaken. At the most, the council's power was confined to religious and social laws.

The System X-Rayed. .Let us now return to the source of new light on the real functions and the powers of the Panchayet Proper, namely, the series of documents giving the replies to the elaborate questionnaire sent out by Mountstuart Elphinstone in 1819. This questionnaire contained 125 questions dealing with the judicial administration, 16 with criminal justice, 41 on the work of the police, and 22 on general matters, including education : and it is indicative of his great interest in the village administration that practically all of the questions under the judicial head elicited information about panchayets. To enumerate, or even to summarise, the 800 replies from the Collectors on this very important subject is beyond the scope of this chapter. They outline with the greatest detail the working of the panchayets (with local differences) as gleaned by Robertson, at Poona, Chaplin at Dharwar. Briggs at Ivandesh, James Grant (later Grant Duff) at Satara, and Pottinger at Ahmednagar. They elucidate the methods of the constitution of the panchayet, the presiding authority, the attendance of members, the calling of witnesses the declaration of the award, the nature of the decrees, the allowing of appeals, the nature of revisions, the fees paid to members, the

essential differences of the urban and rural panchayets, the public feeling towards panchayets, the popularity amongst litigants, the character and intelligence of the members, and a score of other matters concerning which previously there has been all too little information. PANCHAYETS UNDER THE PESHWA8 Not Chota Municipalities But perhaps the outstanding feature* of the voluminous series of documents is the revelation that the village panchayets, as such, did not attend to any other matters than judicial functioning. According to the detailed accounts sent to Elphinstone, the only panchayets known to the Collectors of all the districts were those especially appointed to hear civil and a few criminal cases. That is to say, a panchayet was really a court of justice for all cases which could not be, or were not sufficiently important to be, decided by the individual State ministers or the high revenue State officials. Other documents found in the Daftar corroborate the view already expressed that really there were two different forms of panchayet for village government, the one being the panchayet proper selected to arbitrate in disputes, and the other the hereditary council of representatives which attended to certain other matters in the village, which,

however, had almost fallen into decay by 1817. What Elphinstone and his Collectors knew as the panchayet was solely a jury agreed upon by both parties in a dispute and which automatically dissolved when the case was concluded. It is very clear from this that there was really no such thing as a village panchayet to administer the local government and to try minor court cases. And it is just on this point that we seem to have been making the great mistake. It appears that sufficient attention has not been paid to the real functions of the two very distinct groups of villagers, with the result that most of the panchayet schemes which have been introduced have sought to give one elected or nominated body in the village the double functions and responsibility of two totally different bodies under the old system. For such a system to be successful, our administrators will have to solve the great problem of joining together in village administration two vitally different institutions, namely, an hereditary representative council whose duty it is to maintain traditional customs and rights and to keep a general eye over the conduct and running of the village, and a sporadic jury system of civil arbitrators voluntarily selected by the parties to a dispute and

automatically dissolving when the work was done. But a? there was undoubtedly a very vital connection, at least in spirit, between these two forms of panchayet in ancient times, it is very possible that the fusion of their powers and responsibilities and functions is not beyond the capacity of the framers of modern democratic institutions. But this theme will be further elaborated after we have examined the details of the Peshwa's system. The Representative Element As a fundamental to be remembered during this detailed survey, there is the unassailable and most encouraging fact that the various reports in the Residency Daftar clearly show that in all social matters the representative element was the only regulating principle, even though in definite affairs of state control and responsibility none but the regular officers were allowed to interfere. The recital of the foregoing facts gives a general bird's eye view both of the problem of panchayets and the scope of this memoir, incidentally revealing the real value of the Daftar documents and the part they could play in any future panchayet system. CHAPTER TWO
Maharashtrian Administration in the 18th Century
"The principle I adopted for the civil administration was to preserve unimpaired the practice which I

found established," wrote Mount- Muart Elphinstone to Government in submitting his valuable report on the Condition of the Conquered Terri- tories in 1819 ; and hence even his bare skeleton outline of the Mahratta administration was obviously based on the prevailing customs and prac- tices. His information, he further admitted, was "derived in a great measure from the Jammabundy re- lports of the local officers on Eevenue subjects, and on judicial points from the answers of the same gentlemen to a series of queries which I circu- lated." It was this statement that set the present writer on his treasure- hunt for the original questionnaire and the replies thereto, especially as Elphinstone himself ' 'commended them to the attention of the Supreme Government," making particular mention of the document of Mr. Chaplin a*s being "of particular value" and that of Captain Grant as contain- ing "much information both on the points immediately in question and on the general character of the peo- ple." And if those reports were con- sidered so comprehensive and so im- portant at that time, surely they are considerably more valuable now. And it is from those Reports, so complete, so honest, so sympathetic, and so practical, that a great deal of this survey has been written. The striking

feature of this quintette of reports, however, is the disarming frankness of the replies to Mr. Elphinstone's questions. There is no burking the issue or confusing the points, but at the same time it is obvious that the fullest sympathy and interest of the new British Officials was with the people. Every possible effort was made, by personal contact, to obtain the views and desires of the people, and in several places it is incidentally mentioned that a reply to a particularly important question was obtained only by the interrogation of several hundreds of local and influential people. Similarly, all the Collectors had no hesitation in admitting either that the information they had collected was doubtful and contradictory or that no information at all was available, even though in some cases special convocations of able men were called to give the required information. A notable instance of this was James Grant's conference of Pundits or Shastrees at Wai to ascertain the exact difference between the regular authorised Hindu Law and the actual Mahratta practice. The Need for Frankness In view of this splendid example of refreshing candour, it is absolutely essential for the present writer to be equally frank when painting the actual conditions

which prevailed when the British took over the Mahratta dominions. At first sight some of the descriptions of the conditions may appear too bitter and too harsh, but, after all, even England passed through its Dark Ages when torture was the only persuasion in religion and when death in its cruellest forms was the only sense of justice known. That is to say, the plain and truthful recital of conditions as they existed a century or so ago should never be looked upon as recriminatory or condemnatory. The true historian has to face facts, and at times has to take the risk of being misunderstood ; but in this case it is (to some degree) a pleasure to recount the sterling character of the village institution and the village people and the way in which they triumphed over the most appalling conditions and the most stupendous difficulties. To maintain one's own against heavy odds is always an achievement to be desired ; but to win through in spite of difficulties which have balked and belittled and vanquished the peasantry of many another country is a triumph for the Maharashtrian villager which will find few equals in the history of the world. Therefore the darker the background of the environment, the more arresting is the picture of the people's victories. And no greater victory is on

record than the survival of the panchayet system at a time when corruption drove justice behind the thicket of purdahs and when law was almost identical with the passing whims and desires of those in immediate control. And yet, in spite of this and in spite of the ravages of a predatory and grasping officialdom whose one delight seemed to be to outdo the dacoits of that age of terror, the famous first Commissioner of the Deccan could say in 1819, only about a year after the Mahratta standard had been struck by Bajirao to Sir John Malcolm at Mhow, "In whatever point of view we examine the Native Government in the Deccan, the first and most important feature is the division into villages or townships. These communities contain in miniature all the materials of a State within themselves, and are almost sufficient to protect their members, if all other governments were withdrawn. Though probably not compatible with a very good form of government, they are an excellent remedy for the imperfections of a bad one ; they prevent the bad effects of its negligence and weakness, and even present some barrier against tyranny and rapacity." If Elphinstone could say this after his close association with all the defects and tyranny of the Peshwa's administration, then the

Peshwa's system of village government, and village self-government, is worthy of the closest examination. A Strange Inheritance It is generally admitted now, however, that in many respects the inherited characteristics of the Mahratta people are, without serious modification, against a really democratic government. For example, even

hail to write on one occasion that he could not converse for long with the Mahrattas "without being provoked with their constant selfishness and design, wearied with their importunities, and disgusted with their flattery." But probably even he remembered at times that he was dealing with a people whose very existence hitherto had depended entirely upon their ability to design, to flatter and to importunate, and that at the time he was in control he was conversing with representatives of a country which had been dispossessed of its inheritance. But even though the conditions were not such as to bring out the best in the Mahrattas he was ruling, it must be confessed that under Baji Rao the Mahratta Empire declined most seriously. As Elphinstone wrote on one occasion : "If this were the state of things (regarding the difficulties of panchayets) under Nana Fadnavis, it was doubtless worse under Baji Rao. Justice was

openly sold, and except as a marketable commodity it was never thought of. Government offered little justice to the rich and none to the poor. But with all these defects, the Mahratta Country flourished and the people seemed to have been exempt from some of the evils which exist under our more perfect Government. There must have been some advantages in the system to counterbalance its obvious defects, and most of them appear to me to have originated in the one fact that the Government, although it did little to obtain justice for the people, left them the means of procuring it for themselves. The advantage of this was particularly felt among the lower orders, who were most out of reach of their Rulers and most apt to be neglected under all Governments. IK means of the Panchayet tlicx were enabled to effect a tolerable dispensation of justice among themselves." Now what were the exact rural administrative condition under which these panchayets had to work in the time of the last Peshwa? Let James Grant of Satara, William Chaplin of Dharwar, Henry Pottinger of Ahmednagar, John Brigg* of Khandesh and Thackeray of the Southern Mahratta Country answer. James Grant : "From the death of Shivaji until the period when Ballaji Wishwanath acquired the

principal authority in the direction of affairs, there appears to have been the greatest anarchy in the civil government of the country. "What little order can be traced, seems to have been upheld or established by the Peshwas, but the Mah-rattas, even if they had understood the principles of good Government, never had leisure for regular arrangement. They were always in hurry and confusion ; it was their haste to which they owed all their successes ; everything depended on expedition and if they had taken time to consolidate their power, they must have stopped short in the full tide of their conquests. "The late Peshwa had a better opportunity than any of his predecessors of amending the laws, or of fixing whatever was considered equitable by the generality of his subjects, but that Prince possessed neither ability nor inclination for a task of the kind ; we PANCHAYETS UNDER THE PESHWAS shall therefore look in vain for fair precedents and approved usages to the reign of Bajee Rao. Even the administration of Nana Furnaveese, corrupt and bad as it was, is now spoken of with applause, not that the bad practices of that period are unknown or forgotten, but Bajee Rao with so much less excuse, was so much worse than Nana Furnaveese. "The course of events affords one

useful lesson, and I cannot help thinking that had Bajee Rao been either more controlled or less supported by the British Government, he would have been a better Prince, or at all events, he would never have dared to commit many base acts which impunity in smaller crimes led him to perpetrate. No Steady System "From what I have learned in the course of my enquiries respecting the Mahrattas, both now and formerly, I believe that their Eulers and men in power have at all times been very corrupt, and though individuals are occasionally spoken of with high praises for their justice and impartiality, there never appears to have been any steady system. Every one in authority exercised judicial power to a certain extent, as far as his rank and consideration permitted. Hence if we say in England that wealth is another name for power, the remark, however applicable in all countries, may be reversed here, for authority under the late Government, and generally throughout the rise and progress of the Mahratta State, was a common source of nefarious emolument. "During the last twenty years, matters in this respect were probably worse than at any former period. Bajee Rao raised mean men for disgraceful acts, and ruined respectable persons who had any

value for their own honour and the fair reputation of their families and decisions therefore in most cases depended on the will of unprincipled individuals, who cared little for public opinion, and who had few restraints either upon their caprice or their avarice. "The duties of the office called Xyadeesh were latterly exercised in Poona by a Shastree, who was appointed by Bajeerao with a considerable establishment. This establishment cost the Government nothing ; there was no salary, and the whole was supported by emoluments neither authorized nor forbidden. "The first person who held this situation at the head of the Nyadeesh was Earn Shastree. He was, I believe, appointed by the first Mahadoo Rao, whose character as a judge stands higher than that of any other of the Peshwa's time. But even after the death of his patron, Ram Shastree continued to uphold the duties of his situation with becoming dignity and high honour ; his memory is revered throughout the country, and many of the good acts of Nana Furnaveese are believed to have originated in the weight and respectability of Ram Shastree's opinion. Such a public character under a corrupt Government is beyond all praise, and a succession of such examples, even if they had stood

alone in their generation, 10 I'ANCHAYETS UNDER THE PESHWAS would have prevented the general debasement of morals, which Bajee- rao and his Court effected so rapidly in Poona. 'Briefly, however, in regard to the matter now to be answered, Bajee Rao listened to no complaints, much less redressed them ; every rich man and every man in office, however insignificant his place, assembled panchayets and decided civil suits. These decisions, however, were often reversed or a new panchayet ordered at the pleasure of any other greater man. The Nyetuleesh Balshastree did not interfere with the panchayet convened by any powerful man, lest a superior influence to his own should have occasioned the loss of his situation." Henry Pottinger : "My enquiries and observations lead me to form the opinion that there was no such thing as Justice in Bajee Rao's rule. Mock trials and Panchayets were sometimes held in the Talookahs, and the Peshwa himself at times gave orders on particular cases ; but there was no enquiry on his part, no anxiety to know the real merits of the dispute, no examination of witnesses or papers, and consequently it happened much more frequently that he awarded in favour of the oppressor than the oppressed. This indeed was almost the inevitable

result of his system, for he was guided by the reports and recommendations of his Hoojrees and other men of infamous morals and debased character, who were his usual companions and who were always ready to receive bribes for their voice with the Peshwa, and when two men had any dispute, he who felt that his cause was the worst, was sure to pay best. "The corruption was greater in and near the capital and other large towns than in the remote districts where there were only villages. The occasional presence, and in some cases the constant residence, of Sirdars or Chiefs or great Brahmins instead of having a good effect on the people were the surest means of fomenting discontent and leading to injustice and oppression, and in some situations the whole population would appear to have taken its tone from the example of a leading, and always an intriguing and unprincipled, Carkoon. In fact, this last remark may be safely extended to the Peshwa's Durbar, where it was latterly well known that if a disputant could afford to purchase the influence of men of low and disgraceful connections and pursuits, but who were Bajee Rao's associates, his case was secure. These men frequently connived and took different sides of the question merely to protract the matter and

thereby to increase the pretence for extortion." And later on Pottinger adds : "This feeling of indifference to the ends of justice proceeded from the base means resorted to by every one about the Government, and through them to the members to turn duty to their advantage." John Briggs : In the course of a very long report on the working of the panchayet system over a period of four years, the Collector of Khandesh had this to say as a sort of background : "The Panchayet under the late Peshwa was naturally tainted

the corruption of every other branch of the administration which was notoriously venal from the Prince to the Peasant. And because of the up-bringing, experience has shown that the people taken in a body have no particular motive or disposition to aid voluntarily in the administration of justice."

And in his replies to the question. naire of 1818, Briggs curtly says: "Justice and injustice men always bought and sold under the Mahratta Government."

William Chaplin :

Chaplin on the other hand, was very optimistic and apparently greatly impressed, because in replying to the question by Elphinstone as to who was eligible to sit as a panchayet member, he said without any qualification or criticism : "All castes are eligible, provided they are men of good sense and probity"; and to another query he replied: "Persons of the greatest respectability often accepted the duty."

Of the Peshwa's Government he does not say much; but it is to the point :

"General corruption crept into every branch of the late administration, both fiscal and judicial.

Notwithstanding the prevalence of bribery and corruption throughout the Mahratta State and the frequency of partial and unjust decisions procured by such means, panchayets have in general upheld their character of integrity, the awards for the most part being in conformity with the Hindu law and the established custom."

William Thackeray :no

An additional extract from a private seir account might also be quoted here to wn show what the Peshwa's administraavetion was like. Mr. Thackeray, an of to ficial of the Southern Mahratta counion try, said :

"All endeavours to discover the on- existence or remains of a regular ys: Mahratta system of justice in the ays Southern Division of the Mahratta tta Country have hitherto failed, and the following remarks on the subject are necessarily mere inferences drawn from the general conduct and proceed ings of the officers of the late Governwas ment, and the impression made thereBat- by on the minds of its subjects and the - to sense and feeling of the people as to vho right and wrong. Yet

"The few remains of law and jusare tice that have survived the different of revolutions by which this Country has in- been convulsed for the past three cenof turies are evidently relics of the Ancient Findoo Institutions. The Mohammer'an Kings of Beejapoor do not seem t have interfered much with le the administration of justice beyond the seat of Government. The Laws and Regulations founded on the Koran chiefly referred to their own caste, and they were satisfied with deriving a high revenue without meddling with the religion of their Hindoo subjects, except when inflamed by wine or fits of holy zeal to make converts with the sword of the Prophet.

An Unfavourable Genius

"The military genius of the Mahrattas could never have been favourable to a system of justice, and

since Hyder invaded the Doab about 55 years ago the peace of the Country has been disturbed by so many wars, invasions and rebellions that even under a more regular Government it would have been vain to expect the observance of Civ. regulations. The wars of Hyder and Tippoo, the incursions of Dhoondi and Freebooters, the treachery and rebellion of local officers, the dissensions among the Peshwa's nobility the independence of Jaghirdars, and the rapacity of Sir Soobahs, Mamlatdars and inferior officers were evils which for so long a continuance would have shaken the foundation of the most substantial system had such a system been organized during any period of the Mahratta Empire

The only institution that has survived these disturbances is the Hindoo panchayet, which has lived through all the changes that have occurred since the downfall of the Vijeannuggar Dynasty. This mode of trial, which resembles our English Jury, has been upheld by the same principle that enabled the latter to rise from its ashes, notwithstanding all the violent efforts of our Norman Conquerors to supersede it by substituting the trial by battle.

"Had legislation been more consonant with the Military disposition of the Mahrattas, they being Hindoos would naturally have revived the institutions prescribed by their own Shastris and rather adhere to the old system, than introducing a new one, but for the last fifty or sixty years there has scarcely been an Interval of Tranquillity, and the State has wanted time and opportunity as well as inclination for a Measure of Reform.

Justice Forgotten

"The first care of every Government must be the revenue of the State, and where we find that owing either to vice or weakness this vital branch of the constitution has been neglected, it is in vain to look for order and regularity in any other. We might as well look for motion and activity in a body the blood of which has ceased to circulate. From the last destructive system of renting the revenues, from the decayed and neglected state of the tanks, water-courses, and all other public works, and from the character of the Mahratta Government impressed on the minds of its own subjects, we may confidently infer that the Peshwa's Officers in the Dooab, if not every other part of his Dominions, so far from consulting the welfare of the people and the prosperity of the country, did not even bestow common attention on the more immediate interests of the State. And what would be expected but Ruin and Disorder from the licensed plunder committed by the renters and managers, into whose rapacious hands the country had been delivered by its own Government? Under such a system the Peshwa could hardly have mocked the feelings of his subjects by affecting to introduce Courts of Law and Forms of Justice. This would have been worse hypocrisy than that of the Mahommedan King mentioned by Ferishtah, who, while the country was covered by his destroying army, effected out of his tender consideration for the property of the inhabitants, to have his vegetables conveyed from place to place on

portable beds of earth, so that even the brinjalls for the Royal Table might not be gathered with the hand of oppression.

"A State that has always been at war and regarded war as a fruitful source of revenue, could not be expected while setting examples of flagrant injustice to enact judicial rules and ordinances. Our own Government in this country has certainly shown that making war abroad is not inconsistent with the manufacture of regulations at home. But the Mahratta constitution was Military : ours is Civil; they made war for plunder: we make it in self-defence or for the more exalted purpose of extending Civilization.

A Miraculous Survival

From these extracts it is clear that one of the miracles of history, particularly Indian history, is the survival of the Panchayet.

But a system of enrolling the people to settle their own legal and social problems is an entirely different system from that of expecting them to take up at a moment's notice the more responsible and less precise task of running their own local administrations. In all the Poona Residency Daftar no trace has yet been found of a system by which any of the Peshwas ever delegated powers of selfGovernment to the people, except by appointing certain representatives of the people as State Officers. Of democracy as it is talked about today, there is absolutely no trace. The Peshwa's rule was intrinsically and essentially autocratic; and the people, as far as their pockets and

consciences were concerned, would have felt all the evils of an indifferent autocracy had not the system of panchayets survived the many storms and kept alive to as certain degree the spirit of Justice.

And surely the village people who could so struggle against odds to maintain and sustain such a system possessed as well the characteristics which would make successful an extension of that system into the realm of local administration. Even the legal panchayets presupposed not merely a spirit of fairness and honesty but also a spirit of citizenship. for, as will be seen in the detailed survey of the system in the next two chapters, the panchayet institution fundamentally demanded a realisation of the need of civics as well as of justice. Panchayets occupied a good deal of time and occasioned considerable inconvenience ;. and although in such an atmosphere of corruption as Bajirao created, it is not surprising to find that even the panchayets were at times tainted, yet in principle and in practise they remained ideal as a system of village self-Government on the judicial side.

And it is on that foundation of idealism that a much larger and much more imposing edifice embracing all the branches of local administration could be constructed.

Chapter three

Conduct of Civil work

One of the finest training-grounds of citizenship is that which gives citizens the responsibility of settling the disputes of their neighbours and fellow-residents. For this reason the system in force under the Peshwas by which local civil suits were referred for settlement to juries of the disputants' fellow-citizens is well worth the closest examination, for if personal differences as to conduct and principle could thus be settled "without fear or favour", then surely it can be expected that similar assemblies of citizens could take the responsibility of administering, in a limited degree, the local affairs of the village, town or district in which they live. Where litigation can be entrusted to local arbitrators, so administration can be also, because in effect local self-government is nought but the arbitration of elected and selected representatives in connection with matters which affect the whole community instead of two or more individuals. The ideal simplicity of the ancient panchayat was that it brought about either a reconciliation of the disputing parties or a mutual accommodation; and the fact that both of these objects was obtained despite the many difficulties outlined in the preceding chapter reveals that the panchayat system has in it the essential fundamentals of an institution which may well serve to bring about civic accommodation and reconciliation for the in general good.

But before taking this for granted, it is necessary to make a comprehensive survey of the exact manner in which the panchayet system was worked under the Mahratta rule ; and to achieve that purpose, this chapter will analyse and summarise the detailed replies of all the Collectors to the elaborate questionnaire (already referred to which Elphinstone sent out, although occasional notes will be added based on other letters discovered in the Poona Residency Daftar.

As previously stated, this questionnaire contained 128 queries dealing with civil judicial administration, but for the sake of convenience they are here grouped together under the following main heads; cases tryable by panchayets; their general constitution: their method of theory at least settled it at once. After such reference had been made, there seemed to have been no option but to abide by his decision, although Mr. Briggs differs from all the other Collectors by saying that if discontented with the verdict, the parties "might sue for a panchayet which was sometimes granted."

But if the suit was intricate or if it involved a large sum of money, it was always referred by the Mamlatda to a panchayet. In fact, Grant declares that to decide on any important cause without the authority of a panchayet was unusual and perfectly unauthorised."

To summarise, therefore, it might be said that all suits founded upon contract, whether of account, covenant, or debt ; cases relative to personal or real property; disputes about boundaries or distribution of water ; all claims to land by occupancy or prescription : quarrels

between partners; disputes between castes ; infringement of established customs; breaches of promise of marriage ; disregard of the rules of adoption ; and all disputes about titles by gift and grants by inheritance were referred to panchayets. It might also be mentioned that all wise local officers appeared to have referred every case to a panchayet when no other mode of adjustment seemed likely to satisfy the parties.

On the other hand, there were a number of factors which determined the attitude of the disputants, and the mode of enquiry to be advocated was often based either on the advice of friends, the prospect of success by bribery, or the influence of any relation; the wit, the method of award : appeals ; enforcement of judgments; fees; pleaders; and popularity.

These will now be dealt with in that order.

1. Cases Tryable by Panchayets

As far as petty cases were concerned, the parties in rural areas usually referred the matter to the local judicial officer of Government, who sometimes serving as officers either under the Peshwa or under a Sardar of distinction. Pottinger adds that although there was no alternative when the officer of Government ordered a panchayet, "he usually listened to any objections that were made to that mode of settlement, and was ready, for a few rupees, to authorise any other for adjusting the matter."

From this summary it is clear that panchayets wielded very wide powers in civil suits, the only cases

which not come before them being those - which were too trivial to warrant calling a panchayet.

2. Their General Constitution

The most common method of constituting a panchayet was to ask the parties to name a certain number of persons (never less than two each, but sometimes twenty or more), and to appoint a karkoon of Government to superintend the proceedings; although there were cases in which the Kumavisdar (or Mamlatdar) of Government himself nominated those who were to sit. Government, however, seemed to have retained the right of sanction and confirmation to ensure (at least in theory) that those selected were (says Chaplin) "the most respectable people, and men of good sense and probity."

When a complainant either lived in Poona or took his case there, he first applied to the Shastree or to any important officer who was considered capable of assembling a satisfactory panchayet. If the case was to be investigated, the person in whose hands it had been placed retained it for personal superintendence if it was likely to prove sufficiently profitable, or handed it over to a friend to whom he delegated his powers. The panchayet was then selected by this superintending officer, the parties concerned having the privilege of approval. The panchayet seldom seems to have been restricted to five, and there are many instances where it totalled fifty, especially where publicity was peculiarly necessary as in such cases as fixing disputed boundaries.

As a general rule, every man's panchayet was composed of persons of his own caste, trade, or situation, and no caste seems to have been either barred or exempted. In cases of money disputes, well-known Banias were often called in, whilst if the case largely concerned men of rank, then their compeers were chosen "to sit on the bench." When Shastrees were parties, when disputes were about religious infringements, or when the transgression of established customs was complained of, local Shastrees were ordered to sit on the panchayet ; and when the case involved particularly knotty points of law, such as violation of caste rules or doubts as to the legality of an adoption, then the whole panchayet was composed of Shastrees. But in all cases when the Government officer appointed the panchayet, he usually tried to include one or more members well conversant with the Hindu law rather than risking an unsatisfactory decision or a deadlock which would ultimately necessitate his referring the case to a place where a number of celebrated Shastrees resided, or to Poona where a regular bench of learned men were kept in constant pay for the sole purpose of deciding points of legal difficulty

As a general rule not even a great man could try a case himself or refer it to a panchayet, because (says Briggs) "the jealousy of the superior authorities on the spot would render it very unwise for him to exercise that power." Yet Chaplin adds that "great men within the limits of their jurisdiction often tried causes or referred them to panchayets," whilst Pottinger calls attention to the fact that some Brahmins and learned Shastrees used

at times to settle disputes and then report what they had done to the Peshwa through the Ministers. But such settlements were usually more the result of advice than of authority.

In actual cases of caste disputes the people concerned usually assembled their own panchayet, although if a definite complaint was made to a Government officer, he formed a panchayet of a few of the most respectable and venerable men of the caste. Although Grant will not admit that there were definite heads of castes (but "heads rather of trades and professions who settled disputes"), Chaplin plainly declares that there were "heads of all castes who settled disputes not exclusively by their own sole authority but in conjunction with the most respectable members of the caste aided by the Shittu Gunacharee."

It seems fairly certain, however, from the general reports that there was no autocratic caste chief who decided questions entirely on his own authority, although there is no doubt that the recognised elders of the caste carried great weight. He always sought to compromise a dispute and if that failed, he himself established a panchayet. On this point Chaplin says: "The practice of settling disputes through the heads of castes appears well calculated to preserve the morals and discipline of the different classes. No regulation seems better adopted to prevent relaxation in this respect. The fear of public excommunication from the society of their fellows is of all others the best preventive of all bad conduct that can be invented. The abuse of authority by the heads of classes can be

prevented, and its salutary use will always be allowed with manifest advantages." Pottinger adds that in his district (Ahmednagar) "there sometimes was a sort of committee voted by the caste to enquire into the affair, which proceeded along the usual lines of a panchayet."

In other words, it is clear that caste panchayets wielded a very great influence.

Government and Caste

There are cases on record where the Government actually summoned a caste panchayet, but as a general rule the leaders of the caste made the necessary arrangements. It was not unusual, moreover, for the Government to nominate an eminent Shastree to act as superintendent or chairman of such a panchayet, although the preponderance of evidence from the records is to the effect that where, as the mamlatdar or the village patil officially called for a caste panchayet, the most respectable head of a caste had the real authority to summon it subject to the regulations of the particular caste. Grant says: "When a Brahmin committed a crime or infringement of a serious nature cognisable by the rules of caste, the complaint against him was made to the Government, whilst in similar circumstances other persons were complained against to the head of the caste or trade, or to the chowdry, patil, mukadam or whatever he may be locally styled. These heads of castes or professions are not regularly elected; the general suffrage establishes the power by the weight or respectability of the individual so chosen."

But there were no set regulations as to how they should proceed beyond the general observance of the rules of the Shastrees and the established customs of the country, and although the Government could interfere in minor matters, it never went so far as to compel a caste to alter a decision unless by the decree of a respectable independent panchayet of the same caste which esteemed the reason for interference right and proper. If, however, any caste panchayet's decision disturbed the peace, then Government intervened in an effort to effect a compromise. Pottinger adds that Government only interfered if a definite and bona fide complaint was made to it by the aggrieved party, in which case it could order a man who had been expelled to be received back into his caste.

In this connection also Grant's comments are interesting : "As a general opinion, a caste is said to be the best judge of what persons are fit or otherwise to remain in it, but native Governments, I find, have not been so tolerant in this respect as I had imagined. The Government has an undoubted right to take cognisance of wrongful expulsion from caste, and can punish a false informant or persons who have given an unjust or malicious decision in an affair of this kind; but the Government could not do this of itself. It was necessary to have respectable and disinterested persons of the same caste, brought from whatever quarter, to reverse the decree. In an affair of caste where the delinquent may be partially to blame only, the Government can compel the caste to accept the usual atonement (by fine or penance) for the offence if of a less heinous nature

than that which is usually punishable by ex. pulsion." Redress for wrongful sentence could also be ordered by Government.

The decision officially announced was usually arrived at on behalf of the Government by Shastrees, and it was these who prescribed the penance the one who was to be readmitted. such penances usually taking the form of feeding so many Brahmins, paying money to temples, or giving money to Government. And adds one Collector: "There was no escaping the forfeits, and the caste always caroused for a day, or even more, at the expense of the accused man."

There was very little difference in important points between the panchayets held in the town and those in the districts. In working, however, a village or rural panchayet was much more simple, particularly in that there was seldom any written record kept of all the proceedings, except the *raznamis* of the plaintiff and defendant and a memorandum of the *saronch* kept by the *kulkarni*. No regular district panchayet, however, could sit except with the consent of the *mamlatdar* or the *chaikdar*, the *patil* sanctioning the proceedings in a few cases if the *mamlatdar* was inaccessible. District and village panchayets were encouraged because suits from villages heard in a town were generally troublesome and nearly always unprofitable. The *patil* readily contributed his assistance when he recognised that the suit could be settled locally although sometimes (for reasons that might be guessed) he sought the assent of the *mamlatdar* or *karkoon* to have the case transferred to another village. But, generally speaking, all those

who had the power preferred to reserve the decision to their own hands "as a source of private advantage."

The Patil's Power

Village panchayets were always actually assembled by the head patil or mukadam of the village, under special instructions or permission from the mamlatdar, the patil himself having no actual judicial authority. Pottinger, in describing the power of the patil, says: "When a dispute occurred in a village, the patil tried to settle it by amicable arbitration. If he failed in this and the parties demanded a panchayet, he gave his permission to one being assembled. He could not name the members himself unless he were a man of much importance in other respects; but he would order anyone whose testimony was required to be in attendance." But the patil's powers extended only to the assembling of the panchayet : he could not interfere with the award nor if the parties concerned agreed to submit to the arbitration or decision of their friends. At the same time he could decide if he thought a panchayet was unnecessary, but only then if he had been given such special discretionary powers from the head of the district. In any case, if the parties were not satisfied with the patil's decision, they could always appeal to the shaikdar or the mamlatdar.

In village panchayets membership was open to all except the regular outcasts. Cultivators participated, says Chaplin, "when sufficiently well informed," and patils were frequently members, especially when there were boundary disputes under discussion. Briggs tells

of more or less informal panchayets when he says: "It was usual with the ryots to refer the consideration of their disputes to the patil and elders of the village when they sat, as is customary, at the village gate in the evening." The decision of course, was rather one of general opinion than a judicial proceeding, for there was no power to enforce it; but the plan was frequently adopted with signal success. When the parties concerned selected the members of a panchayet, they usually chose their friends, of whatever rank they might be, although Pottinger states that at the same time they naturally endeavoured to select men on whose talents and judgments they could rely." There seemed a decided tendency, on the whole, to select men who were reasonably well acquainted with life and who had a good knowledge, based on experience, of human nature.

In short, despite the proved assertions of the Collectors that justice was none too well meted out in the time of the later Peshwas, it seems fairly clear that in the panchayet system there was abundant opportunity for the best traits of individual and communal character to be brought to the fore; and the great care with which the panchayet constitution has been outlined by these Collectors reveals in itself that it was an admirable way of giving reasonable justice to the ordinary people in a very difficult period of national history.

3. Method of Work

As has been already suggested, the general principle or membership was by nomination, the parties usually having the choice (or at least the approval) of all the

members, the um or president being nominated the local Government officer. If the Government was in any way implicated in the case, then all the members were usually selected officially. The official nominees on all other occasions were generally chosen because they were conversant with the Hindu law rather than with the details of the plaint in question. Although the consent of both parties was usually considered necessary, (Grant says "indispensably necessary"), if the defendant perversely refused without just cause to agree to this mode of trial, his consent was superseded and the authority of Government was exercised in insisting upon his abiding by the decision of a panchayet.

It might be mentioned here that it is an interesting sidelight on the Maratha's sense of justice that such cases were not allowed to go by de. fault, for although the defendant deliberately compromised his case by refusing to agree to an impartial enquiry, such action did not apparently justify the complainant winning the case.

The president or upire was not as a rule a government officer. Another interesting point is that the panchayet always consisted of an odd number, to render an equality impossible," which suggests that all members, including the president, were bound to vote. If by any unfortunate circumstance (such as a member being ill) the voting was equal, Chaplin says that one amongst them, recognised as the most respectable for his talents or integrity, was sometimes chosen as umpire, but it does not appear that any person independent of the members acted in that capacity or was appointed." If during the meeting there was a

deadlock or a difference of opinion causing hot words or abuse, the karkun who was present on behalf of government offered his advice: but otherwise the members were left entirely to themselves.

In matters of religion or in doubtful law cases, the president or the government officer or the panchayet as a whole could call for the opinion of a shastree, but his opinion was restricted to the question of principle or interpretation and not to the immediate cause at issue. His decision, however, was generally accepted as authoritative on points of law, but in matters that came home to every man's judgment (says Chaplin), the opinion of the shastrees had no more weight than another's." It was very unusual for shastrees to sit in panchayets as ordinary members, although there was no rule to the contrary.

Attendance

We now come to the question of the attendance of members. In a word, all the members received a summons from the chief local civil authority. When a panchayet was once ordered, or decided upon, the disputing parties (if they had the selection of the members) sent to apprise their friends that their presence would be required on a particular day. If any man thus selected declined to come, he was replaced, because no one would be so foolish as to force a person to sit for him against his wishes. But such a refusal rarely occurred at that stage of the proceedings, because disputants usually had taken good care to instruct and prepare their friends before they agreed to submit to the

award of a pancha yet. In cases where the official of government had ordered the members to sit, "if any of them refused to appear it was generally under the excuse, real or feigned, of important business, or indisposition of himself or one of his family, or its interference with some religious ceremony which he was bound to perform on a particular day; and such apologies were always accepted if believed to be true." Then the person who had named the members added another to take the place of the absentee.

In the main it was regarded as very complimentary to be asked to be a member of a panchayet, or, as Grant naively puts it, "it was both flattering and profitable." At any rate, the selection implied a good opinion of the individual's talents, or of his integrity, but, adds Chaplin, "if the honour came too frequently so as to interfere with his commercial or professional engagements, it would rather have been declined as a troublesome compliment."

No man was, however, obliged to be a member, although when frivolous and idle excuses were produced in opposition to the wishes of a public officer, the attendance was insisted upon. But once a man had agreed to serve on a panchayet, attendance to the end was obligatory, unless, says Briggs, "evidence was required from a distance, in which case the panchayet closed its proceedings *sine die*" when it often happened that the cause was eventually decided by another set of members." If, however, a man deliberately refused to attend after having consented or after the proceedings had actually started, he was liable to a fine, but more

generally a sepoy from the officer who assembled or sanctioned the panchayet was sent to fetch the absent member, by force if necessary. But both fines and force were infrequent, as government orders were usually obeyed with alacrity,

If the parties selected members from another village in the neighbourhood, the patil of the village in which the case was to be heard wrote to the patil of the other village requesting that the members might be sent over at once, the party requesting such attendance being held responsible for the subsistence of the visitors. The patil had, however, no definite authority of compulsion, although as he was always backed up by the shaikdar and the mamlatdar, his orders were generally obeyed.

The Right of Challenge

A panchayet was not considered fair unless the parties concerned were allowed to challenge members as well as to appoint or approve of them, such right of challenge being even extended to the first half of the actual proceedings. But challenging had always to be accompanied by a satisfactory reason for desiring a change of member, the objection usually being decided by the local government officer, and this officer always bore in mind that where the panchayet had been selected by the parties concerned each party had naturally selected his own direct friends or his opponent's: implacable enemies.

Once the panchayet was assembled it got down to work in right earnest • as soon as possible, and on the whole carried out the business with reasonable speed,

unless the case was being heard in the slack season when the members did not have much of their own work to attend to.

The Question of Bribes

There was apparently no actual system of enforcing honesty or punishing corruption, and both Briggs and Grant say that they had heard of no instances of corrupt members being fined or otherwise dealt with "even though the crime was very common." Chaplin augments the situation by saying that "every department of Government was corrupt in every stage of it, and scarcely any point was gained without a bribe or fee for special services rendered. Corruption was not considered criminal but was at best a venial fault for which, in practice, no punishment was inflicted."

But Pottinger, apparently basing his remarks on the general principles that were practised more in the breach than in the observance, throws a little further light on the theory as well as the practice when he says: "When it was proved that a member had received money and afterwards awarded against the person who paid him, he was forced to repay the amount of the bribe and to pay a fine. But both these sums generally went to the officer of government, and so they seldom had any other motive for this conduct than to make the most of the business.

4. Witnesses

Although serving on panchayets as members was optional, the records show that appearing as witnesses was absolutely compulsory, with due attention, however, being paid to the justifiable convenience of such witnesses. They were summoned to appear officially by a peon calling personally, and if they persistently refused to attend out of sheer malice or indifference, two or three sebundiese (or horsemen) were sent to the house of the witness, and camped there at his expense. Naturally the plaintiff and the defendant frequently brought their own witnesses, but official assistance could always be procured to compel attendance. Government, it says Grant, sometimes fined witnesses for non-attendance, but as a general rule both parties and evidences were excused on account of sickness or if attendance subjected them to the omission of any important religious observances of such nature as could not with propriety be dispensed with.

If the panchayet held its sitting and found an important witness absent without permission, the meeting was adjourned and a formal application made to the local officer. If for various reasons he still refused to attend, his evidence was regarded as being against the party who had wanted him.

Oath-taking

Before giving evidence, great men were not required to make oath, nor even common people unless one of the parties required them to do so, which was fairly frequent, particularly in watan disputes. A

common occasion for one of the parties asking for a witness to take oath was when he knew that the evidence would be absolutely contrary to that already tendered.

But it would seem that the taking of an oath on trifling occasions was -- extremely repugnant to Hindu prejudices, and Chaplin says that it was - prohibited by the Hindu Law. Because of this, oaths were not required in ordinary cases, whilst "in affairs of great importance the tone, manner, and character of the witness and the consistency of his evidence were weighed and considered, oaths being administered only when doubt or suspicion of the truth appeared to render it necessary to put the veracity of a witness to the test." Chaplin then adds: "The frequency with which, under the British System, oaths are administered in the most trivial cases is probably in a great degree the cause of so much perjury, and for such a total disregard of truth which is generally supposed to characterise the natives of India."

Yet there seems to have been under the Peshwa very little criminal punishment for perjury, although when a witness' word was doubted, he was almost bound to undergo the ordeal of the "dusrat panchrat" in which, if any of his cattle died within a certain period, his evidence was set aside.

The nature of the oath depended almost wholly on the caste of the witnesses, as the oath most binding upon one class had no efficacy with another. Similarly, the mode of taking oaths depended upon that distinction.

In general, the invocation of the express names of the particular deity of each class was considered the most impressive and most binding upon the conscience. When administered by a Brahmin, the common oaths, were the bel bandar, tulsi leaves, the waters of the Kistna, the Godavery or the Ganges, laying the hand upon a cow or holding her tail, standing in any of the rivers just mentioned or giving evidence after having just bathed in them, swearing by the feet of a Brahmin and carrying one's own child to a temple and so lemnly swearing by the head of a Brahmin, all of which were looked upon as binding, whilst the swearing by one's father or mother was a popular and ordinary way of verifying any promise.

But although the oath of bel ban- by dar (Bel leaves and tumeric) was the most sacred oath of the Mahrattas, the usual mode of administering an oath to a Hindu was to place a few tulsi leaves in his hands with some jur pure water, after which the oath was fre taken and the leaves and water put sol into the mouth. The ceremony was performed by a Brahmin and the ne: water was always contained in a copper Particular castes received the oath tha from the hands of a Jungum, a ball jur of burnt cowdung with other ingredi- cot ents being substituted for the tulsi but leaves, and the forehead being rubbed e with it. Generally when oaths were s being taken the witness, in addition h to participating in the ceremony, f called upon the Deity to bring about - some misfortune if the truth was not uttered. This was even done with the Kreesh or tulsi leaf oath, Pot tinger saying that it was

very comy mon when taking that oath for the t witness to swear that his testimony n could be regarded as false if any dod mestic calamity befell him within a scertain number of days (seldom more e. than ten), the importance and sacred r ness of the oath being estimated by d the period selected.

Ordeals were not infrequent in order to establish both veracity and innocence, and a common ordeal wag to take a ring from boiling oil without being scalded. The "dusrat panchrat," already referred to, was an ordeal by which all the evidence would be deemed false if any one of the witness' family or cattle or domestic animals should fall sick or die during the next week or fortnight.

Mohammedans, of course, swore by the Koran.

Perjury Infrequent

But despite, or because of this variety of oaths, it seems that perjury as a general rule was not very frequent. It is true that the most solemn oaths were sometimes disregarded when the party or the witness had any special object in view, but false evidence by disinterested members or witnesses was anything but common. Grant especially urged that "the only efficient check on per jury in the present state of the country would be a heavy fine of some stated proportion of the wit. ness' whole property," and Pottinger cites several cases where there had been brought to him papers relating to mutual agreements made between people who had had disputes under the Peshwa, but who, in filing complaints against each other before the British

Government, produced as a matter of course those same papers which concluded with the most dreadful denunciations that a Hindu could imagine" against either of the parties who should re-agitate the quarrel!

And Chaplin is still more emphatic on the point when, after a lengthy summing up in one of his letters, he says: "In many Indian cases, false evidence is considered meritorious, vide the Eighth Chapter of Manu's 'Institutes on Judicature and the Law,' paras 102-104."

5. Method of Awards

It is an interesting fact that no panchayet could definitely decide ex-parte, although Chaplin says that if perchance there was no defendant present, the panchayet would first of all sign a paper agreeing to the procedure to be adopted and then receive and record the plaintiff's statement. Witnesses or other representatives of both sides, if available, would then be interrogated and a decision reached. If, on the other hand, either party absented himself once the proceedings had started, it would be taken for granted that he had given up the cause, and a decision would be given against him. Where, however, the subject of the dispute was landed property, the possession given was only temporary, and the cause was open to further enquiry and a new settlement on the reappearance of the person against whom it had been decided. If the absence of one of the parties was due to sickness or marriage or any important domestic occurrence, the members of the panchayet

adjourned for a few days until both the disputants appeared.

The actual conduct of the hearing was based on very simple and commonsense lines. The complainant's - case was first stated, then the defendant's side of the question was taken down, and the witness on both sides questioned, whilst later on the substance of the evidence, the arguments used, and the decision and the reasons for that verdict were all fully detailed. Wherever possible all evidence, whether of the complainant or the defendant or the witnesses, was in the handwriting of the one tendering it. All documents and vouchers produced were copied down, and every member of the panchayet signed the complete case.

Just as the general rules for the assembling of panchayets in the districts were less complicated than those for town panchayets, even so was the actual mode of procedure. The parties in village dispute having agreed to submit their case to the judgment of their neighbours, a few of the most respectable men assembled and, in lieu of the usual practice, two straws were taken from the hands of the disputants and placed before them in token of their assent to that mode of adjustment. Their allegations and defence were then received, and any necessary witnesses and documents examined. Judgment was then given after due deliberation, and although in most petty village panchayets the decree was not drawn up in writing, it frequently was recorded for future reference by the village karkoon. In all important cases, however, especially when the complaint had been directly

referred to the patil or mamlatdar, the proceedings were regularly recorded and the award passed in the usual way.

In all panchayets the substance of all evidence was recorded, but Grant suggests with his usual perspicacity that though a member of a panchayet certainly based his decision upon the evidence that was brought forward, it was more the manner than the matter which influenced his judgment coupled with a knowledge of the connection or enmity between the parties and witnesses." The cross-examination was conducted by karkoons, but as they seldom asked more than three questions, the taking of evidence was not a laborious affair, the confession and statements of the defendant and prosecutor being often the main guide to the members.

Eliminating Delay

One of the most interesting phases of the panchayet system is that which shows how the members were forced to come to a decision with the minimum of delay. Grant sees in that question the grand defect of panchayets, the greatest obstacle to encounter in amending the system," for, in his opinion, there was no compelling a decision except by an oppressive stretch of power, or what was considered as such." But Grant appears to have been carried away a little here, because there are many documents available which show that the panchayet system made ample provision for speeding up, and that the system was, at least, as

successful in preventing undue delays of the law as that of the present time.

Although there were no regular means adopted to expedite a decision, Briggs says that an application to the authorities resulted in sentries being placed over the panchayet to prevent the members eating or drinking

until they had reached a decision.' Pottinger goes into this point a little more fully, giving it as his opinion that under the Mahratta Government the art of procrastination had been studied almost as a science, so that "when one of the parties in a panchayet considered himself to be secure of his cause and when he had influence with, or the means of adding to his previous bribes to, the officer by whose orders the panchayet was assembled. he could without much difficulty procure a speedy decision. This was done by representing to the officer of Government the hardship he suffered from delay, and begging that the members might be warned to finish by a certain day. The karkoon who went to see what passed then received instructions to inform the members that they must bring the affair to a conclusion by a certain time. Under such instructions this was usually effected with ease, because what we should look upon as a most tedious procedure was estimated by the natives to be one of extraordinary celerity. Thus, if a man had been waiting three months to know the award and could obtain a knowledge of it by the above method in another month, he thought himself the most favoured of mortals.

"In the extreme case, if the members of the panchayet neglected the injunctions they had received to close their proceedings with all convenient despatch, the karkoon reported their conduct, and the officer by whom they had been brought together (if he really wished to get the matter settled) then called them to his own cutcherry and obliged them to write out an award before his face. This, however, was looked upon, even by the Mahrattas, as an arbitrary act of authority. and the loser on such an occasion seldom failed to appeal if his pecuniary means were equal to doing so."

Government's Confirmation

The written award was always deposited with Government; in the district cutcherry if in rural areas, or in Poona itself if in the towns. In all cases the award received the formal sanction of Government.

Some of the Peshwas, notably Madhavrao, who apparently did not consider it politic to take away a once from Sardars and Jahagirdars and other great men the power of assembling panchayets, advanced a considerable step towards it by rendering the whole panchayet awards subject to their approval and confirmation, but in later times the shastrees and other legal luminaries deposited them in their daftars and confirmed the award themselves. Both parties could always obtain copies if they chose to pay karkoon's fees, but the winner of the case always received what was called doomal putra", or memorandum briefly stating the case and the final decree of the panchayet. In the

district, the local furnavees or shirishtadar was the custodian of all awards.

Even in the case of village panchayets the local officer was bound to preserve the record and to produce it whenever called upon. As a general rule, village panchayet awards were confirmed by the mamlatdar or the head of the district if he happened to be touring in the vicinity.

Boundary Disputes

Before closing this section, perhaps reference should be made to the special system that was in force for the settlement of boundary disputes by panchayet. And because this system varied in detail in different parts of the Peshwa's territory, it will be necessary to differentiate by quoting from various documents and records of the several officials.

Grant says: "A boundary dispute was settled by assembling the patil and ryots of neighbouring villages amounting in number from 20 to 100. The disputing villages subsisted the whole of the persons called in. The Dhars and Mahars of the village had a great deal to say respecting bounds and land-marks, for it was one of their duties to take care that they were properly preserved. When the assembled members could come to no decision, a common way of settling the dispute was to cause a Dhar, after undergoing certain ceremonies, to take a pot of earth on his head and walk along the exact boundary. If, barefooted, he did this without spilling the earth or being pricked by thorns, the village to which he belonged received the disputed land ; but if, on the other

hand, he stopped, hesitated, or limped, the opposite party were declared the rightful owners."

Briggs states that boundary disputes were generally referred to the Government, who directed a panchayet of patils to call on the Dhars of the village to point out the true boundary which they were usually able to do by a line of particular stones under which charcoal in pots, or money, was not unfrequently buried.

Chaplin also refers to the panchayet form of settlement and, in detailing the method adopted in such cases, says the decision was arrived at on a review of the accounts of the respective villages, of the testimony of the old inhabitants of the vicinity, of the proof of the time during which the disputed ground had been occupied by either party, and of any other evidence that was available. Chaplin then goes to some trouble to explain the exact details of the ordeals which were generally carried out as the more popular forms of settlement, particularly "an ordeal which was performed in several different ways"; and his account is so interesting that it is worth reproducing.

"A large clod consisting of equal parts of the soil of each boundary was kneaded together with some of the milk of each village by the hands of the potter, and the addition of cow's dung and urine, honey, and clarified butter (or ghee) gave consistency to this heterogeneous mass, before which was placed an offering of flowers. The patil who was about to take the oath then had his head, eyebrows and upper lip cleanshaven, went through his ablutions, and was

invested with a garland of flowers around his neck. The prepared conserve of earth was then placed upon his head and he commenced walking towards a flag which he had previously erected for the purpose of marking what he had conceived to be the extreme of his boundary. If the clod crumbled to pieces on the way, if a snake crossed his path, if his feet were pricked, or if any accident happened (which according to stipulation previously drawn up should not happen) he lost his cause; otherwise he gained the disputed ground."

Trial By Ordeal

Other modes referred to by Chaplin were the ordeal of picking a ring out of boiling oil unscathed; and walking over the disputed land either with a little of the soil on his hand or nine different grains wrapped in his garment, both of these actions being considered so solemn an oath as to cause the opposite party to relinquish his claim.

Pottinger similarly describes the patil's walk along the boundary line but says that an ordinary pot of water was used instead of a prepared clod of carth. He also refers to a settlement by panchayet in which the areas of the disputing villages are measured. and compared with the official records, the decision being given either according to the documents or by the overplus of ground being divided equally by the panchayet between the disputants.

Yet another interesting method is indirectly divulged in an official letter from Mr. Thackeray in the Southern Mahratta Country, who says that a patil

carried a light on his head when walking along the boundary. only winning his case if he succeeded in carrying the light unextinguished to the end. Boundary dispute were very frequent and the British for that reason found large tracts of land uncultivated," which seems to suggest that the above modes of settling such quarrels were none too successful.

A Code of Laws

Another point which should be included in this section is that dealing with the code of laws which was the acknowledged authority on which to base all judgments.

The principal law book appears to have been the "Dhunne Shastre," although Briggs says that it was neither obligatory nor always conclusive Chaplin refers at times to this matter and says that "the Shastras of the most acknowledged authority were a digest of Hindu law composed by Vignianeswuree, and a treatise on law called Paraserunadhawee." But as these seem to have been used only by the shastrees, Pottinger was compelled to regret that there was nothing really authoritative and, what was still more distressing to the people, there were no well-defined customs regarding punishments, so that where two men were guilty of the same crime one man might escape with a fine of a few rupees whilst the other would be totally ruined. From all the evidence available, there does not seem any doubt that the Maharatta practice frequently differed from the regular law."

In trying to explain this, Grant says that the Mahrattas undoubtedly adopted many of the customs which they found in the countries they conquered, but he adds that he could not find out the real difference between the Hindu law and the Mahratta usage, "nor could a party of shastres assembled at Wai give me the information I sought for."

Briggs says that the Mohammedans certainly materially altered the Hindu code of laws, although the Mahrattas seemed to have adhered to no particular code, making expedience their doctrine and precedence (however unjust) their guide when it suited their convenience."

Chaplin sheds a little more light on the subject by definitely declaring that the Mahratta practice differed from the Hindu law in not inflicting capital punishment upon women, although he could not account for the change.

As a general rule, however, it seems that although even the shastres all admitted: that there was a difference between the theory and the practice, none of them had ever thought how it had occurred, most of them being quite satisfied to blame the Mohammedans for it.

6. Appeals

A rather surprising but complimentary feature of the panchayet system is the ease with which appeals were allowed, even after the award had received the formal confirmation of Government. In principle, it seems that an appeal was always admissible if the

appellant gave good reason in making his statement, although in practice there were periods when the best reason was expressed in rupees. The general course of proceeding was for the appellant to make an official application for revision, agreeing therein to submit to any penalty Government thought fit to impose, either in the way of enhancement of sentence for the crime or fine as a punishment for a frivolous objection, unjust appeals always being severely dealt with. When an appeal was thus made, a new panchayet was appointed. Sentence, however, was not usually suspended during the hearing of an appeal, and there is no mention of compensation being granted in cases where the award was subsequently reversed.

The first appeal lay with the mamlatdar in the case of village panchayets, or with the sirsoobhadar if it had been assembled by the Government. If in either case the decree or sentence had been the result of corruption or misbehaviour of the members, or if it contained any flagrant deviation from justice or custom, a new panchayet was at once ordered. This new assembly then examined the original proceedings and called for new evidence, although if the award was reversed, no action seems to have been taken to punish those responsible.

Revision Orders

Apart from definite appeals by the parties concerned, revisions could be ordered by any direct superior authority and by new mamlatdars, although (says Chaplin) if the appellant came empty-handed or unsupported by powerful friends, he would seldom be

able to procure an order for revision. In most districts the only form of revision was a new panchayet from which all members of the old one were barred. There do not seem to be any instances of an appeal against the decision of an appellate panchayet nor any higher court of Appeal unless the Poona Ministers could be reached. There was not any regular system of appeal direct to a superior judicial officer, as permission for such appeals was discretionary on the part of the officer to be appealed against.

Theoretically the line was from the patil to the shaikdar, the shaikdar to the kuma visdar, the kuma visdar to the mamlatdar, the mamlatdar to the sirsoobhadar, the sirsoobhadar to the Ministers, and the Ministers to the Peshwa but in practice it was generally dependent upon the power and extent of the purse, especially as there was no fixed rule to receive appeals.

7. Enforcement of Judgment

In village panchayets the judgment was enforced by the patil, who was nearly always supported by the superior officers of Government unless there was anything oppressive or unjust in his conduct. The successful party usually received the award from the panchayet and at once proceeded to put it into execution himself, irrespective of whether an appeal was lodged or pending. If the panchayet's order was not obeyed, the help of the patil was called upon and the loser put under the restraint of the talati or the local peons. If no other

recourse was left, the karkoon or the mamlatdar was applied to, although his interference was by no means obligatory.

The person who lost his case seldom had his property sold in civil cases, but in order to persuade him to pay up as quickly as possible he was generally compelled to submit to considerable personal violence amounting perhaps to a degree of torture, such as standing in one posture on one leg with a large stone on his head, or being exposed to the vertical rays of the sun, or temporarily incarcerated in a small room with scant food given at long intervals.

The reason behind this is fairly obvious. A ryot had no tangible property, and his bullock and implements of husbandry could not be sold without risk of reducing him to the rank of a hired labourer with a consequent loss of revenue to Government. Whatever he had saved was doubtless concealed, buried, or deposited with his relations, and the only way to get him to disgorge for the payment of his decreed debt was some arbitrary process which deprived him of his liberty or which caused him such personal inconvenience as would occasion him to settle up speedily.

In other words, this policy, despite its apparent cruelty, was in the long run an indication of foresight and wisdom on the part of the Government which prevented men from being irretrievably ruined. An interesting sidelight is thrown on this question by Pottinger who says that "the Mahrattas are very tractable, and that although they may linger in

obedience, they seldom refuse it altogether to their superiors without a very good cause. It excites the surprise of Europeans to behold their apparent inertness, but that is due more to habitual procrastination than to any definite disobedience."

8. Fees to Members

There were no fixed fees in connection with membership on a panchayet, but members took money generally from both parties which, if given in a just cause, was allowed. That is to say, in practice all fees were given at the pleasure of the disputants. But in all cases the expenses of the members were paid, usually by the losing party, although there seems to be ample evidence that a disputing party treated his nominees on the panchayet and his witnesses as personal guests.

On the other hand, it was customary in all cases for the plaintiff to promise a certain sum to Government (that is, to the local official) upon his preferring his petition, whilst in the hopes of getting a reasonable measure of justice the defendant also frequently did likewise. But there was no scale fixed, except that of ability and inclination to pay. The one who ultimately gained the suit paid hurkee (or joy money), whilst the records seem to show that in later times the loser paid a fine (called gonhagaree) according to his ability and the pleasure of the local representative of Government.

If a more or less general rule can be cited, it is that in simple suits for petty debts, Government officially levied no fee, but that in disputes relative to large estates or to titles, a nazarana, amounting at times to about one-

quarter of the value of the whole property, was taken from the complainant on the suit being referred to a panchavet. Yet it appears to have been the practice in Ahmednagar district for a quarter of all debts decreed to be paid to Government officially along with the indefinite sums to karkoons, mootsuddies, and other officers.

The plaintiff in an unjust cause was always made to make good the expenses of the defendant when the defendant was a poor man. A rich man as defendant received no recompense, although the Government always fined all unjust complainants according to their ability to pay. In many cases also panchayets themselves ordered

damages to be paid to the winner of the case, and the records seem to suggest that, theoretically at least, justice was kept as cheap as possible. Even witnesses were seldom called from a distance if their written testimony could be secured, despite the fact that all expenses were paid by the one who desired the evidence.

9. Pleadors.

One outstanding feature of the old system is the complete absence of vakils or pleaders. The business of legalism was not a separate and special profession in those days, and although a great man could always be represented by his own karkoon or goomastah, that privilege was accorded only because in regular administration the servant often knew more of the estate affairs than the master. Grant says that any great man

could send his vakil, and any man his karkoon, but it is made very clear in the records that they were present in their business capacity as manager of their masters' affairs and not as specially engaged legal advisers. There was certainly no legal trade or profession, but it is interesting to note that Pottinger declares that in order to guarantee absolutely fair play and to ensure the real case being presented to a panchayet, "if a man's abilities were not equal to defending his cause himself, he might take any relation or friend to prepare his statements and to point out the main points in his favour."

A proposal was once brought forward to prohibit vakils or any other person from representing a defendant or a plaintiff, but there was an general unanimous declaration against it from all the district officers, who agreed that a man's business representative or head clerk and accountant should always be permitted to appear for his master. But there was an equally unanimous assertion that regular legal pleaders should not be allowed. Chaplin sums up the general view very well :

"The employment of vakils as a trade ought to be prohibited. The advantages which are supposed to follow from the vakil's being able to set forth in a clear point of view all the merits and bearings of a case are more than counterbalanced by the mischief they occasion. They are great excitors of brawls, and acquire, after some practice and experience of any code, much skill in embarrassing and entangling judicial proceedings. They serve greatly also to enhance the expenses of courts of judicature, and on this account

alone may be considered a grievous evil which has been found to excite the litigiousness of persons possessing very slender claims who have entered upon actions in the hope that the uncertainty of the expense might deter parties from defending even just rights."

But although the friends of parties were allowed to be present in the panchayet and to present their claims, it was a regular rule that when the statements were being made, or any cross-examination was being carried on, no one was permitted to sit near the witness, although after all the statements had been recorded, then any friend could, and did, render all manner of assistance, even interested standersby frequently preferring suggestions. Panchayets were always held open to the public, with the above precautions being taken against the course of justice being defeated or interrupted.

10. Popularity of Panchayets

There does not seem the slightest doubt about the fact that panchayets were popular. Indeed, it would be remarkable if they were not, because in addition to being the only available form of justice for the common people, they were also the least arbitrary. There was, in fact, no other mode of trying cases, and the lowest classes welcomed them even though justice was at times tempered with corruption rather than mercy. No encouragement of panchayets was ever needed, even in the Peshwa's days, which shows that despite its defects and the unfavourable atmosphere in which it was sometimes forced to work, the system was the most

successful indigenous way of dispensing justice that had ever been devised for India, even though, to use Chaplin's words, "active zeal in promoting the dispensation of justice does not appear to have characterised the local functionaries under the Peshwa's Government."

Panchayets did not, it can be said, receive the fostering care of the local officers in Maharashtra except as a source of personal revenue; and yet the system lived, prospered, and succeeded where any other system would have been suffocated by bribery and interred beneath a load of indifference and cruelty.

Grant, who in more than one of his early communications said that he considered the panchayets were unpopular, later admitted that he was probably biassed in favour of the new

British system of ordinary courts (or the Adalat, as it was called). His final verdict on panchayets was that the system embodies the old rule of the country, which, if well acted up to, would be a grand arm against injustice and oppression. It is a very satisfactory and respectable testimonial of character to a man who gains his cause by the suffrage of his peers, and, on the other hand, the loser is more fully satisfied and is more likely to acknowledge the justice of his sentence than if it had been given against him by one individual. However much better our system may be (of which there can be little doubt), yet if the opinions of the country are so much in favour of panchayets, it would be impolitic to attempt any radical alterations." And then he graciously concludes : "That panchayets should still be generally

popular notwithstanding the corruption and dishonesty which have been usually practised, clearly shows that there is much more good than evil resulting from them.

Members' Integrity

Chaplin also was convinced of their popularity and usefulness. After declaring that he could not help noticing that public opinion was very much in their favour, and that the people would much prefer that mode of settling disputes to the other, he says that they were uniformly popular with the persons who were conscious of having a good cause and who were apprehensive that the cause of justice would otherwise be prevented by means of corruption. In the same strain as Grant, he then continues :

"Notwithstanding the prevalence of bribery and corruption throughout the Mahratta State and the frequency of partial and unjust decisions procured by such means, panchayets have in general upheld their character of integrity, awards for the most part have been in conformity with the Hindu law and established custom, whilst the recapitulation of the plaint and the answer and the evidence has, in all cases which I have seen personally, been drawn up succinctly and clearly. and the reasons assigned for decisions have been equally solid and perspicuous. There is no doubt that there has been fairness and intelligence used in. the conduct of panchayets, that evidence is weighed and considered, that exhibits are duly examined and compared, and that the decree in the plurality of cases is just and impartial.

Briggs admits that they were popular, but at first seemed to think that the people themselves preferred the decision of a European officer in whom they had confidence. He states in one place that the villagers disliked the duty of serving, but he is the only district official who has expressed that opinion, and later records seem to show that he changed his mind, of which more will be said in a later chapter. He thought from the first, however, that panchayets were useful in matters of caste and family disputes, but as they were slow in making decisions, and as members and Co-parties and witnesses were often careless in attendance, they needed careful supervision. Other district officers recognised these defects, but were not quite so pessimistic about their being remedied. Briggs' final conclusion may however, was that they would probably be very useful if the system was slightly revised.

Why They Failed

A long and most valuable summary of panchayets was made by Pottinger, the Collector of Ahmednagar, which he bears repetition : From many of the causes already enumerated, panchayets have of late years fallen into all some disrepute. They opened (from the numbers of members employed) a larger field for bribery and corruption; they were not esteemed by the officers of Government because they would not have acted as a check to their extortions, nor by the people of the country because all classes were aware of the state to which

the moral character of he their neighbours and even relations n- was reduced. Even a son could not depend upon his father giving evidence in his favour. People therefore preferred to sit down under in juries rather than expose themselves he to plunder and rapacity. But (Pottinger adds significantly), this view of panchayets was exactly opposite to that of the good times of the Peshwa's rule, and so long as the Government was even tolerably npright, panchavets were the universal mode of settling disputes."

Dealing with their popularity with litigants, Pottinger says that panchayets were very welcome if conducted with probity and justness. It is a common remark among the Mahrattas that the opinion of ten men of honesty must be better than the decision of one."

But perhaps the most valuable remarks are those in which this district officer urges the continuance of the panchayet system, although with certain modifications : "It will require, I fear, many years of example before the whole body of the population will be such as to render the panchayets universally desirable ; but in the interim there are various subjects of contention which can even now be better settled by them than by any other kind of court. I allude to disputes of caste, wuttun, points of religion, and marriage, and most instances where dealers have differences about settlements of accounts. All these should be laid, in the first instance at all events, before a panchayet of persons of that class, because they, and they only, can fully comprehend the intricacies of such affairs. All simple debts, trespasses, assaults, broken contracts and, in fact, all the daily

incidental disputes among the people of the country and the towns should be decided upon either by the Collector or his assistant, or by a panchayet superintended by one of them. The example will, I have no doubt, spread quickly amongst them people who ought to decide of themselves, and if we can only once feel assured that the members of panchayets are guided by truth in their decisions and are deaf to bribery (whether from fear or a better sentiment), it appears to me that no mode would be so well calculated to ensure the ends of justice and to give satisfaction to the parties concerned.

A Question of Duty

The reason that weighs with me in preferring panchayets even now in some cases is that those cases are subjected to certain well-defined and well-understood customs, that a member cannot but feel that if he swerves from his duty on such points he exposes himself to the obloquy of his colleagues and the contempt attached to ignorance, that he also lays himself open to have his own decision brought to bear against himself, for there is hardly a case that could be brought forward to which something similar could not be adduced in every family, and if the rules of wuttun or caste were once broken, all would be confusion. The intelligence of members is excellent; they always understand the matter before them, and if they award unjustly it is not from want of judgment but from absence of principle.

Practical Wisdom

In another letter, Thackeray, who he was holding an important post in the Karnatak, said: "The public opinion of of panchayets must be very favourable, as it is this opinion that has made them so popular for so many ages. They are sought by all parties except those whose conscience of the weakness of their cause would prefer a more distant tribunal where the merits of the case are less intimately understood. It is true that the members often have little theory and little knowledge of written laws, but they have great practical experience with much good sense and understanding, so that perhaps the mamool or common law is better known by them than by any set of country gentlemen in the world, not excepting the farmers and fox-hunters of England. They are sometimes partial to a friend or a popular character, but this objection, which holds equally against all tribunals, is remedied in a great measure by the liberty given to the parties of challenging obnoxious members."

Moslem Disfavour

Probably the only section of the general populace which did not view panchayets with definite favour was the Moslem community, for except in essentially religious causes, all Mohammedans were judged and sentenced according to Hindu law and Mahratta custom. If a case definitely related to the Moslem religion or if there was a suit between two Mohammedans, they were nearly always given the benefit of their own laws, provided they did not militate against the Hindu law;

but in any disputes with any other community or caste, or in any infringement of the general laws of the country, they always had to submit to the overwhelming Hindu majority. Pottinger says that in actual practice no one took serious notice of a civil quarrel between two Mussulmans. "unless one or both of them had the means of bribery," so that the case could be made remunerative. If they could pay, they frequently could have any law they chose, "and perhaps the mamlatdar or an inferior karkoon would send a message to the Kazi ordering him to pronounce a decree in a certain one's favour."

Generally speaking, however, it is clear that the Mohammedans were not only entirely neglected, but treated (says Pottinger) with a degree of contempt and indignity which is hardly credible. When Bajirac was at Nasik, the Mussulmans of that town were not allowed to enter parti. cular streets, or sometimes even to cross the Goda veri. If any of them, no matter what his station, infringed on their rules, he was confined and fined, and in some instances ordered to quit the place while the Peshwa was there, and the Kazi of thepargannah actually confessed that during that period he and all his family stayed the whole time in his house."

As a general rule it seems that Moslems endeavoured to settle all their disputes among themselves with

aid of the Kazi or, in his absence, of the man "best read in the Koran," whilst although inter-communal disputes were invariably referred to a Hindu panchayet, there does not seem to have been any objection to

having one Moslem member, except of course his voice was a solitary one crying in the wilderness of opposition.

Thus ends the tale of the civil justice as meted out, both in theory and practice, under the Peshwa, a tale as interesting as it is educational, a tale that reveals so many lessons that it is well worth studying in the light of modern demands for a greater measure of local self-government.

Chapter Four

The Conduct of Criminal Cases

Under the Peshwa's Government no regularity appears to have been observed either in trying causes or referring them to panchayets." This declaration by one of the district officers seems as true of criminal cases as of civil, if not even more applicable.

Civil suits affect two parties, one of whom is always sufficiently aggrieved to take definite measures to gain relief or compensation. But in criminal cases there is theoretically only one aggrieved party, namely, the Government, and if the Government is too busy fighting or too indulgent of corruption, then criminal justice is allowed to go its own sweet way, dependent largely on the ambition or the conscience of the local district officer. And with most local officials endeavouring to make as great a success of the revenue as they could, and with personal jealousies being amply supported by frequent bribes, criminal justice in the time of the Peshwas could more easily be dispensed with than civil justice. For that reason, there is only comparatively scanty material available regarding the system of criminal justice used in the Peshwa's days, but even this material is sufficient to show that panchayets played a fairly important part in punishing offenders against public morality.

Perhaps the most important feature of this phase of this subject is the discovery that panchayets were in some places given the fullest powers to hear and decide

on the most serious cases, even to the extent of awarding the death penalty. There are no definite papers available showing the details of how the panchayet conducted such cases in the days of Bajirao, but a most interesting set of judgments outlining the different verdicts and punishments awarded by panchayets in Khandesh in 1818 shows that by carrying out Elphinstone's instructions, Briggs followed very closely the system which he had carefully studied.

Theoretical Justice

As far as can be ascertained from the scattered and incomplete documents relating to criminal justice panchayets were frequently assembled by the local officer in cases which for certain reasons, he decided not to try himself. As a general rule, criminal justice was theoretically administered by Government alone, a special officer being appointed in large towns to take cognisance of all crimes and to inflict punishments, whilst in the districts that power was given to the revenue officer, be he sirsoobhadar Orsoobhadar or mamlatdar or karkoon or patil. In later times, even the farmers of revenues and their servants were given the right of punishing offences against the regular law.

The actual powers wielded by these different officers were not clearly defined, although the records show that all except the lowest had the right in general to inflict any punishment short of death, which was reserved in almost all cases to the Peshwa in Poona and to the sirsoobhadar in the districts, although the latter were bound, however, to report to the Peshwa before

execution. But apart from that restriction, the local officers placed criminals in confinement in irons, or in the stocks, fined them, or punished them criminally *ad libitum*

The patil, until late in the last Peshwa's reign, exercised what Grant called "extraordinary power," yet he frequently called upon panchayets to establish guilt or innocence, even though the panchayet did not actually determine the nature and extent of the punishment.

But because the system of criminal justice was by no means as comprehensive or as detailed as that for settlement of civil disputes, there often was no such thing as justice in later days. Pottinger says that murderers were often bought off for a few hundred rupees, although on other occasions people were seized, beaten, sent to hill forts and their property confiscated on the slightest suspicion. "Punishments were inflicted and fines levied on confessions that had been extorted by torture, although Bhils and other professional robbers were very frequently set at liberty on giving security to pay within a fixed time a stipulated sum, to obtain which it was perfectly understood they would have to plunder travellers."

Yet despite these depressing circumstances revealed by the British officials at the time of the conquest, it is absolutely clear that conditions were not always thus. Although in actuality the system was abused, the abuse was due only to the fact that the system itself was for a time either disregarded or forgotten. But the principles remained, so that when the

system of panchayets was revived later as part of the British administration, it was found as suitable for criminal cases as for civil causes.

Panchayets as Detectives

Panchayets, however, figured largely in an unofficial character even in those most disadvantageous times. The records show, for example, that although the head of the police in Poona, and the local revenue officers in the rural areas, took cognisance of all serious crimes when reported, they frequently called a panchayet on the spot, not only as a witness to the original statement but also to make suggestions as to the possible perpetrator of the crime and his whereabouts. Similarly, the patils of the villages, in recording cases of petty assaults, abuse, defamation and the like, often early sought the advice of an unofficial panchayet, not on the question of the sentence but rather on the tracing of the crime and the fixing of the guilt.

It is probable, in fact, that the great frequency of confessions in criminal cases was due very largely to the certainty that escape was impossible when an independent panchayet was on the culprit's track as well as the police. That is to say, there was a public morality which survived all the evils of the time and which kept ordinary crime (except violence down to a minimum ; for it is obvious that in many another land the sad state of internal politics and the long series of internal fighting would have destroyed, almost totally, any feeling of or desire for reasonable civic life in accordance with the moral laws of the land.

Social Crimes

Another form of the panchayet which was to be found in criminal cases was that relating to offences or misdemeanours against caste or social custom. It did not need any Government law against such offences as drunkenness, adultery, and such breaches of social life, because the Hindu law was itself against them. which meant that they were general'y treated as direct crimes of caste, necessitating caste discipline. It might also be noted just here that the last Bajirao was a great enemy of drunkenness, and enjoined his police and revenue officers to punish that offence with severity, although it was not usually harshly dealt with by the caste panchayets.

At certain times these social crimes are said to have been tried, as test cases, by a Wootura Sabha, or Synod of Brahmins, the powers of which were superior to those of the highest of Acharee, or High Priest. At times even applications were made by the Ecclesiastical Power to the Civil Power when the arm of the law was required to subdue refractory spirits who were not to be awed by the thunders of the priests." But as a rule the priests did their own work.

Punishment Optional

Wherever such moral cases were reported in the districts, the local officer almost invariably assembled a panchayet officially, or called together the heads of the caste concerned. Careful consideration was then given to the whole case along much the same lines as already outlined in civil causes, and then the caste panchayet

either expelled the offender, fined him, or ordered the requisite penance. If the offence involved the definite degradation of a particular caste, the culprit was officially handed over to that caste for punishment. Shastrees were generally consulted on these occasions on points of law, as in all cri. minal cases, but they do not appear to have had any definite powers of fixing penalties, although they undoubtedly made suggestions.

In all cases the deposition of the evidences was always taken down in writing as well as the detailed statement or confession of the accused, but although guilt was adjudged according to the Hindu law and Mahratta custom, the extent of the punishment was purely optional with the local officer, with whom, of course, political expediency often weighed as heavily as financial persuasion. The records also show that with the exception of Ramoosies, Bhils and Mangs, confession was supposed to have been a prelude to conviction, but doubtless in later times this theoretical rule was more often infringed than observed.

Even where panchayets were not called, or where caste committees were not appointed, it was a common thing for the presiding officer of any ordinary trial to take the opinion of the principal villagers present in court as to the probable guilt or innocence of the accused party; and if it was generally agreed that he was guilty, various means would be adopted to force him to make a confession which would later justify any sentence which the local officer would place on record.

When caste panchayets came to a decision on a criminal case, no confirmation of their judgment was

necessary, although in the records there are instances of very important caste decisions being reported to Government. It was this wide power of caste, as manifested in caste panchayets, which was undoubtedly mainly responsible for the keeping down of crime. In fact, all the British officers declare that caste was a more powerful influence than either religion or the penal law, coupled (says Pottinger) with public opinion arising a "from the general moral and decent habits of the Mahratta people at large." That is to say, the powers of caste to watch over morals were very extensive, for despite their manifold restrictions and trivialities, they at least created a public opinion among an illiterate and burdened people.

But, what is far more important, if those powers were very seldom abused. Chaplin, who was by no means a champion of the Mahratta customs as he found them, says: "The powers of the heads of the caste were commonly exercised with much impartiality and moderation by their panchayets." Then describing the method adopted, he goes on to say that neither the panchayet nor the Chief of the Elder could take off the interdict.

That originally could only be done by the caste Guru or the full Council of Elders of the same caste; and then only with the sanction of the Gunacherry, or Inspector of Morals and Vice, appointed by Government. But, when the office of Gunacherry was farmed out to the highest bidder, it seems that, by the general consent of all the castes, his power decreased, and he was only

permitted to investigate or adjudicate upon minor offences.

Punishments Inflicted

Before outlining a few of the criminal cases actually tried by panchayets, it will perhaps be fitting to summarise as exhaustively as possible the various forms of punishments used under the Peshwa's system. In theory murder was followed by death to the culprit, but although the Mahrattas ostensibly believed in a life for a life," they also had a common saying, "I do not care for the expense; I will pay the Rs. 350, but I will murder him." Probably owing to the turbulent times in which they lived, murder was, for a period of the Peshwas rule, very common.

If a poor man killed a rich or powerful man, he was invariably put to death. If a poor man killed his equal and could not pay Rs. 350 either to Government or to the relations of the deceased as settled, he was generally deprived of a limb or an eye or an ear, or branded with a hot iron, or if the circumstances were atrocious he was executed. But if a rich man killed a poor man, he always paid the fine and not the penalty, both Government and the relatives of the deceased profiting considerably by the rich man's desire to put an enemy out of the way. If the murderer was a Brahmin he was never executed, usually getting off with fifteen or twenty years' imprisonment, or before if there was a public festival, when he was released and sent to Benares to expiate his sins. But to murder a Brahmin

was an unpardonable offence, although during Bajirao's time the life of a poor Brahmin was not nearly so precious as that of a rich Brahmin, especially if the murderer had plenty of money. Women guilty of murder were seldom executed in the later Peshwas' time, but after a period of imprisonment they were released minus their ears and noses.

Treason and rebellion was not apparently considered so serious a crime as in other parts of the world, for it was usually punished by imprisonment, solely on the grounds that it was dangerous for the rebel to be at large. In particularly impudent rebellions, however, treason resulted in death. If the rebel was a person whom it was deemed politic to conciliate for future co-operation, he was pardoned on payment of a *nuzur* or heavy fine, but if no consideration prompted this indulgence, he lost his lands and his freedom.

Highway robbery was punishable in various ways, such as exposure for months in the stocks, imprisonment in irons, mutilation, corporal punishment at intervals until the stolen property was restored, and occasionally by death. Ordinary theft and robbery were punished in degree according to the *Shastras* with a few days' confinement, a few stripes with rod, mutilation, or a heavy fine, the sentence being dependent entirely upon the whim of the judge.

Crimes Against Morality

Rape was punished by confiscation of goods and death, unless the offender was a Brahmin or person of some rank, when he would get off with a fine. A

Brahmin who committed rape upon a Brahmin woman would be liable to expulsion as well as a fine, but could always obtain purification. A person of inferior class committing rape upon a Brahmin woman was liable either to mutilation or death, generally the latter. If a Brahmin woman went astray of her own accord, she would be ex-communicated and repudiated. Women of the Sooder and some other castes were liable to fine for their lubricity, but the husband frequently took it with resignation. If, however, he was unable to console himself, he tore the end of her saree "in token of eternal separation, and then and there dismissed his slippery helpmate." Married Hindu women cohabiting with Mussulmen were expelled from their caste. Women of all castes, however, except the Brahmins, could be restored to caste on passing through the necessary purifications of the caste to which they belonged, provided the proper fee was paid to the Government.

Such offences against morals as ordinary adultery and fornication were seldom punished by anything else except a fine, followed by purification ordered by the caste panchayet.

Previous to any punishment for great crimes, exposure on an ass wag generally included in the sentence, sometimes with the additional order that the face must be blackened with charcoal or soot.

Modes of Punishment

Death was inflicted in several ways. The offender was per haps tied to the foot of an elephant and draggel around the town, or tumbled down a precipice, or

hanged, or beheaded, or cut down with a sword, or shot with arrows, or torn with hot pincers, or blown from a gun, or (for women). drowned. Execution was always done in public after disgracing the culprit. When criminals were deprived of a finger, breast, or a limb, they were left on the spot, but there was no order preventing assistance from being rendered. Imprisonment usually meant confinement in a hillfort, either with no food, or with bread made chiefly with salt. In fact, imprisonment generally meant a lingering death, as the offenders were often left there with no one to attend to them and no possible means of obtaining food and water. People of respectability, however, were not generally disgraced or badly treated in confinement, whilst persons of very high rank were generally placed under arrest in their own houses. Life prisoners were often chained and handcuffed and let out of the forts twice a week to beg for food in the neighbouring villages.

Moslem Woes

In view of the generally unsatisfactory state of criminal justice and the fact that even in civil cases preference and favouritism were frequently given to Hindus, it is really not surprising to find that Moslems were not by any means satisfied with their treatment as criminals. Oaths were very rarely taken or demanded in criminal cases, confessions being largely depended upon; and so whenever outnumbered, the Moslems had little chance of clearing themselves and absolutely no trust in the consciences of their enemies. For this reason

Pottinger says that in criminal cases "Mohammedans were treated with great severity and seemed to have had the benefit of no law whatever." Yet, in all fairness, it should be stated that in direct contradiction to this, Chaplin declares that "in criminal cases no distinction whatever was made between Hindus and Mussulmans.'

From this rather depressing survey one point seems to stand out very clearly. Although the criminal justice of the Mahrattas was undoubtedly the worst of their institutions, the little good there is in its working is due to the fact that panchayets were used, either officially or unofficially, and that it was the panchayet system which enabled a semblance of justice to be meted out.

In closing this chapter, a tabular statement will be given showing a few of the criminal cases tried by panch ayets in Khandesh in 1818, and the sentences passed. And it is only fair to emphasise the peculiar adequacy of the sentences in most cases, particularly that which drives a goldsmith out of his home town and deprives him from pursuing his trade in any other town because he received certain jewellery knowing it to be stolen.

TYPICAL PANCHAYET CASE IN KHANDESH IN 1818

Case	Sentence
<p>A riotous affray (15 Brinjaries)</p> <p>Theft</p> <p>Theft</p> <p>Throwing his daughter into a well and drowning her.</p> <p>Goldsmith accused of purchasing stolen property knowing it to be stolen.</p> <p>Theft.</p> <p>Being associated with Bhils in systematic robberies. Highway Robbery. Causing an Arab to be put to death.</p> <p>Highway Robbery by two Bhils. Highway Robbery.</p> <p>Being engaged in robbery and murder.</p> <p>Participating robbery.</p>	<p>One to 1 year's imprisonment, four</p> <p>teen others to 2 years' imprisonment in irons.</p> <p>Hard labour</p> <p>months.</p> <p>in</p> <p>irons</p> <p>for</p> <p>fifteen</p> <p>Twelve lashes with a Zer bund.</p> <p>[Acquitted, as guilt not fully proved.</p> <p>Deprived of the privilege of exercising</p> <p>his profession in Malegaon and turned out of it in disgrace.</p> <p>Two years' imprisonment in irons. Hard labour in irons for one year.</p>

<p>in spoils taken by Stealing two gold mohurs and venetian.</p> <p>Severely beating some inhabitants of Kher.</p>	<p>Hard labour in irons for 2 years. Confinement in Songhir Fort for two years. The accused was a woman. Death in both cases. Hard labour in irons for seven years.</p> <p>One accused was a Hindu and the other a Moslem ; but they worked together in successful unity. Death, later commuted by the Panch ayet to life imprisonment. Kept in confinement as a dangerous member of society. No period given!</p> <p>Hard labour in irons for one year.</p> <p>The accused was named Frederick and was therefore probably a Christian servant in a European House. f Acquited, as the accused, a munshi. was not properly identified.</p>
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Case	Sentence
<p>Murder. Conspiracy against the Government.</p> <p>Killing a Moslem in an affray.</p> <p>Stealing. Murder of wife.</p> <p>Robbery and murder by Bhil.</p> <p>Highway Robbery</p>	<p><u>Death. Hard labour in irons for 7 years.</u></p> <p>A Moslem. Fined Rs. 300 each and imprisoned for 18 months. All accused were Rajputs who had been converted in to M&hommedans. Imprisonment in irons for 2 years. Hard labour in irons for 14 years. A Mahommedan. Death. Commuted to confinement for</p> <p>life in consequence of the peculiar circumstances under which he was</p> <p>captured. Hard labour in irons for 3 years. A Bhil.</p>

CHAPTE ER FIVE

Panchayets As Worked by Elphinstone

Having in previous chapters outlined in considerable detail the exact organization governing the assembl. ing and conduct of Panchayets in the days of the Peshwas, it is now necessary to examine the system as it was worked under the British administration which succeeded the downfall of the Mahratta Empire.

One of the most striking decisions of Mountstuart Elphinstone, who was Resident at Poona at the time of the Battle of Kirkee and who immediately became Commissioner of the Con quered Territories, was that by which he ensured the continuance of the Mahratta customs and methods. It becomes of the first consequence," he wrote, "to cherish whatever there is good in the existing system and to attempt no innovation that can injure the principles now in force, since it is so uncertain whether we can introduce better in their room."

Acting on that fundamental principle, Elphinstone proposed that the Indian system of village administration should be preserved, as it would be more welcome to the people than any distinct change in their means of obtaining justice. He recognised, however, that it would be necessary to take measures not only to remove the abuses which had become so serious, but

also to revive its energy which had been flagging as the result

of the continued sapping of those - abuses. Yet even the measures to be adopted to remove the abuses were, said Elphinstone, to be so slow "as to allow the amelioration of society to keep pace with that of the laws and thus escape the evil of having a code unsuitable to the circumstance of the people and beyond the reach of their understanding.

Yet although the retention of the Mahratta administration was admittedly a matter of expediency, Elphinstone was by no means slow in proclaiming that he saw in many features of the old administration excellent methods to be adopted or adapted by the British. One of these was the institution of the panchayets which, he said, would continue to be the principal instrument of local judicial administration. "It must be exempt from all new forms, interference and regulation on our part Where the patil cannot personally settle disputes amicably, he must refer them to panchayets on the old model. If we retain this system we shall find that it has the advantage of leaving unimpaired the institutions, the opinions, and the feelings that have hitherto been kept together, and though the established practice might be worse than that which we have imposed in other parts of India, it will most certainly be less grievous to the people who have accommodated themselves to the present defects so that they are now scarcely aware of their existence. If our own system be unintelligible to the natives, the native system can seldom be thoroughly understood by any of

us, so that we may act against its plainest rules from mere ignorance and at times be liable to strike at its vital principles when we think we are only removing its defects."

A Practical Trial

In short, the instructions sent out by Elphinstone to his district officers directed the civil authority to refer all causes of litigation to a panchayet, the decision of which was to be considered as final unless proof of gross corruption or palpable dereliction of justice was established ; and that no new rules nor innovations of any sort were to be introduced unless it was found absolutely essential to remove certain abuses which were acknowledged even on the part of the people. The Commissioner's object, ne doubt, was to give a practical trial to the system which prevailed under the late Government, either as a substitute for the British system of courts or as a temporary measure until it was deemed advisable on substantial proof to introduce a new system.

Elphinstone, however, was by no means blind to the necessity of making certain immediate improvements which would not in any way effect changes in the radical principles of the indigenous system. He particularly insisted that there should be as few forms as possible. An appeal from a village panchayet was to be made to the Collector who, if he thought that the panchayet had not been freely chosen, or that it had not fully decided the case, or that it had been guilty of any gross error or injustice, should order a new panchayet to reconsider the case either at the

original village or at a neighbouring one. But on no account was the Collector or a mamlatdar to go into an inquiry in an ordinary case merely because the panchayet appeared to him to decide erroneously.

Elphinstone apparently did not see very much difficulty in having ordinary village disputes adjusted in this way, but because there were many commercial people and tradesmen whose cases would perhaps be not so easy to decide by ordinary villagers, he provided for the summoning of special panchayets to deal with them, the membership of such assemblies to be very carefully selected not only for the sake of justice but also to guarantee that attendance was made as little inconvenient as possible. - Elphinstone also believed that a great secret in the future success of the panchayet system would be in an adequate superintendence, and for this reason he instituted a special class of officers who would appoint, instruct and encourage panchayets, not only by watching them closely to see that purity of justice was made universal but also in certain cases actually to establish the case in such a manner that the pleading, documents and evidence might all be brought in a connected way before the members and the case decided at one sitting. "It is chiefly by this superintendence," said Elphinstone, "that we can hope to purify and invigorate the native system so as to convert it from an engine of oppression into an instrument for a more sound dispensation of justice than exists in our own provinces."

Elphinstone particularly guarded against the introduction of vakils who would protract and

complicate cases to a point far beyond the necessity of either party, and, he added, "similar pains must be taken to guard against professional arbitrators, a description of persons who were not unknown under the Mahratta Government and who appear to becoming common under ours. This class adds to all the bad qualities of hired vekils that of corruption in the decision of the causes, and some rule should be fixed to compel officers to attend to this caution, although this is the only regulation I will venture to propose regarding panchayets."

A Temporary Experiment

It is interesting to note that Elphinstone proved himself somewhat of a prophet by suggesting that, owing to the difficulties of establishing the panchayet system with a considerable sacrifice of form and even some sacrifice of essential justice, the panchayet institution might later prove so unsuitable to European ideas as to render it doubtful if the system could be maintained after the retirement of the officers to whom its retention was untrusted during those early days of administrative re-organization. That doubt, which was almost a prophecy, proved to be amply justified because, as we shall see later on in this chapter, the system gradually died out after it had been operating six or seven years. This decline, it appears, was due mainly to the objection taken by the people themselves to the introduction of rules which compelled attendance under certain conditions and which sought to accelerate the decisions of the panchayets.

It seems rather strange, however, that it was deemed so necessary in later years to make attendance compulsory, because there are many suggestions in the old records that there was seldom any difficulty under the Mahratta rule in procuring the attendance of members. As one district officer concisely put it: "It was a duty they owed to society, and as a member of a panchayet to-day might be a suitor to-morrow, he could not refuse to his neighbours the same justice which he expects to receive from them."

Theoretically Ideal

There is not the slightest doubt that in theory the panchayet method of settling disputes in rural areas was far superior to the ordinary village courts of justice. As the Registrar of Ahmednagar stated in 1822 : "There were no intricate forms and no difficulties of the law to deter the parties from appointing their own friends to hear and determine their disputes and from explaining the case in a clear and unsophisticated manner without the aid of those hired abilities which so often perplex rather than enlighten the minds of the hearers. The chosen of both parties meet at their own house, at the village office or elsewhere; the plaintiff's statement is first taken down on the left hand column of the paper, whilst on the right hand the answer of the defendant is entered ; the cross-questioning and proof to the assertions made by either parties are written in detail according to the same order.

"This is the only form required throughout the proceedings and what could be more simple and at the

same time more clear than to question by this means? The members of the panchayets have the whole of the proceedings, both the pros and cons, to bear upon each other, and the decision thereon can be made with the greatest facility. Surely this appears an expeditious and even beautiful as well as satisfactory mode of deciding cases, and may even be considered superior to our far-famed British Courts where the parties can only object to, and not choose, their jury, and where on account of the variety of forms and intricate questions few men are capable of pleading their own causes; with the result that counsellors are retained to make the best of their case and scrupulously to hide the truth of it should it in any way affect their client, and to grasp at every share of the mistake either in word or deed to bring the guilty off, That system avhich soonest brings the 1 truth to light must be preferred to all others, and that is the panchayett system in theory.

It was doubtless this theoretical system which impelled

Elphinstone to adopt it even as it was the unfortunate series of abuses which became manifest in practice which ultimately sounded the panchayet's death-knell. Nevertheless, it was a courageous experiment on the part of Elphinstone, and a survey of its difficulties and its results sheds some enlightenment on the possibilities of carrying out such a democratic system of judicial administration in these modern days, when the masses of India are slowly but surely becoming more literate, more r experienced and more cosmopolitan. a

First Difficulties

In endeavouring to outline with any degree of accuracy the many difficulties with which those early administrators found themselves confronted, we must first go back to the olden times. It then at once becomes so apparent that the ancient Hindu panchayat system of panchayets was altogether subverted throughout Maharashtra of following the death of Sawai Mandhavrao the Peshwa, before which the doors of justice were open to all and redress could be had without recourse to bribery and corruption. But in the short space of half a century so many of the essential principles were being lost sight of, with the result that when Elphinstone and his group of the British officials sought to retain the old system on a more or less improved scale, they found themselves faced so with the task (although perhaps they in did not then realise it) of carrying out a system which differed materially from the originally successful indigenous system and which was at therefore anything but ideal either in theory or practice.

As a matter of fact, it would seem from the historical records available that the very system of trial by panchayets had been lost under the lengthened period of Mahomedan rule in various parts of India. Particularly was this so on the Bengal side where Mahomedan courts seemed to be the only ones that were known, except perhaps in dealing with the questions of Hindu caste in which Moslem officers could not very well interfere, or did not bother to

interfere even though they had the power. That is to say, in Northern and Eastern India the practice of panchayets was, at least at the time of the early British in India, practically unknown.

The conquests of the Mahommedans, however, only extended partially over the southern parts of the provinces of India, and accordingly in many of the provinces under the Madras Presidency there were found at the beginning of the nineteenth century several of the ancient Hindu institutions still in existence. Yet it was also noticeable that the original Hindu system of panchayets had been trampled on and distorted not only by Mahommedan influence but also by a succession of ignorant and oppressive princes of the Hindu nation. Yet as another illustration of its vitality, the fact stands out that its name and some of its forms survived the rude check it experienced and that it was still venerated by the people, however much in practice it may have been mis-applied. Although it survived the ravages of time, its operation, like all other institutions in the iron grasp of tyranny, had assumed the form of the hand which wielded it, with the result that even the early officers of the British administration in Maharashtra admitted that as they were still ignorant of the true shape of this machine, it is quite necessary to apprehend its structure and restore it to its original functions before we can hope to render it subservient to the purpose for which it is intended."

As Briggs himself wrote in 1822, after studying the various reports made by officers of the Madras

estabfishment: "I am led to believe that they understand by a panchayet curly a simple court of arbitration brought together by the parties themselves to produce a reconciliation or to bring about some mutual accommodation to which both are bound to agree." He then points out, however, that although this was hardly sufficient in some cases to meet the ends of justice, there was no doubt that it has always been deemed desirable in all systems of jurisprudence to encourage such mutual accommodation. We ourselves cannot here pursue this particular phase of the subject any further, yet it is worth noting that one of the earliest editions of the famous Blackstone's Commentaries on Law deals with such a system very exhaustively and actually advised that some such plan should be introduced into England more than a century ago and given the definite power of a Court of law.

The Patil's Lost Power

One of the first difficulties which the new administration had to deal with, and which Elphinstone hardly seemed to recognise, was the fact that under the Peshwa Government no regularity appears to have been observed in practice either in trying causes or referring them to panchayets, although, as previous chapters have so clearly demonstrated, the whole system was in theory based on the most regular procedure. Yet the various officers in the different distriets did their best to carry out the ancient system according to its theory, although from the outset of the British regime they were

handicapped by the gradual loss of power sustained by the patil of the village in whose hands previously the success of the panchayets largely lay.

During the decline of the Peshwas, the legitimate authority of the patils was greatly shaken by the introduction of farmers of the revenue and their myrmidons, who apparently cared little for the consequences of the system they produced. Where, however, patils were shrewd, experienced and well-informed, they retained considerable influence among the ryots, although in other cases they were reduced to the most abject pitch of contempt and were often lorded over by the kunbis.

Another great blow at the respectability of patils, says Pottinger, had its source in the nominations of hoojree and court karkoons as shekh-dars of villages, these people being particularly studious as to lower the patils in the estimation of the villagers and to foment disturbances between the patils and the people which eventually led to the expulsion of the patil from the village. A kulkarni likewise, being a Brahmin and having more or less education, usually found it advisable to side with the courtiers, and unless a patil had naturally a strong mind and superior talents to enable him to thwart their machinations, he fell into utter significance." There were, of course, many exceptions to that general decline, and there are references to villages where the word of the patil was as absolute as though it had been that of Baji Rao himself from the Gadi.

Professional Panchayet Members

Another great difficulty in making the panchayet institution more systematic was found in the fact that the people were unaccustomed to regular attendance and rigid rules, and therefore it was found by no means an easy task to amend the system in such a way as would not be considered grievous. It was recognised that restraints and compulsion could not be too suddenly imposed, even though the very success of the system under the new conditions depended upon its being able to compete at least on equal terms with the growing system of Adalat (or Court) which was being introduced by the British Government. At first an attempt was made to overcome this difficulty by granting fees to members for attendance and levying those fees against either both the parties or the loser in any case; but this naturally resulted first of all in protracting the cases unduly, secondly, in producing a body of professional panchayet members who made quite a good living out of the fees, and thirdly in making the panchayet unpopular amongst those who had disputes to settle. In fact, the Collector of Khandesh in 1822 stated that the decision by panchayets had in some cases so tied the system, and the system had been so clogged in the whole course of its proceedings, as "to threaten the very overthrow of all substantial justice."

But perhaps the greatest difficulty of all was the abolition of bribery and corruption. So strong a hold had these abuses obtained on the system under the Peshwas that Elphinstone saw very little hope of reducing its strangling character until the people themselves had

learned. as the result of adequate supervision and considerable education, that bribery and corruption were not only enemies of morals but were also defrauding the majority out of justice for the benefit of a very small minority. For this reason Grant declared that the panchayet institutions, if worked properly, would be "a grand arm against injustice and oppression," although even he admitted that in view of the difficult character of the task of cleansing a system from its abuses, corruption either on the part of the members or parties must not at first be declared severely punishable," adding that the fact of panchayets still being generally popular under the Peshwa, notwithstanding the corruption and dishonesty which had for several decades been practised, clearly showed that there was much more good than evil resulting from them.

Therefore the only effort that was made at the outset to prevent bribery and corruption was by the provision of immediate appeals against, and exposure of, such abuses ; and it must be admitted that this method of tackling a very difficult problem proved very salutary on the whole.

Changes Made

Let us now turn to a consideration of some of the more important changes that were made by the British. In endeavouring to carry out Elphinstone's policy of general convenience, efforts were made to see that panchayet members were elected as seldom as possible from the trade and manufacturing classes, or at least to

take care that the membership duty fell upon individuals only in rotation. All unnecessary harshness in compelling attendance was scrupulously avoided, although wilful neglect to attend after the panchayet had been constituted was punishable by fine, not only with the view to expediting the administration of justice but also with the idea of preventing the inconvenience to which other members would be liable from the unnecessary prolongation of the sitting of the panchayet.

Of course the ideal panchayet was one in which there was neither venality nor coercion, when a panchayet was a court of arbitration where defendants were easily brought to • meet the plaintiffs, where each party brought its own friends to decide its own cause of dispute, where persons without remuneration willingly abandoned all other occupations to sit for weeks and months to decide other people's causes, where witnesses were all ready to attend, and where the defendants at once agreed to pay whatever sum of money was decided upon by this ideal jury.

It is needless to observe here, however, that such a system neither did nor could prevail in actual practice. Nevertheless in those early days of the British administration, all attempts were made to reduce panchayets as nearly as practicable to these ideals and simplicity. Defendants were forced to attend to reply to the plaintiff's complaint ; members of the panchayets were made to attend without using actual force; witnesses were called for at mutual convenience: the proceedings gone through by degrees according to

rules; and the decrees enforced with as little embarrassment as possible.

Carrying out this ideal of arbitration with as little expense as possible, every encouragement was given to compounding all cases except criminal ones even without a panchayet. Even under the Peshwas, it was no unusual thing when two inhabitants of a small village disagreed for all the men of the place to assemble together and prescribe some terms of agreement to the parties to which they generally acceded ; similarly, under the British administration every effort was made for disputes to be settled without an official taking the case to a panchayet. For example, in one letter from Grant's assistant at Satara in 1822, it is stated :. "Private arbitration has increased considerably owing to the expense in attending a panchayet granted by Government and to the endeavours which have been used to render it more common. Before referring a case to a panchayet, the mamlatdars are ordered to recommend amicable arbitration, and even after a panchayet has been assembled, the parties are at liberty 'to try and adjust their disputes through the mediation of any third person."

Another precaution taken against frivolous or unnecessarily cases was the system of levying of fines called hoorkee and goonagharee, which were established especially to deter people of a litigious disposition from bringing forward claims without any foundation. Under this system a security was required, previous to granting a panchayet, from the plaintiff and defendant for the payment of money according to a

definise schedule. In disputes respecting mirasi, kunbava and all other sorts of assessed lands, the person losing the cause was 'to pay a goonagharee equal to one half of the yearly amount paid to Government in disputes about houses and all other kinds of personal property, a goonagharee was levied according to the value of the property at the following rates :

From Re. 1 to Rs. 10,000

10 per cent

From Rs. 10,000 to Rs. 20,000

8 per cent

From Rs. 20,000 to Rs. 1,00,000

5 per cent.

In disputes regarding Inams, Jagheers and other hereditary properties, one year's income was to be paid as hoorkee and goonagharee, one-third of which was levied on the successful claimant and two-thirds on the unsuccessful claimant. If the dispute was merely for some privilege, Government levied goonagharee according to its own discretion. It is noticeable from these facts that as a general rule only the person who lost his cause was affected, and the records show that the number of groundless complaints was greatly diminished.

In addition to these fines, when appeals were made against the decision of a panchayet, the appellant was obliged to bind himself by a written paper to pay such a fine as the Government thought fit if he was not able to make good his assertion, and for payment of

which he had to give security. His complaint was not investigated until he had entered into such bond, and if it was then proved unfounded a fine was levied upon him according to the circumstances which may have induced him to make the appeal.

The taking of a bond from the plaintiff soon became a mere matter of form, although the defendant was obliged to give ample security for his attendance during the trial and for the amount claimed. If this was not done, the property in dispute was distrained and put under Government seal.

Before painting two pictures showing from the pens of district officers the ideal and the actual conduct of a panchayet under the British administration, it should perhaps be noticed that although minor cases were apt to be drawn out for a considerable period, it was found possible to expedite the settlement of boundary disputes by paying greater attention to the organization of a panchayet. For example, Grant points out in one of his letters that following the defeat of the Peshwa there were many large tracts of land lying uncultivated in the Satara District which for some time he found very difficult to deal with, but when he issued a proclamation directing all villagers having disputed boundaries to make an application for panchayets within one year from the date of the order, there was an immediate response either in the form of friendly settlements or in the form of definite panchayets. It should perhaps be pointed out that this sudden wave of popularity regarding panchayets was not due wholly to the people's desire to keep the panchayet system alive,

but rather to the threat which Grant made that if any villagers did not settle up their disputes within the stipulated time, the villagers concerned would be called upon to pay up jointly the revenue of all land lying uncultivated as a result of their quarrellings.

Twin Pen Pictures

In order to place on record as clearly as possible the exact method of settling civil disputes by means of panchayets during the years that followed the end of the Mahratta rule, two extracts are here given. The first indicates what Briggs of Khandesh considered to be the true sustem of panchayet settlement, whilst the second outlines what Gibson, Registrar of Ahmednagar, describel as "the present base practice of a really beautiful theory."

This is Briggs' pen picture : "When a person feels aggrieved by having his property illegally taken or detained from him, he procures a petition to be drawn out stating the subject of the complaint. This be submits to the chief civil authority, who issues an order or mandamus to the subhedar of the province wherein the defendant resides to call him before him and cause him to reply to the plaintiff or to give immediate justice. In the latter case, the plaintiff gives the defendant a deed of acquittance. If the parties come to an accommodation, then they enter into a raznama, or deed of reconciliation. In case the defendant refuses to comply with the demands of the plaintiff, the subhedar or the local officer requires them, if they cannot settle the affair by private arbitration by a certain day, to

appear before him with an equal number of friends of both parties to allow them to investigate and decide upon it. In the meantime the defendant is obliged to enter into a bond by giving security for his appearance, and the plaintiff is bound to prosecute.

"The day appointed arrives and per

Twin Pen Pictures

"The day appointed arrives and perhaps the parties either will not or cannot procure members to sit and decide their case. All attempts at accommodation therefore having failed in procuring redress for the plaintiff, it is no longer apparent in which anything short of compulsion can effect justice. It is here where the whole of our present system (Europeanised) fails, but under the native government this was not without a remedy. The civil authority, whether subha navadhish or whatever office he may hold, now becomes the efficient judge who calls a panchayet of disinterested persons and assembles them in public at his own house.

The first stage of the proceedings is to cause the plaintiff to enter into two bonds (hoorkee and goonagharee) equal to the amount sued for, by which he is bound to prosecute and to make good his plea. By the hoorkee bond he binds himself to pay any costs that may be awarded by the Judge if he gains his cause, and it usually amounts to about twenty-five per cent of the money actually recovered ; whilst by the goonagharee bond he consents to abide by any fine that may be imposed upon him if his plea is proved to be unfounded and litigious. The defendant then gives ample security for his attendance and for the amount claimed. Yet

another bond is taken from both parties called the rajnama ur writ of assent, but this was only given after both parties had challenged the panchayet membership till they were satisfied that each member was unexceptionable.

"In some instances before panchayet opens its proceedings it would require a bail security from the plaintiff for performing whatever was awarded by the court, particularly in cases which affect local customs and privileges in virtue of certain landed tenures or hereditary offices. If such a security is refused, Government would immediately dissolve the court and reject the suit, probably fining the plaintiff on the goonagharee bond for litigiousness.

"All being well, however, the panchayet proceeds. First the original writ and the reply of the defendant with the rejoinder of the plaintiff are recorded. Witnesses procured through the means of the civil authority will be heard, although evidence would be considered the best when the witness gave it under his own hand. Each party then pleads his own cause, till at length the court, satisfied with the information before it, draws a complete summary of the whole case in which the members record what they consider to be the true state of affairs. They conclude by definitely outlining the reasons for coming to the decision, and then they sign the judgment and have it confirmed by the seal of the superintending Judge, who would probably award a sum to be paid by one or both of the parties to the panchayet for their trouble in addition to the fee to Government. An acknowledgment of his

having been proved in the wrong 'khote patra' is then taken from the loser, with a 'manya patra' by which he consents to abide by the judgment. In practice, these latter documents were not of very great importance after a decree had been issued, but it appears they were always enforced."

These, says Briggs, "are the real forms of the panchayet as I understand them to be, although as they have been entirely disregarded under Bajirao's Government and were even loosely attended to under that of Nana Furna veese, it seems necessary that we should give the panchayet system a fair trial by reviving it."

"Briggs further admits that there were doubtless some other forms of the system which had been entirely lost sight of but which should in his opinion have been sought for. In order to get the most complete information on the subject, he suggested the assembling of a committee of those persons who were still living and who had been in the habit of attending panchayets in the time of Ram Shastree in the various courts of Poona ; but there does not appear to be any record of a conference having been held.

Despite the many difficulties that were in the way and in opposition to the views of some of his colleagues, Briggs concluded by stating that he was of the opinion that unless some remuneration was paid to members of a panchayet, there would always be great difficulty in procuring their attendance so as to answer the ends of justice. He also believed that if they did not accept the adoption of measures compelling the attendance of

parties and witnesses, as well as securing the objects for which bonds were originally taken at every stage of the business, they must despair of rendering the institution efficient and of strengthening the hands of the court."

He believed, however, that it was to be made a matter of choice with either of the parties to have the cause decided by a panchayet or by the Government munsiff, and the success of panchayets in Khandesh, both in regard to criminal as well as civil cases, suggests that if a little more attention had been paid to building up a panchayet system along the lines of the model institutions pictured by Briggs as a result of his individual researches, there might not have been that gradual decline in popularity which ultimately resulted in the people themselves sounding the deathknell of their own indigenous and democratic system of rural justice.

How Delays Were Caused

Let us now glance at the actual procedure which resulted from adopting the Peshwa's panchayet system with so few changes. This is in the words of the Registrar of Ahmednagar who, from experience, had to admit that the British system of adalat courts was as superior in practice to that of panchavets as in theory the panchayet was superior to the adalat. This is the picture :

"In the first place, a person makes a complaint and shows good cause to have an investigation made into his case. The defendant argues the plaintiff's right, but at last a panchayet is ordered, the parties giving the

necessary security to abide by the decision. They write the names of the members they select and a panchayet commences its sittings upon the question. But on one day half the members will attend, the next day not so many; the day after probably not one; for several successive days, perhaps even weeks, nothing available can be accomplished. What is to be done? The custom is to send a peon to exhort them to attend; but this must be done four or five times a week, and even then the attendance is precarious, for at present there is no rule to compel the members to attend. For absenting themselves, the plaintiff and the defendant may be fined, or the investigation may proceed without them; but we believe it would be hard indeed to fine the members who are supposed to receive no remuneration for their trouble; for if fines are levied upon them, which they never were under the former government, what man of respectability and family would voluntarily consent to sit on a panchayet, subjecting himself to the risk of such punishment? The parties therefore would be at a loss in procuring persons to undertake their cause.

"Then there is another way of proceeding which is worse than the delay in the case of non-attendance. In some instances, absent members promise to sign their names and agree in toto to the investigation and the award made by the few who can be present. The parties injured hesitate to complain at the time as they imagine that of two evils it is the better policy to choose the lesser, and that it is better if the investigation should

somehow proceed than that nothing should be done towards concluding it.

"In some cases persons are obliged to flatter and even to bribe members, who have consented, in the first instance, to make them attend ; and the latter continue purposely to absent themselves on account of frivolous excuses, and delay to bring the dispute to an adjustment until they have drawn from their entertainer all they can get. That is to say, the investigation proceeds as slowly as it is possible to imagine ; indeed, the length of time that most panchavets take before they are concluded is incredible.

Awards By Auction

"But at length it is to be supposed that all the difficulties and delays 'are overcome and the bearings of the case are drawn up. This is the time when the members are supposed to make money. The award now hangs by the thread; it is to be put, as it were, to auction and to be knocked down to the highest bidder who takes too much care not to incriminate himself. All but that unfortunate being who is injured have an interest in keeping the truth concealed, and the result is that truth seldom sees the light of the day.

"The above-mentioned abuses of the system may probably originate in some degree in the character of the members chosen by the parties. It is certainly an object in the panchayet system for the parties to choose as members whomsoever they may think fit, but on almost every panchayet the same men are to be observed sitting as members, and as these men are of a description who

could not afford to neglect their own affairs to spend their whole time in investigating the cases of others, it is clear that they find the trade a profitable one and do all they can to secure as much employment as possible. The parties have frequently been advised to take their own friends and not to allow these sharks to have anything to do in the investigation of their claims, for such men are as bad as, if not worse than the self-nominated vakils of our own *ada lats*. The reasons they give for entertaining them are the same in both cases, that by the constant attendance in practice they understand the business much better than the stranger would, and moreover because they find it no easy matter to get disinterested persons to consent to become a member of the *panchayet*.

This latter assertion, however, may appear overdrawn, for it has always been said that they esteem it an honour to be called to the *panchayet*, and this they might do if the present custom of requiring traders in *panchayets* did not exist. Thus we find this fine system, as in itself it is, lamentably abused, and instead of the respectable friends of the parties who might be supposed to be fond of principle and honour, we behold a number of men who make their livelihood by it, and whose first object is gain and not justice."

The writer then goes on to outline still further abuses of the system which are apparent in the rural districts particularly, pointing out that as a general rule the local officers paid little or no attention to persons who in the first instance complained to them. If perchance the local officer orders a *panchayet*, it is frequently two, three or

four months before the officer sends in his report, and even then that report contains only the rajnama of the parties, the actual settlement of the dispute being generally left to the imagination.

Likewise, when either the plaintiff or the defendant was dissatisfied with the decision of a panchayet, he frequently hastened to the adalat and declared that the panchayet had decided without paying the slightest attention to the merits of his case, either by not receiving such necessary documents as he could produce, or in calling his witnesses. An investigation had, therefore, to be made and the members of the panchayet had to be called to the head station, no matter what distance that may be, to answer an accusation. As a general rule it was found that the accusations were false and that the decisions of the panchavets were fair: but it was also found that people who had once been treated in that fashion and put to considerable expense for which they got no return, went home in disgust with the determination never again to sit under a panchayet.

Not a Total Failure

The two very distinct pictures just painted may at first glance suggest that panchayets in practice were a total failure ; but yet the figures that are available in the official records show that there is no justification for coming to such a sweeping conclusion. Even the Registrar of Ahmednagar put forward suggestions which he believed would result in abolishing many of the abuses in what he himself described as a fine system", and freely admitted that the system of

panchayets could be very much improved. For example, if the members of a panchayet, said he. were allowed a certain sum in each suit when brought to a conclusion, either to be paid by their own party individually, or the whole to be paid by the person who loses his cause, they could not in those circumstance consider it unreasonable to be fined for absenting themselves, and if a required attendance could be once enforced the removal of the greatest abuse would be the result, and at the same time the means adopted to levy executions would be lessened. On the other hand, Briggs suggested that a day's subsistence should be paid to the members by Government in the first in. stance and eventually by the person who lost, but that was ruled out as being likely to hamper the working of panchavets rather than to accelerate them.

It might be mentioned here that another reason for the heavy decrease in the number of pancha vet cases heard after the system had been in operation under British administration for several years was the decision to set a limit to the period when suits of a particular standing and nature were admissible: and in the Satara District it was stated that a diminution of about 35 per cent immediately resulted from this order. Grant sought to speed up panchayets by fixing a certain period of their existence for any particular case, and the plaintiff or the defendant was threatened with being cast if the delay was due to his negligence. When it a rose from the remissness of the panchayets, they were officially summoned by the mamlatdars and threatened with the loss of their share of the fine which would be levied.

A Vivid Background

From the foregoing paragraphs it is very apparent, not only that the early British administrators in Maharashtra were faced with innumerable difficulties but also that they endeavoured to retain a system which had itself deteriorated and which had lost some of its most important principles. Nevertheless, a careful study of this review of their efforts to make panchayets successful will show that the modern student of politics is most certainly not justified either in demanding the immediate institution of the old-time panchayet system or on the other hand clamouring for its total abolition. Faded reports from busy Collectors of a century ago are certainly most useful to give a vivid background of the actual situation, but in this particular case we are especially fortunate in having a number of statistical returns available to give us real proof about the popularity, the work and the success of the panchayets in this momentous decade from 1817-1827. The second portion of this Chapter will, therefore, deal with a detailed study of these judicial returns from the various districts of the Bombay Presidency.

Explorations in Statistics

One of the most interesting of the documents giving statistics about panchayets is a torn and faded return of the Provincial Collector of Poona" showing the suits preferred in the first six months of the administration following the downfall of the Peshwa in 1817. That return, now almost unreadable. shows that

in the very month (December) following the Battle of Kirkee, no fewer than 35 panchayets were instituted to hear ordinary suits in Poona itself, followed by 17 in January 1818, 7 in February, 20 in March, 25 in April, 21 in May, 22 in June, 20 in July, and 28 in August.

Some of these panchayets, - it is pointed out, were assembled on the orders of the Government (provincial though it was), and others were described as "chosen by the parties." The following table shows the proportion of cases decided by panchavets as compared with the number by Government officers :

By Panchayets By Govt. Officers Total Instituted

	Nov 1817	Dec 1817	Jan 1818	Feb.1818	March .1818	April .1818	May 1818	June .1818	July 1818	Aug.1818
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By panchayets	...	35	17	7	20	25	21	22	20	2
By Govt.Officers	8	27	13	54	50	60	71	57	42	36
Total Instituted	11	63	37	66	67	85	88	79	72	64

Although the proportion fluctuates, it is clear that even in the earliest days of the British administration, every effort was made to encourage panchayets as much as possible, and it is obvious that their great usefulness under the personal eye of Elphinstone in those early days largely contributed to his decision to retain them on a slightly improved scale in his "model" administration which he so quickly organised, even though they later fell from their high estate.

Despite this transition stage already described and the various opinions officially expressed regarding the conflicting merits and demerits of the old revised panchayet system and the newly-introduced adalat system of regular courts, these does not seem my difference of 'opinion on the fact that litigation did not increase as a result of the continuance of the panchayet

system in its adapted form. There were indications at first that they did encourage litigious habits, but it was soon found that such habits were not likely to be learned from serving as a member of a tribunal whose interest it was to bring causes to an early adjudication and whose character for respectability was concerned in the impartial settlement of the affair in dispute. As a matter of fact, Chaplin maintained that "the spirit of litigation did not much exist amongst the natives under their own Government, for it was little observable except in those parties of the country where British Courts are established, where much fraud, perjury, and chicanery have been introduced, and intriguing vakils, with the aid of voluminous regulations, often succeed in perplexing and confounding what would in itself be simple and intelligible, and by those same means influence the erroneous decisions of judges who do not always possess a knowledge of the language sufficient to enable them to comprehend all the niceties and windings of a difficult subject."

Pottinger admits, moreover, that men who frequently served as members of panchayets acquired the faculty of reasoning and weighing evidence to a fine degree, but suggests that this limited rather than encouraged unnecessary litigation.

Without again referring to the influence of vakils in the ordinary courts, it must, however, be confessed that at times panchayets were very long-drawn-out affairs. Cases are on record which show that the hearings have been strung out for a period of three or more years, one such prolongation being due entirely to

the plaintiff himself going backwards and forwards, a distance of 80 miles at least, once a month complaining of the delays which were being occasioned by himself. Yet even that was apparently an improvement on the system as sometimes practised in the time of the Peshwa, because several cases have been discovered which lingered on for 20 years, whilst cases extending not merely over a generation but over a whole century were not unknown.

The Official Orders

The various judicial reports and summaries and statistical tables found amongst the piles of loose papers in the unsorted rumals of the Poona Residency Daftar reveal some very interesting and important facts concerning the actual conduct and results and powers of the panchayets under the British. Some of these facts will be briefly reviewed in the next few paragraphs, whilst those that are purely numerical will be summarised in a convenient form later on.

For several years every effort made to carry out the standing instructions of Elphinstone that panchayets were to be considered the main instruments of civil judicature, and that all suits were referable to those tribunals, whose decisions were to be final (except in cases where corruption or evident partiality was later proved), and frequent circulars were sent out by Elphinstone's successors reminding all district officers of that policy and asking them to report from time to time the effect of the policy. Without repeating what has already been detailed in the first portion of this chapter,

it should perhaps be mentioned that in 1822 a circular was issued by Chaplin, then Commissioner in the Deccan, that "in all cases depending upon local circumstances, complainants to the Collector must be compelled to show that they have done all in their power to adjust their disputes by panchayets before they claimed redress by a civil action. This was as equally applicable to assault as to marriage disputes, or to trespass as to inheritance, or to adoption as to defamation. And although in criminal cases the mode of trial was more or less obligatory on the Collector as Magistrate, the records show that panchayets of five were to be called in. One special proclamation of 1822, for instance, runs in such a way as to prove that all large cases were, without exception, to be tried by panchayets. The order runs thus :

All complaints to be made to the mamlatdar if not previously settled by the patil. If the mamlatdar cannot settle the dispute, he must call a panchayet, and their decision is to hold good unless the party appealing can show some glaring impropriety on the decision of the panchayet. The panchayet is formed by calling over a roll of the inhabitants within reach of the Court, the parties challenging any to whom they object. When they have agreed on four, a fifth is to be appointed by the four, or by the mamlatdar, or by the parties, and this constitutes that panchayet. When the parties can get two men each of their own choice willing to serve, this is to be permitted, but the other is to be preferred. Original trials to be conducted by panchayet also, who are to try the cause, the Collector presiding and a Hindu Judge

sitting by; they are to pronounce the fact, and the Hind: Judge the law. The Collector is to carry it into execution. This is for capital cases and important trials. Petty offences are to be tried summarily by the mamlatdar."

Panchayets versus Munsiffs

Although district munsiffs were introduced after a few years of the new administration, panchayets still retained considerable powers, and as was detailed in a previous chapter, were in some districts given the widest powers, both criminal and civil. But the general idea, particularly after Elphinstone's policy had demonstrated the need for still greater revision, was to have disputes adjusted as near as possible to the place where they arose and in full conformity with the common law of the country. For that reason, a circular was sent out on May 6, 1823, to all Collectors calling their attention to the new rules governing the work of panchayets and munsiffs, and summarising them for general publicity; and among these rules was one stating that panchayets were confined to particular classes of causes unless when both parties desired that mode of trial.

This shows anything but a tendency on the part of the Government to abolish the system if it was still wanted. The same set of rules, it is interesting to note, provided for membership in panchayets to be named from rotation list when they could not be procured by the parties without objection; it was also made compulsory to serve on panchayets when thus called,

whilst greater strictness and regularity of proceedings were also specially enjoined.

Although all cases could, on requisition of parties, be tried by a panchayet instead of by the munsiff, there were ten varieties of causes which the munsiff could not touch but which had to go to panchavets. These were cases relating to religion, marriage, peculiar customs of places, watans or haqs, division of property, maintenance, old and intricate accounts, disputes between two inhabitants of the same village within the sum of Rs. 50 of personal property, suits for damages for alleged personal injuries or personal damages of any nature, and boundary disputes. All these types were both cognisable and triable by panchayets, although later it seems that, if the parties voluntarily agreed in writing, they could be submitted to the munsiffs.

A Mixed Programme

Looking through the old judicial records and statistical tables found in the Daftar, it is not surprising, therefore, to find that panchayets frequently heard cases dealing with watan disputes, meeras, debts, family quarrels about shares of a house or field, inam, precedents, mortgages, adoptions, patilship, kulkarniship, marriage, deposits, village boundaries, site of a house, assault, trespass, theft, adultery, maintenance, wills, suits for salaries, breach of promise, and slavery. In civil suits they had power to decide even when large sums were at stake, and in one return showing the number of prisoners confined in the Poona jail for civil actions there are instances of suits covering

amounts from Rs. 136 to Rs. 4,008, the period of confinement apparently being indefinite but extending in cases well over two years. Some suits were for ordinary debts, whilst is one case of a marwari suing another marwari for Rs. 239. The same document incidently shows that the panchayet ordered civil imprisonment in cases where a man would not accept its verdict over the division of some unvalued property, and also that failure to obey a panchayets order relative to the return of some purloined secret papers also landed the defendant in jail.

A number of different statistical returns for the various districts further show the popularity of panchayets in special cases, and the examples referred to in the appendix tables give details regarding the two such widely-separated districts as Khandesh and the Karnatak, showing that disputes about debts, wills, and promises of presents were easily the most frequent suits heard by panchavets in 1825, proving also that, as the years rolled by, the celerity with which the local munsiffs disposed of cases resulted in a growing tendency for both complainants and defendants to make a special request for "panchayet" cases to be tried by munsiffs, either as a court, as a referee, or an arbitrator. This is particularly marked in Khandesh and Ahmednagar, where the regular courts handled cases which a few years before had been solely decided by pancha vets. Yet the records make it amply clear that this change resulted solely from the desire of the people, because in 1825 circulars were sent to all the local officers reminding them of the rules by which as many

cases as possible were to be decided through the medium of panchayets.

Panchayets versus Mamlatdars

Civil money suits also appear to have declined for the same reason, for a disjointed series of very long and complicated tables dealing with the judicial administration shows that the local courts were as popular in those cases as in all others. There were no munsiffs in those days, but their place was filled by the mamlatdars and amildars, whose decision as a rule was more or less of the nature of an arbitration. But the figures in one of our Tables show that out of 13,189 civil suits decided in the four districts of Poona, Ahmednagar, Khandesh, and Dharwar in the three years between July 1, 1819, and July 1, 1822, over 10 per cent were decided by regular panchayet, about 17 per cent by raznamas or private arbitration after the case had been filed, about 19 per cent by mamlatdars and amildars, and about 17 per cent by decrees of courts. The exact percentages under these three heads for each of the districts are so illuminating as to demand their inclusion here in the first table :

District	Total cases	By Panchayets	By Razanamas	By Mamlatdars	By Courts
Poona	8633	13%	35%	52%	1.5%
Ahmednagar	2753	9	17	9,,	65,,
Khandesh	326	78	7	5.5,,	9,
Dharwar	1477	56	19	16,,	9,,

These figures show that with the exception of Ahmednagar district, the ordinary civil courts were not often called upon to decide cases, and even in Ahmednagar the panchayet accounted for nearly onetenth of the total in the three years, whilst in the following year the percentages radically changed, there being a big drop in the number of court cases and an increase in the number of panchayets. But in the Khandesh and Dharwar districts panchayets were apparently always very popular and greatly helped the provincial average, even though Khandesh was populated very largely by illiterate aboriginals or Bhils.

The average number of panchayets held during each month of 1825 in the Poona district then rose to about - 18, concerning which there were only six successful appeals. In fact, certain registers contain notes to the effect that the decisions of the panchayets were both fair and thorough, whilst in another case

briefly cited in the rough Poona Appeal Register of 1824 the Commissioner states that in the appeal against the Collector's decision "the case concerns such an intricate situation of accounts that it must be referred to a panchayet, and the Collector's must be suspended pending the panchayet's verdict."

Unsuccessful Appeals

It is particularly interesting to note in this connection that a document dealing with Poona month by month for 1825 shows a much larger percentage of successful appeals against the judgments of regular European or Indian "agents" than against panchayets, the figures being 11 sentences confirmed and 10 reversed in European officials' verdicts, 18 confirmed and 13 reversed in Indian officials' verdicts, and 30 confirmed and 6 reversed in panchayet appeals. Full details are given in tables at the end of this chapter, all of which will give any particularly enthusiastic reader a most fruitful statistical field from which to harvest many interesting facts.

In view of the suggestion made a few paragraphs ago to the effect that the decline of the popularity of the panchayet was due largely to the length of time these bodies took to come to a decision, a most interesting set of facts has been here compiled for the Satara district, a careful indexing of scattered letters having taken When When settled co referred to by latdar made it possible for the present writer to outline the exact life-history, as it were, of cases referred to panchayets. Out

Place	Nature of case	When taken to Mamlatdar	When referred to Panchayet	When settled by Panchayet
Koregaon	Watan Meeras Debts	27-2-1818	28-2-1818	2-2-1822
		1-5-1818	4-7-1818	17-9-1821
		13-4-1819	13-8-1819	Not settled by end of 1822
	Inam Precedence Adoption	13-6-1819	13-6-1819	19-12-1821
		12-9-1819	13-9-1819	4-11-1821
		17-12-1819	19-12-1819	Not settled by end of 1822
Wai	Patelship	7-5-1818	23-12-1818	Do.
	Property share	29-12-1818	12-2-1819	18-8-1821
	Marriage	18-5-1820	28-5-1820	18-11-1821
	Watan	25-6-1819	27-8-1819	11-10-1820
	Adoption	5-5-1818	16-7-1818	Not settled by end of 1822
Kattao Pandharpur	Debt	16-9-1820	14-5-1821	14-8-1822
	Watan	26-7-1818	21-11-1820	Not settled by end of 1822
	Adultery	26-9-1818	28-9-1820	Do.
	Maintenance	1-8-1819	1-9-1820	Do.

of this compilation, several typical and representative cases have been selected for reproduction on this page.

A complete summary of all the cases available for the Satara district shows that even by the end of 1822, no decision had been reached in nine cases which had been referred to panchayets in 1818, in 25 cases of those of 1819. and 26 cases of those in 1820, whilst altogether there were 133 cases at the end of 1822 which had been registered more than twelve-months previously. A study of these cases, however, reveals that, in general, the cases were referred to panchayets within a very few days after they had been reported, and that in some cases the panchayet was formed the same

day as the complaint was taken to the government official. But with a number of people to satisfy as to time, place, and personal convenience, it is not surprising to find that the hearings were protracted, although on the other hand an examination of the cases which were outstanding shows them to have been 45 relating to disputed ownership of property, 34 to debts, 32 to watan disputes, 16 to meeras claims. 10 to inams, 8 to sites of houses, 5 to adultery, 3 to adoption, 2 to assa ult, and 1 to maintenance.

At this distance of years from that period it would not be fair to attempt a criticism of the long time it took for those panchayets to decide their cases, especially as some intricate watan and land disputes even now take many months, -and even years, --for a legal or administrative decision to be given. Nevertheless, it seems tolerably certain that it was the people and not the British Government who were responsible for that decline in the popularity of panchayets which later led to their abandonment. That is to say, the ordinary court system of the British ultimately proved a much more convenient and speedy way of settlement. Yet we are bound to admit that had the old-time principles of conducting the panchayets been adhered to strictly, it is possible, and even probable, that the system would have retained its popularity amongst the rural classes and masses, especially as the growing power of vakils and pleaders and other legal advisers so complicated the British court system and made justice so much more expensive.

But as this question of the cause or causes of the decline of the panchayets and their possible resuscitation in these modern times is such an important problem, it must be given a separate chapter in this work, particularly in order that the lessons learned from the Peshwassystem and Elphinstone's retention of it can then be more graphically outlined and more thoroughly discussed.

CHAPTER SIX

Lessons of the Past

Perhaps this last chapter should be prefaced with the very frank and explanatory statement of Mr. Hamilton, in temporary charge of the Poona Residency, in a letter dated. September 13, 1809 :

"The procurance of justice in the Mahratta Country depends upon circumstances so very peculiar in themselves and so characteristic of the people that failure is rather to be regarded as a fit subject for concern than suspicion."

If therefore in this study, undertaken 120 years later, we see glaring defects and dangerous abuses, we must remember the conditions under which justice was sought to be meted out and realise that any system which could be even tolerably successful under such conditions must have had in it a potentiality well worth investigating.

In this final chapter of our detailed survey, we propose to summarise the main lessons which we can learn from the various facts and figures outlined in the foregoing chapters. These lessons, moreover, will be given at some length because we feel that they reveal so many fundamental essentials of the panchayet system and because they shed a flood of light on our modern efforts to revive panchayets in accordance with the democratic principles of the twentieth century.

It has probably come as a shock to many of our panchayet enthusiasts to learn that in no administration

of mediæval or modern India (as differentiated from ancient India B.C.) have panchayets functioned in an administrative capacity. That is the outstanding feature of our researches in the Poona Daftar, for neither in the Residency Records nor in the Peshwas' Records is there a single reference to a village panchayet which controlled or supervised the internal economy or routine of a village. As a matter of fact, so far the special researches into the Peshwas' Daftar, which consists of vast numbers of accounts and daily diaries, have not revealed even the mention of the word panchayet : and it is clear that if panchayets had formed an integral part of the general administration, they would have figured in the records somewhere or other. This means that the only reliable information in existence regarding the working of panchayets, and of their actual constitution, over a century ago, is that which has been examined in detail in this book.

And all the evidence thus obtained forces us to admit that we cannot trace any form whatever of democratic self-government by which elected or nominated groups of villagers administered the civic affairs of the village community, so that any modern system which aims at establishing panchayets as chota municipalities cannot be fairly regarded as a revival of India's ancient system of which we hear so much praise. Yet when we announce this conclusion, it does not mean that the fundamental principles of that ancient system cannot be utilised as a basis for our modern democracy, and the following lessons which can be gleaned from this detailed study of the Peshwas' system

prove most conclusively that panchayets can even to-day be rendered both useful and popular, even though the original - system has to be adapted and modified to suit the totally different conditions of the India of today.

The lessons here enuinerated, it might be mentioned, are taken more or less in the order in which they are derived from the different sections of chapters three, four and five, although where deemed advisable some of the lessons in the different chapters have been combined to save unnecessary duplication.

As a background to this final summary, however, we think it is advisable to remind all readers that the panchayet system could not have lived through more perilous and disadvantageous times; and no arguement in its favour is greater than its own survival through conditions which would have completely abolished any other system of justice in any other country. A system which has such vitality, and which can prosper with tolerable cleanness in spite of evils and corruption, is a system which should be treated with respect; and if such a system could achieve its purpose throughout the time of the Peshqyas and in spite of civil wars and several complete breakdows of administrative madiners, then that system has every possibility of being adaptable to such conditions as exist in India today. . And now for the lessons which our stucty has taught us.

Lesson No. 1.

All local disputes, no matter of what kind were referred to these panchayets, which sat as juries composed of the disputants' neighbours From murder

charges to petty quarrels over a few spees' loan came under the jurisdiction of the panchayet, of which it was officially said by British district administrators. 'the only semblance of justice in the Mahratta Empire was obtained by panchayets, for without them there was no justice at all, either for rich or for poor. nor for important or trivial cases.'

This plain fact appears to lay the very best foundation for the idea that local administration to a limited degree is possible in rural areas, for There legal problems could be so safely entrusted to the people, surely local administrative matters could also be left in their hands, for, after all, civic problems are very little different in principle from personal. problems.

Lesson No. 2.

The ideal of the panchayet system as ascertained by the early British administrators was to produce between two disputants a reconciliation and a compromise for the general good : and surely no better description of the essence of municipal administration or general local self-government could be given than that.

This ideal made the system essentially a democratic one: or at least it showed that it possessed the fundamentals of our modern democracy. No caste, we are told, was barred or exempted, and although there were such things as caste panchayets, there was no trace of any autocratic caste chief to decide ex parte disputes. The panchayet, in fact, was the great leveller of all sections of the community and in all the records that

have been examined in the Poona Daftar the present investigator has not found a single instance of that caste hatred and quarrellings that are so common in these days. The question of depressed classes does not enter into this particular investigation, but it is worth while mentioning in passing that not one of the many dozens of reports of British officials makes any reference to the problems which today confront the social reform of the people of India. It cannot, of course, be inferred from this that there was no such thing as untouchability, but the problem was evidently not nearly so acute as it is made to appear today.

Another illustration of the democratic nature of this system is to be found in the statement of one officer that in caste panchayets general suffrage established the power of the head of the caste by the weight and respectability and intelligence of the individual." By means of this system, any such thing as tyranny of office was not tolerated, which suggests that our modern outworkings of local self-government have produced some totally different characteristics among those participating in any kind of local jurisdiction.

Lesson No. 3.

The panchayet system also contained in it the germ of modern popular suffrage, for although its general principle was that of nomination, there were many instances of direct selection and election, for there is no doubt about the fact that the plan adopted for the composition of the panchayet almost amounted to our modern elections on a small and simple scale. Similarly,

the President or Empire of a panchayet was very frequently not an official, and the method of choosing the President by the majority vote proves that even the villagers of India were admittedly conversant with the principle of election.

Lesson No. 4.

This question of the popularity of the rotating method raises the sister-problem of civic responsibility. The present writer has several times been asked whether there are any signs in the old records of the general populace of the Mahratta Empire recognising or exemplifying the characteristic of the responsibilities of citizenship. In reply it is only necessary to refer to the details which have been given regarding the tray in which attendance at panchayets was almost compulsory in the time of the Peshwa, for although there were no set rules governed by fines, the system worked in such a way that no man could get out of serving unless he had a very good reason for stopping away. The general idea seemed to be that a favour given to-day would most probably be needed in return to-morrow.

Then again, the very survival of the panchayet during - the days of commotion and turmoil and corruption showed that amongst the masses there was, no matter how latent, a public morality which surmounted - all the evils of the times. The panchayet system, indeed, was based solely on the agreement of a man to serve his neighbour and his community, and no matter in what light the system is studied it is very manifest that the

simple duties of citizenship enter fundamentally into its practice and success.

Moreover, there is the additional point which has been brought to light revealing that leading citizens were frequently consulted in important criminal cases, thus showing that the Government recognised the value of a citizen's opinion even though that citizen might be an illiterate (but long experienced) villager.

It is also worth noting that the records show that illiteracy was most certainly not a bar to the creation of really healthy and useful public opinion. In fact, towards the middle of the second decade of the nineteenth century it was public opinion which almost killed the panchayet system through the methods employed making the cases so protracted. Lesson No.

Lesson No 5.

The question of public opinion has another phase, namely, that of the way in which panchayets were amenable to it. Under the Peshwas there were methods of making the members of panchayets reach decisions with reasonable promptitude, and although the patience and kindheartedness of the later British officers unfortunately resulted in a change in this respect, the records show that it was panchayets which were responsible more than any other influence for nullifying the art of procrastination which among the Mabattas had been developed almost to a science. The system must be remarkably elastic for it to be so amenable to public opinion as firstly to kill the baneful results of that procrastinating art, and, secondly, to be sufficiently

strong to kill the popularity of panchayets when conditions were such that they could be strung out over an indefinite period.

Lesson No. 6.

Another remarkable thing about the panchayet system is that, as a general rule, it attracted a very good class of people. Towards the latter end of its career, the system admittedly produced a community of professional panchayet-wallas, but for the greater part of its history we find the system aiming at seeking the assistance as members of the most respectable people, and men of good sense and probity," many of which were available in every district. The very system cultivated habits of reasoning and good judgment, and the fact that over a long period of years the selection in many parts of the Mughal Empire was made according to a rotation list suggests still further that inefficient members were the exception rather than the rule. The character of the members was also shown most vividly by the facts outlined in the next two lessons.

Lesson No. 7.

In theory, and very often in practice as well, nothing could have been more simple than the procedure of the panchayet, which shows how eminently suitable it was for the illiterate villagers of rural India. Panchayets right the way through, indeed, have been marked by a simplicity of procedure which is worth a special study of its own, but which perhaps need not be entered into here. But because of their utter lack

of complicated routine, their decisions were nearly always accepted, even in spite of the fact that such decisions were more often than not the exposition of the general opinion of the members rather than any regular judicial proceedings of & minor court of law.

There are many instances on record where the members of panchayets, for instance, depended more upon commuonense and local knowledge of facts than on regular routine. That is to say, it was more often the manner rather than the matter of the witnesses and parties. The Mahratta rulers undoubtedly realised that in any system which was to include the ordinary people, simplicity of form had to be the keynote, and for that reason we find panchayets being successful and popular in spite of the apparent lack of control and power of enforcement. .

Lesson No. 8.

Probably the most fruitful source of their popularity, however, was the great fairness which almost universally marked their decisions. The system itself was such that it gave abundant opportunity for all the best - traits of the individual and communal character to be brought out, and..in no respect were these traits more marked than in the justice which accompanied all their decisions. It is. true that bribery and corruption were not absent from the panchayet system, especially during certain troublous periods, but the records clearly show that bribery was never advocated and seldom condoned when proved.

The great popularity of panchayets was undoubtedly due to the fact that 2. they dispensed justice in the least

arbitrary form. By far the majority of them were conducted with integrity and in a perfectly legal way according to the knowledge of the members, and the succinct and solid way in which the judgments were drawn up showed a perspicuity, a fairness, and an intelligence which should serve as a very great encouragement to those who are looking for arguments to support the claim for greater measurement of local selfgovernment to be given to even the poor and illiterate classes.

Elphinstone in many of his letters expressed the greatest faith in the judgment of a panchayet, and he frequently preferred it to the considered views of the mamlatdar or even the Collector. He found it the quickest and the safest revealer of truth in a difficult period of contradictions, and not once did he complain that the system was unfair, corrupt, or likely to promote injustice.

Lesson No. 9.

Yet another remarkable thing about the panchayet system was its extraordinary adaptability. It could be used for any and every kind of case, whether criminal or civil, whether simple or complicated, and incidentally showed that the people themselves possessed the same characteristic. Nor was it only in the matter of the kind of cases that The system proved so useful and so elastic. It was also adaptable to changing

conditions, for it survived and prospered in all parts of India under various Rulers in different centuries among several religions and in spite of political rebellions.

The system itself, moreover, was such that those operating it profitted by it and were themselves encouraged to adaptation and instruction. The panchayet system was, in fact, both a training-ground and a workshop, and its greatest secret probably was that it served the rich and the poor with equal justice. A system such as that is surely sufficiently adaptable to be stretched or twisted to meet even the changed conditions of these days.

Lesson No. 10.

A particularly striking feature of the system as practised under the Peshwas was that it made use of the "caste" element constructively rather than destructively. There is no need to deal with this point at length; but it should be noted that in the days of the Peshwas, caste was used to its fullest capacity without creating any of the turmoil and riots and bad feeling which is so common to-day. This proves that even the much-maligned caste system can be turned to advantage in local administration if only the right method is used.

Lesson No. 11

Similarly tradition was used as a means to an end and not regarded either as fact or as fiction. It was, in a word, adopted for what it was worth, and although it naturally had a greater influence then than it would have now in these days of widespread - education, it must be

admitted that the panchayet system utilised every. Possible agency and influence to assist it in carrying out its schemes for justice. We would not, of course, advocate a dependence upon tradition in these days, but not even the greatest iconoclast would be so rash as to declare that even to-day tradition has lost its full power and hold over the people of Indian villages. Rightly used, certain features of tradition could even now be turned to advantage, for, after all, nearly every country in the world boasts of and profits by its ancient traditions. But the fact that so much was made of tradition shows that care will have to be taken to see that the panchayet system is not permitted to keep alive such old ideas as those which let off the Brahmin from capital punishment simply because he was a Brahmin.

Lesson No. 12.

In spite of their great power and universal application, it should be noted that theoretically, if not always in practice, panchayets' decisions were subject to the approval and confirmation of the Government, thus showing that they were used to being ruled with a strong hand when necessary. There was no question of rural independence if by such independence we mean complete autonomy free from any interference from Government officials; and although it was not often that Government did intervene, the right to do so was kept alive. As one of the officers so clearly described it: "The Mahrattis are very tractable, and although they mildly linger in obedience, they seldom refuse it altogether to their superiors."

Lesson No. 13.

By its very simplicity and con.position, the panchayet system was especially suited for village disputes und problems. For a long time, indeed, its success was dependent entirely upon the power and influence of slie village patil and the continuance of the original village polity, and although, to-day the village is not the isolated unit that it once was, the olganisation is still so very identical that there seems no reason why the panchayet system should not still be utilised in a nodern form to solve village problems, even though they be other than judicial.

Lesson No. 14.

Yet panchayets throughout their history have always needed considerable supervision. For many years it was the wide powers of casto which gave that supervision, and when the British took over, they quickly realised that special supervising officecs would be needed to advise and to control the panchayets. Elphinstone actually issued special orders that local officers were to pay particular attention to panchayets, and for the first few years reviving the system was one of the first duties of tho Collectors. To-day Government have so many different departmenta” orgiinisations throughout the districts that it should not be difficult to exercise the most useful supervision in addition to the

work which the recognised local self-government bodies would do.

Lesson No. 15.

Yet despite this supervision, or because of lack of it under the Peshwas, the great defect of the system quickly became apparent to Elphinstone and his officials. That defect was that minorities suffered always. But - with the Central Government either 'indifferent or engaged in war, such defect was only natural: and there is little doubt that had the administration been stable and reasonably secure at the capital, the panchayet system in the rural areas would not have been so difficult to work amongst such minorities as the Mohammedans. The system itself had ample scope, with its adaptability, to cater for both majorities and minorities, and there was no reason why a panchayet composed entirely of Moslems, or at least a Mohammedan majority, could not have been appointed to try cases which were distinctly connected with the Moslem religion. In all other matters, where a common law prevailed, adequate supervision would, of course, ensure that justice was done to either Hindus or Moslems. It is apparent that in these days this particular problem would not present so many difficulties as it did it century or so ago, although when we think of utilising the panchayet system for local administration as well as for the dispensing of local justice, adequate safeguards

must have introduced to guarantee that minorities do not suffer from communal jealousy. It should be remembered that panchayets were very popular under Moslem rule..

Lesson No. 16.

"There must be no pleaders," said the British officers. In other words, the members of panchayets were perfectly capable of understanding and deciding its merits without the aid of professional debaters and twisters of the law. There is no need to labour this point. But the old system certainly shows that even the ordinary villager was considered as competent to look after his own interests as his neighbours were considered capable of judging his complaint or his character. Therein lies a very important lesson.

Lesson No. 17.

Although the panchayet system provided for everything to be done according to a set of rules or customs, there were times when it was found that justice was more likely to be done by resolving the panchayet into a sort of round-table conference. And for the decision of such a conference to be accepted by the people concerned shows that they had the most explicit trust in such a method of settlement; and this is a striking suggestion that administrative matters, which are always settled by roundtable conferences of

Ministers, or district local board members, or municipal councillors, might just as easily be exemplified in the solving of Village problems by- panchayets along the lines already introduced in certain provinces and Indian States.

Lesson No. 18.

A. lesson must also be learned as to why the panchayet system died out. It was not killed or neglected by the British ; but rather the people themselves killed it by their black way of carrying on the system. Being so essentially democratic, its success is dependent entirely upon the will and determination of the people. And when they got tired of it, then the British Government could do nothing else but let it die a natural death. But at the same time, there seems to be no reason why, in these days of general desire for participation in the • general administration of the country, some scheme might not be evolved based on the principles of the original panchayets by which even the villagers might take their part in dealing with simple judicial as well as administrative matters. If the people themselves desire to work panchayets, then there is nothing to prevent their revival being a great success. But a good deal of propaganda work and supervision will have to accompany any such revival.

"Cherish what is good," said El-phinstone; and his advice is as true to-day as it was in 1819. The panchayet system has what he called "vital principles,"

and once they are understood and adopted, there seems to be no reason why we should have to write "failed" across our modern efforts to take democracy to the villages. Elphinstone even realised that some of those "vital principles" .. at first looked like defects; and hence in reviewing the possibility of reviving the old panchayet system along the old lines the greatest care will be needed to see that real essentials are not scrapped. In other words, it will be now, as with Elphinstone, a case of "Safety First."

Previous to the Conquest

Before closing this chapter, it should perhaps be mentioned that considerably before the time of the Battle of Kirkee and the conquest of the Mahratta country, Elphinstone and other British officials had demonstrated their faith in the panchayet system as a means of settling disputes of all kinds. There are many references in the old letters in the Residency Daftar: which illustrate this point, and no better conclusion. to this chapter could be given to show that panchayets were a regular form of administration throughout the Peshwa's dominions.

For example, on June 1, 1814, Elphinstone wrote to Chief Secretary Tarden at Bombay that a dispute between two well known Brahmins had been referred to a panchayet at Seroor "according to the custom of the country." In this particular case, the losar appealed to Elphinstone, then Resident at Poona, whose reply was that he did not feel himself justified in examining a case thus decided. So he rejected the appeal summarily. The

Government of Bombay were then petitioners, but Elphinstone 'advised further rejection, as "full redress has been obtained from the complainant for the fraudulent practices from which he had suffered in his dealings with the defendant; ..." and other merchants of Poona." And Elphinstone's policy is supported by the fact so frequently emphasised in later reports that it is one of the invariable rules of the panchayet 18 originally instituted for the object of doing justice not to enter upon business without having the consent of both parties to abide by the judgment." This really precludes any appeal.

An 1807 Case

Two years before this, moreover, Elphinstone sent a letter to the Resident at Fort Victoria asking him to make arrangements to transmit either an original document which the panchayet have called for in order to compare it with a copy which has been produced before them." The letter further requested that "in order to prevent delay," the Resident himself should attend to the request so that the panchayet might "do justice as expeditiously as possible."

Further letters of a still earlier date shed a most interesting light on the difference between an ordinary band of arbitrators and a regular panchayet. This particular correspondence deals with the work of the Judge and Magistrate at Broach. It appears that a dispute arose over the boundary between the Peshwa's villages of Uneeta in Oolpar and of the village of Bholao in the Company's territory in 1807, and for &

long time there was much squabbling over the matter. Then the Collector took the matter in hand, and decided to appoint four arbitrators, two from the British territory and two from the other side. This did not suit the Peshwa's people, and so a further suggestion was put forward that the Peshwa appoint an Umpire to sit, with the four. This brought no response, and so as the sowing season was fast approaching, the Collector in order to effect justice to both sides, and seeing that there appeared no progress towards settlement, arranged that Dearam Dessage and the two patils of Bholao, being solemnly Sworn, shall in consonance with the custom of the country walk over the premises, and according to their track, the bounds of the land shall be fixed."

But even this did not suit ! Peshwa, for later on in the year (September 1, 1807) Colonel Barry Close, Resident at Poona, wrote to Broach intimating that the Peshwa had appointed Hurry Trimbuk to go to the spot to settle the whole affair. Trimbuk's plan, we are further told in this letter was that the points in dispute should be determined (over the head of the four arbitrators who had already settled the question) "by a panchayet composed of 13 members, of whom 4 shall be from the Company's districts, 4 from Oolpar, and 5 from the Gaikwad's territory, and that the majority of voices should decide." Close replied that he was not aware of there being any objection to this plan, and he added : "I would persuade myself that the Wishes expressed by Ballabhadre are sincere, and that if you can spare time to enter in again on an adjustment of the subject under

consideration, you will find Hurry Trimbak worthy of the honourable appointment conferred on him."

From this it is clear that a regular panchayet superseded any ordinary committee of arbitrators, and even was considered superior to the regular custom of the country in settling a boundary dispute.

But it should be noted that the only mention of Panchayets in these letters is to settle intricate problems such as these and not in any way as regular administrative or judicial bodies established by custom, hereditary, or election.

A Candid Tribute

In view of these early references to panchayets it is not surprising that James Grant could write in S'te 1818: "Panchayets are certainly car popular. If well acted up to, the ZF panchayets would always be a granii to arm against injustice and oppression. VI That panchayets should still be pogo pular, notwithstanding the corruption ir. and dishonesty which have been us. ually practised, clearly shows that in there is much more good than evii er l'esulting from them.

England of old had a system or series of courts very similar to the panchayet system of India. But m1 whereas in England their use was superseded, perhaps inadvertently, byz the improved state of society which called for rules applicable to the more general and intricate relations which must take place as nations ertend their connections, in India for a time they fell into disuse not from a general improvement is the condition of the people, but from a general abandonment of justice

altogether. But they lived through it all, and when revived during the time of the Peshwas they formed the strongest defence against unfair treatment, incidentally revealing characteristics which lifted them entirely out of the general run of small citizens' courts, or trade guilds, or juries, or arbitrators.

Panchayets and Swaraj

Yet even to-day, their real nature. has been forgotten. We have seemingly revived them, but it has been a l'evival in name only. They deserve the closest study of all who are in any way interested in, or planning for, the extension of local selfgovernment, and even though such a study should bring about a complete revolution of ideas upon the original nature of panchayets, India must realise that they contain in them an amazing potentiality for Swaraj.

In fact, the words written by Briggs of Khandesh in May, 1822, are as applicable to-day as they were at that distant time :

"The conquests of the Mohamedans had only extended partially over the Southern parts of India, and accordingly in many of the provinces we have found several of the Hindu institutions in existence. And as our information has extended, **we have gradually become more open to conviction of the advantages to be derived by the employment of the upper classes of the people in directing, and of the mass of the people in carrying through, the duties of civil work** al some of its forms have still survived the rude shocks

it has experienced, and it is still venerated, however in practice it may have been misapplied. We, I conceive, are yet ignorant of the true shape of this machine, but it is 1° quite necessary to comprehend its so structure and restore it to its original functions before we can hope to render it subservient to the purpose for which it is intended."

If this little survey has done anything to remove that ignorance and to reveal the work which panchayets can still do, then the research and the delving into dusty records wilk. have been well worth while.