CHAPTER V

JUDICIAL ADMINISTRATION

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CHAPTER V

JUDICIAL ADMINISTRATION

I. Police Administration:

The Baroda Government, in the past, was at liberty to regulate the strength of the police forces of the State according to the exigencies of the Administration without any reference to the British Government. The Government of India, however, had laid down that their prior permission should be obtained before increasing the strength of the Armed forces. There was no condition or restriction as regard the police force.[1] However, in 1901 A.D., when the Baroda Government proposed to absorb a part of their irregular force into the police the Government of India took exception.[2] The Baroda Government was baffled at this view of the Government of India as it was not able to understand how the former claimed that they had the right to control the police force of the Baroda State. When this was pointed out by the State on 3rd March, 1906, the Government of India replied, "His Highness, the Maharaja Sayaji Rao III, cannot be permitted to increase his armed police force without first obtaining the permission of the Government of India, for the reason that the

men of the armed police are trained and disciplined and bear arms just as the regular forces of the State. To increase the armed police force would be to increase the armed forces of the State, and this cannot be permitted without the express sanction of the Imperial Government".[3]

It means the State can only regulate the police force for the maintenance of law and order in the State.

The history of the Police Administration of the Baroda State may be divided into four periods:

(i) From the Establishment of the Baroda State to 1860 A.D.;

(ii) From 1860 to 1870;

(iii)From 1870 to 1875; and

(iv) From 1875 to 1939.

(i) From the Establishment of the Baroda State to 1860 A.D.:

During this period, that is, prior to 1860, the izara system or farming system prevailed. The izardars exercised magisterial as well as police functions, and the line of demarcation between magisterial and police duties did not exist. For each village, there were the village watchmen

called Vartanias or Rakahs, who were responsible for the safety of the village and the protection of travellers. These men acted under the orders of the village mukhis or patels, who were themselves responsible to the thanedars who had charge of small groups of villages. Even though they were revenue officers also, they were mainly concerned with the police duties. Therefore, the thanedar's functions were mainly of a police and magisterial character. It was his duty to detect criminals, and to dispose of such cases as lay within his powers, committing others to the Vahivatdar's court. Although, theoretically the powers of the thanedar and vahivatdar were defined by their Kalambandis or izara pattas (agreements or conditions of lease), practically, these officers exercised great power in criminal matters. Even in grave offences, they held inquiries, either sometimes with permission or of their own and awarded punishments according to their powers. They received cash benefits (nazarana) as per requisites.

In Baroda City, the chautras or chabutras, who were in charge of the izardars, exercised criminal and police powers. To aid the izardars, there were the fauzdari sepoys, about 300 in number, under three jamadars. The fauzdari sepoys assisted the izardars in detecting thefts and other crimes and in keeping order during the day. But the Killedar was responsible for keeping a watch during the night. He

placed Sibandis in charge of the city. The izardars and killedars generally inquired into all cases primarily, but committed such cases as were beyond their powers to the court. Under special instructions, however, or with the permission of the Dewan or the Maharaja, the izardars often decided serious cases requiring higher punishments than they were authorized to inflict.

(ii) Second Period : 1860-1870:

One of the most important changes in the administration of police which we notice during this period was the abolition of the chautra and the izara system and the establishment of the huzur fauzdari court. This court took cognizance of all offences which were beyond the powers of the mahal vahivatdars. The most important function of the huzur fauzdari court was to inquire into murders and some other grave offences, and to submit the report to the Maharaja. The punishment was awarded by the Dewan or the Maharaja. All the officers, from the huzur fauzdari down to the police patel, were magistrates and police officers at the same time. They not only tried and decided criminal cases, but also conducted preliminary inquiries and traced out offenders. The detection and punishment of crime devolved upon the same set of officers.

Another important change introduced during this period, as far as it concerned the districts, was the appointment of a fauzdari aval Karkuns by the huzur. Of whom, there were four under the vahivatdar, the first representing the revenue department, the second carried out magisterial and police work, the third carried out the preliminary work in criminal cases and the fourth representing the military department. The fauzdari aval karkun was empowered to make a separate representation to the Maharaja, in cases where he disagreed with the vahivatdar.

Police Officers and Magistrates:

In the hierarchy of police officers, the lowest was the village patel or mukhi; who was responsible for the safety of the village. He decided the cases of the village according to the nature of crime. His powers were limited to a fine of one rupee and four annas (1.25) and awarding twenty-four hours' imprisonment. Above the mukhi, was the thanedar. He was in charge of a group of villages and exercised powers of inflicting a fine of five rupees, or in some cases, ten rupees and awarding eight days' imprisonment. Over and above that, he conducted preliminary inquiries before committing the cases to the vahivatdars. The powers

of the vahivatdar were limited to three months' imprisonment and a twenty-five rupees fine. But in some cases, requiring a higher punishment, not exceeding six months' imprisonment and a fine of rupees fifty, the vahivatdars were allowed to hold preliminary inquiries and submit the report with their opinion for decision to the huzur fauzdari. In some cases, requiring a higher punishment beyond six months' imprisonment and a fine of rupees fifty, the vahivatdar was to hold preliminary inquiries, and to submit the report, without mentioning his opinion, to the Sar fauzdar who held further inquiries, if necessary, and finally submitted the matter with his opinion, to the huzur fauzdari. In the last class of cases, therefore, the vahivatdars were regarded merely as police officers. The Sar fauzdars were not invested with distinct criminal powers, and were appointed merely to obviate inconvenience to people residing in distant parts of the State.

Huzur Fauzdari Court:

All cases above the cognizance of the vahivatdars were dealt with by the huzur fauzdari court, whose powers extended to one year's imprisonment and a one hundred rupee fine. Though the court was empowered to award the above punishment without consulting the Dewan, as a matter of

fact, the Dewan was consulted, or was at least kept informed about all pending cases. The result was that the huzur fauzdari was able to dispose of all cases, whether within or beyond its powers.

(iii)Third Period : 1870-1875:

The major change, which we noticed in the administration of police at the close of the Maharaja Malharrao's reign, was the organisation of a body of mounted police. Over and above that, classes of magistrates were formed and their powers were defined according to the extent of the mahal. The powers of a first class vahivatdar were fixed to six months' imprisonment and rupees one hundred fine. A police officer for the city was appointed, who was afterwards transferred to the Kadi division on account of the disturbances then prevailing in that district. The police nemnuk (appointment) for the city of Baroda was curtailed, the force being reduced from 1100 to 700 men. In other respects the earlier system was continued.

(iv) Fourth Period : 1875 A.D. Onwards:

With the appointment of Raja Sir T. Madhavrao, as the Dewan of the Baroda State, the old system of police

administration was gradually changed. The most important change which he made was the separation of Magisterial and Police functions.[4] After that, a police Neab Suba was appointed for each district. Further, Suba and Police Inspectors for sub-divisions, fauzdars for talukas and naeb fauzdar for tappas (thanas) were also appointed. A police Superintendent was specially appointed for the city. He had eight inspectors under him, each having the status of a fauzdar. The administration of the village police remained as before. The thanedars were supplanted by naeb fauzdars. Measures to constitute a regular police force on modern lines for the Baroda city were taken by the Maharaja Khanderao,[5] but Sir T. Madhavrao created this force as a step towards further improvement in it.[6] Then Sir Sayaji Rao III introduced certain changes in the administration of Police.

First of all, he provided uniforms to the newly organised police force. In the beginning, the recurring cost was defrayed from a fund made up partly by monthly deductions from salaries and partly by an annual grant from the Government. Soon the Maharaja found that the deductions from the salaries were unjust and, therefore, he ordered that from August, 1907, they should cease and from that date uniforms should be provided entirely at the expense of the Government. Another change, which he made, was the change of

designation of the head of the Police. The head of the Police, who until 1892 was called Huzur Assistant, Police Department, began to be styled Police Commissioner. For patrol purposes of the Okhamandal and Kodinar coasts, a Water Police was organised in 1909. It consisted of 4 offices and 18 men under the command of a naeb fauzdar. In order to check the turbulent nature of the Vaghers of Okhamandal taluka, the taluka was divided into two parts, Northern and Southern with Dhinki and Varvala respectively as head-quarter stations for the police naeb fauzdars. The Dhinki and Varvala Naeb fauzdars committed cases directly to the Assistant Resident (Office located at Dwarka). In 1909, criminal powers over the Vaghers, upto second class, were retransferred to the local magistrate. Then he found that this administration was not satisfactory, so in 1920 the post of Assistant Resident was abolished and an officer of the Suba's grade styled Okhamandal Commissioner was appointed and the full jurisdiction over the Vaghers and the Okhamandal Police reverted to the State.

Police Act : Police Nibandha:

To improve the police administration, a code of conduct was prepared for the police. The Maharaja thought of giving the powers and duties to the Police. Therefore, the first

Police Act was framed in 1881.[7] It was subsequently revised and brought uo-to-date in 1898. It defined the powers and duties of the Head of the Police, the District Subas, the Police Naeb Subas and other Police officers. Provision was also made for entertaining punitive police for maintaining law and order in turbulent localities.

After that, the Maharaja introduced many reforms in the Police Department to make the force efficient and active. First of all he opened Police schools in all district headquarters for the training of recruits, wherein illiterates were taught reading, writing and simple arithmetic. By the opening of these schools, the percentage of those who can read and write started increasing considerably. For providing better understanding to the Police, a police parshnottari (catechism) containing all useful information in the form of questions and answers was complied. Its copies were given free of charge to those constables who can read and write. The idea of the Maharaja behind this was to make the Police Department alert and, thereby, maintain peace and order in the State. The second important step which the Maharaja took was the establishment of a Police Bank. Prior to that, the members of the force were taking loans from the sahukars at a very high rate of interest. Owing to this, they were not in a position to even repay the instalments of the capital amount of loans. They were some-

times paying only interest on the loans to the sahukars. To improve the financial position of the force, the Maharaja established a Police Bank in 1900 A.D. He started giving small loans to the members of the force at a low rate of interest. By giving such facilities, he saved the police from falling into the clutches of the sahukars. Thirdly, an arrangement for better registration and investigation of crimes was made. Formerly many serious offences, such as robbery, kidnapping of girls, arson, murder were left unreported, and great pressure was put to extort confessions. So an arrangement was made for registration and investigation of crimes. As a result, a large percentage of crimes was now registered, credit was given for actual exertions made in investigating a crime rather than for mere percentage of discoveries. The police officers, who resorted to illegal means to induce confessions and admissions of crime, were severely dealt with. This reform changed the views of the people about the crime department and it was welcomed by the people of the State. In short, by introducing the system of registration and investigation of crimes, the Maharaja was able to put an end to the irregularities of the crime department.

Immediately after this success, he introduced changes for the prevention of crimes. First of all, an effective system of patrol was devised. Secondly, suspects were

registered and watched. Thirdly, rules were framed for the purpose of reminding the police of their duties and were printed and circulated to all. Copies of the rules were also pasted on the notice boards of all the thanas and chaukies in the State. Forthly, a small police drill book, embodying the latest improvements, was prepared and published. Fifthly, reading rooms and libraries were established at the District Head Quarters. A get-together for the police force was held every year in all the districts as a recreation measure. An endeavour was made to keep the force vigilant and efficient by supplying information about criminal tribes and dangerous gangs.

To attract better recruits and to keep police away from corruption, the pay of the police was revised and raised. An arrangement was made to give travelling allowances to constables and officers on duty out of their jurisdiction circle.

Another novel work of the Maharaja in the administration of the police, was the introduction of the Finger Impression System. It was introduced for the first time in the Baroda State for the purpose of identification of accused persons. In a short time, Baroda was recognised as Finger Print Bureau and exchanged slips with other Bureaus

of all over India. The system of direct correspondence in the matters of hue and cry between the police of Baroda and that of the rest of India was adopted. This measure ended the old and dilatory method and secured prompt and cordial co-operation between the two. A special arrangement was made in Baroda for the preservation of all cases of crimes of the State. For this, all Police Head Quarters were instructed to submit the cases of articles of the crime persons to the head office at Baroda. Orders were issued to all magistrates and judges to preserve such cases of articles, because sometime it happened that the same criminal, living in one jurisdiction, committed crimes in another jurisdiction. Therefore, an arrangement was made between the Police Naeb Subas, Baroda and the Superintendents of Police, Kaira and Broach to exchange police officers for each other's jurisdiction in order to study the antecedents and characters of suspects. Arrangements were also made for holding conferences between the District Police Naeb Subas and the Superintendents of Police of neighbouring British districts and also Agencies for control of crimes. Their main function was to discuss methods of work and to help each other in putting down crimes and bringing offenders to justice. Immediately after doing this, the Maharaja, at the request of the Agent to the Governor in Kathiawad, joined in the convention for securing co-operation among the States of Kathiawad in the suppression of dacoities and other serious crimes on terms of reciprocity.[8]

As a result of the reforms in the Police administration, the number of offences were considerably reduced as can be seen from the Police Statistics reports for the years 1920-21 and 1921-22 as under:[9]

Year	Baroda	Kadi	Navsari	Amreli	Okha-mandal	Total
1920-1921	1,476	1,175	420	193	53	3,317
1921-1922	1,327	1,125	343	186	20	3,001
Reduced	0,149	0,050	077	007	33	0,316

We noticed that the total number of cognizable offences during the year 1921-1922 was 3,001 as against 3,317 in the year 1920-1921. It means within a year 316 cases were reduced. The trend of decrease in crimes can be seen in all the districts of the State.

However, some more changes were still required for the betterment of the police administration. The Maharaja himself was not happy about its progress. Therefore, after 1922, he made many changes in the Police administration. Many more duties were given to the police; such as control of traffic, service of summons and warrants in criminal

cases, destruction of stray dogs, inspection of shops, selling explosives and poisonous drugs, extinguishment of fires etc. As a result of this, the Maharaja was able to maintain law and order in the State. The entire arrangement was continued since then. The people of the State lived comfortably and peacefully to a considerable extent.

II. Administration of Jail:

Closely connected with crime, is the administration of jails. Till 1850 A.D., there were chautras in the city and lock-ups in the mahals for the imprisonment of offenders, though there were petty jails in some of the talukas like Kadi and Patan. The arrangements of chautras, lock-ups and jails were not satisfactory. The sanitary condition of the jails, and the health and discipline of the inmates were neglected. During the regime of the Maharaja Khanderao, at the request of Sir R. Shakespeare, the Resident, the Central Jail at Baroda was created under the jailorship of Shri Narbherambhai.[10] It was designed according to the British ideas and pattern. Initially, only the main block of the jail was built and then additions were made from time to time according to the requirements of accommodation. In the beginning, the system of exacting labour was introduced. But later on, when it was found that many Vaghers and others started escaping from

the jail, this system was abolished. During this time, the expenses for the maintenance of the prisoners were recovered from the property of the prisoners themselves and from the amounts of fines levied from them.

This arrangement of the jail's was continued till the appointment of Sir T. Madhavrao, as the Dewan of the Baroda State. He made some changes in the organisation of the jail. The Central Jail which was constructed earlier was opened in 1881. In the jail, the prisoners were given training for useful work and efforts were made to maintain discipline among them, so that after their release they could realise their mistakes and give up their criminal activities. After that, many District Jails were constructed and opened at Navsari, Mehsana, Amreli and Dwarka. An arrangement was also made for the construction of lock-ups in mahal (taluka) and peta-mahal (sub-taluka). In all, forty lock-ups were constructed, one in each taluka or peta-taluka, for the accommodation of under-trial and short-term prisioners.

Immediately after coming to the throne, Sir Sayaji Rao III introduced reforms in the Central and other jails in the State. To systematise the administration of the Jail, first of all, the 'Prison Act' was passed in 1894.[11] A Jail code was prepared and published. In it, the provisions were laid down exactly as those of the Bengal Jail Code and it clearly laid down the rules of

jail management and discipline. This considerably helped in the improvement of the management of the Jails.

Secondly, a separate Reformatory for juveniles was established. Thirdly, the prisoners were employed on remunerative work as far as possible within the jail area with a view to creating a feeling among the prisoners about how to earn money through hard-work for the betterment of life. The other important aim behind this, was to stop unhealthy activities which prevailed in the State. Fourthly, a separate ward was provided for under-trial prisoners in the Central Jail. It was so situated that it was impossible for the prisoners to come into contact with other convicts. Another important step in this regard was the introduction of handicraft industries for the prisoners. The prisoners were trained and required to manufacture carpets, durries, cloth, cane work etc. in the Central Jail at Baroda and also in the three District Jails of the State. The products were sold to the public. Uniforms were provided to jail officials and warders. Marking system for good conduct and behaviour for convicts was introduced. Under this system, convicts who behaved well and did their works properly were released before completion of their sentences.

Another important and remarkable step which was taken by the Maharaja in the administration of Jail was the introduction of

the Borstal System[12] in the year 1907-1908. He got this idea after his visit to England. It was introduced on an experimental basis in the Central Jail for a period of three years. Like in Britain, the prisoners were divided into three grades and were designated as Penal, Ordinary and Special. On admission, a prisoner was placed in the second class or ordinary grade, and he could obtain promotion to the third or special grade by good conduct. On the other hand, idleness or misconduct caused his removal to the Penal grade.[13] Each of these grades had a distinctive dress, but all were employed on work which had definite civic value, such as farming, carpentry, etc. Instruction was given to them in useful trades and small-scale industries, so as to equip them to make a living on release. An arrangement was also made for giving them employment after their release. Before the discharge of any prisoner of this class, the Jail Superintendent was to enquire whether he had any relations or friends who could give honest employment. If there was nobody to take care of the released prisoner, the Superintendent or Inspector-General of Prisons or any staff members of prisons used their good offices to procure him employment. After release, the behaviour and attitude of the man were quietly watched and efforts were made to keep him in the right direction. This system worked very well, but was abolished in 1920-1921, when the better system of keeping select convicts in the Baroda Farm was introduced by the Maharaja.

The Baroda Model Farm was introduced with a view to freeing convicts from jail influences and to enable or equip them to be good citizens on release. A rule was made for selecting the cinvicts at the farm. Accordingly, those convicts, who had behaved well while undergoing two-thirds of their sentence, were eligible for entry to this farm. Here, they worked within the precints of the Farm practically as free men. They put on a special dress, cooked their own food, and kept for themselves what they saved from their earnings. This system worked more satisfactorily and efficiently than the Borstal System. Since then, it was continued in the State.

III. Extradition:

The boundaries of the Baroda State intermingled with those of other States and of the British Indian Government. Therefore, extradition with British India was very much essential. So the Definitive Treaty was signed in 1817 between the Maharaja Anandrao Gaekwad and the East India Company. By Article IX of the Treaty, it was agreed that, "the contracting parties being actuated by a sincere desire to promote and maintain the general tranquility and order of their respective possessions, and adverting to the intermixture of some of the territories belonging to the Honorable Company and the Maharaja Anandrao Gaekwad, Sena Khas Khel Samsher Bahadur, it is, therefore, hereby

agreed that offenders taking refuge in the jurisdiction of either party shall be surrendered on demand without delay or hesitation".[14]

This agreement was too general. It neither clearly mentioned about the procedure nor the offences for which surrenders could be demanded. Till 1875, no progress was made in the clarification of this provision. But in January 1876, Sir T. Madhavrao, the Dewan, started correspondence with the Agent to the Governor-General with a view to bringing about a definite understanding on the subject. The correspondence, thereupon, ensued with the Government of India and ultimately the questions raised therein were finally settled by the Government of India vide letters Nos. 63 J and 75 J, dated 3rd and 22nd June, 1877, respectively. By this arrangement, the provisions of the Act and the procedure prescribed by it, were made applicable to extradition demands made by the Baroda Government. The offences for which British officers may demand surrender of criminals from Baroda were limited to those for which British officers were authorised to surrender subjects of the Baroda State under the Act. In the case of demands for British subjects from Baroda, it was suggested that a larger catalogue should be allowed.

In this there did not exist any specific procedure for dealing with cases coming under it, therefore, the Dewan put down

certain principles for the acceptance of the British Government. He hoped that the Government of India would be pleased to accord to Baroda, in all such matters, the most liberal consideration which it might offer to any Native State.[15]

For all possible cases arising out of the consideration of three major principles, namely:

(i) Of which Government the criminal was the subject?

(ii) In which territory was the offence committed?

(iii) In which territory was the criminal a fugitive from justice?

When applied to the British as well as the Baroda Government can be known from the following table.[16]

Sr. No.	Principle i. of which Government the ii. Criminal subject	Principle i. in which territory ii. Offence committed	Principle i. in which territory ii. Criminal fugitive	Remarks
1.	i. British ii. Baroda	i. British ii. British	i. Baroda ii. Baroda	(a)
2.	i. Baroda ii. British	i. Baroda ii. Baroda	i. British ii. British	(b)
3.	i. Baroda ii. British	i. British ii. Baroda	i. British ii. Baroda	(c)
4.	i. Baroda ii. British	i. Baroda ii. British	i. Baroda ii. British	(d)

(a) In these cases, the British Government demands extradition from Baroda territory.

(b) In these cases, Baroda demands extradition from British territory.

(c) In these cases, the criminal being in the territory in which the offence was committed no demand for extradition can arise.

(d) These cases might be struck out as no question of jurisdiction can possibly arise there-in.

Immediately, the question arose as to how to deal with them. To solve this problem, the Dewan suggested three principles:[17]

(a) He was of the opinion that whatever the differences in the constitution of the two states, the criminal should not be able to benefit by such. This principle was applied because the British Provinces and the Baroda territories were not extensive blocks, but touching only at a distant frontier line. Both were intermixed and were provided with the communication, by which criminals were able to move easily from one territory to the other.

(b) When a criminal was fugitive in a territory, which was not the scene of his offence, he should be remitted to the territory which was the scene of his offence for the purpose of preliminary enquiry and afterwards for trial.

(c) Precautions should be taken to prevent the subject of the Government, suffering manifest injustice on the part of the other, and precautions should also be taken to prevent preponderant inconvenience to the Government themselves.

All the above mentioned principles were accepted by the British Government. Though some misunderstanding with regard to the interpretation and subsequent application of the principles arose, it was later on solved by the Maharaja.

Prior to the Maharaja, there was an extradition officer for the whole State at Baroda. He and his office formed a part of the Varisht Court. The work of the officer was found unsatisfactory by the Maharaja. Therefore, the Maharaja put the extradition office under the Nyaya Mantri from the 30th April, 1914.[18]

Extradition with British India as well as Indian States was obtained and granted through the Resident, except in case of Chandod and the Amreli District. Extradition of an offender to Chandod from the Rana of Mandwa was obtained through the Political Agent, Rewa Kantha, without the intervention of the Resident. In the case of Amreli District, the Suba of Amreli corresponded directly with the Assistant Resident at Amreli. For all other cases, communication regarding extradition was carried on with the Residency.

To systematise the administration of extradition, the posts of the Assistant Residents at Okhamandal and Amreli were

abolished. It was decided to give work of extradition for the same districts to the Resident of Baroda. The officer for extradition was prohibited to make correspondence directly with the Resident. The officer of extradition was first to write to the political secretary of the Dewan office, and that officer was to communicate further with the Residency.

All demands for extradition made by Baroda must be accompanied by papers of a prima facie case showing the guilt of the accused. Demands on Baroda for the extradition of Baroda subjects must likewise be accompanied by prima facie cases. In other cases, only a certificate of the District Magistrate that a prima facie existed against a particular offender was supplied to it, and the State had to surrender the offender on such a certificate. It was suggested by the Baroda Government that the arrangement might be the same in all classes of cases. It was also suggested that the result of the trial of the extradited person was to be communicated without delay.

To maintain peace and order in the State, a special provision was made for the trial of the registered thugs and dacoits. If they had committed offences in Baroda territory and were found there, they were tried by Baroda Courts. But if they were arrested in British territory or in Indian States adjoining Baroda, they were to be tried by the court of the Resident, to

whom the requisite authority had been delegated by His Highness's Government. The trial of border affrays was also dealt with. If the scene of offence was in Baroda territory, the offenders were tried by the State Courts; if it was in British territory, the offenders were tried by the local British Courts and if it was in the territory of any other Indian States, it was carried out by the authorities that ordinarily tried similar offences there. But if the venue was doubtful, or if it be in both Baroda and British territories, the local British Courts were empowered to try the offence.

In short, the administration of extradition resulted into a sizable reduction of trial cases in the Baroda State, and proved useful.

IV Justice:

Much could be written on the subject of the administration of justice in the Baroda State, and obviously the matter is closely connected with the question of good government. But we shall confine ourselves to a brief account of the major reform, which Sir Sayaji Rao III introduced in the judicial system of his State. This was the separation of the judicial and the executive powers. For many years the separation of the Judicial functions from the Executive ones was a plank in the Congress platform.

Before I discuss about the judicial administration of the Maharaja, it will be appropriate to give a brief account of the history of judiciary of the Baroda State till 1875.

The stages of evolution of the judicial administration may be divided into the following periods:

(a) Early Maratha Period : 1705-1802;

(b) Period of British Influence : 1802-1819-1839;

(c) Period of Judicial Changes : 1839-1875;

(d) Period of Reforms of Raja Sir T. Madhavrao : 1875-1880; and

(e) Period of Judicial Administration of Sir Sayaji Rao III : 1881-1939.

(a) <u>The Early Maratha Period : 1705-1802</u>

The early Maratha invaders of Gujarat were interested only in taking tribute, but not territory. Territory became theirs almost against their wish, because the Mughal empire fell into pieces. The disintegration of the Musalman Kingdom of Gujarat preceded as well as accompanied the Maratha conquest, and the Gaekwad and other Maratha chiefs obtained only a portion of the debris. The Musalman nobles, Rajput Chieftains and petty Girassias also gained or retained their respective shares in the territory.

During this period, the administration of civil and criminal justice in the Baroda State was in the hands of a revenue farmer called izardar or kamavisdar. For giving judgements for cases, they were neglecting everything. Major Walker remarked that they rendered the subjects 'restless and dissatisfied'. In civil cases, the izardar or kamavisdar always demanded o.25 of the sum which might be awarded by the arbitrators. None of the proceedings were in writing except the clerk entering in his diary and benefits accrued from the decision on any disputed point. In the criminal cases, the izardar or kamavisdar was the judge, who exercised limited powers and was not invested with the powers of inflicting the capital punishment. The usual punishments inflicted were fines, imprisonment, or banishment and in very rare cases, death.

But almost every crime became commutable for money, and fines were considered a regular branch of the revenue. In short, the old system of administration of justice in the Baroda State was as follows:

"There was the panchayat at the base, which was the ancient institution which gave prompt and cheap justice to the people. There were the kamavisdars, whose real business was to get money out of the districts they farmed, and

therefore, the civil and criminal justice was a strange wearisome task to them".[19]

(b) The Period of British Influence : 1802-1819-1839

During this period, the State was ruled by a Commission of which the Resident was a prominent member, and the British interference ranged over every part of the administration. The First Resident, Captain Carnac, urged the members of the administration to devote their attention to the discharge of justice without endeavouring to establish a regular system for this subject. He also encouraged the system of panchayats. But later on, the Resident, Captain Carnac, noticed that the practice of arbitration as a system of justice could not operate in a large and civilized society, where rights were determined not by a written law, but by local customs and usages. About the administration of the panchayat he also noticed that panchayats were not juries, were not upon oath, decided on points of law and were not subject to the revision of any regular tribunal. After these two observations, Captain Carnac suggested for the establishment of a Central Court at Baroda, wholly distinct from the court of the Kotwal or city magistrate. By establishing Central Courts, Nyayadhishi, the Resident wished to be empowered with both civil and criminal powers and the appointment of one of the members of the Gaekwad

family as its head, so that the nobles might feel repugnant to submitting to its decrees.

The Central Court tried both civil and criminal cases. Being the first and final court, it delegated required powers to the vahivatdars of districts. The court was composed of the Sarpant (Chief Justice - Shri Kashinath Abhyankar More) and three Pants (Judges). The pants recorded their opinions separately, and the sarpant, after collecting these opinions, took them to the Huzur. But after finding some irregularities in its working methods, in 1833, for a short time, the post of the President of the Central Court was abolished and all the pants were done away with. Due to this, the work of the administration of justice was given to the Dewan. The Dewan, Shri Veniram Aditram and Shri Puranik Bhau, started deciding cases with the help of Shirastedars (aval karkuns). This abnormal state of things continued till Shri Veniram was dismissed on account of his irregularities and malpractices in delivering justice for the cases. So a judge was again placed at the head of the court.

(c) The Period of Judicial Changes : 1839-1875

In 1839, the devghar kacheri was instituted by the Maharaja Sayaji Rao II, so that a person, discontented with

the decision of the Central court, might appeal to the Maharaja. On the payment of a nazarana, the Maharaja gave him the chance of a re-trial at the devghar kacheri. But the re-trial system was found very faulty. So in 1845, the appellate powers were withdrawn from the devghar kacheri and it was converted into a joint civil court with the central court, though the latter alone retained its criminal jurisdiction. But above the two civil courts, he placed the sadar nyayadhishi court, of which he himself was the first President.

After five years (1850), a special court called darak-dar kacheri was instituted, which was to be a court of appeal from the sadar nyayadhishi court in civil matters. This court remained in existence till the end of the Maharaja Ganpatrao's reign.

The year 1860 is considered a very important year in the history of the judicial administration of the State, because, during this year, the Maharaja Khanderao Gaekwad introduced changes in the judiciary system of the State. First of all, the Huzur Fauzdari Court was constituted. It was both a magisterial and criminal court, and deprived the nyayadhishi court of its criminal powers. Due to this, the izardari or revenue farming system came to an end, and each

mahal or sub-division was placed under a vahivatdar. The vahivatdar was assisted by four shirastedars (aval karkuns), one each for revenue, civil, criminal and the military department. The magisterial work and criminal cases were supervised by the fauzdari kamdar, revenue appeals went from the vahivatdar's court to the sar suba. Finally, the appeals in civil suits went to the sadar nyayadhishi and then to the Members' Court, after the latter had taken the place both of the Sadar nyayadhishi court and of the 'Special Court'.

The Maharaja Khanderao had made an attempt to introduce written or printed laws for the betterment of the judicial department. In 1861, a criminal code was framed on British lines, called the first fauzdari tharav. It was at first applied to the city of Baroda alone and after its success, it was extended to the whole State in 1863. Then in the same year, acts, called the first and second nibandh, were promulgated. By the first act, criminal jurisdiction was entrusted to the Government servants like vahivatdars, thanedars, patels, etc. It was passed for the abolition of the izardar system. By the second, inamdars and dumaledars obtained some civil and criminal powers. In the same year, a civil code was also framed, which was revised and amended in 1869-70. Then a Stamp Act and a Registration Act were also framed. In 1865, a Revenue Code was enacted, for the most part compiled from the Bombay Regulations of 1827. The laws

passed by the Maharaja Khanderao differed on some points from the British laws.

In 1871, a Varisht (High) Court of final appeals in civil, criminal and revenue matters was instituted by the Maharaja Malharrao Gaekwad. He established this court with a view to giving the Maharaja a more constant means of interfering in judicial affairs and of using his influence to the benefit of his purse.

(d) The Period of Reforms of Raja Sir T. Madhavrao : 1875-1880

After the deposition of the Maharaja Malharrao Gaekwad, Sir Raja T. Madhavrao became the Dewan of the Baroda State. Immediately after assuming power, he decided to improve the administration of justice. To that end, he first of all, created a new judicial department mainly based on the system in practice in the British India. Then, he took away the powers of the vahivatdars. During the time of the Maharaja Khanderao, the vahivatdars exercised civil powers of each mahal. The Dewan investigated the method of vahivatdars and found that they were not performing their duties properly, so he took away their powers to try civil cases. After doing this, the civil courts were instituted for civil cases in

each taluka. The Munsiff was in-charge of these courts. Then, in each district, a district court was opened for original work above the powers of the munsiffs, for hearing appeals against the munsiff's decisions, and for the trial of sessions cases and criminal appeals on the magistrates' orders.

Another important work of the Dewan was the establishment of the Sardar's Court. This court was established for privileged persons. These were the members of the Gaekwad's family, the nobles, that was, the Sardars, the darakdars, and their representative retainers and servants, in all, about 800 people.

This new court, specially instituted for facilitating the sardars, consisted of a judge, the siledar bakshi, the sibandi bakshi, a sardar and a darakdar appointed from time to time. Each case was tried by the Judge and another member of the court. All civil suits and criminal charges, wherein the offences might have been compounded in the first instance, were referred to the court of arbitration. If the cases were not settled, the court proceeded with the trial. If two members of the court did not agree, their respective opinions were sent to the High Court for orders. But all decisions of the High Court were subject to revision by the

Huzur. Thirteen[20] of the sardars had the right to appeal directly to the High Court or the Minister. It was decided not to give any kind of punishment to these thirteen sardars without the prior sanction of the Huzur and also no sentence of imprisonment could be passed on any person subject to the jurisdiction of sardar's court without such sanction. But this special court for the sardars was abolished in 1904 owing to certain difficulties faced by the Maharaja Sir Sayaji Rao III. The work of this court was then handed over to the city Munsiff and city Judges' courts according to the limits of their jurisdiction.

Sir T. Madhavrao did not make new laws in the judiciary department owing to his day-to-day busy schedule for the running of the State's administration. He left this task for the young Maharaja Sir Sayaji Rao III. But he made an arrangement for curing defects in laws. He ordered that when any of the lower courts found the State law to be defective, a reference should be made to the Varisht Court and it was to follow the spirit of the British Indian Law in most instances. When the Varisht Court passed a decision of this kind and the law was amended, circulars to notify the fact were sent out by the Huzur. As regards evidence, torts and contracts, no law was passed, but the spirit of the British Indian Law was followed. In 1878-79, the Resident, Mr. P.S. Melvill, C.S.I., who was a Judicial Commissioner in the

North-West Provinces, wrote about the judicial administration of the State during the minority period of the Maharaja Sayaji Rao III in the following words: "The Judicial Department of the State is now established on a firm basis. It is sufficient for the work, is well paid, is officered, except in some of the posts of the lower grades, by thoroughly qualified men, many of them have been trained in the British service, and the work is done generally in a highly satisfactory manner".[21]

(e) The Judicial Administration of Sir Sayaji Rao III : 1881-1939

The reforms in the judicial department and its administration on modern lines are considered to be one of the remarkable achievements of the Maharaja Sir Sayaji Rao III. Though, Sir Raja T. Madhavrao had tried to organise the judicial department on modern lines, it was after the Maharaja assumed power in 1881 that the department was streamlined. Since then, the constitution had powers of courts were revised, old laws were amended and new laws were prepared and the administration of justice was brought to such a high state of efficiency and integrity that the decrees passed by the Baroda Courts were executed in British India as if they were passed by the British Courts themselves.[22]

The Maharaja realised the urgency of the problem of judicial administration. The first item of reform which he took up in his hand in the judicial administration was the amendment of the old laws and the codification of the new ones. The attempts towards codified laws had been made by the Maharajas Ganpatrao and Khanderao, but they were rudimentary in character.

Therefore, the Maharaja thought to codify the laws. For this, he formed a Law Committee in 1882, consisting of the Judges of High Court to look after the work of legislation. This Committee met a number of times and worked till 1890 and framed several acts. The most important of them were Stamps, Registration and the Police Acts. As the Committee could not spare sufficient time to look to the expeditions of legislative business, and its progress was not as rapid as he desired, the Maharaja, in 1892, appointed Shri J.S. Gadgil, a retired judge, for the preparation of a draft of the Civil Procedure Code on the model of the British Code (Act XIV of 1882).[23] Accordingly, the code was drafted by him and it became law in 1896.

In 1892, the Maharaja appointed Shri J. R. Naylor of the Bombay Civil Service as a Special Judicial Commissioner

of Baroda.[24] He drafted the new Penal, Criminal Procedure and Police Codes for the State. All these drafts remained in force for more than two decades in the State. He retired in 1896, and the Law Committee continued to discharge its legislative functions. Its work was transferred to the Varisht Court. After this the naeb Dewan drafted the Transfer of Property Act and revised the Registration Act in 1901-1902.

Then the Maharaja made an attempt to remove the social evils of the State. He thought that no real uplift of women was possible without making radical changes in the society. He found various abuses in the society particularly polygamy, child marriages, prohibition of widow re-marriage, unequal marriage (age wise) and dislike for the birth of a daughter. After that, he made up his mind to introduce changes by legal ways. For this, two Acts, namely, the Hindu Widow Re-marriage Act and the Freedom of Conscience Act were passed in 1902. Then, in 1904, the Maharaja made a very strong attack on the custom of child marriage by law. He found that women became widows due to early marriages. Due to early marriages, all classes in the society suffered a lot. So the Child Marriage Law was passed. It aimed at checking such marriages. The act raised and fixed the age limit to 18 and 14 from 16 and 12 for boys and girls

respectively. Initially this step created discontentment in the minds of the people, but later on it was approved by them. Marriages below this age limits were made punishable. In short, this was a very progressive measure, which remained in force for nearly 20 years.

In 1904, the Maharaja created Legal Remembrancer's Department and the work of legislation was transferred to this department. This department also worked as a consultant of the Government and advised all its departments on legal questions connected with the administration of public affairs and the drawing up of all important deeds on behalf of the Government.

With the co-operation of the people, the Maharaja established village munsiff's courts. An Act to regulate such courts was passed in 1901. Due to this, he was able to bring justice to the doors of the people. He also took some steps for the quicker settlement of village disputes, by appointing 'madhyastha panchas' or 'conciliators' in all important talukas. The main function of this body was to persuade the parties appearing before them and to settle their problems amicably.

Codification of Laws:

Sir T. Madhavrao did not find sufficient time for the codification of laws. The Maharaja believed that public opinion was far enough advanced, and the disturbance of the public mind had sufficiently subsided to warrant introduction of this great reform. Therefore, he ordered for the preparation of a codification of laws. Accordingly, many acts and laws were passed.

The most important acts were:

(i) The Trust Act, 1907

This act followed in the wake of the Contract and Transfer of Property Acts and regulated the equitable relations of persons standing in judiciary relation-ship.

(ii) The Civil Procedure Code, 1907

The most important step, which the Maharaja took, was the amendment in the Civil Procedure Code, in 1907. Prior to 1907, no civil suits could be brought against the State in

the judicial courts. He amended it in 1907. By an amendment, this bar was removed and people were free to plead their cases against Government before the judicial tribunals. By doing this, he was able to develop confidence among the people in the judicial organisation.

(iii)The Hindu Son's Liability Act, 1908

This Act affected a radical change in the law by freeing Hindu Sons from their personal liability for ancestral debts. No such attempt was made in British India. The Maharaja first applied this on a trial basis to certain cases in Baroda District with the help of assessors in order to seek greater association and co-operation of the people in this work. This was done succeessfully. Then, this Act was applied in the other districts which became very popular among the people.

(iv) The Civil Marriages Act, 1908

This Act marked an advance step in social legislation. It legalised marriages under contractual forms unfettered by any ceremonial scruples.

(v) The Hindu Divorce Act, 1931

A Hindu marriage is generally regarded as a sacrament and hence inviolable. But the Maharaja in order to alleviate the life-long misery of married persons, who could not live happily together, passed the Hindu Divorce Act, in 1931. It gave to all Hindus domiciled in the State the liberty to have their marriages dissolved under such circumstances.

Creation of Small Cause Courts

(a) Civil Suits : 1890

With a view to removing certain defects in the earlier civil suits procedure, the Maharaja passed an Act called "Nana Davano Nibandh" - Small Cause Court - in 1890 by laying down the procedure to be followed in small cause suits.[25] The main provisions of this Act were:

(i) the summons issued on the defendant were for the final disposal of the suit and not for framing issues;

(ii) the depositions of witnesses were not to be recorded in full, but only a memorandum of the same was to be made;

(iii) the decrees passed were not appealable but final; and

(iv) the judgement was to contain only issues and findings on them but not necessarily the reasons for arriving at

those findings. By introducing civil suits, he reduced the petty cases procedure.

(b) Criminal Suits : 1890 and Summary Trials : 1892

After finding success in the organisation of small cause courts cases, the Maharaja turned his attention towards the procedure for the trial of small criminal cases in 1890. Before that, cases of every description were tried under one and the same procedure and regular and special appeals were allowed in all cases of every kind. This involved parties in heavy expense. Therefore, with a view to speeding up the dispensation of justice, the Maharaja introduced certain changes in it. First of all, the Maharaja sanctioned rules for the summary disposal of petty criminal cases. Then rules for the trial cases by benches of magistrates were framed and sanctioned. Immediately after this, the benches of First Class city magistrates for summary trials were constituted at Baroda in January 1892 and benches in other places, after verification of its works, in March 1892 and onwards. The Honorary Magistrates were nominated at Baroda, Petlad, Navsari, Kathor, Patan, Kadi, Amreli and some other places to try offences coming under the Summary Trial Rules. At the end, the first class magis trates, having summary powers from a bench with one of

the local honorary magistrate and the below so constituted, summary disposals of such offences were included in the IXth schedule of the Criminal Procedure Code.[26] No appeal lay against a sentence not exceeding fifteen days' imprisonment or a fine of twenty-five rupees.

(c) Kabja Nibandh : Possessory Suits : 1895

The Kabja Nibandh or the Possessory Courts Act was passed on 1st August, 1895. By it, great changes were effected in the procedure for the recovery of possession of land and other property. The nibandh enacted that there shall be civil court styled "Kaber nyayadhishi" in all places, where deemed necessary. Appeals which were allowed under the old law were disallowed and the decision passed in possessory suits under the Act became final. However, a provision was made that the parties, dissatisfied with the decision, might file a suit in the ordinary civil courts.

In short, by passing the above mentioned acts and laws, the Maharaja created a good impression and faith among the people in the judicial administration of the State. It created a new awareness in the State and greatly helped the people.

Separation of Judicial and Executive Functions

The separation of judicial and executive functions was the most important contribution of the Maharaja in the judicial administration of the State. Right from the beginning, he had endeavoured to bring about a separation of the judicial and executive duties. His travels in the districts convinced him that the executive officers (vahivatdars) were overworked in their dual capacity as executive and judicial officers, and they impressed him at the same time with the impropriety of the man being simultaneously prosecutor and a judge. He also travelled in the talukas and found that the taluka executive officers used to try all criminal cases while the taluka judicial officers (munsiffs) took cognizance of civil cases only. This type of administration created many problems in the judicial organisations. Hence, after evaluating the entire procedure, the Maharaja made up his mind to separate the two powers. For this, first of all, he discussed the matter with the highest officers of the State and also took advice of his ministers. After knowing and considering their opinions, he came to the conclusion that the separation should be affected immediately. In the beginning, he introduced it in a few talukas as an experiment, where three quarters of the criminal work was transferred from the vahivatdars to the munsiffs. It was also directed that three-fourth of the criminal cases should be tried by munsiffs, and only one-fourth should be tried by vahivatdars. In this way, the bulk of the criminal work was made over to trained judicial officers who

performed no executive or revenue work. After that he extended the scheme to other talukas by appointing additional magistrates to undertake the work from the shoulders of the vahivatdars. By 1907-1908, he completed his task, relieving the revenue officers of all judicial powers, and setting up the necessary extra munsiff courts. As a result of this, all criminal and civil work was performed by munsiffs who had their courts in almost all the talukas; while the revenue and executive officers devoted all their time to their legitimate revenue duties.[27] At the same time, care was taken that the new magistrates should be properly qualified men.

In 1909, the Earl of Minto visited Baroda City and publicly assured the Maharaja that "his bold attempt to separate the judicial and executive functions had elicited the warm interest of the Government of India".[28]

In an instruction to the officers concerning the courts of law, he wrote in Huzur orders that, "they (officers of the judicial department) should make efforts to surpass the British Indian Courts. The average time-limit for the disposal of a case should be brought down to at the most three-fourths of that in British India".[29] By such inspiration to the officers of the judiciary department, the Maharaja was able to make the administration of justice speedier and satisfactory.

Public Prosecutors

One other item in connection with the administration of justice was public prosecutions. Till 1908, public prosecutions before magistrates were conducted by police officers, whereas in the District Courts and the High Courts qualified pleaders were employed. Due to the anomalies in the appointment of qualified pleaders to the lower courts, the Maharaja found, after visiting the places and hearing the matter from the people, that the arrangement and the procedure of such courts were unsatisfactory. Therefore, in 1908, the Maharaja empowered the Legal Remembrancer (whose department was set up in 1904 to assist the Government in all matters of law) to appoint qualified prosecutors for the magistrate courts as well as for the lower courts. The language of the laws and the Court was Gujarati. In this way, the Maharaja satisfied the people by making changes in the public prosecutions.

Revision of the Powers and Functions of the Courts

After making considerable progress in the judicial administration, the Maharaja revised the powers and functions of the various courts.[30] His main objective was to make the courts function efficiently.

(a) Huzur Nyaya Sabha

The Varisht (High) Court was the supreme tribunal in the State. The Maharaja had the powers of revising the decisions of the Varisht Court and, in exercise of these powers, he was advised by the Nyaya Sabha, which was subject to the jurisdiction of the Privy Council. The Nyaya Sabha comprised three members, including a judge of the Varisht Court. Appeals to the Huzur against the decree of the Varisht Court lay in such civil suits in which the value of the subject matter of dispute was upto Rs. 5,000 and above in the case of immovable property, and upto Rs. 15,000 and above in case of movable property.

(b) Varisht Court

The Varisht Court or High Court at the State capital, with a Chief Justice and two puisne (lower) judges, was the highest judicial tribunal in the State. It was established in 1871 by the Maharaja Malharrao Gaekwad. It did not exercise the original civil jurisdiction, but exercised appellate and revisional jurisdiction in civil as well as criminal matters. It could pass the sentence of death or life imprisonment, but a sentence of banishment was subject to confirmation by the Huzur.

(c) District Judge's Court

Below the Varisht Court, came the courts of the District and Sessions Judges. There were district courts at Baroda, Kadi, Navsari and Amreli. For Baroda City, there was a separate district court. After the observation of its working in Okhamandal District, a Commissioner was appointed and he was invested with the powers of the district sessions judge for the area under his charge. A district court had powers to try original civil suits of the value of any amount, to hear small cause suits of above Rs. 500, and to hear appeals against the decrees and orders of the munsiffs.

In criminal matters, it was called the "Sessions Court" and could try cases committed to it by the subordinate magistrates. In such cases, it could pass any sentence except that of life-imprisonment, banishment, or death, which must be referred to the Varisht Court for confirmation. It was also empowered to enquire into the legality of any judgement, sentence or order passed by any subordinate criminal court and to send the same for revision to the Varisht Court, if it deemed it desirable.

(d) Assistant Judges' Courts

The Joint or Assistant Judges were appointed when necessary. The powers of a Joint Judge and of a District and Sessions Judge were the same in both civil and criminal matters. An Assistant Judge had the same powers in civil matters, but in criminal matters an appeal lay to the Sessions Judge on any sentence of imprisonment upto seven years, passed by an Assistant Sessions Judge, while a sentence of more than seven years' imprisonment required the confirmation of the Sessions Judge.

(e) Munsiffs' Courts

Below the district court, came the courts of the taluka munsiffs and magistrates. There were twenty-four munsiff courts[31] in the State. Of these, eight were in the Baroda District, at Baroda, Petlad, Karjan, Padra, Sinor, Dabhoi, Sankheda and Savli; nine in the Kadi District, at Kadi, Dehgam, Kalol, Vijapur, Mehsana, Visnagar, Sidhpur, Patan and Chanasma; four in the Amreli District, at Amreli, Dhari, Kodinar and Dwarka; and three in the Navsari District, at Vyara, Kathor and Navsari. Every munsiff had been given powers to hear civil suits upto Rs. 10,000. He was also a first-class magistrate for the taluka.

The Maharaja also specially empowered the munsiff to try small cause suits upto Rs. 100, when he sat alone and upto Rs. 300, when forming a bench with another munsiff. In criminal matters, he could pass a sentence upto two years' imprisonment and a fine upto Rs. 1,000.[32]

(f) Village Munsiffs

Below the taluka munsiffs, came the village munsiffs' courts. It was the lowest court of justice in the judicial administration. There were four village munsiffs' courts in the State in 1920-1921, but later on more such courts were established, when necessary. These courts exercised jurisdiction over a village or a group of villages and were empowered to decide suits relating to money matters upto Rs.30, when they sat alone and Rs.100 when sitting in bench with a panch.

Features of the Judicial System

The Judicial system in the Baroda State had certain special features which distinguished it from that prevailing in British India.[33] These were:

(i) the language of laws and of the court was Gujarati;

(ii) there was complete separation of the judiciary and the executive since 1881;

(iii) there was absolute independence of the Judicial Department. The Chief Justice exercised complete control and supervision over the Judicial Department;

(iv) the Huzur Nyayasabha (Privy Council) was established to entertain and dispose of civil and criminal appeals and extraordinary applications against the decisions of the High Court;

(v) Courts of small causes were established for speedy disposal of petty money suits; and

(vi) the High Court was the supreme tribunal in the State subject to an appeal to Huzur Nyayasabha in cases similar to those in which appeals were permitted in the Dominion of India to the Privy Council. The High Court did not exercise original civil or criminal jurisdiction, but exercised only appellate and revisional powers.

The Maharaja became successful in his attempt by dividing the work of judicial matters and giving the powers individually to the judges and other officers. Indeed, it may be said that most of the laws and regulations framed during his reign were due to his initiative and interest. On the whole, the Maharaja followed the legislation of Britain and British India as a model for efficient judicial administration. In some respects, in the

judicial organisations, the Baroda State even evolved its own system and procedure. In short, the work of the Maharaja in this field laid a solid foundation of smooth, systematic, effective and efficient administration of the judiciary in the State, which, in those days, was not to be found in many parts of India. This naturally gave a place of pride to the State of Baroda in this field of judicial administration. This also shows the progressive outlook and innovative spirit of the Maharaja, a real trend-setter in this and many other areas of activities.

V. Local Self Government

Introduction

The history of Local Self-Government in India is very old. The powers of village councils in the ancient period were probably extensive. The villages themselves managed the simple affairs of the village, but the States being small, there was hardly any distinction between the Central and Local Governments. Information about the local self-government institution is available in Vedic literature, Kautilya's Artha Sashtra, Indica of Megasthenes and other sources. The sources tell us that the Government of the village was carried under the direct control, supervision and guidance of Gramani. The village council was

permitted to spend a specified percentage of the revenues collected for financing its multifarious activities.

(i) Village Panchayats

The institution of Village Panchayat which existed in the past was not only an ancient institution, but it also had a paramount importance in rural culture and administration.

Sir Charles Metcalfe evaluated the village administration and said that, "the village communities are little republics having nearly everything they want within themselves and almost independent of foreign relations. They seem to last where nothing else lasts".[34] But this ancient institution became a thing of the past during the British regime.

Sir Sayaji Rao III re-introduced old administrative methods of governing village affairs by the elder people of the same village. India is a country of villages. Self-government was by no means unknown in ancient India, and the village Councils were at once the best example and perhaps the only, if rather moribund, survival of the old economy.[35]

It is claimed for the Baroda State that, 'it justly prides itself on the fact that from the commencement of its land settlement operations, great efforts were made to preserve as much of the ancient self-government in the villages as possible'.[36] The Maharaja was particularly anxious that this should be done; for it might almost be called a fundamental axiom of Indian politics that the village is the unit, and that upon it must be based any successful scheme of self-government. Mr. Elliot, writing in 1893, described the question as one 'which His Highness the Maharaja has personally fostered and made his own. His generous wish was that the village should once again be self-ruling'. The Maharaja, in a letter to the Minister from Nice, told him to "tell Mr. Elliot that he must, at least in 100 villages, introduce the elective village Councils before he leaves India. I am deeply interested in that measure and wish to extend it to all my State. If properly worked it will turn out a most useful measure. It will be a keystone of what I wish to develop in my State. Do not believe that I am going to have other elective bodies like that... I hate to have a constitution which will weaken the hands of the already feeble Rajas. In their solid strength lies the interest of the people".[37]

Owing to this, a provision was made to have a village panchayat in every village, and for the maintenance of

village powers and services like the ancient usage. A fresh advance was made in 1901 when an elective system into the village panchayats with ample powers was introduced. The Maharaja also conceived the idea of building up a complete system of representation from the village to the talukas, from the taluka to the district, and from the district to the Legislative Council of the State. Therefore, Laws were passed in 1902 for the organisation of Gram Panchayats and a careful control was kept on their functioning.[38]

The laws passed in 1902 provided that every village with a population of one thousand or more should have a Panchayat of its own; and that those with a population of less than a thousand should be conveniently grouped together and have a common panchayat. In course of time, a number of amendments and modifications were made and it was thought desirable to draft a fresh Act to include all these. For that a committee under the chairmanship of Shri Govindbhai Hathibhai Desai was appointed and the new Act passed through the Legislative Council, and it received the assent of His Highness in 1920. Regarding the Village Panchayat, this Act laid special emphasis on the election principle.[39]

Important functions were given to the Panchayats. The Maharaja allowed sharing of Local Cess's money for the

welfare of villagers. He also ordered Panchayats to collect the amount received from the fruit-auctions. Panchayats were permitted to receive other benefits, like extra-yield namely, grass-yield, wood, village-land rents, etc. Some compulsory and voluntary services required to be carried out by the gram panchayats were spelled out clearly such as water-supply and drainage, sanitation, roads or cart-tracks within the village and upto the village borders, maintenance and cleanliness of the village wells, tanks or ponds, maintenance of the religious places, maintenance and administration of the State and public properties, construction of such and other State owned buildings, execution of the programme of smallpox vaccination, caring for the schools, supervision of village servants, implementation of compulsory education act, control on early or child-marriages, check on weights and measurements, maintenance and checking of local water reservoirs or ponds, etc. The Village Panchayats helped in relief work in times of natural calamities, like floods, excess rainfalls, droughts, earthquakes, famines and epidemics. The trial of civil and criminal cases within certain specified limits was also given to the Panchayats. If they would show due sense of responsibility in the exercise of the delegated powers, it would be the intention of His Highness's Government to extend the scope of their activities and responsibilities still further. His faith in the Village Panchayats was rewarded and he was able to establish efficient administra-

tion in the villages. In short, revival of the Village Panchayat system in the Baroda State proved advantageous to the people as well as the State.

(ii) Local Self-Government Act, 1904 : Taluka and District Local Boards

Immediately after achieving a brilliant success in the village organisations and putting the village panchayats on a sound footing, the Maharaja turned his attention towards the formation of Taluka and District Panchayats. Owing to the failure of the rains in 1903 and the scarcity which had begun in many parts of the State, it was thought that this was an unfavourable time for the development of this scheme. But the Maharaja felt that Local Boards like Village Panchayat would certainly help the famine relief operations and other works. Therefore, the Sthanik Panchayat Sabandhi Nibandh, the Local Self-Government Act was passed in September 1904. The provision to set-up taluka and district boards in the Raj was made in it.[40]

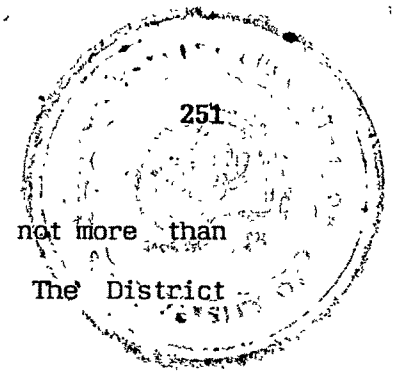
Taluka Boards

By this Act, it was provided that all the villages in the taluka should be divided into a number of groups. From

each of these, a certain member should be returned to the Taluka Board. The qualifications for the voters and the candidates for the Taluka Boards were fixed. The total number varied in different talukas according to area and population. Out of the total number of members, 2/3 members were to be elected and 1/3 were to be nominated. Of the nominated members, half were ex-officio members and the other half represented the interests of the minorities. An official element was included in the personnel of the taluka boards. Each municipality in the taluka had the privilege of choosing a member. The Naeb Suba of the sub-division was the president and the vice-president was to be elected by the members from among non-official members.

District Board

The Local Self-Government Act also made special provisions for the election of members to the District Board. It was provided that each Taluka within a district shall elect one or more members to the District Board. Similarly, each municipality with a population of over ten thousands, should also send a member to the District Board. One member was to be elected by alienated villages. Together, they constituted not less than one-half of the total number. The other half was to be nominated by the



Government and among the nominated members, not more than one-half were to be Government Servants. The District Officer was to be the Chairman of the Board.

After the Local Self-Government Act, the Baroda Prant Panchayat came into existence on the 1st August, 1905, and it remained in the same from till the merger of the State in 1949. In the Baroda Prant Panchayat, in all, sixteen members were elected and seventeen were nominated. Of the nominated members, not more than half were Government Servants. However, it may be mentioned here that, in 1924-1925, the Government had to honour the wishes of the people to permit them to elect their own Chairman, instead of the Prant Suba. Thus the first Chairman of the Baroda Prant Panchayat was
41
Shri Tulsibhai Bakorbhai Amin. This was the first experiment made by the Baroda State, and thus it was a step towards the panchayat raj of the modern times.

Functions of Taluka and District Boards

The Local Self-Government Act did not define the relationship between the Taluka and the District Boards. Section 27 of the Act laid down that excepting some works, expressly reserved for the District Boards, all other works were to be

executed by the Taluka Boards. The duties vested in Taluka and District Boards were:[42]

(i) the construction of roads, tanks, wells and water-works;

(ii) the management of dharmashalas, dispensaries and markets;

(iii) the supervision of vaccination and sanitation;

(iv) primary education and agriculture;

(v) the undertaking of relief measures on a small scale in times of natural calamities; and

(vi) other public duties which were entrusted to them from time to time.

After giving the above-mentioned duties to them, it was found that in some departments, particularly in the primary education, they neither understood the measure nor cared to enforce it. As a result the State Government again resumed its control. In the process of reorganisation, the Taluka Panchayats were discontinued subsequently and the District Local Boards were continued.

(iii) Municipal Administration

The municipal administration is a broad-based democratic administration endeavouring to provide basic facili-

ties to the people within its area. In fact, in the ancient period, particularly during the period of the Mauryan empire, the municipal administration was one of the most important organs of the government. The references about its administration are given in 'Indica', written by Magesthenes, a Greek ambassador. The nature of its objectives and the specified area of its operations bring municipal organisation in close and direct contact with the people, creating a climate of mutual understanding and involvement. The municipal institutions are for the uplift of the standards of living of the people.

As regards the municipal administration of the Baroda State, it was started in a rudimentary form in 1830 during the regime of Sayajirao Gaekwad II. It began its work within the city walls in 1830 and extended its area of operation beyond these limits in 1859. It was ordered that the four principal roads should be regularly watered by a newly created municipal agency. The cost was to be met by the levy of a cess from the keepers of shops. This cess was collected for a short time, although the work of watering the roads continued at the expenses of the Government. Later on, the responsibility of repairing the existing roads and making new ones was reorganised and accepted, and to defray the cost, it was decided to levy dues on certain articles imported and exported. In 1859, it was arranged to include

the principal roads outside City limits. From 1859 to 1869, municipalities functioned as State departments. In 1869, these municipalities were separated from the departments and their administration was handed over to nominated members and was presided over by a Sudharai Kamdar - Municipal Commissioner. A house-tax was introduced, and was assessed at Rs.2-8-0 i.e., Rs.2.50 per thousand of the house value, but as the expenditure involved in its collection exceeded the realisations, the tax was dropped. In 1872, a Kalambandhi was sanctioned empowering the municipality to add to its funds by levying nazaranas, licence fees on new buildings, rents on mandwas, etc.

During the period of Sir T. Madhavrao, no attempt was made for the improvement of the municipal administration. But, Sir Sayaji Rao III made an advance in the development of its administration. In 1892, Sudharai Nibandh, i.e. Municipal Act, was passed by His Highness in the Baroda State, which recognised, for the first time, the elective principle in Baroda Municipal Government. On this occasion, his address to the Baroda Municipality was typical. He said, "I cannot help saying to you that my own ideal, and that of my Government, is not to keep the ruled entirely aloof from the ruler, and from the work of administration. That Government which joins hands and takes the help of the people, and answers their wishes and wants sympathetically

and liberally, is in my opinion the best Government. If I am spared long, and if the administration is supported in all its liberal measures by the people, I shall endeavour to advance this reform until the moral and material conditions of the people have been so developed that they will be able to take a substantial and intelligent interest in the affairs of Government".[43]

By this Act, Baroda City was divided into 22 wards, each to elect one member to the Municipal Board. Besides the large number of elected members, there were 8 ex-officio members; the Sudharai Kamdar, the Municipal Commissioner, was the ex-officio President of the Municipality. It was decided by the Maharaja that the entire cost of municipal administration would be borne by the Government. Therefore, the citizens had the privilege of representation without taxation. After some time, it was found that without taking taxes from the citizens, it was difficult to run the administration at the cost of the Government. To remove this anomaly, therefore, another Municipal Act was passed in the year 1905, which was based on the Bombay District Municipal Act.

The Municipal Act of 1905 not only conferred financial independence, but also separated the administration of

deliberative functions from the executive. This Act also increased the elected members from half to two-thirds. Thereafter, its powers, responsibilities and privileges were extended, and it elected its own president. Except for such matters as taxation, making laws and bye-laws, the municipality enjoyed independent powers. This Act removed the anomaly of 'representation without taxation'. After this Act, various Acts conferring different rights on municipalities of different classes were enacted in 1927, 1931 and 1949, and the municipalities of different categories, which acquired more and more powers, slowly and gradually continued to make considerable progress. It would, therefore, be observed that even during the formation of native States, the progress of the local self-government institution, in Baroda State was remarkable and outstanding.

District Municipalities

Before 1877, there were no municipalities in the districts. They came into existence in the year 1877. In that year, municipalities were established in most of the taluka towns with simple rules for their working. They were entirely managed by the vahivatdars of the talukas. There was no house tax, and no general assessment of property. The Municipal Act of 1905, based on the Bombay Municipal Act III

of 1901, was brought into force from the 1st of February, 1906. From this date, municipalities were divided into two classes 'A' and 'B', according to their size, importance and fitness for Local Self-Government. Those municipalities which were not sufficiently advanced for self-government, were classed 'A', and were to be managed by the vahivatdars of the talukas in which they were situated. In the 'B' class were placed municipalities which were to be self-governing. Besides the town of Baroda, seven other towns, namely, Dabhoi, Patan, Sidhpur, Visnagar, Navsari, Gandevi and Amreli were selected from the beginning for the establishment of 'B' class municipalities. Later on, Billimora was added to it. The proportion of elected members differed slightly in these two and presidents in both the cases were government officials. From 1939, however, all the 'A' class and some of the 'B' class municipalities were allowed to elect their presidents. This system continued till the merger of the State took place in 1949.

CHAPTER V

REFERENCES AND NOTES

1. Huzur Political Office Selection File No.341/4. 'Military Matters', p. 16. Also quoted by V. K. Chavda, Gaekwad and the British, A Study of Their Problems. (1875-1920), p. 128.
2. Residency Letter No.19191, dated 15th December, 1904, p. 17. Also quoted by V. K. Chavda, p. 128.
3. Residency Letter No.12854 dated 24th August, 1906, p. 17. Also quoted by .V. K. Chavda, p. 128.
4. G. H. Desai and A. B. Clarke, Gazetteer of the Baroda State (Baroda, 1923), Vol. II, p. 292. Henceforth cited as GBS.
5. Maharaja Khanderao formed a Police battalion consisting of seven companies, under two commandants. Of the seven companies, four were armed with muskets and had two Officers, a Major and a Commandant, and the other three were armed with sticks, lathis, and were similarly commanded. Each company consisted of 102 men, with a Subedar and a Jamadar. A Company was sub-divided into four sections, each consisting of twenty-five men with one Havaldar and the one Naik. The number of companies was afterwards increased to eleven.

6. Dr. S. B. Rajyagor, Gujarat State Gazetteers, Government of Gujarat, Vadodara District (edited) (Ahmedabad, 1979), p. 575. Henceforth cited as Rajyagor.
7. GBS, Vol. II, p. 293.
8. Ibid., p. 295.
9. Ibid., pp. 297-299. See Tables.
10. Ibid., p. 301.
11. Ibid., p. 302. Also cited by Rajyagor, p. 581.
12. Borstal System: In Great Britain, the prison at Borstal was specially set for the reception and detention of male criminals between the age group of 16 and 21 and special treatment was given to them. It was known as the Brostal System. The period between this age group 16 and 21, was one during which a proper treatment of criminals may help them to lead a normal life once again. This idea appealed the Maharaja Sir Sayaji Rao III when he conducted the nineth tour to Europe including England and U.S.A. between April, 1905 and November, 1906.
13. GBS, Vol. II, p. 302.
14. C. U. Aitchison, A Collection of Treaties, Engagements and Sanads, Vol. VI, Chapter XXV, Article 9, p. 138. Henceforth cited as Aitchison.
15. Huzur Political Order, Memo on Extradition, p. 1. Also cited by V. K. Chavda, p. 110.
16. Ibid., p. 3. Also quoted by V. K. Chavda, p. 111.
17. Ibid., pp. 4-5. Also cited in GBS, p. 284. Also quoted by V. K. Chavda, p. 112.
18. GBS, Vol. II, p. 281.

19. Ibid., p. 248.

20. Thirteen Sardars:

    (i to vi) Six members of the Pandhre family;

    (vii) Narayanrao Raje Ghorpade;

    (viii) the Nawab of Baroda;

    (ix) Mir Kamal-ul-din;

    (x) Mir Ibrahim Ali;

    (xi) Mansingrao Jadhav;

    (xii) Jotiajirao Phakade; and

    (xiii) Dost Muhammad Jamadar.

21. GBS, Vol. II, pp. 259-260. Quoted.

22. Ibid.

23. Philip W. Sergeant, The Ruler of Baroda (London, 1928), p. 276. Henceforth cited as Sergeant.

24. Ibid.

25. GBS, Vol. II, p. 263.

26. Aitchison, Vol. VI, Article 9. Also cited in GBS, Vol. II, pp. 263-264.

27. GBS, Vol. II, p. 265. Also cited by Sergeant, pp. 274-275.

28. Sergeant, pp. 274-275.

29. Ibid.

30. GBS, Vol. II, pp. 269-270.

31. Ibid., p. 271. See Table.

32. Ibid., p. 270. Also quoted by Rajyagor, p. 593.

33. Rajyagor, p. 593.

34. Ibid., p. 619.

35. Professor K. P. Jayswal, Hindu Polity (Calcutta, 1924), Vol. I, p. 63.

36. GBS, Vol. II, p. 225. Also cited by Stanley Rice, Life of Sayaji Rao III Maharaja of Baroda (London, 1931), Vol. II, p. 79. Henceforth cited as Stanley.

37. G. S. Sardesai, Selected Letters (Compiled) (Baroda, 1923),Vol.I, Letter No.140, dated 28th January, 1894, p. 103. Also quoted by Stanley, p. 80.

38. V. P. Dandekar, Srimant Sayajirao Maharaja, 'Vyakti Ani Karya', Vol. III, (Poona, 1933), pp. 82-83.

39. GBS, Vol. II, p. 227.

40. Ibid., p. 229.

41. Rajyagor, p. 635.

42. GBS, Vol. II, p. 231.

43. A. G. Widgery, Speeches and Addresses of Maharaja Sayaji Rao Gaekwad, (edited) (London, 1928), Vol. II, p. 345.

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