

**CHAPTER IV**

**JUDICIAL PRINCIPLES AND PRACTICE**

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#### JUDICIAL PRINCIPLES AND PRACTICES

The nature of justice can be understood by analysing the judicial principles and practices prevalent in the State. As far as the judicial principles followed in the Kolhapur State two subjects warrant our attention. One is the policy followed in case of the Criminal Castes and secondly the importance given to speedy justice. While these two principles were responsible in giving healthy tone to the judicial system, the practice of giving exemptions to some of the prominent persons in the feudal framework was responsible in continuing the inequality in the judicial system.

During the rule of Shahu Chhatrapati criminal cases and cases resulting from the violation of traffic rules were on the rise. These cases affected the judicial practices of Kolhapur. The question about the evidence in criminal cases formed part of emerging judicial practices.

In addition to these aspects the working of the institutions of advocates and government prosecutors has been also studied in the chapter. The special relations between the ruler of Kolhapur and the feudatory Jagirdars in judicial matters gives valuable information about the judicial principles and practices.

The chapter, therefore, consists of the following subjects :

- 1) Criminal Castes and Shahu Chhatrapati.
- 2) Justice Delayed.
- 3) Appearing before the Court of Law.
- 4) Traffic Rules.
- 5) Evidence in Criminal cases.
- 6) Advocates.
- 7) Government Prosecutors.
- 8) Kolhapur Feudatory Jagirs ; Judicial relations.

Criminal Castes and Shahu Chhatrapati :

The British Government had declared some Castes as the Criminal castes eventhough some of the members of these castes practised their traditional professions, for their livelihood. In view of the British Government the castes like Kaikadi, Mahar, Mang, Berad, Pardhi, Garudi, Kolhati, Bhamate and Waddar were main criminal castes in Bombay province.<sup>1</sup> Their occupations were making baskets and acting as middlemen in sale and purchase of animals.<sup>2</sup> Only some times some of them beged for subsistance. However, many of them worked as labourers.<sup>3</sup> Of these criminal castes the members of the Mahar<sup>4</sup> and Mang<sup>5</sup> Castes had fixed habitation and were a part of the agrarian system of the villages.<sup>6</sup> Traditionally Kaikadi, Kolhati, Berad and Waddar were decoits.<sup>7</sup> Bhamate were the pick-pocketers.<sup>8</sup> The members of these castes were under the observation of police and had to give hajeri to the police daily.<sup>9</sup> They could not leave the village without the permission of the Police Patil.<sup>10</sup>

In Kolhapur State also the practice of Hajeri for the criminal castes existed. It was laid down in an order of 20th September, 1890, that those who had to give Hajeri in the near police Chouki, must do so without any omissions. If these people failed to do so they were to be prosecuted in a court of law under Article 17 of the Indian Penal Code.<sup>11</sup>

Shahu Chhatrapati by an order of 27th July, 1918, abolished the Hajeri of the people from Mahar, Mang, Ramoshi and Berad castes.<sup>12</sup> Shahu abolished Hajeri because of the fact that the practice of Hajeri by itself created many difficulties for the criminal castes, as they could not practise any honest profession. However, exception was made of those members of the criminal castes who were found guilty and were, therefore, punished. Such culprits were not given exemption in Hajeri.<sup>13</sup>

Later on in the same year the Hajeri of the members of the Gattichor caste except the culprits was abolished.<sup>14</sup> The Hajeri of culprits would be discontinued after the period of five years from the date of his release from the prison, provided the persons proved his good behaviour in these five years.<sup>15</sup> It can also be noted that the member of the Kalkorvi caste belonging to the criminal castes, being traditionally not settled at one fixed place, had to give Hajeri daily with the police patils.<sup>16</sup>

Similarly, a confirmed criminal like Shivappa Toppanna Berad residing in Petha Gadhinglaj, was banished from Kolhapur.<sup>17</sup>

The Farse Pardhis who were also a criminal caste were appointed as watchman,<sup>18</sup> at Sontali near Kolhapur and employed on the construction of road from Ambewadi to Sontali.<sup>19</sup> One of the leaders of the Farse Parthis, Lalya, son of Jalal, was taken in the police service. The Bijapur police requested Shahu Chhatrapati to send a competent policeman to investigate into the theft and decoities in Bijapur District. Lalya was successful in tracing the culprits in a theft in Bagalkot Taluka of Bijapur.<sup>20</sup>

#### Justice Delayed :

Justice delayed is justice denied. This is a significant maxim reflecting upon the importance of getting justice in good time. The interest of both the plaintiff and the defendant, though not of the advocate, are served by speedy judicions.

With this view in mind Shahu Chhatrapati of Kolhapur passed different orders for the acceleration of the judicial process. He, as the Supreme Judge in Kolhapur State, was interested in giving speedy justice to the people. In June 1894, Shahu Maharaj wrote, "I am glad to say that I am going on well with my office work. There are many cases on the Council's time waiting for final disposal, say about 600, of which 250 are special appeals. I dispose of about six every day in addition to the current work, and at this rate I think I shall clear of all arrears in a few months."<sup>21</sup>

There were, however, a number of cases which were decided by the courts lower than the court of the Chhatrapati. As the number of cases in these courts increased the judges could not cope with the cases. Shahu Chhatrapati by his order of October 7, 1889 started Munsiffs court known as 'Karveer Munsiffche court',<sup>22</sup> in the city of Kolhapur with effect from October 15, 1889.<sup>23</sup> The decisions in criminal cases, especially in murder cases, the Chhatrapati realised, were given after a long period. He, therefore, issued an order in 1895,<sup>24</sup> that the decisions in the criminal cases should be delayed.<sup>25</sup> He ordered all the Magistrates in Kolhapur State that their work in this respect would be closely observed.<sup>26</sup> The Magistrates, it was laid down, should give speedy decisions in criminal cases.<sup>27</sup>

One of the important factors in the delay of justice had been the attitude of the advocates,<sup>28</sup> who had a number of cases in different courts. In such cases, it came to the notice of Shahu, that the advocates demanded future dates for pleading their cases.<sup>29</sup> It was ordered that such leave should not be granted to the advocates on this ground.<sup>30</sup> The advocates concerned if busy in other courts, it was laid down, should appoint another advocate to plead the case.<sup>31</sup>

Appearing before the court of Law :  
Exemption to some persons

The feudatory jahagirdars of Kolhapur State, it appears, enjoyed among other privileges, the judicial privileges also.

There was the case of Dondhiraj Chintaman alias Tatyasaheb Patwardhan, which raised the question about the type in which the cases involving such jahagirdars could be admitted. Shahu, by his order of 1895, ordered that the cases involving feudatory jahagirdars of Kurundwad, Sangli, Miraj, Jamkhandi, Jath, Mudhol and Ramdurg, could be tried only in the District Court of Kolhapur,<sup>32</sup> and not in any other court inferior to the District court.<sup>33</sup> The physical presence of these jahagirdars was also not required in the District court.<sup>34</sup> Even the Sardesai and Nadgonda could get exemption for not personally attending the civil court in Kolhapur. One Lakhamgonda Basavprabhu Sardesai, who was Nadgonda in Prant Hukeri, Sansthan Vantmuri, requested Shahu that it was below his prestige to be personally present in civil court<sup>35</sup> and requested that he should be given exemption for personally attending that civil courts in Kolhapur.<sup>36</sup> Shahu by his order of May 12, 1903, gave exemption to Lakhamgonda Basavprabhu to personally attend civil courts in Kolhapur State. The Sardesai of first rank in the Kolhapur State, it appears, enjoyed this exemption. When Shrinivas Pandit alias Bala Maharaj was adopted by Sakawarbai alias Tai Maharaj the wife of Shri Vasudeo alias Baba Maharaj Pandit, he became one of the Sardesai of the first rank.<sup>37</sup> Tai Maharaj requested that the name of her adopted son, Shri Harihar Pandit alias Bala Maharaj should be entered in the list of the first rank.<sup>38</sup> Sardesai and also that the should be given exemption from personally attending the courts in the

Kolhapur State.<sup>39</sup> The necessary exemption to Shri Harihar Pandit alias Bala Maharaj for not personally attending any court was given by Shahu.<sup>40</sup>

It seems from these typical representative cases that the feudatory jahagirdars, the sardars, and also the traditional revenue officials like Sardesai or Nadgonda enjoyed the privilege of not attending personally the courts in Kolhapur State. The judicial privileges throw light upon the feudal system of society that existed in this period. Shahu Chhatrapati also, it seems, did not try to remove these feudal privileges.

#### Traffic Rules :

During the rule of Shahu Chhatrapati a number of rules were made to improve the condition of the traffic in Kolhapur State.

By an order of 29th November, 1895, it was laid down for the first time that all the vehicles, both public and private should be driven by the left side of the road.<sup>41</sup> Any violation of this rule was to be legally punished.<sup>42</sup> The Act Eleven of 1904 of British India laid down that cruelty towards animals was to be avoided and declared that the cruelty towards animals was punishable.<sup>43</sup> This act was applied in the Kolhapur city for period of two years. According to the Act the bullock-cart vehicle, carried by two bullocks could be loaded only upto twenty Bengali mounds (equal to ten Kolhapuri mounds).<sup>44</sup>



As the traffic by night increased by the beginning of the 20th century in Kolhapur, an order was passed on 31st July, 1905, that all public vehicles should carry lanterns or, lamps with wax or kerosene.<sup>45</sup> The order was again repeated by which the use of kerosene lamps in public vehicles in the night became compulsory.<sup>46</sup>

The use of motor-cars and motor-cycles gradually increased in Kolhapur during the first world war. In order to regulate the traffic of cars and motor cycles the part of the Act of Bombay Government, (Act II, 1904) was enforced in Kolhapur.<sup>47</sup> In order to regulate the vehicles pulled by animals or engines orders were issued to give traffic passes to only those vehicles which had healthy animals,<sup>48</sup> and the public vehicles were to be used in the state of Kolhapur only on the receipt of traffic passes.<sup>49</sup> It was laid down that proper register should be maintained in shops which gave bicycles, and the registers giving all the necessary details were to be open to police-men for inspection.<sup>50</sup>

#### Evidence in criminal cases :

A few orders were issued by Shahu in relation to the evidence in criminal cases. In some of the criminal cases the animals belonging to the cultivation involved in the criminal cases, were confiscated.<sup>51</sup> There was, therefore, the possibility of an increase in the expenditure for the criminal courts for the maintenance and feeding of the animals.<sup>52</sup> It was, therefore, ordered on August 15, 1895, that the animals,

confiscated as evidence in a criminal case, should be maintained by the owner of the animals,<sup>53</sup> and should be forwarded by the owner, whenever required, in the criminal courts.<sup>54</sup> The owner of the animals to be given any allowances for feeding and maintenance of these animals.<sup>55</sup>

It was laid down that a register of all the evidence used in a criminal case should be maintained,<sup>56</sup> by all the Magistrates in Kolhapur. All the Magistrates were also ordered by the District Magistrate by an order of 31st October, 1916, that the evidence in criminal cases, with the exception of perishable commodities, should be carefully maintained by the Magistrates till the decision in the case, or the appeal over the decision, was given in the court of law.<sup>57</sup>

#### Advocates :

The Advocates pleaded cases in civil and criminal suits and played an important role in the administration of justice. It is intended to study here the reforms introduced in case of the advocates.

Shahu Chhatrapati did not grant no-pay leave to a school teacher, who was a government servant, to practise as a professional advocate.<sup>58</sup> He laid the rule that the sanad of the pleader should not be granted to a government servant who had passed the law examinations, unless he tendered his resignation from government service.<sup>59</sup> A rule was made to

display on the notice board the decisions given by the judges on the notice board of the court, for the convenience of the advocates.<sup>60</sup> The sanad issued to the pleader by the government gave authority to him to practise law in the civil and criminal courts in Kolhapur. The sanad-fee was fixed at rupees fifty for every advocate and an amount of rupees one hundred was to be collected from the Barrister, intending to participate in the judicial administration as advocate.

There were some advocates who, having the sanad for a particular court of law, wanted to practise also in the other courts of law. The advocate had to pay an additional amount of rupees fifty as the fee for the sanad, which extended the powers of the advocates.<sup>62</sup>

The Political Agent of Kolhapur as the court of law and courts of the Indian Region of Kathewad Prant gave a grant of the sanad for practising the profession of advocates for one year only.<sup>63</sup> Shahu by his order published in the Kolhapur State Gazettee of 29th 1908, laid down that in Kolhapur as a sanad to the advocates would be given for one year only.<sup>64</sup> Every year the advocate would have to pay an amount of rupees twelve to rupees twenty-five to the government of Kolhapur as the fee for renewing the sanad.<sup>65</sup> In an order published in 4th October, 1910 the rules regarding the collection of fee from the advocates desiring the renewal of the sanad was made clear. Later on in year 1915, the rates of the fee for the renewal of the sanad

were fixed at rupees one hundred for first issue of the sanad to the advocate and rupees fifty for yearly renewal of the sanad.<sup>66</sup>

In the Kolhapur State Gazettee of year 1912, 1916 and 1917 the list of advocates who received permission to plead the cases in all the Kolhapur State had been laid down. In the year 1912, the number was seventy four,<sup>67</sup> in 1916, it was eighty<sup>68</sup> and in 1917, one hundred fifty.<sup>69</sup> The increase in the number advocates from eighty in 1916, to one hundred fifty in 1917, was because of the policy adopted by Shahu in granting the sanads to the members of educationally backward castes, to pleade cases in the Kolhapur courts.

Similarly, a list of the Mukhatyar Vakils with the right to represent interest of the persons is available. Such advocates were forty-four in Pargana Kolhapur,<sup>70</sup> thirteen in Petha Panhala,<sup>71</sup> ninteen in Petha Hatkanangale,<sup>72</sup> twelve in Petha Gadhinglaj,<sup>73</sup> four in Mahal Raibag, seven in Peta Bhudargad,<sup>75</sup> and three in Mahal Chanwad.<sup>76</sup>

Some times the permission to practise Mukhtyar Vakili was discontinued by the order of ruler of Kolhapur,<sup>77</sup> and again given to the advocates by the Chhatrapati upon the request of the said advocates.<sup>78</sup>

The Government Prosecutors :

Generally there were two types of prosecutors, one was the police prosecutor and the other the public prosecutor. By an order of 29th August, 1903, one Mr. Ganpat Krishnaji Kadam was appointed as a police prosecutor with effect from 1st September, 1903. The said police prosecutors was entitled to the same honorarium and convenience charges as in the past.<sup>79</sup> Later on the services of Ganpat Krishnaji Kadam were confirmed and it was laid down that he should get an annual fee of rupees five hundred.<sup>80</sup> It was also laid down that no other person should be appointed as a police prosecutor other Mr. Kadam.<sup>81</sup> It was later on noticed that Ganpat Krishnaji Kadam could not attend to all his duties as police prosecutor because the number of criminal cases had increased. Shahu Chhatrapati, therefore, by an order of 10th December, 1912, took away the powers of the police prosecutor from Mr. Kadam.<sup>82</sup>

In addition to the police prosecutor a public prosecutor was appointed to look after the criminal cases in the High Court.<sup>83</sup> Shahu Chhatrapati on 13th July, 1903 appointed Govind Sakharam Deshmukh as public prosecutor in High Court.<sup>84</sup> The services of Govind Sakharam Deshmukh as public prosecutor to deal with criminal cases in the High Court on behalf of Kolhapur Government were confirmed by an order of 30th June, 1904.<sup>85</sup> In 1912, Govind Sakharam Deshmukh was given promotion and his monthly salary was raised to rupees twenty five.<sup>86</sup>

Judicial Relations between Kolhapur State and the Feudatory Jagirs in relation to the Criminal Cases :

There were criminal offenders, who were active in Kolhapur proper, feudatory jagirs and the other adjoining British territory. In such cases the evidence used in criminal cases in the criminal courts in the Kolhapur State, feudatory states and British India had to be exchanged by concerned courts.

The earlier case of extradition, relating to the Kolhapur State belongs to the year 1898,<sup>87</sup> when it was mutually accepted by the Magistrates of Bijapur District and the Kolhapur government that the warrant on offenders, who were absconding could be served in both Kolhapur State and Bijapur District.<sup>88</sup>

A case of such a nature arose by 1903, in which the question <sup>of</sup> reciprocity between Miraj Sansthan and Kolhapur Darbar regarding the exchange of criminal evidence by the police departments came for the consideration.<sup>89</sup> The Chief of the Miraj Sansthan, through the Political Agent, communicated the acceptance of such reciprocity.<sup>90</sup>

In 1903, an extradition Act was passed. By the Article XI of this act the exchange of the convict between the British territory and the native State was to be made.<sup>91</sup> The Act laid down the procedure for the exchange.

This reciprocity was further extended by an order of December 24, 1904, among all the Indian States and feudatory States in the Bombay Presidency.<sup>92</sup> It was also made applicable to the British territory in the Bombay Presidency.<sup>93</sup> The expenditure of sending the offender and the criminal evidence was to borne by the government which had the initial possession of the offender and the evidence.<sup>94</sup> It was by this order that criminal offenders could be tried in different courts of Law by the Government of Indian States and British territory.<sup>95</sup>

Later on, that is in 1905, this reciprocity was extended to other Indian States in Rajasthan and U.P.<sup>96</sup> The Sawantwadi Sawsthan also came under this arrangement by 1906.<sup>97</sup>

In 1907, an agreement between the Kolhapur Darbar and Mysore Darbar regarding the exchange of offenders and criminal evidence was made.<sup>98</sup> This agreement was also to be applicable to the feudatory Jagirs of the States,<sup>99</sup> and was to come in effect from 1st January, 1907.<sup>100</sup> This agreement was also relating to the native soldier who might commit offence in one of the native States.<sup>101</sup> A proper procedure involving the native States and the military authorities was laid down in this agreement.<sup>102</sup>

The agreement of Reciprocity, for the surrender of the offender and evidence in criminal cases between Kolhapur State and the feudatory Jagirs, with the approval of Government of

Bombay was published on 1st July, 1908.<sup>103</sup> This agreement was based upon the principle of extradition.<sup>104</sup>

According to the agreement,

"A prisoner undergoing in a State prison will also be surrendered to a demanding State for the trial of an offence of the classes mentioned above, before the expiry of the term of imprisonment awarded by the State in which the prisoner may be undergoing sentence of imprisonment, provided he is sent back to the State from which his surrender was asked, after the completion of trial, to finish his term of imprisonment, in the State when he was brought. After the imprisonment is finished, he will be sent back to the State requiring him in case been convicted, a note to that effect should, however, be communicated to the State originally surrendering the convict.

In the case of a convicted prisoner being under sentence of death, the extradition may be refused. Similarly if a prisoner undergoing sentence of imprisonment is surrendered to another State on a charge of murder and is by the latter States court sentenced to death, it shall not be necessary to return him to the State originally



surrendering him for the completion of his term of imprisonment."<sup>105</sup>

It was maintained in the agreement that the evidence should be surrendered to the demanding State. The expenditure on account of sending evidence, maintenance and conveyance of person should be borne by the surrendering State.<sup>106</sup> It was, moreover, laid down that the police of the State could enter in the limits of another States in pursuit of offenders,<sup>107</sup> and should conduct the inquiry, search and arrest with the assistance of the local police.<sup>108</sup>

The Extradition Act provided for the transfer of the offenders from one place to another and there were cases, when the offender did not get speedy justice. In order to provide speedy justice <sup>in</sup> extradition cases,<sup>109</sup> an order was published on 16th April, 1910, in the Kolhapur State Gazettee,<sup>110</sup> that extradition cases should be decided as previously laid down in orders on 1897-98,<sup>111</sup> that the decisions were <sup>to be</sup> invariably given within one month.<sup>112</sup> If the decision was not given within one month, the concerned Magistrate would be held responsible.<sup>113</sup>

## NOTES.

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