

## CHAPTER V

JUDICIAL PATTERNS AT CROSS ROADS

On the long role of civil servants of the East India Company Elphinstone has left an indelible mark. As a diplomat and an administrator, he exercised a decisive influence upon the fate of Western India at the critical epoch, when British order had to be substituted for Maratha. He was famous for the nobility of character, promotion of education and justice.

This chapter refers in detail to the study of Judiciary reforms which were brought out by Elphinstone. Before an attempt is made to study the reforms brought out by him, it is felt necessary to have an idea about the political and the other conditions prevailed at that time. An effort has been made to bring out those conditions while studying the reforms.

Elphinstone's government of Bombay was free from conspicuous incidents except the judicial reforms which were known as Elphinstone's code.

During the first two years Elphinstone paid two visits to Gujarat. The British districts of Gujarat caused

little trouble to the Bombay Presidency when compared to others. The great fertility of soil together with the security of British place lightened the burden of even a high assessment. The jurisdiction of the collectors were small. Considerable latitude was allowed to them as Bombay never had a board of revenue and Gujarat never had a Commissioner.<sup>1</sup> However, the question of Adalats (civil courts) attracted Elphinstone's attention the most.

Elphinstone's policy of codifying Hindu law was not immediately approved. In fact, the Company administrator wanted him to introduce the British system of Justice. Elphinstone however gave his reasons for using 'Code founded on Hindu law.'<sup>2</sup> He explained the term used, keeping in mind of the fact that people may show interest in knowing how far the new code, will help in arriving at a required solution. He believed in retaining what is generally known than discarding everything for want of a slight improvement. He also believed that the shastrees or Kazis cannot be won for ever as every Hindu knew sufficient law to detect the fallies in it. Secondly, he wanted to be sure about the establishment, in other words the strong grounding of the new code in British by the British law, before introducing it in India and running a risk of it.

(2) marriage (3) peculiar customs of places (4) division of property (5) maintenance (6) old and intricate accounts (7) disputes between two inhabitants of the same village within the sum of Rs.50 personal property or value (8) Suits for damages, for alleged personal injuries and for personal damages of whatever nature (9) boundary disputes.

The complaint had the choice of the place in instituting a suit. It seems that in most cases, the complaint was lodged before the Kamavisdar in whose jurisdiction the plaintiff lived. The cases brought to the higher authorities were directly referred to their subordinates by them. Suits involving religious points were transferred to holy places. Trial by a Panchayat was the accepted principle of law and the public officer tried the causes generally with the help of a Panchayat.

Panchayats however had their own limitation. They were handling disputes among and within castes and religious groups of personal nature. They were not handling revenue cases efficiently. The only advantage of having Panchayats continue to function as native judiciary was to expedite the proceedings wherever possible, as in some parts a great distress was suffered from work of speedy justice. Other

I. Panchayats as Jdiciaries in Gujarat before Elphinstone.

At the time of the Regulation Committee's work in Gujarat, two types of Panchayats were generally found.<sup>3</sup> One was the religious panchayat and the other was the caste Panchayat. The caste Panchayat was made up of a group of respectable people from each caste, headed by one of them as chief and they worked on tradition where as the religious panchayats were headed by shastries or kazis. In addition to the code of Hindu law based on castes and religion, each Panchayat had its own rules. They were plainest in nature and only exertion required from Judicial authority was to enforce their observance. There was seldom any difficulty in performing this with the assistance of argument and administration from the shastris or kazis. The internal regulations of Panchayats were generally made by common consent. However, generally, Panchayats had reputation and respectability which, upto a certain extent helped in developing a moral character among its members which could never have been reached by control of any law.

All causes relating to the following subjects were to be referred to Panchayat for adjustment : (1) religion

reason was the distance of Adalats from the habitation of the complainant. The advantages of Panchayats rested on the decision of disputes on the spot by persons acquainted in the history of caste. However, to overcome the limitations of Panchayats as Judiciary certain measures were felt as necessary which one as follows.

It was felt necessary to establish Panchayats where civil cases were accumulated to the extent of clogging. It was considered a great duty of magistrate to carefully avoid interfering and middling with cases by discipline except in cases which required the necessity to ascertain and justice. In respect to sue disputes as the natives are disposed to settle by that mode of Panchayats where they do not get to the expenses of bringing to Adalat were taken care of by Panchayats. There were two-third of cases as appealed to assistant registrar and native commissioners, however it was felt that they could be transferred below to the proper officer of the judges courts and should be sent back with requisite orders completed and retained by inferior courts for final division. It was felt that inhabitants from Gujarat reposed the utmost confidence in division bench of European Officers.

At the collectorate of Bharuch, Native Commissioner such as Amins and Patels were employed to investigate disputes connected with revenue matters including the measurement and boundaries of lands, water courses and examining of accounts. To them were attached in the cutchery sundry Desais and Majumdars who were acquainted with revenue concerns. In case of those concerning trade in Kheda, there was a collectorate for seeking recovery or settlement in trade. The Commissioner of Goga, Barwalla, Dhundhuka and Dolhera was empowered to receive complaints which were transitted by them to Kheda for registry at stated periods. However the merchants and other nature traders according to John Dunlop Collector of Ahmedabad had strong test of confidence in European tribunala.

The business of Adalat was very much confined to such differences as the parties were unable to settle by a Panchayat. In their prevailing system of proceeding the decisions of civil suits by appointment of Native Commissioner to the institution of village Panchayat or any other scheme was supposed to be less dependent on the European part of establishment.

Wherever parties were inclined to submit their differences to the division of Panchayats, they had ready-made answers in both parties executing penalty bonds which when decision is given the party most suffered should get. The shastries or kazis, Desais and Amins were found to have competent knowledge of business and general acquaintances with regulations. They seem calculated to introduce regularity and be constant with their decisions.

It was therefore felt that only these aspects of local judiciary be transferred to Adalat, where an appeal against Panchayats decision was made or where revenue disputes were not taken care of by Panchayat otherwise it was felt that the Panchayats should be allowed to function without any interference.

## II. Regulation Committee by Elphinstone

Elphinstone believed that imposing coding responsibility on collectors will be consuming time and too much of work taking as they were already loaded with revenue settlement work. Therefore he decided that the collectors of Gujarat should only assist the regulation committee members in

collective required data.

A regulation committee was appointed by Elphinstone which comprised of the Governor in Council with Barington as its president, Steel as its secretary, James Braskne Charles Norris and others as its members.<sup>4</sup> Firstly, Elphinstone directed the Regulation Committee to examine the position and rights of the Shastries and Kazi's and all other persons acquainted with the law, the customs of castes or the public opinion regarding the authority attached to each. Secondly, he wanted them to extract from the records of courts of justice, the information available on these subjects in the course of judicial investigations. It was considered desirable to collect all opinions by patient inquiries in cases when the proofs were brought forth by the stimulus of individual interest.<sup>5</sup> Harry Borodile, the young Registrar at Pune was instructed to go immediately to Surat and proceed to any Zillah for investigation, selected by Sadar Adalat (Provincial court). He was to be assisted by the Judge of Surat during investigations. Borodile was to report his investigation to the Adalat for the government to enable them to judge the progress and the probable result of his plan. He was asked to collect with accuracy, the decisions given by the Pandits in cases referred



to them by the courts and the answers given by the witness and the practices operating among castes. A new judiciary systems also came to be instituted as a result of his work which marked the refining of new era in the field of judicial administration. The next section of this chapter deals with the New Judiciary System.

#### The New Judiciary System

The office of Judge and Magistrate was created in 1800, on the assumption by the English of the entire management of the District. As a Judge, this officer was vested with civil, and as a magistrate, with criminal and police jurisdiction in and over the district. Jurisdiction was from time to time, extended to the territories subsequently coded. All appealable civil causes decided in the district or local courts of Surat were cognizable by the Provincial court of appeal established at Bharuch in 1805. In the same year, the criminal court of session at Surat was abolished and its powers were exercised by the Provincial court of circuit at Bhuruch. The seat of the Provincial courts of appeal and circuit was removed from Buruch to Surat on 5th December 1810, and at the same time

the jurisdiction of these courts was extended to the districts of Surat, Bhuruch and Kheda. In 1818 the office of district magistrate was transferred from the district judge to the collector. In 1820 the Provincial court of civil appeal at Surat was abolished and the chief civil court or Sadar Diwani Adalat, was transferred from Bombay to Surat. In the same year, the power and functions of the criminal court of circuit and of appeal were united to form a chief criminal court or Sadar faujdari Adalat and stationed at Surat. In 1828, the chief civil and criminal courts were again removed from Surat to Bombay. The post of District judge of Bhuruch was abolished in 1827. An officer was appointed in his place with the title of senior assistant judge as a subordinate to the district judge of Surat.<sup>6</sup>

Since the objective of Elphinstone was to collaborate the western and native Judiciary codes, he institutionalised on the western principles of law and social equality.

The Regulation Committee set up for organization of the judiciary proposed a three tier system, at the apex of which there was Sadar Adalat. Below it, was the zillah

Adalat or District Court. Third was the institution of the Native Commissionership of Justice.<sup>7</sup>

The Sadar Adalat consisted of Sadar Diwani Adalat and Sadar Faujdary Adalat. They enjoyed supreme powers in civil and criminal judicial matters respectively. These Adalats were authorised to appoint Pulana Judges who could visit different parts of the country as per requirements and decide cases on the spot.

The Zillah Adalat had jurisdiction over the entire district. It was divided into two branches to deal with civil and criminal cases separately. It heard appeals from the subordinate courts, but its main function was to supervise and regulate the work of lower courts. The District Judge was helped by assistant judges in discharging his responsibilities.

The District-Judge also appointed the native commissioners. Certain restrictions were put in the jurisdiction of this institution like, they should work out the cases with a charge that does not exceed Rs.500/- and they should investigate the appeals against the decisions of panchayats and soon. It was through this institution that the Panchayats

were integrated with British judicial system for the first time.<sup>8</sup>

However the native commissionership was not organised on the same principles as district courts. For instance, it did not allow pleaders in cases as was done in the district courts. Any person could appear before native commissioners on behalf of the disputing parties mention the source. The awards of commissioners were based on popular notion of justice.

The Sadar Diwani Adalat and Sadar Foujdary Adalats were separated to take care of revenue and police cases. Each of these had a number of native commissioners at various levels. However at the pinnacle was the district collector, who was an European Officer appointed by the Crown. He was referred to as Zillah magistrate. The hierarchical position of both European as well as native commissioners under judiciary recommended, during Elphinstones presiding is given below:

Tabular Note of the Judiciary set-up

Sadar Adalat

Court of Circuits

Sadar Diwani Adalat  
(Civil)

1. Judge
2. Sadar Amin
3. Talatis

Sadar Foujdary Adalat  
(Criminal)

1. Judge
2. Munsif
3. Patels

The collector was to take part in zilla Adalat of Civil and criminal court. The collector's duties were decided as Revenue and judiciary according to which he was supposed to look into only Revenue cases at Sadar Diwani Adalat and be a magistrate for the Sadar Foujdary Adlat.<sup>9</sup>

Sadar Adalat

A supreme court (Sadar Adalat) consisting of a chief justice and puisnes nominated by the crown, was established at Bombay in 1823.<sup>10</sup> This was done to distinguish them from

the High Court whose judges were servants of the company, exercising both civil and criminal jurisdiction throughout the presidency. The authority of the supreme court was supposed to be limited to the city of Bombay. The judges seemed to have claimed for themselves an independent position, if not superior to that of the Governor and council and to have viewed with suspicion about the every act of the executive.

It was never felt necessary to presume the terms 'Foujdary' and 'Diwan' to distinguish the court when acting properly in the criminal and civil capacity. The single appellation of 'Sadar Adalat' was felt as sufficient for all useful purposes.<sup>11</sup>

The court should consist four or more judges. The senior to be determined as chief judge and the others were second, third and fourth judges of the Sadar Adalat.<sup>12</sup>

The court was supposed to use a circular seal in English, Marathi, Gujarati and Persian languages with an inscription of 'the Seal of the Sadar Adalat of Bombay'. The seal was supposed to remain in the custody of the chief judge. Every judge had to take an oath in front of

the Governor or any other person, when he was commissioning to administer before exercising any of the functions of his office.<sup>13</sup>

Duties of Sadar Adalat<sup>14</sup>

(i) Court's authority in Civil matters

The duty of Sadar Adalat in its civil capacity was to hear and determine appeal against decrees passed in the zillah court and in certain cases to enforce the having of suits and complaints by such court to enjoin an adherence to forms of proceeding prescribed by the Regulation, when neglected, give directions with respect as it may deem expedient.

(ii) Court's authority in criminal matters

The duty of Sadar Adalat in the criminal capacity is to superintend all matters relating to the administration of criminal justice and police with power to call for and inspect the proceedings of criminal judges and zillah magistrates to enjoin an adherence to the regulations where neglected and to give such directions with respect to forms not provided by the regulations as it may deem expedient.

(iii) In receiving sentences of criminal judges

To review the sentences of imprisonment pronounced by a zillah criminal judge for a period exceeding 2 years, to remit sentences of imprisonment for life, to refer to the governor in council all sentences of death and to decide about that reference made to the court by judges on circuit.

(iv) In the cognizance of misconduct on the part of zillah judges and others

It was the further duty of Sadar Adalat to examine into and if necessary report to the Governor any acts of negligence and misconduct on the part of the zillah judge, Magistrates, or other convenanted servants employed in any court of justice.

(v) Of native officers of their own court

To investigate all charges of negligence or misconduct, with discharge of public duty or acts of profligacious private conduct preferred against any native officer of their own court or to refer the charges to one or more of its numbers for that purpose and if necessary to dismiss such officer.



(vi) Of Commissioners, native officers and of zillah courts

To direct the judge on against any commissioner, pleader or any low officer, or native record keeper of any zillah court to dismiss him.

How the court constituted<sup>15</sup>

Two or more judges of the Sadar Adalat constituted a Adalat. The act of the court depended on the act of two judges only. But if they differ, the opinions of a third judge was requisited, and the decision was made according to the majority of voices. If the four judges sat and the number of voices were found equal, then the senior judge was supposed to cast vote. If more than four judges sat then the decision was taken according to the majority of voices, but if the number of voices were found, equal then the senior was to vote.

Whenever a judge or a circuit referred any matter of a criminal nature to the Sadar Adalat, the court made provision for atleast two other judges. But the recorded opinion of the judge making reference was considered as a vote or if he was himself present he was not supposed to be along with the other judges.

All appeals to the Sadar Adalat in civil matters in the first instance, was referred by the court to one of its judges for hearing, who hold separate sitting for that purpose either at the seat of the court or in the zillah where the suits were originally tried and the judgement passed therein confirms the Decree of the inferior court. But if the judge sees the reason to alter or reverse the decree or considers the case doubtful or important as to require the deliberate decision of the Sadar Adalat records his opinion on the appeal and submits the case to the court. The judgement of the court was taken and the decision passed according to the rule contained in the Regulation.

It was supposed that the court should have a Registrar and one or more registrars, who previously to entering on the duties of their office, should take and subscribe in open court. It was also supposed that the duty of the Registrar is to file all the appeals, receive and mark all pledgings, exhibit other papers in civil cases, and to receive and file all papers which may be brought into court in criminal cases. The Registrar was supposed to keep the minutes of the court, prepare and sign all orders precepts and other process, issued from

the court and prepare all decrees and warrants for the signature of the judges; have the general record of the civil and criminal proceedings of the court in its different branches and of those of the courts of circuit when transmitted by the judges. The assistant registrar was supposed to assist the Registrar in the performance of his duties and to act for him in case of his absence. The registrar was supposed to have number of native assistants as may be required for taking down depositions, preparing rules, orders and other process, examining accounts and making translations or copies of papers etc. in the different languages used in the court.

It was decided that the court should have 2 Hindu Law officers or Pandits and the Muslim law officers or Kazis; it should be the duty of the law officers to attend the court when required and give answers to questions on points of Hindu or Muslim law, as may be put to them in one or other form by the court or by any judge; the court should have a nazir who should have number of inferior officers to extent his business which leads to the requirement of appointment and removal by himself and he should be responsible for their acts and missions; it should be the duty of the nazir to serve summons, to take securities, to execute the orders and

generally to fulfill instructions as he may receive from the court, returning the same with an endorsement specifying the manner in which they were executed in the cause that had prevented their execution.

#### Circuit courts of the adalat

The Sadar Adalat appointed one or more of its puisna judges to hold a court for the trial of capital and other high criminal offences committed in the zillahs over which its jurisdiction extends and the order of rotation changed only when the cause like absence of judge due to his state of health and other necessary causes which required a deviation from the rule.

If the Sadar Adalat was to be the occasion to send two or more judges separately on circuit it was supposed to prescribe the zillahs to which each judge should proceed and the order of succession in which he should visit each zillah. The court held its ordinary sessions for the trial of offences at the Sadar station of the zillah in which such offences occurred. The ordinary sessions of the court of circuit held quarterly at Surat and half yearly in the other zillahs but it was expected to be competent to the Sadar Adalat to direct them to be held more frequently

in any of the other zillah provided that they were in no case held often than quarterly.

The sessions commence at Surat on the 1st of January, 1st of April, 1st of July and 1st of October in each year and the circuits on 1st March and 1st of October at such intermediates tenure as the Sadar Adalat fixed when the circuit was held often than half yearly.

Whenever a session was about to take place in any zillah, the judge appointed for the circuit gave notice to the zillah judge of the day when such sessions commenced, so that the proclamation there of may be made at least 15 days previously.

Any part or it necessary the whole of Ministerial officers of the zillah court were the deposal of the court of circuit to aid its proceedings and the law officers of the zillah court to maintain the law of the court of circuit while it sits within such zillah. The judge on circuit as soon after the sessions in each zillah as circumstances would permit, transmits the record of the whole presidency of the court with the deposition examinations

and other original writings used in each trial, to the registrar of the Sadar Adalat, for the purpose of being deposited with the records of that court.

Duties of Judges: The duty of the judge on

- (i) circuit was to receive complaints in regard to criminal offence of any description that had been committed in any zillah within his circuit and he was supposed to be satisfied whenever oath of the complaints or such other proof which was sufficient that a complaint had been made to the proper authority and had refused or omitted to investigate it, to require by often precept any competent authority within such zillah proceed in such complaint.
- (ii) The duty of the judge circuit was to receive complaints against any khazee, commissioner or pleader or against any law officer, Nazir or Native Record Keeper of a zillah court for any offence for which the office was liable to be dismissed and to forward such complaint to Sadar Adalat provided with proof as may be deemed sufficient that the complaint had been made to the zillah judge who had refused or omitted to investigate it.
- (iii) The duty of the judge on circuit was to visit the jails both of civil and criminal of zillah and to offer

suggestions as may appear to him advisable related to their economy and the better management, accommodation or security of the prisoners.

- (iv) His duty was also to inspect the criminal proceedings of the zillah Judges as well as the proceedings of the zillah magistrates.
- (v) The judge on circuit had authority to inspect the civil proceedings of any court within the limits of his circuit and to offer suggestions.
- (vi) The duty was also to lay before the Sadar Adalat a report containing a general of his proceedings and that of each zillah in respect to and police and in respect to economy of the jails.
- (vii) It was also his duty to state any circumstances that had come to his knowledge which was tending to affect the due administration of justice, to offer such observations as he may think useful either in regard to the system of the laws in general or the forms legal proceeding and to suggest such improvement as may seem to him desirable.

SADAR DIWANI ADALAT

Sadar Amin and Talatis were the native officer in Sadar Diwani Adalat.

(a) Sadar Amin

He was the head of the Sadar Diwani Adalat. He was to be appointed by zillah judge. The number of Sadar Amins to be appointed in each zillah was unlimited and it depended on decretion of the officer. It was also dependent on the consideration of the state of civil business and other local circumstances.<sup>17</sup>

Rights of Sadar Amin

- (1) They had the right to receive from zillah judges the references of any original suit for land exempt from the payment of rents in money or in kind to government not exceeding Rs.20 as well as for land subject to the payment of rent in money or in kind to government the annual income which did not exceed Rs.200. They were also be referred for the settlement of suit of other real property as well as other personal property of which the value that was not to exceed Rs.500/-.



- (2) The Sadar Amin had the right to be guided by the same rules as were prescribed for the trial of suits before zillah judge, provided the decisions passed by him or carried in execution by the zillah court and that every notice, summons attachment and other process related to any cause depending before Sadar Amin issued under the official signature of the judge or registrar.
- (3) Once the suits decided by Sadar Amin on an investigation of merits of case or adjusted by razeenamas of parties; they could have rights to receive full amount of stamp duty paid on such suits.
- (4) The proceedings of the Sadar Amins were to be received in evidence unless the judge may have reason to be dissatisfied with them.

Duties of Sadar Amin:

- (1) He was execute fines after getting them remitted or modified or confirmed by zillah judges under the same rules prescribed for execution of decrees.
- (2) Every Sadar Amin made and subscribed a solemn declaration that was required and made by Munsif before the judge of the zillah court to which he may belong in open court.

- (3) They were to hold their cutcheries at the station where the zillah courts was held in a room belonging to the court house or in a convenient place as the judge may direct.
  - (4) They investigated the suits by themselves which were referred to them in the public cuchery or court room and allowed their officers, servants, dependents or other person interfere.
  - (5) They were to keep a register book according to the form prescribed.
  - (6) During the adjustment or investigation the Sadar got a part of preceedings and detailed instructions as appeared necessary for his information and guidance.
- (b) Talatees

They were considered as native servants at village level. He was however mainly concerned with agricultural land and products. He had to almost essentially qualify for the patel post. His duties were very much similar to those of Patels.<sup>18</sup> Whereas the great importance of the office of the village accountants in obtaining correct information of the resources possessed by the state in each village, and in prescribing evidence of the rights and privileges enjoyed by each propritor and cultivator

if necessary duties of the office were defined and forms of Registers were be provided and plans calculated to ensure a record of the most material facts so as to provide easy reference to them at any future time.<sup>19</sup>

Duties of Talatees<sup>20</sup>

- (1) Village accountant was placed under the authorities of the collector. It seemed unnecessary to preserve that part of the rule which vested the collector with the power to require the Talatees when any of their services were wanted as he must be understood to possess this power as the rule was proposed to be co-ordered.
- (2) It was the duty to keep accounts of the village according to such forms as the collector may prescribe which was to exhibit in detail the actual revenue and charges of the village and was not supposed to remove accounts from the village unless by the order or with the sanction of the collector.
- (3) It was also the duty of the Talatee to keep registers for each year of the following:
  - (1) The fields in the village with a contrasted statement of the past and present years' assessments and the causes of the differences.

- (ii) The lands in the village showing their extent and appropriation with the boundaries of the village, and the manner in which it was held.
- (iii) A register of the lands in the village held exempt from the payment of public revenue.
- (iv) A register of the lands in village held partially exempt from the payment of public revenue.
- (v) A register of the lands in village paying revenue in kind, showing the gross produce and the share there of accruing to the government.
- (vi) A register of the lands in the village paying money revenue and of the rates and amounts thereof.
- (vii) A register of the lands in the village cultivated in gardens, showing the gross produce and the share according to the government whether in kind or money.
- (viii) A register of Timber and fruit trees in the village, distinguishing the number belonging to government wholly in part with the rate of division of the produce of those held jointly.

- (ix) A register of taxes (exclusive of the land tax) collected in the village.
- (x) A register of emoluments derived by district and village officers from the village showing the sources of the emoluments, their amount and whether paid by government or by individuals.
- (xi) A register of grants and Sannads by which lands in the village were held exempt from the payment of revenue either wholly or in part.
- (xii) A register of the prices of the grain in the village for each month in the year. But the Register of the prices of the grain need only be kept in those villages in each paraganah which the collector may select for the purpose and notify to the accountants there of as being from the extent of the population, their situation or from other circumstances suited to afford a correct prices throughout the district.
- (4) Accounts and registers may be publically inspected. The whole of the village accounts and registers should be open to the inspection as well of the officers of government as of all persons interested therein and any such person may take copies there of, but the originals should not be

removed from the custody of the accountant for any purpose, authentic copies of any such accounts registers may also be obtained by giving an application to the collector.

- (5) Wherever a grant or sannad had been copied into the register, the Talatee endorsed thereon the day on which it was registered and the number of the page in the register in which it was entered, after which he altered the andornment with his signature and returned the grant or sannad to the person who presented it.
- (6) It was also the duty of talatee to transmit on or before the day of in each year to the accountant of the district or to such other officer as the collector may point to receive them attested copies of all the accounts and registers for the proceeding year.
- (7) Whenever called upon by the Patel or by the Native Revenue or Police Officer of the District to prepare all writings connected with his concerns of the village which were required either for the use of government or the public such as reports of inquests depositions and examinations in criminal matters and as well as to prepare deeds of reference to arbitrators and written awards were required.

Rights of the Talatees

- (i) Talatee demanded the production titles to exemption. Talatee had the authority to call for the production of any writing under which land within the village was claimed to be held, exempted the payment of revenue either wholly in part for the purpose of entering a copy in the register of grants and sannads.
- (ii) Any person claiming exempt under a writing who after receiving written notice from the collector to produce it refused or neglected to do so was liable for the public assessment as if he had no title to exemption, unless satisfactory proof was offered to the collector of the contents of the writing that it was authentic and still continue in force and that he was unable to produce it from causes which he had not been able to control.

Liable to be dismissed for fraud:

A Talatee who with a fraudulent intention makes a false entry in any of the accounts or registers or alters any entry therein, omits to make the proper entry, or is guilty of any other act of fraud in the exercise of his official functions, was in addition to the punishment assigned for the criminal offence and he liable to be dismissed from office.<sup>21</sup>

(vii) SADAR FOUJDARY ADALAT

Munsiff and Patels were native officers in the Sadar Foujdary Adalat.

- (a) Munsif: Munsiff was civil judiciary personnels employed in Sadar Foujdary Adalat. Zillah judges used to recommend to Sadar Adalat, the name of the persons for vacant offices of Munsif. The number of Munsifs for each zillah were fixed by Sadar Adalat. Zillah judges were to prepare and submit requirement. Local jurisdiction were later arranged to include one or more of these areas pointed out by zillah judges. As for police jurisdiction the names of town and villages were announced for adoption in each established.<sup>22</sup>

Munsif centchery was approved by Sadar Adalat on the basis of Sannads which could be recalled, cancelled or their offices could be abolished.

Zillah judge was to report the circumstances with opinion to Sadar Adalat who would then pass on the report as may appear to be proper. The judge could remove Munsif under certain circumstances or fine them upto Rs.20,



but was to report to Sadar Adalat about it. He could be removed by his resignation. Munsif could be liable for criminal prosecution, extortion and other acts of oppression committed by him. He was to be subjected to fine or imprisonment proportionate to nature and circumstances of the case.

Rights of Munsifs:

- (i) They were authorized to deliver formal possession of lands, house or other real property in conformity with the dec
- (ii) No Munsif could be liable for prosecution for errors, in his proceedings or judgements unless the judge would be satisfied by sufficient evidence that the charge is well founded.
- (iii) Munsif could not receive or by any suit for damage on account of personal inquiries or for personal damages of any nature in that the order of reference from zillah court.
- (iv) Munsif could not allow any party in a suit to plead before them.

- (v) Munsif could not in any case permit any person to act as the Wakil of another unless such person exhibits in open court a wakilnamah containing information required by the preceeding clause.
- (vi) Munsif at all times was authorized to cross examine the witness who had taken solemn declaration.
- (vii) Munsifs were authorized to prevent parts or their wakils from putting to witness suggestive questions or pointing to irrelevant matters in the dispute.
- (viii) Munsif was authorized to have copies of regulation in force regarding stamp paper as furnished by zillah Judge for guidance.
- (ix) Munsif had a right as to not to write the copies of decrees or answers of any part of proceedings of any suit on stamp paper.
- (x) Munsif had authority to carry his decrees in the execution.
- (xi) The decisions of zillah judges on appeals from decrees passed by Munsif were considered.

Duties of Munsifs:

- (i) The complaint would state that a Munsif will take down the grounds of complaint, the time when the cause of

action arose. The name and residence of the persons, the complaint against the total amount or value of property claimed and all circumstances which may concidate the transaction.

- (ii) Munsif could deliver the notice to the plaintiff or to his wakil. He could personally serve the notice on defendant or through any other person. However, the name of such person in all cases he endorsed on the notice by the Munsif previously to its being delivered to the plaintiff or wakil for execution.
- (iii) The Munsif could cause the proclamation written in current language and character of the community to be affixed in a conspicuous part of his own cutchery and a copy of same be placed on the outer door or same other conspicuous place near it. This proclamation could contain a copy of the original notice give the period of 15 days for person to appear in person or through his wakil could bring suit for hearing and determine within the appearances answer of the defendant.

- (iv) Munsif could by all suits was in order of their filling and numbers. However in case the zillah judge authorises him to bring any particular suit for hearing and determination without attending to the regular order of the file he could so.
- (v) He could administer to witnesses whose oaths may be considered most binding on their consciences according to their respective religions. However in case of a person of a rank which would render it improper to compel him to take an oath, Munsif could dispense with it and could leave it to the solemn declaration under prescribed rules.

(b) Patels:

The office of Talukadar or active Patel of zillah had dual responsibility of the incharge of police as well as management of the revenue. No reports remuneration was paid to them for these dual duties. The office of Patels was an object of ambition. It was keenly sought after by principal people in the village. They were mainly native servants on revenue side.<sup>23</sup>

The procedure adopted by the Headman must have been exceedingly irregular and informal. If a fairly definite

system could be traced in any particular area, it must have varied considerably from the system which obtained in other parts. The only reports that were available dealt in any detail confined to western India. Elphinstone thus described the procedure in a suit for the recovery of a debt. If a complaint was made to a Patel, he could send for the person complained of, and if he admitted the debt, would interfere partly as a friend to settle the mode and time of payment. If the debt were disputed, he could not by their own influence effect a settlement to the satisfaction of both parties. Patel assembled a Panchayat of inhabitants of the village, who enquired into the matter with very little form, and decided as they thought best. But this decision could not take place without the previous consent of the parties.

Patels exercised formerly without any defined limits to their authority the power of slightly punishing for all minor offences, such as abusive language, petty assaults, and transgresses.

Duties of Patels:

- (i) They had to discharge all usual and well-known services

to government of Heads of villages.

- (ii) Their duties were predominantly concerned with revenue matters but they also had to carry on police and magisterial duties.
- (iii) Their duties were general in nature. They were connected with matter of local nature and local inquiries.

#### VIII ADMINISTRATION OF POLICE<sup>24</sup>

A system of police established throughout the territories subordinate to the presidency of Bombay. The duties of police were conducted by the judge and collector of each zillah under their respective designations of criminal judge and zillah Magistrate, the district police officers and the heads of village in a manner.

Each native collector of a district was incharge of the police there of and performed the duties. The zillah magistrate was appointed as District officer by Governor to perform the duties. The police of each village was the under the charge of Patel or chief Magistrate of the Revenue when the village revenue management was divided among different persons, the magistrate should select one of them to take charge of the police.

The Patel as subordinate to the zillah Magistrate and Police officer of the district in which the village was situated. His official communication was held with the latter, unless the Magistrate found it more convenient to direct their being made to himself or one of his assistants.

The Patel had the principal direction of the managements for watch and ward. His chief executive assistant was the village watchman, who stood to him practically in the relation of a personal servant. As a rule he was one of the meneal castes, often given to criminal habits, who lived on the outskirts of the village and performed general service to the community. He was responsible under the supervision of the Patel, not merely for the discovery of lost property, but for replacing its value when not discovered. In the joint land holding communities of Gujarat, the police responsibility of the Patel was divided among the land owners who, between them maintained order in the village and through their servants restored, or replaced the value of lost property. The village communities were every where held jointly responsible for offences committed within their limits and any penalties awarded in consequence were liable to mutual appointment. Where necessity arose the

watchman was assisted by the members of his family, by the other village servants and in some cases by the whole village community. Such a necessity arose whenever a serious theft occurred in the village. It was then customary for the watchman, assisted by the general body of villagers, to start in pursuit of the thief, and the search was only given up when the offender had been definitely traced to an adjacent village, when the responsibility was understood to shift to the members of that village.

One of the most graphic accounts that we have of the duties performed by the village watchman was that given by Elphinstone in Gujarat. The duties were to keep watch at night, to find out all arrivals and departures, observe all strangers and report all suspicious persons to the Patel. The watchman was found to know the character of each man in the village and in the event of a theft committed within the village bounds, it was his business to detect the thief. He was enabled to do this by his early habits of inquisitiveness and observation as well as by nature of his allowance, which being partly a small share of the grain and similar property belonging to each house, he was kept always on the watch to ascertain his fees and always in motion to collect them. When a theft



or robbery happened, the watchman commenced his enquiries and researches. It was very common for him to track a thief by his foot-steps and if he does this to another village so as to satisfy the watchman there, or if he otherwise traces the property to an adjoining village, his responsibility ends. The remuneration of the village police took the usual form of grain-fees, occasional perquisites, and endowments of land. With regard to the responsibility of the watchman to make good lost property, Elphinstone's remark may be noted that his obligation was limited by the extent of his means, while the remainder was levied on the village as a whole, and that it was only in particular cases that this indemnity was enforced at all. Where indemnity was directed to be paid and the patel or watchman refused, the punishment was the transfer of the assigned land to the nearest relation, fine, imprisonment in rous or severe corporal punishment.

#### IX CRIME AND PUNISHMENT

The imprisonment for a short-period as a punishment for acts of housebreaking and the theft was the subject of remark and complaint. They were satisfied with the shelter, clothing and food furnished to them in the jail.

They returned to their houses at the expiration of the term of imprisonment. It was said that potty thefts were sometimes committed by them with the view of securing themselves the subsistence and clothing afforded by the government.<sup>25</sup>

The punishment seldom went beyond a few blows with the open hand or confinement for a couple of days in the village chaulky, the prisoner paying subsistence money to the hawaldar or peon who was placed over him. A fine was perhaps occasionally exacted, which did not, however, exceed a rupee and a quarter. The rupee going to the government and the rest to the peon. If the crime were of such a nature as to require the infliction of a greater penalty.<sup>26</sup>

There was a practice known by the term 'Kalee Chitri' very prevalent in Gujarat<sup>27</sup> which marks the systematic method in which the 'Bheels' carry on the art of theft when they regard it as their proper pursuit. The stolen cattle were conveyed to some large village, where protection could be afforded and the loser tracing the footprints or guided only by suspicion, generally follows. He was shown his property and given to understand

that for a certain sum he may receive it back. The conditions commonly agreed to, for if the sufferer departs on other terms, the thief concludes that he had gone to procure the aid of the police and take the cattle to the hills where he defill all pursuit. The people knew this well and consequently always compound and they never inform afterwards, for they argue somewhat justly that if they did, they would be obliged to travel into Ahmedabad, perhaps at great inconvenience, and though the thief might be punished, they would be liable inspite of all the power of government to suffer from the renegeance of the whole class. It was for these reasons that few specific complaints were lodged with the proper authorities although such robberies were almost daily occurrence. The thieves did not always belong to the villages where they carry their plunder for protection, they were frequently inhabitants of the new and poor villages, where they were wholly without employment from the early harvest of one season to the spring of the next and tempted to follow the pursuit of thieving as more congenial to their habits than earning a subsistence as daily labourers.

The practice of kaleechitree doubtless increased

the number of thieves to sell the stolen animal a considerable journey must be made accompanied with great risk of detection. Whereas by this means a few rupees were obtained with very little risk and without moving far away from home. Articles of clothing, grain were ofcourse disposed of in any village, but cattle were so liable to be discovered and owned that nobody in the beighbourhood of the place where they were stolen would venture to purchase them. Antroli in the Hursol parganah and Bakrol in Edurwara were the most notorious places.

Elphinstone was aware of this practice and therefore wanted to stop it. He made a survey and placed a Thana of police in each village where it was known to have had a desired effect.

While the survey was in progress at Harsal, the Patel lost valuable Bullock. After the lapse of a few days and after failing in making the foot prints, he was accosted in this manner and he ultimately agreed to pay Rs.25 for the restoration of his property. The animal was accordingly brought back and the money duly paid. The bheels had also a trick of founding stray cattle and demanding a consideration from the owners before delivering them up.

But although these petty robberies were a serious evil; it was pleasing to contemplate over the change that was taking place in the habits of the bheels. Those in particular who reside upon and about the banks of the Kharee river entirely upon plunder and the surrounding places were rendered extremely dangerous to travellers. As the country improved and the forests became cleared, their excesses were somewhat restrained.

After the survey, the Bheels had seriously concerned themselves to agriculture, the officers of the survey rode into, through and about their villages at all hours unarmed and unattended and where every one was received with the greatest respect and never on any one occasion experienced anything like insult.

#### CONCLUSION

From the above it is clear that a great change was introduced in the pattern of judiciary during the tenure of the presidency of Elphinstone. As a branch of new administration, while it interlocked with executive side of the state, it also began to reform the Gujarati Society from within. Apparently Elphinstone's objective was not

to make an overall change in the system of judiciary as he wanted to assimilate both the systems, traditional Indian and Western Judiciary. This system was introduced by him after a careful investigation. It was to find out in a way as to keeping with the ethos of Indian judiciary but at the same time to modulate on the western pattern of judiciary in order to provide justice with social and economic equality both in the fields of Diwani and Foujdary. The incorporation of the native judges and putting them in the frame work of judiciary provided the English administration an opportunity to secure the help of the experienced and local headmen who had good deal of experience and influence among the native people. Further, Elphinstone reforms kept the integrity of the traditional obligation of justice, that is Panchayat a lowest unit in the judiciary but a significant one. The judiciary system introduced in Gujarat at the time when the similar attempts were made in another parts of western India. In this regard Elphinstone could be regarded as a pioneer of the modern judiciary system of Bombay Presidency.

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