

## CHAPTER FOUR

### JUDICIAL SYSTEM OF THE PATWARDHANS

This chapter deals with the study of administration of justice under the Patwardhans with special reference to the Sangli State. The Patwardhans' judicial system was not much different from the system that prevailed in other parts of the Southern Maratha Country.

The roots of judicial administration in the Southern Maratha Country go back to Shivaji's times. Shivaji developed his own system in his own way. Shivaji's judicial system can be divided into two parts, viz., (1) Central Authority, and (2) Local Authority.

The Central Authority consisted of the King himself and his eight ministers. Later on, during Rajaram's reign the office of Pratinidhi was added to it.<sup>1</sup> Sometimes even the private secretaries (Darakdars) of the King also acted as the secretaries for the State. Some learned persons were also added to the Central Council. These additional members were known as Sabhasads. Their salaries were fixed.

The Local Authority had its various fields of activities. The divisions of Subhas were divided into two units. The first unit was divided into three parts, and each was placed under the

supervision of the Peshwa, the Sachiv and the Mantri. The second unit was placed in charge of Subhedars.

The ministers were assisted by Sar-Subhedars in the provincial administration.<sup>2</sup> The Subha was further divided into the Diwan Sabha and the Gota Subha. The Tarf Karyat was the unit of local administration. The administration of last unit (local administration) was under the Patil.

Under the Peshwas the administration was divided into central authority and local authority. In the central authority there were the king, the Dharmasabha and the Peshwa. The Chhatrapati in 1750 became a figure-head and all powers were usurped by the Peshwa. Naturally, with the decline of the power of the king the Nyayadhish and the Panditrao lost their importance. They too became puppets in the hands of the Peshwa.

Same was the case of the Dharmasabha. Chhatrapati, who was the head of the Dharmasabha, had lost his power and authority and, therefore, it is needless to depict the deteriorating picture of the Dharmasabha. The Peshwa became all powerful in the central government and he became the sole prop of the judiciary. Dr. Gune says, "By the virtue of Mutalgi seen and the Jagir tenure the Peshwa was the highest judicial authority in his own territory and over the districts assigned in Jagir to the Sardars newly created by him. During this period it became customary to bring to the Peshwa the disputes from the territory of both the new and the old Sardars as the highest

judicial authority."<sup>4</sup>

Under the three Peshwas the Majlis system continued and settled the disputes with the help of the Gota but with Madhavrao I the Panchayat system became very popular. The Peshwa was the fountain head of justice. He appointed special Nyayadhish for temporal and spiritual purposes. His jurisdiction was extended to civil, criminal and social matters.<sup>5</sup>

The Panchayat system became very popular. V.V. Khare says: "Under the Peshwas the important system was the Panchayat. It was the duty of the Patil to appoint the Panch subject to the opinions of the parties concerned. If any body desired that his case should not be tried either by the Patil or by the Gram Panchayat, then the case was referred to the Mamlatdar. If the Mamlatdar failed to arrive at a decision, then the case was referred to the Sursubhedar and after that to the Peshwa. The number of members in a Panchayat was to be not less than five and it was to be extended upto fifty in a special case. There was also the practice of giving evidences. After studying the case the Niwadapatra was issued by the Peshwa. Sometimes the execution was left to the Patil and Mamlatdar. In ordinary cases the tradition was considered and in case of death sentence the matter was referred to Nana Phadnis or to the Peshwa."<sup>6</sup>

Local Administration

Under the Peshwas all the local officers, Sarsubhedars, Subhedars or Mamlatdars, Kamavisdars were authorised to decide suits through the Panchayats. The Sarsubhedars, Subhedars and Mamlatdars possessed both original and appellate jurisdiction. "It does not seem, however, that there was a definite gradation of these officers or their powers. Generally, the suits were tried on the spot and if dissatisfied at the decision the plaintiff had liberty to appeal to some higher authority he may choose."<sup>7</sup>

Mr. Grant remarks: "The officers of the government used with the consent of the parties to decide petty cases such as disputes regarding common small debts, and the Shastri, Mamlatdar, or person in authority had power to judge the propriety of assembling a Panchayat or sending away the plaintiff, but it was unusual and perfectly unauthorised to decide on any important case without the authority of Panchayat."<sup>8</sup>

Trial by Panchayati) Proper Forum

The complainant had the choice of the place in instituting a suit. In most cases the complaint was brought at first either

before the Kamavisdar or the Subhedar in whose jurisdiction the plaintiff lived. The cases brought to the higher authorities directly were referred to their subordinates by them. Trial by a Panchayat was the accepted principle of law.

ii) The Working of a Panchayat

The judicial proceedings by the Panchayat were followed without any alteration. The award of a Panchayat was known as 'Saransha' or summary. After its final approval a Niwadapatra was granted to the person in whose favour the case was decided. After the Niwadapatra was given the seal of the Royal authority was affixed. When the Niwadapatra was issued, it was also an order for the local officers for its execution.

iii) Appeal for Finality

The party dissatisfied with the decision of a Panchayat appointed by the local government could go in appeal to the Peshwa at Poona. Then an enquiry about the previous decision was made and if necessary a new Panchayat was appointed with the approval of the chief justice.

iv) Court Fees

Under the Peshwas the fees paid by the defeated party was known as 'Harki' or 'Sherni' and Gunhegari. The fee charged

was never fixed. When a party was successful, the amount was recovered by instalments. Sometimes creditors paid the sum on behalf of the litigant and recovered it from him afterwards. "No Niwadapatra was granted unless the government fee was remitted."<sup>9</sup> The members of the Panchayat generally received no reward or fee. Sometimes a 'shela' or 'pagota' was presented to the members.

v) Ex-party Decision

When either party pending the investigation made default in attendance the business was nevertheless proceeded and a decision taken. And it was the usual practice to record the nature of the default in the Saransha.

vi) Evidence on Ordeal

Under the Peshwas the evidence was considered but when the evidence was not available they resorted to ordeals. The ordeals like the Agnidivya and Divine intervention within a fixed period as a means of proof.

Agnidivya

Agnidivya can be divided into three sub-groups. Of them, the first was Ravadiyya, meaning picking up a heated piece of metal. The second was known as Agnidivya meaning picking up a heated ball of metal. And the third was the Airanidivya meaning

an ordeal by heated anvil.

The second type of ordeal, that is, divine intervention within a fixed period as a means of proof can be divided into three sub-groups. The first of the sub-groups is the Kiriya-divya meaning performance of certain customary religious rites such as Nidichi Kriya, Vatichi Kriya and other Kriyas. The second of the sub-groups is known as Satya or Belbhandar. The third of the sub-groups was Sapatha (oath). These ordeals were performed according to the nature of the crime.

The criminal justice can be considered under the heads of Central Criminal Justice and Local Criminal Justice. The Central Criminal Justice was in the hands of the Peshwa and the Local Criminal Justice was conducted by the Sarsubhedar, Mamlatdar, the Kamavisdar and the Patil.

The powers of the Sarsubhedar, Mamlatdar and the Kamavisdar were never defined, but the powers of the Patil were defined in various documents. "The Patils are the most important functionaries in the villages and perhaps the most important class in the country. The Patil is the head of Police and of the administration of justice in his village."<sup>10</sup>

#### Judiciary Under the Patwardhans

As regards the Maratha criminal justice in the Southern

Maratha Country, Mr. Chaplin, the Officer appointed by Elphinstone, remarks: "The few remains of law and justice that have survived the different revolutions are evidently relics of the Ancient Hindu Institutions. The Mohamedean Kings of Bijapur do not seem to interfere much with administration of justice beyond the seat of Government."<sup>11</sup> Under the Peshwas there appears to be no regularity in trying cases or referring them to Panchayat. The Sarsubhas of the Karnatak Prant and the Mamlatdars under him were only representatives of the government, both in Revenue and Judicial affairs.<sup>12</sup>

In the last quarter of the 18th century the Central Authority had been further weakened by the family struggle among the Peshwas. The Sardars or Jahagirdars enjoyed great powers in dealing with both criminal and civil cases. "The powers of the great Jahagirdars have been under no control for the last twenty or thirty years except the control exercised by General Wellesley. Within their own Jahagirs they appear to have had as much authority as the Feudal Barons formerly had in Europe."<sup>13</sup>

In this background in his judicial reforms which Elphinstone introduced into the territory, he tried to maintain the authority of the village headman. "Elphinstone was keen to maintain the authority and influence of the village headman."<sup>14</sup> He had instructed his officers to modify the existing methods and institutions of justice wherever possible, but they should





always try to maintain the Maratha system.

"In the country the Patil, over him the Mamlatdar, and Sarsoobedars, and above all the Paishwa or his minister. Jageerdars administered justice in their own land; the great ones with little or no interference from the Government."<sup>15</sup>

Commenting upon the judicial system, Elphinstone says, "There was no regular administration of justice, no certain means of filing a suit and no fixed rules of proceeding after it had been filed."<sup>16</sup>

This was the type of judicial system that prevailed throughout the territory under the Sangli State especially upto the end of the career of Chintamanrao Appasaheb I in the Sangli State. "In early times before the introduction of a regular system of civil and military courts, into the State in 1851-1852 there was neither a recognized code of laws nor a prescribed form of trial nor any regular courts for administering justice."

#### Civil Courts

In 1851 Civil Courts were created and Munsiffs were appointed to supervise them. There was one Court for Sangli and Miraj Prant. Another one was set for Shahapur. One Court each for the provinces of Shirhatti, Mangalwedha and Terdal. The Vahivatdar at Dodwad was also given Civil jurisdiction. The

rules and procedure were framed on the lines of British India.<sup>18</sup>

The Munsiffs were mostly Tainatdars. They were bound together by oaths. Until 1872 all appeals lay to the Huzur Court directly. In the year 1872 the first appellate court, i.e., the Nyayadhish Court was established.

The Nyayadhish was empowered to hear appeals from decrees and orders from the Munsiffs and try as a Court of original jurisdiction suits of the value of Rs. 5,000 to Rs. 10,000. Appeals from his decrees in appeal and in original suits lay to the Huzur.<sup>19</sup> This Nyayadhish Court was abolished in 1873.

In 1874 the Joint Administration was introduced in the State. By this time there was a great number of appeals lying undisposed in the Huzur Court. So, Major West, the first Joint Administrator re-established the Nyayadhish Court in 1876.

In 1880 the constitution of the Munsiff's Court was changed. The number of Munsiffs was reduced to three. The Munsiff's Court's jurisdictions were as follows:

A separate Court for Sangli and Miraj Prant, a separate court for Mangalwedha, Kuchi and Terdal and the third separate court for Shahapur and Shirhatti.

The Court at Mangalwedha, Kuchi and Terdal was called N.D. Court and the Court for Shahapur and Shirhatti was called

S.D. Court.

In 1880 the Nyayadhish was empowered to try cases of any value above Rs. 5,000 and hear appeals from subordinate courts and to exercise supervision over them.<sup>20</sup> This constitution of the Munsiff's Court continued upto 1905. But it was found that there was considerable loss of time in the N.D. Munsiff travelling from one place to another. It became very difficult for the Munsiffs to impart justice promptly. The debtors also could evade the execution process by absenting themselves during the short period the court present in one place. Considering the shortcomings in the system, Terdal was separated from the N.D. and linked to the Miraj Prant Court which was styled as C.D. Court. Similarly, Sangli and Sangliwadi were separated from the C.D. Court and were given to the N.D. Court. To effect this change, the administrator Captain Burke issued an Ordinance on 8.9.1905 which was published in the Sangli State Gazette on 7.10.1905. The Ordinance runs as follows:

- 1 The Munsiff of Miraj Prant will hold the charge of Terdal. The said Munsiff will convene his Court at Terdal.
- 2 The Nazir of Terdal should have the rights of Clerk of the Court. As the Clerk of the Court the Nazir will have the right to accept petition and call the appellant. But whenever the Munsiff is at Terdal, the Nazir will not use

these powers.

3 As far as the incomplete suits are concerned, the cases should be conducted at Terdal or Sangli by the Munsiff with the consent of the clients.

4 The Terdal Nazir shall be called Assistant Nazir Miraj Prant.

5 The Joint Sub-Judge Miraj Prant shall decide the civil suits mainly of Sangli and Sangliwadi. In the absence of Munsiff, if he deems fit, the Joint Sub-Judge will discharge the Munsiff's duties.

6 As long as the Munsiff of Miraj Prant resides at Terdal, the Joint Sub-Judge will look into the correspondence of the Munsiff.<sup>21</sup>

The Nazir of the Talukas of Mangalwedha, Kuchi and Terdal will have the right of Affidavit, which was accorded to him by the article 36 of High Court Civil Circular. Further, for the convenience the Courts at the following places were termed as Uttarbhag Court and Madhyabhag Court. The Munsiff courts at Miraj Prant Sangli and Terdal shall be termed as Munsiff Court Madhyabhag.<sup>23</sup> The legal work with the Uttarbhag lessened during 1907, hence the Administrator ordered that the Munsiff, Uttarbhag should assist the Nyayadhish at Sangli.<sup>24</sup>

The Mamlatdar's powers were enhanced in 1906. Even the powers of the Aval Karkun were increased. Whenever the Mamlatdars and the Munsiff at Nazir were absent in the Taluka, the Aval Karkuns of Mangalvedha, Kuchi, Terdal and Shirhatti had the right to summon and receive notices to tenants.<sup>25</sup>

It appears that there were complaints against the Talathis and Aval Karkuns regarding the work they were expected to do towards the rayats. It is evident that the clients were unable to get copies of their case papers to be submitted in the Court of Law. Therefore, the Administrator issued an Ordinance on 12.6.1907. This Ordinance provided that "All the Amaldars should keep the copies of the documents to be given to clients ready. A notice to this effect should be affixed on the notice board in the Amaldar's office." Whenever an appeal was to be made to a higher court, the copies of the documents should be kept ready within fifteen days of the date of application for copies."<sup>26</sup>

In 1908, another reform of significance was introduced by the Administrator. In the Departments of Judiciary the British Calendar should be enforced and henceforward the year should begin with the month of January and not with Fasali year as before. But in the Accounts Department the Fasali year should be considered as official year.

In 1909 the Administrator issued the following proclamation in Sangli Gazette on 7.3.1909.

According to the article 229 of Civil Procedure Code (1882 Act XIV) the Governor General in Council has consented the order of 1906 of the Sangli State to be promulgated in the State. This order created the following courts:

- 1) Huzur Court - Sangli,
- 2) Nyayadhish Court - Sangli
- 3) Madhya Bhag Subordinate Court  
(It included Miraj Prant, Sangli and Terdal)
- 4) Dakshin Bhag Subordinate Court  
(It included Shahapur and Shirhatti)
- 5) Uttar Bhag Subordinate Court  
(It included Kuchi and Mangalwedha)

On 7.3.1909 another important proclamation was issued by the Administrator: "It is proclaimed that by the article 229B of the Civil Procedure Code of 1882 Act XIV the Administrator on behalf of the minor ruler of the Sangli State has enforced all the Civil laws of the British India to the Sangli State."<sup>27</sup>

#### Criminal Justice

As far as criminal justice was concerned, the traditional system prevailed until the new courts were established in the country. In deciding criminal cases the Patil used to examine

the cases and award punishments. Above the Patil were the Kamavisdars and Mamlatdars, who exercised their powers to punish an offender. Yet their powers were indefinite. Certain cases of greater magnitude such as murder, robbery, decoity, theft were dealt with at Sangli. At Sangli the cases were dealt with by either the Chief or by a body of Panch summoned for that occasion. The following cases were considered to be of serious nature<sup>28</sup>:

- 1) Contracting a Pat marriage (A marriage in which a divorced lady married another person) without the sanction of the State;
- 2) Adultry;
- 3) Wife refusing to reside with her husband;
- 4) Theft, robbery when the property was recovered;
- 5) Attempting to commit suicide;
- 6) Drinking liquor by a person of high caste; and
- 7) rape.

When the jails were full, and there was no accommodation for new prisoners, the matter was reported to the chief and then the oldest prisoner was released. In Shirhatti Prant of the Sangli State there was altogether a different system prevalent. If a person was imprisoned and if the relatives of the prisoner appealed to the Court that due to the absence of the prisoner, their agriculture produce was bound to be hit hard, and also

the family of the prisoner was likely to be put to great financial loss, then the Court, on the basis of evidence, would release the prisoner on an alternative that either the prisoner should return to the prison after harvest or that the prisoner should pay heavy fine. On the payment of the fine he would be set free.<sup>29</sup>

Adultery: For adultery women were generally fined but in certain cases their noses, breasts were cut off. There were no prisons but the offenders were confined in forts.

#### Police Protection

Police force was maintained for the protection of life and property. Village Police and village community were held responsible for thefts, robberies for the acts committed within their limits. Each Taluka and District had its own detective police force. The theft was traced by the foot-steps. When these foot-steps crossed the limits of the other village, then it was the duty of that villagers to take the charge of the trace. And when the steps seemed to be halted in a particular village leaving behind nothing of a sort of trace, then it was the responsibility of that village to compensate the theft. The village police were assisted by horsemen. These horsemen were subordinate to the Mamlatdar.<sup>30</sup>



Huzur Nyayadhish Fad

About the year 1840 the Huzur Nyayadhish Court was in existence at Sangli. The Chief Justice of the Court performed all the duties of a civil and criminal judge for the whole State. Sometimes the Chief Justice was assisted by a Panchayat. In rare cases his decisions were reviewed by the Karbhari. Murder, dacoity, robbery, rape, adultery, theft, hurt etc. were dealt with by this court.

The Registration Department

Registration of documents was introduced in the State in 1863. All documents of transfer of immovable property of mortgage and sale were required to be registered irrespective of their value. The documents were registered in the Huzur office. The fees for registration of documents were charged on the number of words in the documents.

In July 1875 some rules on the model of Registration Act current in British India, were introduced.

In 1877 the British Registration Act III was introduced.

In 1875 Sub-Registrars were appointed for different Talukas - one each for Miraj Prant, Shahapur, Terdal, Mangalwedha and Shirhatti. The State Karbhari was the District

Registrar.<sup>31</sup> In 1880 the powers of the District Registrar were delegated to the Nyayadhish. In 1902, these powers were further transferred to the Chief Revenue Officer. The Nyayadhish when on annual tour of inspection of Munsiff's Court, inspected the work of Sub-Registrars.<sup>32</sup>

NOTES AND REFERENCES

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- 3 Rajawade, V.K. - MIS 3.125.
- 4 Gune, V.T. - Op.cit., p. 45.
- 5 S.P.D. - 45, 48.
- 6 Bhave, V.K. - Peshwekalin Maharashtra, pp. 378-380.
- 7 Gune, V.T. - Op.cit., p. 48.
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- 9 SPD Vol. 45.
- 10 Elphinstone, M. Territories Conquered from the Paishwa -  
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- 11 Choksey, R.D. - Twilight of Maratha Raj, 1818, p. 25.
- 12 Ibid., p. 28.
- 13 Ibid., p. 31.
- 14 Ghosh, Pradeep Kumar - Mount Stuart Elphinstone's<sup>t</sup> Embassy  
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- 15 Elphinstone, M. - Op.cit., p. 74.
- 16 Ibid., p. 84.
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- 18 Ibid., p. 188.

- 19 Burke, R.C. - Notes on Sangli State, p. 189.
- 20 Ibid., p. 190.
- 21 The Standing Orders of the Sangli State, Part X, p. 4.
- 22 Sangli Gazette, 7.8.1905.
- 23 Ibid., 7.3.1906.
- 24 Ibid., 7.11.1907.
- 25 Ibid., 7.3.1906.
- 26 Ibid., 15.6.1907.
- 27 Proclamation issued on 7.3.1909 quoted in the Standing Orders of the Sangli State.
- 28 Burke, R.C. - Op.cit., p. 185.
- 29 Ibid., p. 186.
- 30 Ibid., p. 187.
- 31 Ibid., p. 201.
- 32 Ibid., p. 203.