The Indian Panchayat, Access to Knowledge and Criminal Prosecutions in Colonial Bombay, 1827–61

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"Cultural expertise" in contemporary European and American courts has been provided largely by Western-trained anthropologists covering issues as diverse as marriage and divorce, adoption and legitimacy, and murder and manslaughter.[1] In historical perspective, however, the practice of employing experts as cultural mediators to interpret "native" customs in contemporary Western courts both reproduces and inverts the experience of many colonized peoples. On the one hand, employing predominantly Western intellectuals to explicate and verify the customs and manners of colonized peoples reproduces the centuries-long experience of "natives" placed under the scrutiny of Western investigators, ethnologists, and other experts. At the same time, however, the modern practice of "cultural expertise" serves to invert early colonial history whereby Westerners first gained access to local knowledge and established their legal authority not through the advice or experience of foreign specialists, but through the mediation of "native" scholars and legal professionals.

1. Generally, see the contributions to Livia Holden, ed., *Cultural Expertise and Litigation: Patterns, Conflicts, Narratives* (Abingdon: Routledge, 2011) and Professor Holden's introduction therein.

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Certainly, a great amount of scholarly work has been done on the transmission of "native" legal knowledge to British occupiers, especially through the mediation and translation of a variety of texts, digests, and other sources from which were drawn the principles and practices of Indian law and custom. Much of this work emphasizes the transformation under British rule of a relatively flexible body of Muslim and Hindu law into a legal system based on abstract orders and commands emanating from the state rather than the individual.[2] J. D. M. Derrett long ago described these modes of transmission and their subsequent incorporation into what became Anglo-Hindu law as a combination of selections, abrogations, distortions, and supplementations, a view that current legal historians continue to confirm in great historical detail.[3] Nevertheless, the significant role played by sastric scholars as well as the legal mediation of *qazis*, *pandits*, and *maulvis* were deemed by early British judges and magistrate to be an essential means by which they could gain access to the local knowledge of customs and practices necessary to rule India.

However, access to local knowledge and customs also was provided by an array of Indian subjects other than those with specialized knowledge of law and legal procedures.[4] This article explores the unique situation whereby British judges and magistrates throughout the countryside beyond Bombay called upon panchayats, that is, caste or village councils, to help them administer justice. There, during the second quarter of the nineteenth

2. The literature on "law and governance" in colonial India is an extensive one although it is heavily weighted toward the experience in Bengal. Relevant contributions include Jörg Fisch, *Cheap Lives and Dear Limbs: The British Transformation of the Bengal Criminal Law, 1769–1817* (Wiesbaden: Franz Steiner Verlag, 1983); Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (New Delhi: Oxford University Press, 1998); Jon E. Wilson, *The Domination of Strangers: Modern Governance in Eastern India* (Basingstoke, Hampshire: Palgrave Macmillan, 2008), ch. 4; and Robert Travers, *Ideology and Empire in Eighteenth-Century India: The British in Bengal* (Cambridge: Cambridge University Press, 2007), ch. 5.

3. J. Duncan M. Derrett, "The Administration of Hindu Law by the British," *Comparative Studies in Society and History* 4 (1961): 10–52; see also the useful introductions provided by Rosane Rocher, "The Creation of Anglo-Hindu Law," in *Hinduism and Law: An Introduction*, ed. T. Lubin, D. R. Davis, Jr., and J. K. Krishnan (Cambridge: Cambridge University Press, 2010), 78–88; and Sandra Den Otter, "Law, Authority, and Colonial Rule," in *India and the British Empire*, ed. D. M. Peers and N. Gooptu (Oxford: Oxford University Press, 2012), 168–90.

4. The literature on the mutability of bureaucracy, scribes, and the documentary state is one such interesting area of current research. See, for example, Bhavani Raman, *Document Raj: Writing and Scribes in Early Colonial India* (Chicago: University of Chicago Press, 2012). In a more contemporary context, Nayanika Mathur's *Paper Tiger: Law, Bureaucracy and the Developmental State in Himalayan India* (Delhi: Cambridge University Press, 2016) is a very fine example of this approach.

century, panchayats were being deployed to investigate crimes, including murder, assault, robbery, arson, forgery, rape, and property disputes. Moreover, the active participation of the panchayat in the administration of criminal law varied as much in form as in function. In different scenarios, the panchayat functioned as a coroner's court, a criminal investigation team, and a general witnessing agent for the courts. With very few exceptions, the panchayats almost always appeared in a supporting role on the prosecution side of any case offering their opinions on the crime in question in written form. Judges, for their part, appear to have relied quite heavily upon these recommendations and there are very few instances in which the panchayat's opinions were either ignored or rejected. There thus developed an ad hoc system of legal procedure whereby the "cultural expertise" residing in the panchayat was transferred and adopted by British legal authorities.

I. Panchayat Law in the Bombay Presidency, 1827–61

British administrators in southern and western India long had sought to incorporate the traditional panchayat into their systems of justice either as a jury or as a panel of arbitrators. However, by the mid-1820s, these attempts to formalize a role for the panchayat in the administration of justice had failed and the East India Company ordered the experiments to be abandoned.[5] Instead, although the intercession of panchayats was not abandoned entirely, their role in the administration of justice technically was restricted to a more informal or a voluntary one. In the western Bombay Presidency, this more restricted role for the panchayat was outlined in two enactments: the so-called Elphinstone Code of 1827 and the 1841 Act No. XXI of the Government of India. The Elphinstone Code was typical of the military-styled governance of early colonial India. It consisted of more than twenty comprehensive and detailed regulations, each of which was composed of many chapters, which were to govern the administration of civil and criminal justice, including such areas as military discipline, revenue collection, and customs and duties.

5. For the earlier history of the panchayat in the Bombay Presidency, see James Jaffe, *Ironies of Colonial Governance: Law, Custom and Justice in Colonial India* (Cambridge: Cambridge University Press, 2015); on the Madras Presidency, see Catherine Sandin Meschievitz, "Civil Litigation and Judicial Policy in the Madras Presidency, 1800–1843" (PhD diss., University of Wisconsin–Madison, 1986); and T. H. Beaglehole, *Thomas Munro and the Development of Administrative Policy in Madras, 1792–1818* (Cambridge: Cambridge University Press, 1966), ch. 3.

The panchayat is mentioned specifically in three of the Regulations that comprise the Elphinstone Code: Regulation IV, Regulation VII, and Regulation XIII. Regulation VII provides for the "amicable adjustments of disputes of a civil nature by means of arbitrators (a Punchaet)." This arbitration process was wholly voluntary. No one could be compelled to enter into an arbitration nor could any person be compelled to serve as an arbitrator. However, any award decided upon by the panchayat was recognized as having the authority of a decree of the court. Unfortunately, because these proceedings were extrajudicial in nature, there is very little surviving evidence of how often voluntary arbitral panchayats were employed or of their efficacy in resolving civil disputes.[6]

Of much greater importance was the provision for the employment of panchayats as detailed in Regulations IV and XIII. In both civil and criminal trials, the courts were authorized to be "assisted by respectable natives." The relevant clauses regarding "native" assistance were vague and imprecise. In both instances, "European" judges were authorized "to avail themselves of the assistance of respectable natives in the trial of suits, by employing them as members of a punchaet, or as assessors, or more nearly as a jury." In all cases, however, these bodies only could offer their advice or recommendation. Final decisions were vested solely in the European judge. We shall see that although these clauses seem rather trivial and very nebulous, they will be resorted to quite frequently by British judges and magistrates attempting to deal with crime in the *mofussil*, the countryside beyond Bombay proper.

After 1827, there appear to have been no further efforts to legislate the employment of panchayats in civil or criminal cases until 1841.[7] In that year, the government of India passed An Act for the Better Prevention of Local Nuisances. Although the title of the act also makes it appear to be a rather mundane one, this act granted to the local magistrate the authority to order the removal of "injurious" trades from public spaces, the clearance of fire hazards, the demolition of deteriorating buildings, and the removal of obstructions from public thoroughfares. Moreover, it also provided for an appeals process whereby "a jury or punchayet" could be

6. Parenthetically, Regulation X also provided for the creation of "Special Commissions" to arbitrate village boundary disputes but did not mention panchayats specifically. However, local judges also interpreted this Regulation to connote the employment of juries and panchayats to resolve such disputes. See James Morris, ed., *Cases Disposed of by the Sudder Foujdaree Adawlut of Bombay* (hereafter Morris, *Cases*), Vol. VIII (Bombay, 1858), 7.

7. The employment of panchayats in the army of the East India Company to decide suits against military personnel persisted throughout this period. Act XI (1841), for example, extended this practice from the troops stationed in the Madras Presidency to those stationed in the Bombay Presidency.

convened upon the application of the property owner. Unlike the panchayats in the Elphinstone Code, however, the format of these appeals panchayats was defined clearly. These panchayats required a minimum of five persons; the magistrate appointed the panchayat's "president" and one half of the members of the panchayat. The appellant selected the remaining half. In these cases, the decision of the panchayat was final.

Once again, it must be emphasized that legal provisions for the employment of panchayats, especially in criminal cases, generally appear to have been vague, broadly constructed, and lacking significant substance. However, the Sessions Courts in the *mofussil* would use the very ambiguity of the law to employ the panchayat in a wide variety of cases, thus making "respectable natives" a common feature of the administration of British criminal justice.

II. The Panchayat and Court Records

Unfortunately, the records of the courts of original jurisdiction in the *mofussil*, the Sessions Courts, have been either destroyed or lost, or are unavailable. Therefore, this study rests on the analysis of cases brought before the *sadr faujdari adalat*, the chief criminal court of appeal in the Bombay Presidency. On the civil side, it appears that despite the fact that judges were authorized to employ them, panchayats were rarely if ever used as an adjunct to determine judgments. There, panchayats most often appear as litigants, such as in the case against the gold-thread spinners' caste panchayat in Surat filed by a member who was outcaste for working with wire-drawers.[8] On the criminal side, however, there are three collections of printed cases available that detail their use, two of which are very incomplete. A. F. Bellasis, a deputy registrar in the court, published one volume of selected cases covering the period 1827–46, and E. Harrington, another registrar in the court, published a four volume collection covering only the very last years of the court's existence. By far the most comprehensive collection, however, is contained in the ten volumes of James Morris's *Cases Disposed of by the Sudder Foujdaree Adawlut of Bombay* (published 1854–59).

It also should be noted that the terminology in these reports is not always consistent. Almost certainly, this reflects the fact that the relevant acts and regulations similarly referred to these advisory bodies as "panchayats, assessors, or nearly a jury." Bellasis's *Reports* uses the terms "jurors" and "jury" almost exclusively, whereas Harrington more frequently

8. Anon., *Reports of Selected Cases Decided by the Sudder Dewanee Adawlut, Bombay* (Bombay, 1862), Case No. 23, 105–8.

employs the term "assessor," albeit inconsistently.[9] Morris, however, much more frequently refers to these bodies as "punchayets," to its members as "punches," and to the reports that they issued as "punchayetnamas" although he, too, sometimes refers to "jurors" or "assessors."

Finally, because of the lack of trial records at the magistrates' and Sessions Courts' level, relatively little is known about the creation and composition of these panchayats. As will be discussed in greater detail, from the little information that found its way into the appeals cases, they often were convened by the local police, although many cases indicate that they also were called into being by the local judicial authorities. The number of "punches" serving on these panchayats is also often unclear. Throughout the Bombay Presidency, there often were fewer than five, the number inscribed in the term "panchayat," or "council of five." In two of the very few cases in which the members of the panchayat were named, there were only two "punches"; in another case, there were only three. Finally, most often there is very little indication of the status or occupation of the punches, which makes it impossible, of course, to determine who the British authorities considered to be "respectable" and reliable, although it does appear that the "punches" were drawn from a wide spectrum of Indian society.

III. The Panchayat and the Coroner's Inquest

Despite these many obstacles, there is much that can be learned from these case records. It is quite clear, for example, that panchayats were employed most commonly as a form of "native" coroner's juries and performed murder inquests with a remit that was equally as expansive as that of their English counterparts.[10] Thus, panchayats not only gave a verdict on the cause of death, they also could suggest who might or might not have been culpable, questioned witnesses, and inquired into accessories to the crime. Moreover, "punches" serving at a murder inquest often were called in later to act as witnesses themselves, a role that in England was

9. For example, Harrington refers to a report of the assessors' findings in a murder case as a "punchnama." See E. Harrington, *Cases Disposed of by the Sudder Foujdaree Adawlut of Bombay* (hereafter Harrington, *Cases*), vol. III, 301.

10. On the coroner's inquest in England, see John Jervis, *On the Office and Duties of Coroners*, 3rd ed. (1829; London: H. Sweet, W. Maxwell and Stevens & Sons, 1866). Unlike in England, however, there appears to have been no system of fining the perpetrator in cases of accidental death. On the deodand, or fine for causing an accidental death, see P. J. Fisher, "The Politics of Sudden Death: The Office and Role of the Coroner in England and Wales, 1726–1888" (PhD diss., University of Leicester, 2007), 122–25.

performed by the coroner himself. The inquest panchayat therefore might be considered a type of "legal transplant." However, the inquest panchayat had no statutory or regulatory foundation. Instead, it was an ad hoc institution created by judges and magistrates trained in English legal procedures and seemingly intended to mimic the combined functions of the English coroner and coroner's jury.

Certainly, the clearest indication that the panchayat was adapted by the British to serve as a coroner's jury comes from a murder case tried before the Sholapoor (Solapur) Sessions Court on July 1, 1858. Ningapa wulud Bhimapa clubbed to death a man whom he suspected of being his wife's lover. He then weighted the body with stones and threw it into the Krishna River. The case report continues: "The body was found in this place on the following day; and the members of the Punchayet, or Court of Inquest, were of opinion that death had been caused by wounds and contusions on the head and neck, apparently inflicted with a club or stick."[11]

The equivalence of the panchayat to a coroner's jury is apparent similarly in the 1856 prosecution of Bhimee kom Hunmapa for aiding an abortion. The woman receiving the abortion died shortly thereafter. Bhimee, however, was not charged with homicide, because the panchayat acting as a court of inquest, could not determine the precise cause of the mother's death: "The verdict of the Court of Inquest ([Exhibit] No. 4) which sat upon the body, is to the effect that the body was swollen and marked with boils or eruptions, from which blood had been flowing, and that the *pudendum* was swollen and bloody; there were no marks of violence on the body, and the members of the 'punchayet' were of opinion that the death of the deceased was caused either by the after-birth not having come away, or by the drugs which had been administered to her."[12] In a murder case from 1861, the session judge noted, "The Inquest Report ([Evidence] No. 6) is to the effect that, on examining the corpse, the members of the Punchayet found a severe contusion on the right temple apparently caused by a stone, and a similar contusion on the left breast; and the members were of opinion that the injuries were amply sufficient to occasion death, and must have been inflicted with a stone as large as a mango."[13]

Although such a clear terminological equivalency between the panchayat and a court of inquest is not present in every case, it is obvious nonetheless that court-appointed panchayats were functioning in just this manner. Indeed, in a murder case tried before the Konkun (Konkan)

11. Morris, *Cases*, X:105.
12. Morris, *Cases*, VI:396.
13. Harrington, *Cases*, III:37–38.

Sessions Court in 1857, the members of the panchayat were referred to specifically as "jurors." In that case, Chahoo bin Pandoo Pitambra was charged with beating his wife to death, and although there was conflicting evidence as to the defendant's whereabouts at the time of the murder, the session judge's opinion noted

> The report of the Punchayet testifies to the evidence of marks and bruises on the face, chest, sides, and belly of the deceased, to such an extent that the *Jurors* attributed her death to the assault thus indicated. This report, unfortunately, was not made until about thirty hours after death (from about noon on the 8th until towards evening on the 9th of May), still the statements are confident, and the evidences of violence were apparently clear and great.[14]

Certainly, not all case reports offer such clear evidence of the panchayat's adaptation to British criminal procedures. Oftentimes, the case reports are much more laconic. Nevertheless, they provide certain evidence of the panchayat acting as a coroner's jury. A case report from the Rutnagherry Sessions Court in 1854, for example, simply states, "That the deceased Huree died a violent death is fully proved by the members of the punchayet."[15] In a case before the Poona (Pune) Sessions Court in 1854, the judge noted, "The members of the Punchayet attribute her death to the parts having been exposed after the severe injury they had sustained."[16] In 1858, the Dharwar Session Judge explained, "The circumstances of this heinous murder are of a strange and unusually dark character. The neck of deceased was nearly cut through, and the belly was ripped open and the entrails exposed, a severe wound was inflicted on the head, and other wounds were also found on the body on its being examined by the members of the Punchayet."[17] In 1855, a Poona session judge found that "from the evidence of the Members of the Punchayet it is proved that the deceased met with a violent death."[18]

Unlike in England, where the coroner was responsible for submitting a report of the investigation, in the Bombay Presidency, this was the responsibility of the inquest panchayat.[19] In the "trial of suits," the Elphinstone Code included the requirement that "the reference to the punchaet and

14. Morris, *Cases*, VIII:342. Emphasis added.
15. Morris, *Cases*, I:467.
16. Morris, *Cases*, V:205.
17. Morris, *Cases*, X:211.
18. Morris, *Cases*, III:729.
19. For the practice in England, see Fisher, "Politics of Sudden Death," ch. 7; Ian Burney, *Bodies of Evidence: Medicine and the Politics of the English Inquest, 1830–1926* (Baltimore: Johns Hopkins University Press, 2000), 4–5; and John Impey, *The Practice and Office of the Sheriff. . ., also, the Practice of the Office of Coroner*, 5th ed. (London, 1822), 444.

its answer shall be in writing."[20] This written answer evolved into the *panchayatnama*, a document equivalent to the English coroner's inquest report. At least since the time of the Marathas, judicial panchayats attached to the government had prepared several forms of written documentation, including the *sarounsh* (award or decision), *razeenamah* (agreement to abide by the panchayat decision), and *yad* (memorandum on the decision).[21] The *panchayatnama* therefore was not a new invention, but rather an amalgamation and adaptation of earlier panchayat practices with British legal custom.

Magistrates and session judges appear to have placed great faith in the *panchayatnama*. In one case, the Dharwar Session Judge reported, "the facts in this case have been very clearly set out in the written opinion of the Punchayet."[22] Another session judge in Tanna (Thane) wrote in his verdict, "from the 'Punchayutnama' or Inquest Report, there does not appear to be a doubt as to the deceased Dhondnak's having met with a violent death."[23] In the abortion case noted previously, the *panchayatnama* was referred to as "the verdict of the Court of Inquest."[24] Even when the *panchayatnama* proved to be less than satisfactory, judges accepted the report. One judge reported, "The Punchayetnama ([Exhibit] No. 5) … although ill-drawn up, shows that the jowaree [millet] stalks, and the ground from the spot where [the] deceased was stated to have been left by his assailants to the well, were stained with blood."[25]

The fact that judges accepted the reports of the *panchayatnamas* was in part the result of the very thoroughness with which the "punches" conducted their investigations. In the *jowaree* stalks murder case just noted, the *panchayatnama* indicated that "a pool of blood, of four finger-breadths square, was apparent on the spot."[26] The deputy magistrate in an assault case in Khandeish [Khandesh] explained his sentencing of a convict by referring to "the evidence and the 'punchayetnama' [that] describe the wound as gaping, and likely to give pain for an entire month."[27] In an 1854 murder case in which the defendant claimed that his father's death

20. Elphinstone Code, §XXIV, Clause 1st.

21. See Jaffe, *Ironies of Colonial Governance*, 29. On judicial panchayats under the Marathas, see V. T. Gune, *The Judicial System of the Marathas* (Poona: Deccan College Post-Graduate and Research Institute, 1953); and Mountstuart Elphinstone, *Report on the Territories Conquered from the Paishwa* (Calcutta: Calcutta Government Press, 1821), 100.

22. Morris, *Cases*, III:26.

23. Ibid., 294.

24. Morris, *Cases*, VI:396.

25. Morris, *Cases*, IX:255.

26. Ibid., 255.

27. Morris, *Cases*, V:387.

was a suicide, the judge noted, "Against this supposition the whole evidence is opposed. From the supplemental 'yad' [memorandum] which accompanied the 'Punchayutnama,' which has been proved in the usual way, it is evident that the height of the beam would not have suited the purpose of suicide, being only 2¾ haths [approximately 4½ feet] high."[28]

Indeed, there were several instances in which the *sadr* court rebuked sessions judges and magistrates either for neglecting the evidence presented in the *panchayatnama* or for not properly recording it as evidence. In 1857, for example, a Deputy Magistrate was rebuked and his judgment overturned by the *sadr* court because

> the Court are of opinion that the evidence of the 'punchayet' . . . ought rather to have weighed with the Deputy Magistrate than the uncertain testimony of the neighbouring cultivators; and that, having taken a punchayet to report, the Magistrate ought, but for some strong reasons, to have been guided by their opinion; and, as no reasons are shown for distrusting this opinion, the Judges determine to reverse the Deputy Magistrate's conviction and sentence[29]

Similarly, in a review of a murder case originally brought before the Konkun Sessions Court in 1855, the puisne judges, Ashness Remington and Metcalfe Larken, noted, "the Session Judge is to be informed that he should have read and recorded the 'punchayutnama.'"[30] A year earlier, the same judges had admonished a Sholapoor session judge, "the inquest report ought to have been proved, and recorded in this case."[31] In 1858, the *sadr* court pointed out to the assistant magistrate in Kaira (Kheda) "the error he had committed in . . . not having had the wounds of the different persons examined by a 'punchayet.'"[32]

Moreover, like the English coroner's jury, the Indian inquest panchayat also heard testimony from witnesses and examined the scene of the crime. In one unique case from Belgaum, the murder victim apparently lived long enough to testify before a panchayat. Upon one witness finding the victim, the "deceased gave the name of [the] prisoner as the person who had murdered him. Deceased did not, however, say he had seen [the] prisoner, but the assertion deceased repeated before a Punchayet, and prisoner was

28. Morris, *Cases*, I:469.
29. Morris, *Cases*, VIII:7.
30. Morris, *Cases*, III:77.
31. Morris, *Cases*, I:417.
32. Morris, *Cases*, IX:455.

accordingly taken into custody."[33] The case record from an 1855 murder verdict in Pune notes the panchayat's investigation of a crime scene:

> It is stated in the 'punchnama' that the murder took place at the prisoner's house; that the 'Punch' were present at the search of prisoner's house; that they saw the weapons (swords, &c.) by means of which the murder was committed, and some blood marks in the prisoner's house; that prisoner had tried to obliterate those marks, by scrubbing the floor, and cowdunging it; that there were also blood marks in a cupboard in the wall, in which the corpse was secreted; that prisoner had in their presence given up the ornaments which were on Reoo's person; that there were drops of blood from the place where the body was lying to the prisoner's house; that the Punch stated in their Report that the weapon by which the murder was committed was cleaned with brick, in order to remove the blood marks from it.[34]

Without a coroner, the session judges often sought the written opinion of the local civil surgeon to corroborate the panchayat's findings. There does not appear to have been any specific procedural requirement to do so, but the court and the court reporters found them to be important enough to append them regularly to the case reports. Nevertheless, there is no surviving evidence that the civil surgeon's report either superseded or overturned a panchayat's verdict. In one of the few cases in which the civil surgeon's report contradicted the panchayat's findings, the judge thought it of no great consequence: "The members of the Punchayet attribute her death to the parts having been exposed after the severe injury they had sustained; whilst the Civil Surgeon is of opinion that death occurred from the effects of the injuries having a fatal influence or impression upon the nervous system. In either case, therefore, it seems that the unfortunate child died from the effects of the injuries she had sustained."[35]

Much more often, however, the civil surgeon's reports served to confirm the panchayat's verdict by offering a more specific and detailed examination of the postmortem body, or, in one unusual case, of the prisoner himself. In an 1854 murder-insanity case, the panchayat's verdict and the civil surgeon's report were used by the judge as corroborating evidence upon which to reach his decision to confine the defendant in the Colaba Lunatic Asylum:

> From the 'punchayetnama' recorded in the case, it is clear that the death of the woman (prisoner's wife) was caused by the infliction of certain wounds by a hatchet, and the prisoner confesses that they were caused by him. The Punchayet, from all they learnt, were of opinion that the prisoner was not

33. Morris, *Cases*, X:201.
34. Morris, *Cases*, III:19.
35. Morris, *Cases*, V:205.

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> in a sound mind at the time he committed the deed, and they recorded the same; and the Civil Surgeon, under whose observation the prisoner has been the last seven months, is of opinion that under the excitement of jealousy, (which was, it would appear, the case with the prisoner,) he would not be able to distinguish between right and wrong, and could hardly be held responsible for his actions, thus corroborating the opinion previously given by the Punchayet of the prisoner's insanity.[36]

IV. The Panchayat and Criminal Investigations

Unlike the English coroner and coroner's jury, whose remit was limited to the investigation of deaths of a suspicious or unnatural character, the Indian panchayat was deployed to investigate a number of crimes other than those involving a dead body, including cases of forgery, robbery, assault, arson, and rape. Once again, this appears to have been an ad hoc arrangement instigated by foreign local judges and magistrates to take advantage of the knowledge and experience of "native" assistance through the broad terms offered by the Elphinstone Code.

In a one forgery case, for example, a panchayat was called upon to compare the signatures on an allegedly forged note to collect Rs. 1,975. The panchayat found "that the greater portion of the signature on the note has been evidently more or less carefully traced, a purpose for which the very thin paper on which the note is written is well adapted, and for which it was doubtless chosen."[37] The prisoner was convicted of forgery and sentenced to 2 years and 6 months of hard labor.

Indeed, in one extraordinary case involving forgery, this innovation came under the intense scrutiny of the *sadr* court evoking an equally fervent reply from the presiding session judge. The case involved the use of forged government-stamped paper with intent to defraud the recipient by providing a false bond for a debt. The session judge of Pune was convinced of the prisoner's guilt, but the panchayat declared him innocent. According to the Elphinstone Code, the judge's decision was final, but in this case the session judge accepted the decision of the panchayat to acquit instead of his own guilty verdict. The prosecutor in the case appealed the decision noting that the sessions court "acquitted a prisoner in opposition to its recorded conviction of his guilt, out of deference to the Assessors, whose views the petitioner suggests ought not to have guided the court's judgment at all; but, under the circumstances, should have been totally

36. Morris, *Cases*, I:244.
37. Morris, *Cases*, X:162.

disregarded."[38] (One should note the use of the term "assessors" here, a term that this case soon would dispense with in favor of the term "panchayat".)

Upon appeal, the *sadr* court annulled the sessions court's decision and sent the case back to be retried.[39] However, the session judge remained adamant in his own defense claiming, "it has been my anxious desire since I have had charge of this Adawlut to establish and sustain the practice of calling in the aid of Assessors or Punchayut. I feel also bound to state that I have generally received great and valuable assistance from their remarks, and the minuteness with which it is customary with them to criticise and comment on the evidence."

Of course, this statement may have been written merely to defend his own decision, but, as a point of law, the judge rightly (and with unusual humility for a British judge) noted:

> I certainly can perceive nothing in the Regulations which either declares or suggests that if the Punchayut have come to a conclusion different from my own, that I necessarily must be right, and they necessarily must be wrong; and that I am precluded, if I should feel that their opinion on any particular point was of weight, and more likely, from their superior acquaintance with the habits of Native society, to be more correct than my own, from adopting their conclusion as my decision. The decision is still mine, not theirs.[40]

The ad hoc nature of the employment of panchayats by the British judiciary also extended to cases of robbery. In one fascinating case dating from 1855, a gang of robbers attacked and looted the goldsmith's shop in the village of Neerlugee.[41] The goldsmith petitioned the local magistrate to be recompensed for his losses amounting to more than Rs. 1,100. The magistrate then appointed a panchayat to investigate the amount of the claim, but this investigation was superseded by a charge that the entire village had violated Regulation XII of the Elphinstone Code, Section XXXVII of which made villages responsible for their own protection from robberies "with regard to prevention, detection or apprehension" upon pain of a fine.

Upon reviewing the case, the magistrate imposed a fine of Rs. 500 upon the entire village for "negligence and misconduct," and made the fine payable to the goldsmith whose shop had been looted. The villagers proceeded to petition the *sadr* court, and they appear to have appointed their own panchayat to do so, the court referring to the thirteen petitioners

38. Morris, *Cases*, II:77.
39. Ibid., 85.
40. Morris, *Cases*, III:53.
41. Morris, *Cases*, VIII:171–78.

as "the Punch." The local panchayat pleaded that the villagers were unarmed, that the village headman (*patel*) and police did not do their duty in organizing any resistance, that they were afraid of retribution, and that they were ignorant of the law. Unfortunately for the villagers, the judge's appointed panchayat found against them and their petition was rejected although the court exempted from payment eight female householders whose households did not have a residing male.

In a murder and robbery case from Dharwar in 1857, a panchayat was empaneled to search for stolen goods after the discovery of the body of Shetowa kom Busapa. The defendant, 25-year-old Dod Eeraya bin Bussapa, admitted to the crime and on the following day he led the panchayat along with the district police officer and a police corporal (*naik*) to a manure heap where the silver and gold ornaments worn by the victim had been hidden. The panchayat then returned to view the body, conducted their inquest on the body, and pronounced that Shetowa had been murdered. The *sadr* court confirmed the session judge's verdict and sentenced the defendant to death by hanging.[42]

Panchayats also were employed to investigate assault and arson cases. In 1858, a group of villagers severely beat Ayungoura, a man who apparently had been involved in a series of lawsuits against others in the village. They tied him to a post and beat him for nearly 2 hours. A panchayat was organized to investigate the crime, and the court entered "the evidence of the Punchayet, who prove that Ayungoura was most severely injured, and in a manner that could only have been effected in the way he describes."[43] In a separate case, Kesoo wulud Dhurma was charged with serious assault after he attacked a man caught trying to steal grain from his field. Kesoo used a hatchet on the victim and "the 'punchayetnama' describe the wound as gaping, and likely to give pain for an entire month. It is still sloughing, and hardly in a healing condition."[44] In a hamlet near Pune, Tookya wulud Dhondee was charged with setting fire to a neighbor's crops. The case was heard by the session judge who, "after consulting with the Punchayet" and "with the unanimous concurrence of the Punchayet," found the prisoner guilty.[45]

Certainly, the most intriguing and unique use to which panchayats were adapted to the needs of British justice was as a jury of matrons in cases of rape. A jury of matrons was an English common-law institution whereby pregnant women could "plead the belly" thus seeking a reprieve from

42. Ibid., 494–97.
43. Morris, *Cases*, IX:315.
44. Morris, *Cases*, V:387.
45. Morris, *Cases*, III:475.

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the court's decision until after the birth of the baby. In England, the plea could be entered in several circumstances, both civil and criminal. On the civil side, the plea could be entered regarding claims to an inheritance in which case the woman would be examined by a jury of matrons and then carefully watched until an issue was or was not forthcoming. On the criminal side, the plea could be entered to forestall an order of execution. However, once entering the plea of pregnancy, the woman had to be proven to be with "quick child," indicating that the movement of the fetus could be felt.[46] In both civil and criminal cases, juries of matrons composed of experienced and respectable women would be empaneled to assess and evaluate the claim. Their report then would be forwarded to the judge who very often would grant the reprieve.[47]

There are relatively few cases of this practice being transplanted to India. In 1777, the case of *Rex v. Peggy* came before the Calcutta Supreme Court. According to Durba Ghosh, neither Peggy's nationality nor her religion are identifiable, although it is likely that she was a concubine of an Englishman.[48] Upon her conviction for scalding a slave girl to death, Peggy pleaded that she was pregnant and asked for a stay of execution. The court entered into a discussion of whether the jury of matrons could be composed of women who were not Christian, but finally acceded to the demand of Hyde, J. that they be so. Thereafter, "the sheriff returned twenty-two women, and twelve were sworn on the jury. The jury of matrons returned their verdict that the prisoner was not with child, and she was accordingly executed on Monday the 22nd of December."[49]

In the Bombay Presidency, such issues seem to have been resolved by the Mukowa Case of 1836. Mukowa, a widow, had murdered a 7-year-old child and stolen the ornaments he had been wearing. She was sentenced to death, but a jury of matrons found her to be 5 months pregnant. Her death sentence then was commuted to life imprisonment, but several months later

46. By far the most detailed account of this practice in England is provided by James Oldham, "On 'Pleading the Belly': A History of the Jury of Matrons," *Criminal Justice History* 6 (1985): 1–64.

47. In England, in cases of divorce or annulment, juries of matrons also could be empaneled to evaluate a wife's claim to virginity resulting from her husband's impotency. See Jaqueline Murray, "On the Origins and Role of 'Wise Women' in Causes for Annulment on the Grounds of Male Impotence," *Journal of Medieval History* 16 (1990): 235–49. In India, however, this appears not to have been the case. In the single case reported involving a divorce for impotency, the wife was directed to "act according to her religious law" rather than the courts. See Harrington, *Cases*, II:216–17.

48. Durba Ghosh, *Sex and Family in Colonial India: The Making of Empire* (Cambridge: Cambridge University Press, 2006), 185.

49. T. C. Morton, *Decisions of the Supreme Court of Judicature at Fort William in Bengal* (Calcutta: Samuel Smith & Co., 1841), 260–61.

when the session judge asked for a report on her condition, the civil surgeon found she was not pregnant. He reported that the appearance of pregnancy actually was caused by "excessive obesity of the abdomen." The session judge inquired of the *sadr* court whether he then could reinstate the death penalty and the court replied that he could not. However, the case was then referred to the Supreme Government for further guidance on this issue and, in 1840, the court was instructed "that on all future occasions on which a capital sentence may be passed against a Woman in a state of Pregnancy, the execution of the same be deferred until forty days after her delivery."[50]

This rather simple solution did not absolutely end the use of juries of matrons in cases involving pregnancy and the death sentence. The English newspaper, *The Friend of India*, reports the use of one by the Bombay Supreme Court as late as 1861, but, as the newspaper reported, "a female Jury is a rare occurrence."[51] Perhaps further research into archival records and case reports will uncover further instances, but the use of the jury of matrons on the English common-law model apparently was not a common feature of British justice in India. Moreover, after the passage of the Code of Criminal Procedure in 1861, such examinations appear to have passed solely into the hands of the civil surgeon.[52] In an 1862 murder case, for example, when the defendant's *vakil* entered a plea of *enceinte*— that is, pregnant—the *sadr* court ordered her to be examined by the civil surgeon who reported that she was 8 months pregnant.[53]

This does not mean, however, that the jury of matrons was not adapted by local magistrates and justices in India for other purposes. This was so in cases of alleged rape. In 1856, T. A. Compton, the Sholapore Session Judge, convicted a prisoner for raping a 9-year-old girl. The girl's father had refused to approach the village *patel* to lodge a complaint and instead had gone directly to the district police officer. The police empaneled a jury of matrons to examine the child, which then issued its report. The judge later recorded, "from the 'punchayetnama' ([Evidence] No. 10) or verdict of the jury of matrons assembled by the District Police Officer to examine the complainant's person (proved by the witnesses Nos. 8 and 9 (Ralumanee

50. A. F. Bellasis, *Reports of Criminal Cases determined in the Court of Sudder Foujdaree Adawlut, of Bombay* (Bombay: Printed at the Government Press, 1849), 113–15.

51. *The Friend of India*, April 25, 1861, 457.

52. H. T. Prinsep, *The Code of Criminal Procedure (Act XXV of 1861) and other Laws and Rules of Practice*, 2nd ed. (hereafter 1861 Code) (London: Thacker, Spink, & Co., 1868), § 385 does not require specifically the civil surgeon to examine pregnant convicts, but the various court rulings outlined by Prinsep indicate that this quickly became established practice. See Prinsep's annotations at 192, 195.

53. Harrington, *Cases*, III:412–14.

and Ladma), it appears that her pudendum was torn and swollen, and that they were decidedly of the opinion that she had been violated."[54]

Two years later, in 1858, the same judge heard a second child-rape case and once again the district police officer was responsible for empaneling a jury of matrons: "The 'punchayet,' or jury of matrons, assembled by the District Police Officer to examine the person of the prosecutrix, deposed that they found the *pudenda* torn, and injuries such as might have been caused by rape."[55]

Unfortunately, almost nothing is known about the women who served on these juries of matrons. In the former case, two of them appear to have witnessed the *panchayatnama* in court: Ralumanee and Ladma. They were likely to have been from the village where the crime took place, També, which perhaps was the small village of Tambole approximately 40 km from Solapur. The victim was married to a weaver and the assailant was a farmer. In the latter rape case, the assailant was described as a Brahmin, the girl as the daughter of a prostitute, and both from the village of Barsee, perhaps the current-day Barshi, now a sizable town with a population of more than 200,000, approximately 70 km from Solapur. However, in neither case is there any information provided regarding the background of the women who served on the juries or the basis upon which they were selected.

Needless to say, these are very rare instances of women serving in the administration of justice, but they further emphasize the ways in which "legal transplants" were adapted to and altered by the necessities of governance. Paradoxically, however, the reverse also is true. The employment of a panchayat in such a wide variety of cases reveals the authority and legitimacy that continued to rest in this protean body. In this sense, Simon Roberts, the legal anthropologist, surely is correct to suggest that the creation of a body of colonial law was not based solely on the coercive power of the colonial state. Instead, it also "lies in the links it can claim with a past, established, approved state of affairs."[56] In Radhika Singha's words, the inquest panchayat was a "constructed tradition."[57]

54. Morris, *Cases*, V:695–96.

55. Morris, *Cases*, IX:400.

56. Simon Roberts, *Order and Dispute: An Introduction to Legal Anthropology*, 2nd ed. (New Orleans: Quid Pro Books, 2013), 162.

57. See Radhika Singha, *A Despotism of Law: Crime and Justice in Early Colonial India* (New Delhi: Oxford University Press, 1998), 83–85, where the "constructed tradition" of *sati* is evaluated.

V. Panchayat Procedures: Convening, Location, Composition

In the *mofussil* under the jurisdiction of the East India Company courts, there were no coroners as there were in the presidency towns within the jurisdiction of the royal courts. This almost certainly accounts for the fact that there were no regularized procedures for convening or conducting inquest panchayats. In England, the responsibility and authority to convene a coroner's jury lay with the coroner. By no means was this the case in the Bombay Presidency. There were at least a half-dozen different people of various stations both within and without company service who were responsible for convening or calling together a panchayat in criminal inquests.

In many cases, these were people who served in some sort of position in the local police hierarchy. In 1853, a homicide investigation was launched into the death of Otum Baijee and his daughter. Damodhur Heerachund, the "Joint Police Officer of Neriad, went there to inquire into the matter, and ordered a 'punchayet' to assemble."[58] We have seen already that in the two rape investigations mentioned, the district police officer convened the inquest panchayats. This was true as well in an assault case from Belgaum where the *mamledar* (district police officer) appointed the panchayat "purposely from amongst the people of another village, as likely to be unbiassed [sic] and not mixed up in the affairs of the Sool village."[59] In 1857, the *foujdar* (chief of police) of Solapur assembled an array of examiners, including a panchayat, to investigate a robbery case:

> the Foujdar of Sholapore sent one of his Karkoons, named Bhikajee Jugunath (witness No. 15), three Police Sepoys, Boozroog, Syud Chand, and Syud Padsha (witnesses Nos. 9, 10, and 14), together with a Punchayet, consisting of witnesses Nos. 16, 17, and 18 (Hunmunt, Ramchundur, and Yogapa), to search the house of prisoner No. 1 (Alawudeen), and the three Sepoys affirm that Syud Padsha (witness No. 14), having observed that the earth was disturbed in a corner of the room, scraped it up, and found a gold ring concealed there.[60]

In 1855, this same *foujdar* was rebuked for not having had a victim's wounds examined by a panchayat. "It was unquestionably the Foujdar's duty to have made the members of the Punchayet examine the complainant's arms in the presence of the several prisoners," the session judge noted.[61]

58. Morris, *Cases*, V:665.
59. Morris, *Cases*, IX:314.
60. Morris, *Cases*, VIII:599.
61. Morris, *Cases*, V:38.

Revenue officers and village headmen (*patels*) also appear to have possessed this responsibility. In a gang robbery case from the village of Korganoor (possibly Kodaganur), the local *amildar* (revenue officer) was reprimanded "because he did not summon a Punch, to examine [the victims'] wounds at the time."[62] In one case, the village *patel* acting in his capacity as head of the village police summoned together the panchayat. When the body of a missing child was found outside of the village of Goodoor (Gudur), "intelligence was immediately sent to the village, and the Police Patel, a Punch, and the complainant came out."[63] In 1861, when two bodies were found in the village of Goodsagur (Gudisagar), "on the Patel being informed of what had occurred, he assembled a *punch* to hold an inquest."[64]

Judges of various ranks also were responsible for calling in the aid of panchayats. It has been noted already that the Poona Session Judge, P. W. LeGeyt, insisted on his privilege of summoning panchayats to aid in his decisions.[65] There is evidence as well that officials lower down the judicial ladder also exercised this function. In a forgery case heard before the Tanna (Thane) Sessions Court in 1858, the judge noted that a panchayat had been appointed by the local *munsif* to determine the value of the land in question.[66] In a case of attempted murder heard by an assistant magistrate while camped at Dakor, the Kaira Sessions Court judge "pointed out to the First Assistant Magistrate the error he had committed . . . in not having had the wounds of the different persons examined by a 'punchayet.'"[67]

However, company officials were not the only persons who called upon the witnessing role of panchayats. Defendants also seized upon the panchayat as an essential judicial tool. When Oomeashunkur Nuthooram was brought up on charges of attempting to sue Jugjeewun Wujaram using a forged bond note in Kaira in 1858, the defendant himself demanded a panchayat to examine and compare the signatures on the note. The judge agreed to this request, but the result was not what the defendant had hoped: "The two handwritings have been submitted to a Punchayet at the request of prisoner," the judge noted, "and their opinion, as recorded, is unfavourable to him."[68]

62. Ibid., 77.
63. Morris, *Cases*, VII:239.
64. Harrington, *Cases*, II:88.
65. Morris, Cases, III:53.
66. Morris, *Cases*, X:393.
67. Morris, *Cases*, IX:455.
68. Morris, *Cases,* X:381.

And yet the courts viewed with evident suspicion panchayats that were created outside of their supervision and authority. These might include "customary" caste panchayats, but they most often referred to autonomous and short-lived panchayats assembled to resolve minor disputes between individuals. In a perjury case involving a bankruptcy settlement, the judge noted that such an autonomous body "does not appear to have been a regularly constituted Punchayet."[69] In a separate case, a camel-dealer was charged Rs. 20 by "a sort of Punchayet" for destruction caused when his camels strayed into a neighboring field.[70]

Unlike in England, where inquests commonly were conducted on the body in the local pub, the extensive purview of the Indian inquest panchayat required it to be convened in a variety of locations.[71] Needless, to say, the absence of an official coroner and the differences in the institutional structures of village and town life also were contributing factors to the panchayat's mobility. Although the precise location of the panchayat inquest is rarely mentioned, they appear to have been assembled most often at or near the location of the crime. Therefore, in a murder and robbery case from 1858 near Badami, the police began their investigation only "when several villagers forming the Punchayet were cooperating."[72] In an assault case from the same region, we have seen already that the panchayat was "composed of inhabitants of Badamee" chosen "purposely from amongst the people of another village, as likely to be unbiassed [sic] and not mixed up in the affairs."[73]

Frequently, the inquest panchayats were brought together to visit the scene of the crime. We already have seen how the *foujdar* of Solapur assembled the inquest panchayat and the police to investigate a murder and robbery scene.[74] This was not uncommon. In a murder case from Narayengaum (Narayangaon) near Pune, "the 'Punch' were present at the search of prisoner's house; that they saw the weapons (swords, &c.) by means of which the murder was committed, and some blood marks in the prisoner's house."[75] When Chenapa wulud Goopadapa was charged with wantonly destroying a wall built by his neighbor in Solapur, the *panchayatnama* bore witness to the fact "that the ruins appear as if caused by

69. Harrington, *Cases*, II:244.

70. Harrington, *Cases*, IV:181.

71. On the "pub inquest," see Burney, *Bodies of Evidence*, ch. 1 and 3. According to Burney, as late as 1877, the *British Medical Journal* reported that nearly 95% of inquests in Liverpool still took place in a pub. Ibid., 85.

72. Morris, *Cases*, IX:219.

73. Morris, *Cases*, IX: 314.

74. Morris, *Cases*, VIII:599.

75. Morris, *Cases*, III:19.

such a proceeding, the result of the wall being built so close."[76] In an 1856 robbery case, a panchayat "accompanied the defendants [sic] to her house" in an attempt to prove the charge.[77] Similarly, when an abandoned infant was discovered in Kurmula (Karmala), the Sholapoor Session Judge, T. A. Compton, reported, "The members of the Punch which was assembled to examine the child, when first discovered, were of opinion that, though injured by the thorns, it would live if properly fed and cared for."[78] In an 1855 murder case, "the Members [of the panchayat] were present when the bones now before the Court were exhumed."[79] Finally, panchayats could be found interviewing prisoners in the local jail. In a robbery case heard before the Ahmedabad Session Judge, "a Punchayet was held on the wood in the Jail premises."[80]

Unfortunately, there is very little information as to whom were chosen to comprise these inquest panchayats. We already have seen that panchayats in the *mofussil* often were made up of local or neighboring villagers. However, very little else of substance was included in the case reports. For example, the Pune Session Judge who defended his employment of panchayats to the *sadr* judges described them as "the unanimous opinion of five men competent to value Native evidence."[81] In another case report, they only are referred to as "four respectable persons."[82] In an 1861 murder investigation heard before the Sholapoor Sessions Court, "the members of the Punchayet were well acquainted with the deceased."[83] When a panchayat was called together to value a quantity of wood stolen from villagers outside Ahmedabad, the session judge reported that it was "a competent Punchayet, of very respectable people, who buy wood in the market for their own use."[84] Other case reports, however, shed only a little more light on the composition of panchayats. A panchayat composed of two "punches," one of whom was a revenue *patel*, was appointed to investigate a village gang robbery.[85] In a case involving a threatening letter (*jhansa*), the panchayat was composed of three minor village officials: two *karkoons* (revenue clerks) and one *tulatee* (village accountant).[86] Three names are

76. Ibid., 428.
77. Morris, *Cases*, V:159.
78. Ibid,.176.
79. Morris, *Cases*, III:124.
80. Morris, *Cases*, X:102.
81. Morris, *Cases*, III:54.
82. Morris, *Cases*, V:159.
83. Harrington, *Cases*, II:489.
84. Morris, *Cases*, X:101.
85. Morris, *Cases*, VIII:174.
86. Morris, *Cases*, III:217.

attached to a panchayat that investigated another robbery in Solapur: Hunmunt, Ramchundur, and Yogapa, with no other identifying information.[87] The panchayat acting as a jury of matrons should have been composed of women alone, although there is no indication of the number of women who served in this capacity. Two witnesses, Ralumanee and Ladma, appeared to testify as to the accuracy of the *panchayatnama* in a rape case and, given the variable numbers of "punches" that comprised these panchayats, they may have been its only two members.

Members of panchayats frequently were called into court to testify to the authenticity of their *panchayatnama*. In the language of the courts, the *panchayatnama* had to be "proved." In many instances, the case record simply refers to the *panchayatnama* as being "proved in the usual way," but with little further information.[88] However, when additional information is provided, proof of the *panchayatnama's* authenticity usually was supplied by the testimony of members of the inquest panchayat itself. Thus, in a child murder case, "it is distinctly proved by the *punchayetnama*, and the witnesses who were members of the inquest, Nos. 2 and 5, that there were on the body indications of strangulation."[89] In a murder inquest in the village of Khandar, the session judge reported, "from the 'punchayutnama' (recorded No. 4), proved in the usual way, by the evidence of witnesses Nos. 2 and 3," that the victim "probably met her death by unfair means."[90] When Ladlesa wulud Mukdoomsa was accused of strangling one of his wives in the village of Kulkuree (Kalkeri) in 1856, the judge noted, "from the Inquest Report (No. 4), proved by the witnesses Ayapa and Shunkur (Nos. 2 and 3), it appears that there were marks of a rope or string round the deceased's neck, and the members of the 'punchayet' were unquestionably of opinion that the deceased had come to her death by strangulation."[91]

The panchayat, therefore, was a mutable institution with no regular procedures. Perhaps its very mutability was one of the key elements explaining its longevity and popularity. The numbers and types of people who served on them were both variable and diverse, and there is no indication that any "foreigner" ever participated. Most "punches," however, appear to have been drawn from the lower ranks of society, including common villagers. The panchayat could be convened by a variety of company officials from the *sadr* judges to the village *patel*. Some of its avatars obviously

87. Morris, *Cases*, VIII:599.
88. See, for example, Morris, *Cases*, I:469.
89. Harrington, *Cases*, II:18.
90. Morris, *Cases*, III:124.
91. Morris, *Cases*, VI:266.

were modeled on English institutions, such as the coroner's jury or the jury of matrons. Equally true, however, is that the panchayat had adapted itself to fill a unique space in Indian social life not only by providing "native" expertise to the British, but also by providing a legitimate venue for popular participation and involvement in the administration of justice.

VI. The Panchayat and the Public Nuisance Act of 1841

Before 1841, the participation of the panchayat in the governance of Indian society was based largely on the ambiguous sections of the 1827 Elphinstone Code. In that year, however, the panchayat was given a firmer statutory basis upon the passage of Act XXI, "An Act for the better Prevention of Local Nuisances."[92] The act imposed a number of sanitary and safety restrictions, seemingly directed to urban locales, and delegated to local magistrates the authority to clear obstructions from public thoroughfares, relocate noxious trades, prevent the construction of buildings or the disposal of materials that might cause a fire, and remove buildings that were structurally unsound.

The act further provided that any person affected by these actions had the right to appeal to "a jury or punchayet." Upon receiving a petition to appeal, the magistrate was required to appoint a jury or panchayat composed of no fewer than five people to hear and determine the case. The "president" and no less than one-half of the appointees were to be selected by the magistrate "from the residents in the vicinity;" the remainder were to be chosen by the appellant. Appeals had to be lodged within 10 days of receiving the magistrate's "injunction," as it was termed, and the magistrate was ordered to follow the decision of the panchayat/jury, which was to be determined by a majority vote.

The procedures described in the act clearly were adopted from the arbitration clauses of the Elphinstone Code wherein each party selected its own representatives to a panchayat. However, those procedures were voluntary, and the intervention of an arbitration panchayat was a course of action mutually agreed upon by the parties. The Prevention of Local Nuisances Act, on the other hand, contained an important element of compulsion initiated by the magistrate's condemnation of unsafe properties. Appellants, according to the act, were forced to arbitrate their case within 10 days if they wished to appeal the magistrate's decision.

92. British Parliamentary Papers (hereafter BPP), *East India: Acts passed by the Right Honourable the Governor-General of India, in Council, for 1841 and 1842* (London: Ordered printed by the House of Commons, 1844), 39–40.

In the years that followed the introduction of this act, several cases that first were decided at the local sessions level were appealed to the *sadr* court. Naturally, these cases almost always involved some sort of procedural irregularity. In a case emanating out of Nashik, for example, the local magistrate ordered fifteen villagers to remove their manure piles from near their houses. The villagers appealed to the *sadr* court. However, the puisne judges there rejected their petition noting, "the petitioners ought to have proceeded under Section III. Act XXI. of 1841, and have had a Punchayet appointed to try the question. This they have not done; and there being no cause apparent for interference with the Assistant Magistrate's order, this petition is rejected."[93] In a case involving encroachment on a public road in Kuperwunj (possibly Kapadvanj), the magistrate's injunction stipulated a time period of only 8 instead of 10 days. On appeal, the *sadr* judges upheld the petitioner's complaint observing, "As Section III. of the Act under which the Assistant Magistrate has acted provides a period of at least ten days after the serving or publication of the notice, during which any party affected by it may object and apply for a Punchayet to decide the question at issue, it is thus apparent that the period to be specified in any notice issued under this Act was intended to be not less than ten days, though this point is not directly provided for."[94]

As the previous case indicates, the *sadr* court was quite rigorous in applying the terms of the public nuisances law. In 1858, the court overturned the order of a magistrate in Tanna (Thane) who had overruled the decision of a panchayat. W. E. Frere and W. H. Harrison, the puisne judges, resolved, "Section III. Act XXI. of 1841 empowers the Magistrate to appoint the majority of the Punchayet, but, at the same time, provides that the Punchayet shall try and decide the question, no further option being left to the Magistrate. His order is, therefore, reversed, and he is to be directed to carry out the decision of the Punchayet."[95] In another encroachment case from Broach (Bharuch), a magistrate had ordered the removal of an entire verandah that extended only 8 inches onto the high road. The panchayat had decided previously that only the offending 8 inches needed to be removed. On appeal, the *sadr* court ordered the magistrate to abide by the panchayat's decision.[96]

93. Morris, *Cases*, VIII:81.
94. Morris, *Cases*, V:95.
95. Morris, *Cases*, X:199.
96. Morris, *Cases*, VIII:260.

VII. Conclusion: The End of the Inquest Panchayat

The introduction of the 1861 Code of Criminal Procedure marked the end of the panchayat in this manifestation. The word itself was purged from the code although many of the new procedures echoed those of the former panchayats. Inquests, for example, were to be undertaken by the nearest police officer "in the presence of two or more respectable inhabitants of the neighbourhood."[97] In some instances, the term "panchayat" was replaced by the English word "jury" even though the procedures and functions remained almost the same as what they had been previously. The Prevention of Local Nuisances Act was incorporated into the code and renamed "Of Local Nuisances." Procedurally, it was identical to the previous act except that the term "panchayat" had been excised. Upon receiving a petition against an order of removal, "the Magistrate shall forthwith appoint a Jury, which shall consist of not less than five persons, whereof the President and one-half of the Members shall be nominated by such Magistrate, and the remaining Members by the party petitioning."[98]

It is by no means clear precisely why the term "panchayat" was eliminated from the judicial vocabulary in India. It would be easy to speculate that this was part of a "hegemonic" effort to further Anglicize the law in India, and this possibility should not be discounted. However, there also appear to have been other developments that were conspiring to undermine, or, at the very least, minimize the panchayat's role as criminal witness.

One of these perhaps was as a response to the long-standing demands of portions of the Indian elite for the introduction of a Western-styled trial by jury.[99] The First and Fourth Law Commission Reports of 1856 laid the foundation for the expansion not only of trial by jury, but also of trials with the aid of assessors.[100] These recommendations then were adopted in Sections 322–54 of the Criminal Procedure Code. Outside of the original jurisdiction of the former *sadr* courts in the presidency towns, trial by jury

97. 1861 Code, § 161.

98. 1861 Code, § 310.

99. On the earlier "jury debate" in India, see James Jaffe "Custom, Identity, and the Jury in India, 1800–1832," *Historical Journal* 57 (2014): 131–55.

100. BPP, *First report of Her Majesty's commissioners appointed to consider the reform of the judicial establishments, judicial procedure, and laws of India, &c.* (1856), 140–42; and BPP, *Fourth report of Her Majesty's commissioners appointed to consider the reform of the judicial establishments, judicial procedure, and laws of India, &c.* (1856), 114–15. Interestingly, in the case of judicial reforms in the Madras and Bombay Presidencies, the *Fourth Report* recommended the retention of panchayats only in the form of bodies of arbitration. However, this recommendation did not appear in the final 1861 Code. See BPP, *Fourth Report*, 6–7.

in session cases in the *mofussil* was to be extended only to districts approved by the local government and only to the crimes specifically defined by it. Therefore, in Bengal, trial by jury initially was extended to only seven districts and its remit included crimes against the body, public tranquility, and property. In the Madras Presidency, trial by jury also was granted at first to seven districts, but included only crimes against property. In Bombay, it was extended to the Pune Sessions Court only in 1867 and covered only the most serious crimes that could be punished by death, transportation, or more than 10 years' imprisonment.[101] According to the Criminal Procedure Code, these juries were to be composed of an odd number of jurors, but no fewer than five (another echo of the panchayat), and a unanimous verdict could not be overruled by the judge. All other cases in the sessions courts were to be tried with the aid of at least two assessors whose opinions were required to be presented both orally and in writing, but whose decision was not binding upon the judge.

Another possible reason for the decline of the inquest panchayat may have been related to the "medicalization" of the inquest itself, a term defined by the historian of the nineteenth-century English inquest, Ian Burney, as "the progressive expropriation of health from the public sphere and its relocation in an exclusive professional domain."[102] Although the new Code of Criminal Procedure included the provision to summon "respectable inhabitants" to view the body, it also instructed the local police or, in the *mofussil* of Madras and Bombay, the village *patel*, to make the initial inquiry into the cause of death and, if there were doubts, to immediately forward the body to the civil surgeon for further investigation.[103]

The increasingly prominent role of medical professionals in the inquest at the cost of the panchayat was emphasized by Norman Chevers in his influential *A Manual of Medical Jurisprudence for India* (1856). Chevers stressed the importance of having trained medical personnel examine the body and report a cause of death. The panchayat was anathema to this goal. In the third edition of his book, Chevers referred at length to an 1862 article published in *The Madras Quarterly Journal of Medical Science* by Ruthnum Moodelly, a Madras "native surgeon," which declared that "the institution of the punchayet is a complete failure."[104] In Chevers'

101. See Prinsep's annotation, *Code of Criminal Procedure*, 159–60.

102. Burney, *Bodies of Evidence*, 10.

103. 1861 Code, § 161.

104. Norman Chevers, *A Manual of Medical Jurisprudence for India*, 3rd ed. (Calcutta: Thacker, Spink, & Co., 1870), 37.

rather garbled quotation from Moodelly's report, he noted: "the members of the punchayets are often men from the dregs of society, picked up indiscriminately without the slightest regard to their discretion and respectability. They perform their temporary duty very reluctantly, pay no attention to the proceedings at the inquest, and are glad to get rid of a vexatious task by finding any verdict they please. "Never differ" is their motto—and they, on every occasion, concur in the same opinion."[105]

Nevertheless, even as the new high courts replaced the company's *sadr* courts, judges quickly began to educate their session counterparts on the new procedures. As late as October 1861, the sessions courts still were relying on inquest panchayats as the evidentiary basis of their verdicts. Therefore, a case heard before the Sholapoor Sessions Court in that month included references to the "Inquest Report" from "members of the Punchayet."[106] By the beginning of 1862, however, the session judges were being reminded repeatedly of the new procedures. In an appeal of a murder case heard in January 1862, the court informed an assistant magistrate from Belgaum, "The Punchnama, No. 10, is not evidence, and should not have been recorded by the Assistant Magistrate."[107] In another murder case from the same district, the puisne judges noted, "the prisoner having appealed, the Court have reviewed the case. In doing this, the first thing that has struck the Court is, that the trial has not been conducted with the aid of Assessors, as required by Section 324 of the aforesaid Code; and hence they have been led to consider how far this omission affects the validity of the proceedings."[108] In a session case from Ahmedabad heard in February 1862, the court remarked, "The Court notice to the Session Judge that this trial should have been conducted with the aid of Assessors."[109] Throughout the remainder of the year, such comments appeared in a great many case reports.

The fact that the panchayat could appear in the various manifestations described here is testimony to its power, authority, and resonance, but it

105. Ibid., 37. The original quotation reads as follows: "The institution of Punchayet is a complete failure, for the arbitrators of which it is composed are often men from the dregs of society, selected or rather picked up indiscriminately without the slightest regard as to respectability and power of discretion. These take up their temporary posts very reluctantly, pay no attention to the proceedings at the inquest, and would be glad to get rid of what to them is a great nuisance, by passing any decision they choose. 'Never differ' is their motto, and they will all be found on every occasion to subscribe to one and the same opinion." Ruthnum Moodelly, "Cases of Poisoning Witnessed in Nellore," *The Madras Quarterly Journal of Medical Science* 5 (1862): 311.

106. Harrington, *Cases*, III:37–38.

107. Ibid., 301.

108. Ibid., 86.

109. Ibid., 129.

is no less a testimony both to its durability and malleability. The inquest panchayat was just one of the many forms in which the panchayat would appear during the nineteenth and twentieth centuries. It is true that the inquest panchayat was an agent of British governance and thereby helped to subjugate further a conquered people; however, it also was a participatory body that sustained in the Indian historical memory an institution whose ideological purchase was essential to the later nationalist independence movement.