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Gota, majālis and panchayat: Petitioning and judicial institutions in western India, c. 1600-1820.

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Introduction

Indian observers of the East India Company's emerging political order in the late eighteenth century were, as is well known, struck by the inaccessibility of officials of the Company's government to their Indian subjects. Both Indo-Muslim traditions of *akhlāq*, and Sanskrit-influenced norms for *nīti* or political ethics, laid great emphasis on the duties of rulers, or those they deputised, to offer regular opportunities for their subjects to approach them and make known their concerns and grievances.[1] As the Company's Bengal government struggled to develop effective judicial systems, its own servants became sharply aware of the difficulty of balancing accessibility with the disorder that they felt might overwhelm its courts unless petitioners could be more effectively channelled into a formal judicial system.[2] By the 1820s in western India, and certainly in the mind of the first Governor of Bombay Mountstuart Elphinstone, Bengal's judicial system had become a byword for paralysis and breakdown, with its delays, ill-informed or inert judges and the endless layers of intermediates interposed between petitioners and magistrates. Elphinstone compared it with the simplicity and directness of the judicial institutions his government had just inherited in the Maratha territories conquered in 1818. 'Here, every man above the rank of a Hircarrah sits down before us, and did before the Paishwa; even a common Ryot, if he had to stay any time, would sit down on the ground'.[3] With their deep local knowledge and familiar principles of procedure, traditional panchayat assemblies in particular 'retained in a great degree the confidence of the people', and Elphinstone urged that they be retained as a local part of the Bombay government's own judicial system.[4]

Elphinstone's characterisation of the panchayat as the region's 'traditional' judicial forum was not quite accurate. Panchayats were a relatively late innovation, the product of the attempts of the later eighteenth century governments of the Maratha peshwas to reduce rural autonomies and control judicial institutions more directly. But many of his observations about the communitarian nature of the rural social order and the position of relative equality that petitioners felt as they approached the panchayat, were more accurate. In western India, indeed, the Persian term *arjī,* with its connotations of humble appeal to superior state authority, seems to have been relatively infrequently used in the panchayat and its predecessors in the local corporate institutions of the seventeenth century and earlier. These

[1] There is a large literature here, but see in particular Kumkum Chatterjee, 'History as Self-Representation: The Recasting of a Political Tradition in Late Eighteenth Century Eastern India'. *Modern Asian Studies* 32, 4 (1998): 913-948; Muzaffar Alam, *The Languages of Political Islam in India*. Delhi: Permanent Black, 2004; Velcheru Narayana Rao and Sanjay Subrahmanyam, 'Notes on Political Thought in Medieval and Early Modern South India'. *Modern Asian Studies* 43, 1 (2009): 175-210.
[2] See in particular Jon E. Wilson, *The Domination of Strangers: Modern Governance in Eastern India, 1780-1835*. Basingstoke: Palgrave Macmillan, 2008; Robert Travers, *Ideology and Empire in Eighteenth Century India: The British in Bengal, 1757-93*. Cambridge: Cambridge University Press, 2008.
[3] Mountstuart Elphinstone, *Report On The Territories Conquered From The Paishwa*. Calcutta: Government Gazette Press, 1821, p. 59.
[4] Ibid., pp. 59 and 95-101..

institutions have attracted some outstanding scholarly attention.[5] However, we still have relatively little understanding of their internal culture and conventions. This essay explores the most important of these, the *gota*, 'family', and the *majālis*, 'assembly'. They offered arenas which strikingly combined a fierce rhetoric of local brotherhood and personal witness with a highly bureaucratised documentary culture linking them to regional power-holders and distant royal courts. Understandably, we tend to associate documentary regimes exclusively with the colonial state, and to see rural communitarianism as militating against cultures of individual and family rights. Yet such associations may have made it difficult for us to appreciate these pre-colonial corporate institutions, and the spaces for hearing petitions, preserving rights and adjudicating disputes that they provided.

Local rights and corporate bodies in early modern western India

These corporate institutions were part of western India's pre-Mughal local history. Unlike Bengal, where most written records of landed rights dated back to the Mughal period at the earliest, the Marathi-speaking regions had a much earlier and continuous recorded history of rural settlement, cultivation and lands gifted by local states in return for service of different kinds. As elsewhere in peninsular India, the village headman, Patil or Mokadam took a leading role in opening up land for cultivation, and the hereditary cultivator's right of *mirās* derived from family participation in such early pioneering. Rights to offices of the offices of the Kulkarni, or accountant, and the Joshi or priest, could likewise constitute a village *mirās*. At the interface between these communities and the local state lay the key office of Deshmukh, 'mouth of the country'. The Deshmukh was himself usually also a Patil. He had in addition responsibility for maintaining cultivation and the flow of state revenues, for oversight of local justice and for local security. These responsibilities carried considerable rewards in land, services and rewards in kind, which were often dispersed through the many villages over which the Deshmukh had charge.[6]

The fourteenth century consolidation of the Bahmani Sultanate in western India incorporated rather than replaced the layer of conservative Brahman accountants and administrators who had served the Yadava kingdom. With literate skills, religious prestige and access to cash, these long-settled Brahman families were also able to accumulate many kinds of connected rights. Their presence also contributed to the region's well-developed culture of written records for rights, in stone, copper-plate and, with increasing frequency from the thirteenth century, on paper.[7]

This milieu shaped local judicial conventions and procedures. It was certainly true that village people sometimes submitted a humble *arjī* to local level revenue officers to make a collective plea for some abatement in times of drought or dearth, and that the Deshmukh did the same to superior state authorities. Their language was appropriately deferential. Such supplications usually opened with the phrase 'Placing our heads on your feet, we greet and request you as follows'.[8] Much more commonly, however, petitioning appears as part of

[5] See in particular V.T. Gune, *The Judicial System of the Marathas*. Poona: Deccan College Research Institute, 1953; A.R. Kulkarni, *Maharashtra in the Age of Shivaji*. Poona: Deshmukh and Co., 1969; Frank Perlin, 'Of White Whale and Countrymen in the Eighteenth Century Maratha Deccan'. *Journal of Peasant Studies* 5, 2 (1978): 172-237; Sumit Guha, 'Speaking Historically: The Changing Voices of Historical Narration in Western India'. *American Historical Review* 109, 4 (2004): 1084-1103.

[6] Stewart Gordon, *The Marathas 1600-1818*. Cambridge: Cambridge University Press, 1993, 26-34..

[7] For paper use in western India, see Frank Perlin, 'State Formation Re-considered'. *Modern Asian Studies* 19, 3 (1985), 453-455; Rosalind O'Hanlon, 'Performance in a world of paper: puranic histories and social communication in early modern India'. *Past and Present* 219 (May 2013): 87-126.

[8] R.V. Oturkar, *Peśve-kālīn sāmājik va ārthik vyavahār*. Pune: BISM, 1950, no. 12 and 13, p. 7.

local procedures for the affirmation of rights and the adjudication of disputes. This was a setting in which all justice started with a petition. Judicial institutions themselves were not separated out from society into a separate enclave. They were rather embedded in the fabric of local society, which contained several sites where local communities articulated grievances, safeguarded their rights and resolved disputes. In asking for justice, therefore, petitioners did not feel that they were invariably approaching a superior state authority far removed from their own spheres. Rather, they were appealing to a corporate body of their own social equals, at least in the kinds of rights they held.

The oldest of these corporate bodies, dating back to the first millennium, was the *gota*, 'family', from the Sanskrit *gotra*, or exogamous kin group. Looked on as a brotherhood or family unit, a *gota* was the collective body of all those who held the same kinds of local proprietary rights. These might be holders of permanent *mirās* rights, either in land or in hereditary village service offices with their entitlement to land and reward in kind attached. Members of the same caste community also constituted a *gota*. In cases of dispute over rights, or matters of caste identity or transgression, mirāsīdārs or caste members brought their problems to the assembled *gota* for adjudication. State officials very early joined the *gota* to register and if necessary to help enforce its decisions. This early corporate form was taken up into the bureaucracy of the Bahmani kingdom and then the Delhi Sultanate state, and persisted through into the eighteenth century. In cases of social transgression, caste communities met as a *gota* without the presence of state officials to deliberate ritual transgressions of different kinds. When property rights of any kind were at issue, however, state officials – the local Havildar, Qazi and Amin were present, while rulers themselves might demand to hear the most important cases.

Such assemblies were referred to as *majālis*, 'assembly'. They included members of the relevant *gota*, together with state officials, Muslim clerics, Brahman scholars and priests, Deshmukhs and village headmen and holders of local *mirāsī* rights. The meetings might vary in size from a dozen to several hundred people in attendance. They were held in public, often at a local fort or district headquarters, and conducted in Marathi. They called people at all social levels, and from all sides in a dispute, to give witness and bring local knowledge to bear. Much of their work involved inspecting documents, their content and their seals, for authenticity. Where the property in question was substantial, the *majālis* might be attended by many dozens, sometimes hundreds of people, many of them village Patils and Kulkarnis holding *mirās* rights from many villages around, who wished to ensure that the rights of people like themselves were respected, and the *majālis* conducted its proceedings in the proper manner. Disputes were not the only occasion for the holding of a *majālis*. Uncontested sales or transfers of property were held before a *majālis*, and a *mahzar* document issued to confirm them. Requests for the issuing of new documents of right often required the authority of a *majālis*. At the end of the proceedings, unsatisfied parties could ask to have their case heard by a *majālis* in a different place, or one with wider regional representation where there might be less risk of bias in favour of one of the parties. They could also petition for a hearing at a *dharmasabhā*, an assembly of learned pandits who adjudicated religious questions under the authority of a *dharmādhikārī*, a hereditary office commanding substantial local influence and perquisites.[9]

[9] For the work of dharmasabhas in western India, see Rosalind O'Hanlon, 'Narratives of Penance and Purification in Western India, c. 1650-1850'. *Journal of Hindu Studies* 2 (2009): 48-75.

Highly elaborated bureaucratic routines marked the practices of the *majālis*. A wide range of Persian, Arabic, Sanskrit and Marathi terms described its operation, reflecting the prominent role of Muslim state officials in the judicial and revenue affairs of the Maratha countryside. If, on receiving a 'representation', state officials decided to investigate, they would ask parties to the case to submit a written statement or *kariṇā*. If any of the parties decided that they wished their case heard before a *majālis* from a different place, they would have to submit a *thalpatra*. A government messenger might take a *talabrokhā* or written summons to witnesses, *sākṣīmozā* or *shāhidī*. The messenger would expect to levy a fee or *masālā* for his services. Parties to a dispute would have to submit a *muchalkā* to the *majālis*, a written bond of agreement under penalty to abide by its decision. To do so, they might need a *zāmīn*, a bondsman able to put up surety in the case. The taking of evidence would include *purśīs*, the interrogation of witnesses, and perhaps *sadi*, a written or oral statement given in evidence. The *majālis* would note the contents, *majamūn* or *mazkūr*, of documents submitted to it, and might decide that they were authentic, *bajinnas*, or false, *layini*. The *majālis* would issue a *mahzar* to the successful party, but state officials might also confirm this with a *nivāḍpatra* or *jayapatra* registered in the state records. The successful litigant would pay a sum of money, *harkī*, to the *majālis*, to signify his pleasure. The vanquished party had to issue a *yejitpatra*, a statement in writing admitting his failure.[10]

Witness to rights in the *mazhar*

A correctly recorded and attested paper *mahzar* was the key outcome of a *majālis* assembly. In form, a *mahzar* was written by a scribe on long rolls made of pieces of handmade paper, six to 8 inches wide, glued together to form a roll that might extend to several feet, depending on the length of the various testimonies to be incorporated and the numbers of witnesses whose names were to be added. Each join was stamped on the rear side with seals to guard against later fraudulent alterations. At the end it was signed or marked by those in attendance, although the process of taking signatures sometimes continued several days after the meeting.[11] While state officials would retain a copy for the state records, the *mahzar* itself was given to the party whose rights it thereby confirmed. Thus constituted, it was a complex social artefact of great value, and usually stored in a sealed bamboo tube or stone pot, to guard against house fires and damage from insects or water.[12]

Mahzars followed a standard form. They stated the date and place of the *majālis*, and names of the state officials in attendance. There followed the names of the principals present, their place of origin, their office, and sometimes their age, as evidence of their worth as witnesses. The main text was usually presented as an address to the petitioner: that he had come to the Huzoor, and made the following representation. The next part of the narrative reproduced what the petitioner had said, which might include histories of earlier cases and judgements relevant to the case in hand. The testimony of different witnesses followed, sometimes in great detail, sometimes very briefly. The *mahzar* concluded with the consensus reached and the judgement given. A protracted dispute might generate a *mahzar* judgement that contained many histories within its narrative, going back a number of generations and occupying several feet of paper roll.

Although state officials were present, the authority of the *majālis* derived very much from its character as an assembly of local holders of rights and people with local experience and knowledge. The term *mahzar* itself comes from the Arabic *huzoor*, 'present'. The personal

[10] Gune, *Judicial System of the Marathas*, pp. xxii-xxviii.
[11] Ibid., p. 207.
[12] Ibid., p. 80.

testimony of knowledgeable witnesses, the questioning of parties to the case and the direct inspection of documents were central to the proceedings of the *majālis*. There was another close tie between the *majālis* and local holders of rights. One of the most important privileges of *mirāsī* right was the entitlement to attend the *majālis* and put seal, sign or signature to the *mahzar* recording its decisions. Holders of different kinds of rights had their own signs which might be used instead of a signature: the *patil*, *mokadam* or village head put his mark as a plough, the potter as a wheel, the carpenter a chisel, the merchant a pair of balances, and so on. These practices reflected the fact that a *mahzar* was given not by state officials or by royal authority, but by the *gota* itself, with its members present and signifying their assent.

What can we say about the language of the petitions, and the *mahzars* within which they were incorporated? As noted above, petitioners were not described as making a supplicatory *arjī*. They might indeed 'make a humble request', *vinanti karṇe*, but their approach was as often presented rather neutrally: petitioners 'made a representation'. As seen above, they drew on an amalgam of Persian, Arabic, Sanskrit and Marathi terms, their authors clearly careful to use the correct Persian terms wherever rights were bound up with revenue arrangements. They emphasised the continuity of rights possessed *piḍī dar piḍī*, 'from generation to generation', or *lekarāce lekarī*, 'from children to their children'. Rights were described in direct rather than impersonal terms: they were not 'held' or 'enjoyed', but rather 'eaten', *khāṇe*. Standard phrases which appear in many petitions as they are reproduced in the *mahzar* stressed comprehensiveness of attendance at the *majālis*: *samasta deśaka*, 'all of the headmen of the villages', *samasta gota*, 'the whole gota', *samasta bāp-bhau va mirāsīdar kunbi*, 'all brothers of the same father and *mirāsīdar* cultivators', *samasta peṭha*, 'the whole town', or simply *samasta hardojaṇa*, 'one and all'. Above all, as will be seen below, they emphasised the principle of *mirāsī-bhau*, the brotherhood of those who possessed the same hereditary village rights.

Testimony, rhetoric and record: the *majālis* as a public space

Embedded in wider social and political networks, the *majālis* was not merely a judicial occasion in a narrow sense, but had a significant public dimension. Through its recognised procedures for receiving 'representations', assembling key local parties, calling and examining witnesses, the *majālis* both created an occasion which remained in collective memory, and generated the *mahzar* document which confirmed important local rights. Let us look, for example, at a *majālis* which met on 1 September 1636 to hear the petition of the Brahman Padhye family. The family claimed the offices of *dharmādhikārī* and priest, with *inām* lands attached, to some 75 villages in the Konkan province of Sangamesvara. The offices were the subject of a long-running dispute, dating back to 1600 or earlier, with another local family of priests, the Purohits.[13] In 1636, the challenges to their offices seem to have been revived by another priestly family, the Joshis, who may have been connected to the earlier case. The Padhyes therefore approached the state officials at Muzaffarabad with their petition. The *majālis* to hear it was held at Khelna fort before some 36 people, including the Havildar, Qazi and other Muslim officials, Deshmukhs, Patils, Kulkarnis, Shroff, and a significant number of *nāyakavaḍī*, Mahars or other menial village servants acting as district revenue sepoys. After listing those in attendance, the *mahzar* began its narrative with the Padhe's 'representation'.

[13] See Rosalind O'Hanlon and Christopher Minkowski, 'What makes people who they are? Pandit networks and the problem of livelihoods in early modern western India'. *The Indian Economic and Social History Review* 45, 3 (July-September 2008), pp. 400-402.

> We have possessed the *mirāsī* rights to *dharmādhikārī* and *josī* from generation to generation. But then Krishna Joshi of Sangamesvara went to the Huzoor, gave false information, and made a complaint about our *mirās*. They produced a document of grant from Humayun. But we are ancient *mirāsīdārs* from the time of the Hindu kings, and we have copper plates from that time at our house to show our possession, and can bring it before you to confirm this.

The Padhyes duly produced their copper plates. The assembly decided that the copper plates confirmed their continuing rights, and dismissed the Joshi family's case: 'The Joshis have nothing to do with this matter'.[14] Perhaps as a consequence of these challenges, the Padhyes seem to have been particularly careful over subsequent decades to secure documentary proof of their rights. In 1659 they asked for replacement papers for those destroyed in a house fire, in 1662 with the extension of Sivaji's control over the Konkan, they requested fresh *sanads* documenting their rights, and did so again in 1709 at the accession of the raja Shahu II.[15]

In these later undisputed cases, the Padhye's documents seem to have been issued without difficulty from the state records. In other instances, however, where substantial property or offices were at issue and documentary evidence had been lost, a *majālis* was needed to generate new *mahzars*. In 1667, the Brahman Ghode family of Pune petitioned for replacements for papers attesting to their *inām* lands in 4 different villages around Pune, as well as a quantity of oil for use in the city's Kedaresvar temple. They explained that they had possessed titles for these rights since the time of the Nizam Shahi kings. 'But then robbers attacked this place. There was no faujdar or governor. All of the troops had gone to Bijapur. Seeing the place empty, thieves attacked and took everything we had, all our sanads, both new and old'. This *majālis* was attended by a total of 19 people, the Kazi, the Faujdar, the Amin, the Deshmukh, Deshpande, village headmen, shetias and mahajans.[16] House fires were another hazard. In 1692 the Athalye family, priests of Devale village near Pune, petitioned for fresh documents. 'Abaji Patole's soldiers came and set the house on fire. When the house burnt down, there were our caskets of books in there, and our letters of rights. These were well known as long established. Therefore we need to be given a *mahzar*'. Thirty people from many different villages around were present at the *majālis* and signed the *mahzar*.[17]

Ethics of brotherhood, ethics of procedure

The second way in which the petitions and the meetings where they were considered constituted a kind of 'public' occasion lay in their frequent invocation of the ethic of brotherhood linking *mirāsīdārs* in a common bond. Petitions frequently referred to *mirāsī* brotherhood, *mirāsī-bhau*, along with the brotherhood of those born of the same father, *bāp-bhau*. Part of this ethic lay in mutual solidarity and support for one another's rights, and a concern that the nature of rights and the means by which rights were created should be properly understood. Part of the ethic also lay in mutual respect for the proper documentary procedures through which oral testimony was translated into tangible judgements, complete with seals and signatures. These dimensions of the *majālis* meant that such assemblies were never just about individual decisions and outcomes. Rather, they reaffirmed affirmed general principles about rights and procedures, of potential interest to all of those who held similar entitlements.

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[14] D.V. Potdar and G.N. Muzumdar, *Śivacaritra Sāhitya* , vol. 2. Pune: BISM, 1930, no. 341, p. 342-4.
[15] Ibid., nos. 343 and 345, pp. 345-7.
[16] *Śivacaritra Sāhitya*, BISM 1942, vol. 8, no. 59, pp. 65-6.
[17] V.S. Athalye, ed., *Āṭhalye Gharāṇayācā Itihās*. Pune: V.S. Athalye, 1939, no. 9, p. 22.

Something of this sense of ethic emerged in the language used in an early seventeenth century dispute over rights to the Patil office of Chauryasi village in Indapur province. We do not have a *mazhar* for this controversy, but rather a letter of protest about the conduct of revenue officials, which alludes to their neglect of this ethic, and to their violation of proper procedure. Kanhoji Raja of the nearby petty state of Prabhavali, and Deskmukh of Indapur, contended over the patilship of Chauryasi village against a local rival, one Landa. Landa seems to have decided that since there was no hereditary Patil in the village, he himself would take over the office, conspiring with the local Muslim state official, Shaikh Sadu, to bribe the revenue officers of the province to issue a *mahzar* in his favour. Kanhoji first made what would have been a vital point to any Deshmukh of the period: that the absence of a hereditary Patil did not mean that there was a vacancy in the village. 'It is an old custom, not a new one, that the Deshmukh is the Patil of the village where there is no Patil, and where there is no Kulkarni, the Deshpande is the Kulkarni.' Kanhoji then asserted that he was 'ready to go before the gota' in defence of his rights, and remonstrated bitterly with the revenue officers for their attempts to forge a *mahzar*:

> How did it come about that Shaikh Sadu induced you with money to give a decision in favour of Landa? You will say that you were forced. But how could Shaikh Sadu issue the document of decision without your handwriting on it, and the witness of the people and hereditary artisans?

He appealed to them as brother proprietors, invoking the 'niti' or ethic that should bind them together:

> You and I are brothers, and there is an ethic [niti] for those who are possessed of rights; we might suffer beatings, we might fall among rebels, but we do not bear false witness against another's rights. Both you and I have this ethic of brotherhood. Great warriors like Bhishma may descend on the village in their thousands, such that the owners were absent for five or six hundred years. But on their return, they would still have their patrimonial rights.[18]

At first sight, this early seventeenth century characterisation of the 'timeless village' looks very like the picture that might have been conjured by a nineteenth century Orientalist. But of course Kanhoji is not really saying that his rights have no history. In his world, rights existed primarily through the ability to attest publicly to their legitimate history, before assemblies of the kind described above. Kanhoji's defence of 'timeless' rights skilfully suggests a local world ultimately untouched by the temporary turbulences of great states and armies. But it is in fact precisely this world that he invokes in his reference to 'niti', flattering fellow proprietors by imputing to their brotherhood the qualities of ethical government more usually associated with kings.

A *mahzar* of 15 January 1667 reveals an even sharper sensitivity to the sacrosanct nature of the *mahzar* in the face of forgery. The village headman of Pasarni, Kondaji Mahigude, had held his position for many generations. But then the family and the local peasant proprietors quarrelled. The fields lay uncultivated, there was nothing to eat, and Kondaji abandoned his land. But state officials pressed him for payment of the land revenue, so Kondaji agreed to allow the brothers of the Rikame and Yevale families to cultivate a share of his lands. After some years, the brothers claimed that Kondaji had not just allowed them to cultivate some of his lands, but had made over his mirās rights to them, and they produced a *mahzar* to confirm this. The brothers clearly had some local influence, because Kondaji demanded that the

[18] S.N. Joshi and G.H, Khare, *Śivacaritra Sāhitya*, vol. 3. Pune: Chitrashala Press, 1930, no. 611, p. 199-200.

mahzar be examined by a *gota* outside the locality, in the town of Talegaon. The Talegaon gota found in favour of Kondaji, so in turn the brothers demanded that the *gota* of another village, Chimangaon, examine the document. They also found in favour of Kondaji. So the brothers demanded to be heard before a *majālis*. This was a very large body, the *mahzar* recording the names of some 50 people, state officials, Deshmukhs and Deshpandes, village heads, Kulkarnis, and shetias from many villages around. After hearing witnesses and examining the documents, they determined that the findings of the earlier hearings had been correct, and the *mahzar* presented by the brothers was false, procured by means of bribery:

> It was not properly witnessed by the appointed village servants and gathered subjects of the place, the owner had not given his consent to sell it, and the local government did not have authority from the village. A *mahzar* may be given without proper consent because someone has offered a gift to the legers, but the *gota* will not honour a *mahzar* forcibly given.[19]

The rhetoric of corporate brotherhood and mutual guardianship of village rights also appeared in documents of sale. In 1670, the *mirāsīdārs* of Tadali village in Junnar province decided to sell the *mirās* offices of Kulkarni and Joshi, village accountant and priest. This was not in any sense a petition, but rather a public declaration of collective purpose, in a matter of key importance to the welfare of the village, which required comprehensive public witness and affirmation. They gathered in a *majālis*, and described their proceedings in a *mahzar mirāsī patra*. The document opened: 'On Friday the eighth day of the light half of Mārgeśvara in the śake year of 1592. The *hāzīr majālis* of Tadali village, Takali, in taraf Rajangaon, pargana Junnar. In the temple of Śri, in the absence of the Huzoor'. The document then named some 25 individuals from different villages, Patils, Kulkarnis, priests and village servants, in attendance. In a few cases their ages were listed, perhaps as an indication of their depth of local knowledge: two men, one a Chamar, gave their ages as 80 years old. But the gathering seems to have been much larger, the list indicating 'and the whole village' next to some of the village names. On this important occasion absences were listed too: it was recorded that 'Rayaji Adhau Mokadam was not present'.

The *mahzar* was addressed to the purchasers of the office, Nilo Sondev and Abaji Sondev.

> Sivaji bin Jait patil and Manaji bin Vevoji Bhose Mokadam, of Tadale village, Takali, taraf Rajangaon, pargana Junnar, and all brothers who share the same father [*bāp-bhau*], the twelve village servants, the *mirāsīdār* kunbis, write this document of *mirās*. Kumaji was our mirāsīdār Kulkarni and Joshi. But his lineage died out. So we villagers appointed a deputy who carried on the work of the Kulkarni. We village people ourselves calculated the auspicious times for marriages. Then we all came together and decided that we would sell the Kulkarni and Joshi offices and make you our brother in *mirās*. So we came to you in Rayri. Of our own will, we sell to you the Kulkarni and Joshi offices of Tadali village and the house that goes with them, and we give the *mirās* to you. May you and your children's children enjoy it [lit. 'eat it'] it in happiness. With the seal of the Deshmukh and the signature of the Deshpande, we make you our brother in mirās [mirās-bhau]. If any mirāsīdār comes in the way of your possession of these offices, we the headmen, the twelve village servants, all we brothers who share the same father, and the mirāsīdār kunbis will prevent them. You will be free from interference.

We see here very much the invocation of 'the whole community'. The *mahzar* then listed the land, gardens and goods in kind attached to the offices, and stipulated the price of the sale at 150 honas. It concluded: 'May you and your descendants eat these in happiness, and if we

[19] *Śivacaritra Sāhitya,* vol. 8, no. 70, 73-78.

turn out to be false, then may the goddess bring down destruction on us'. There was no state official at this meeting, as its opening explicitly mentioned: the document, with its narrative, its witnesses, signatures and seals, and perhaps the all-seeing eye of the goddess, were the guarantees.[20]

The office of priest and its rights to land and perquisites in kind often prompted discussion and dispute. There was plenty of potential for brothers of priestly families to disagree about the practical division of proceeds from what was often a shared office. More importantly, though, priestly rights usually took in the entitlement to perform domestic rituals for all of the Hindus within the village, whether these families wanted their services or not. A family's attempt to engage the services of a new priest often signalled an attempt to improve its caste standing and the ritual dignities it might claim. Sonar goldsmiths belonged to the wider community of early modern India's elite artisan castes - prestigious builders of temples and sculptors of figures of the gods to goldsmiths, gem-workers, engravers, painters - with a history of asserting twice born and sometimes Brahman status for themselves.[21] A series of letters and petitions in Nasik in the 1640s suggest that western India's Sonars were scoping out the possibility for developing their own such claims. A leading member of the community, Jakhoji Sonar had evidently engaged the services of his own priest, one Sivabhaṭ Ksemakalyani. This brought him into conflict with the powerful Prabhu *dharmādhikārī* family of the town, who claimed the rights to all such services, as well as the rewards that went with them. In May 1646, the Prabhu *dharmādhikārīs* protested to local state officials that Sivabhaṭ had not only carried out the ceremonies, but endeavoured to collect the perquisites as well, on the grounds that the family employed him to do so.

A *majālis* was convened, with the Qazi and the Amin, as well as the Deshmukh, the Deshpande, the Patil, merchants and shetias. The assembly heard that Sivabhaṭ had disregarded an earlier judgement given against him, and in his resentment had come to blows with one of the Prabhu brothers. The assembly's judgement cut through the argument about what it was that created priestly rights. 'Sonars, or other Hindus, may have their own maintained people in their households. But the fact of being maintained does not create one single rights. These rights in Hindu houses belong to you and you should take them'. In what was a fairly common way to end a *mahzar*, particularly in religious matters, the judgement concluded: 'Anyone who disputes this is a criminal in the eyes of the state, and a traitor to the *gota*'.[22] These imprecations notwithstanding, Sonars continued to try to appoint their own priests. In 1649 the Nasik *dharmādhikārīs* approached local state officials to complain that another Sonar family was endeavouring to place marriage ceremonies in the hands of its own employed priest.[23]

This rhetoric of brotherhood was still alive and flourishing in the middle of the eighteenth century. In 1746, two *mirāsī* families in the village of Saswad near Pune, quarrelled over the honours on public occasions that were associated with the offices of Kulkarni and Joshi. Brothers of the Brahman Panse family complained to their fellow-villagers that their fathers had observed the proper order of seniority quite harmoniously. Just recently, however, there

[20] Joshi and Khare, *Śivacaritra Sāhitya*, vol. 3, no. 427, pp. 37-41.
[21] See Rosalind O'Hanlon, 'Gopinatha and the discourse of caste in early modern India'. *South Asian History and Culture* (forthcoming, 2015)
[22] Joshi and Khare, *Śivacaritra Sāhitya*, vol. 2, nos. 296 and 296, pp. 294-301.
[23] Ibid., no. 299, pp. 300-301..

had been disagreement and litigation. 'We do not know the meaning of this. You and we are brothers in our rights, and we should behave in the same way that our fathers did'.[24]

The majālis and regional networks

The third sense in which the proceedings of these assemblies incorporated a 'public' dimension lay in the sheer numbers recorded to have attended many of them, and the range of different locations at which petitioners might ask for their cases to be considered. Perlin notes that there may have been a peak in the frequency of large *majālis* meetings in the Deccan for which we have records. The uneven survival of records makes it difficult to be certain. However, regional assemblies with many dozens, and in some cases hundreds in attendance, seem to have been called to meet most often during the troubled middle and later decades of the seventeenth century as the Maratha warrior leader Sivaji fought to carve out his own domain. In 1649, for example, 77 named people or individuals identified by their role attended the *majālis* at which the powerful Jedhe Deshmukh family divided their rights beween their five sons.[25] In 1652, 72 people assembled to resolve arguments over shares in the Kulkarni office of Khanapur and surrounding villages.[26] In 1657, 101 people attended a meeting over rights in a village.[27] In 1675, 238 people met to resolve a dispute over the patil's office in Pali village of Karad pargana.[28] In 1688, 185 people attended a meeting about the Deshkulkarni and Kulkarni offices of Wai province.[29] In 1725, 80 people attended a meeting about transfer of ownership of the Patil's office in villages of the Maval region.[30] Large assemblies to confirm or transfer rights were, of course, to be expected, as prolonged warfare eroded the power of established families, created opportunities for ambitious new leaders, or simply resulted in the destruction of documents which families then strove to replace. But Perlin suggests that the meetings may have had a further and subtler purpose, not directly expressed in the practical transactions described in the judgements. Their mass attendances provided occasions when family heads could concert their alliances as political circumstances shifted, calculate their fortunes under different leaders, affirm old loyalties or seek out new allies.[31]

It was not only the size and relatively greater frequency of substantial meetings that enabled the *majālis* to serve as a kind of 'public' arena. As seen above in the case of the headship of Pasarni, unsatisfied petitioners could submit a *thalpatra*, asking to be heard before the *majālis* of another place, in the hope of a more sympathetic hearing. Even more striking in the range of locations it brought together is the 1611 case from the Marathi-speaking regions of Bijapur state that has been described by Richard Eaton. The family of the headman of Masura village in Satara district quarrelled with the servants of a Sufi shrine in the village over entitlements to offerings made at the shrine. There were murders on both sides, the headman was killed and his office passed to his son. Eventually, a local Muslim merchant petitioned the region's deputy governor, to whom he was related by marriage, at the district headquarters in Karad, asking him to take action against the headman's family. The deputy governor duly did so, by fining the son heavily and transferring the office to his own relation, the Muslim merchant who had made the complaint. After a further passage of time, the son

[24] Oturkar, *Peśve-kālīn sāmājik va ārthik vyavahār*, no. 49, p. 36.
[25] Gune, *Judicial System of the Marathas,* p. 176.
[26] Joshi and Khare, *Sivacaritra Sahitya*, vol. 3, no. 637, pp. 218-221.
[27] Ibid., no. 639.
[28] Gune, *Judicial System of the Marathas*, pp. 196-198.
[29] Ibid., pp. 205-7.
[30] Ibid., pp. 227-8.
[31] Frank Perlin, 'State Formation Re-considered'. *Modern Asian Studies* 19, 3 (1985), 453-455.

died. His son took up the cause, making a direct approach to Sultan Ibrahim Adil Shah at the Bijapur court, to ask for the headship to be returned to his family. After further manoeuvring on both sides, the case was referred to a *majālis* back in Karad, which ruled that the headship should indeed be returned to its original family. At this, however, the Muslim merchant complained that the Karad assembly had been biased in favour of the former headman's family. He asked that the case be heard this time by a *dharmasabhā*, an assembly of religious scholars, and not in Karad, but in Paithan, some 200 miles distant, where the assembly enjoyed an ancient reputation for its experience and fairness. This was agreed, but his petition here was no more successful, and the pandits ruled in favour of the original holders of the office. The last throw of the merchant's family was to challenge their opponents to an ordeal. Interestingly, and offering some insight into the importance of personal witness and paper documents in this culture, the pandits replied: 'When there are witnesses and documents in the case, why should we hand out an ordeal?'.[32]

For seventeenth century petitioners, therefore, the *majālis* offered a well-understood quasi-public space, with its own well-recognised and carefully guarded procedures. In it, local knowledge and oral testimony came together with a highly developed documentary culture, based on paper. The narratives of the *mahzar* at once offered histories of the particular rights in question, affirmed general principles as to what created rights and what did not, and articulated an idealised ethic of solidarity binding those who held rights together. Yet in no sense did the *majālis* offer an exclusive route to justice, or one insulated from wider sets of social relations. Petitioners could apply to a plurality of authorities. Relations outside the *majālis* could be mobilised to try to affect its proceedings, or inducements offered to key officials in the hope of evading the scrutiny of *gota* members and *mirāsīdārs*. These features sometimes made it difficult for petitioners to gain finality in their suits. On the other hand, a degree of inconclusiveness may have made for better local social cohesion, avoiding the permanent alienation of dissatisfied parties, who might still hope for redress in later generations, if not in their own.

Centralising justice in the panchayat.

As elsewhere in the subcontinent, the growth of stronger regional successor states from the late seventeenth century slowly cut into these local autonomies. In western India, this process began from mid-century, with Sivaji's well-known drive to restrict the administrative and tax-related powers of regional and village headmen, and to move to reward loyal servants with cash grants rather than permanent alienations of land.[33] The advantages of greater control of these structures naturally conflicted with the need to retain the loyalties of the large landed families who, until a few decades before, had been Sivaji's rivals, and to reward new recruits to his cause. As Gordon suggests, Sivaji's claim from the 1660s to the rights of Sardeshmukhi – to stand as the Deshmukh over all other Deshmukhs – may have been an attempt to resolve this problem of authority, as was his decision, a decade later, to have himself consecrated as a dharmic Kshatriya king. Maratha defeats at the hands of Mughal forces after Sivaji's death, and the twenty years of Maratha civil war that followed reversed

[32] The original document is printed in V.K. Rajwade, ed., *Marāṭhyāncya Itihāsācī Sādhane*, vol. 2, Dhule: Rājavāḍe Samśodhan Manḍal, 2002, no. 6, pp. 16-21. There is a partial translation in Graham Smith and J. Duncan M. Derrett, 'Hindu Judicial Administration in Pre-British Times and Its Lesson for today'. *Journal of the American Oriental Society* 95, 3 (1975): 417-423. Eaton's discussion is in Richard M. Eaton, *A Social History of the Deccan, 1300-1761: Eight Indian Lives*. Cambridge: Cambridge University Press, 2005, 145-150.

[33] A.R. Kulkarni, *Maharashtra in the Age of Shivaji*, 30-32; Gordon, *The Marathas*, 85-7; R. V. Heravadkar, ed., *Śiva Chhatrapatīce caritra: Sabhāsad bakhar*. Pune: Vhins Press, 2002, pp. 21-38.

these efforts of state-building. However, the emergence from 1714 of the ambitious Bhat family from the Konkan as ministers to the Maratha kings at their Satara court inaugurated a new drive to centralise the administrative and revenue gathering structures of a Maratha state now with major north Indian military ambitions. The death of the Maratha raja Shahu II in 1749, and the transfer of effective power from Satara to the peshwa's court at Pune increased this pressure.

For the old *majālis* assemblies of the seventeenth century, these pressures meant their gradual decline in favour of the institution of the panchayat. We tend to think of the panchayat as 'traditional' India's archetypal local and popular assembly. However, panchayats were in fact an instrument of eighteenth century attempts at centralisation. The panchayat usually consisted of between 3 and 15 members, but there was no fixed number. Crucially, however, village and regional headmen and local *mirāsīdārs* had no automatic right to attend, members of the panchayat being ad hoc invitees of petitioners themselves. In addition, no panchayat could be held without the presence of state officials, and the peshwa court maintained its own busy huzoor panchayat in the palace at Pune, with a standing staff of scribes and record-keepers to assist in its work. Like the *mahzar*, its written judgement or *nivāḍapatra* contained the original petition, the evidence given by witnesses and the eventual judgement. Unlike the *mahzar*, however, the *nivāḍapatra* did not record the names of the panchas who heard the case, and was issued as a document of state, rather than a summary of the deliberations of gathered mirāsīdārs and heads of villages standing in witness to a local decision.[34]

Yet the shift was a slow and partial one. As Elphinstone noted in his lengthy description of the Maratha panchayat in 1818, it was on the whole an accessible and effective forum for the hearing of small local disputes.[35] However, it seems to have worked less well in more substantial cases. Petitioners with influence and resources could still take their pleas to other centres. The newly powerful Maratha families of Shinde, Holkar, Gaikwad and Pavar, with their own independent domains in central India meant a plethora of different authorities outside the Pune court to whom appeal could be made. Key officials of the peshwa government were themselves often on military service in north India. Authority remained another problem. The reduction in numbers of witnesses meant a greater reliance on documents, but documents could always be forged. In addition, many leading families outside the governing elite did not wholly accept either the legitimacy of the peshwa court in its succession to the powers of the Maratha royal family, or the standing of the Bhat family as impeccable Brahmans. In larger cases, therefore, it proved very difficult for the peshwa government to insulate the judicial process from the wider social and political networks within which it was embedded.

The judgement of a panchayat held in June 1765, just four years after the Marathas' disastrous defeat at the battle of Panipat outside Delhi, illustrates something of these circumstances. With its references to 'bundles' of accompanying documentary evidence, the judgement is also testimony to the all-pervasive documentary regime of the Maratha state. The judgement recorded that brothers of the Brahman Mule family had come to the peshwa's court in Pune and complained that the Garge family were attempting to usurp their rights as priests and *dharmādhikārīs* in the village of Tasgaon outside Pune. The peshwa's minister Bhausaheb had heard the case and decided in favour of the Mules. But the Garges

[34] Gune, *Judicial System of the Marathas*, 49-50, 83-6.
[35] Elphinstone, *Report on the Territories*, pp. 76-99.

disregarded the verdict, gave out false information about the judgement, and forcibly assumed control of the Mules' offices. So, the judgement continued, in the narrative of the Mules:

> We went to see the Bhausaheb in Hindustan. We told him that Garge had given out false information about the judgement he had earlier given (bundle 2) and seized our property. So the Bhausaheb gave us a letter for Nana Saheb peshwa, saying that in the judgement given, Garge had put forward a false case. He gave us a written affirmation that the Mules should be allowed to resume their property, and we came back to Pune. Then Nana Saheb peshwa died. But the Swami saw the letters and issued instructions to the revenue officers and the villagers that Garge had been found false and should be made to release the property, and the Mules allowed to resume their rights. So then Garge approached Mahadji Shinde and made a complaint to him, and also demanded a fee of 200 rupees from the village Patil (bundle 3). The villagers said that the Mules would have to pay this fee. Then Garge took us before Mahadji Shinde, and demanded with menaces that we should give him our letters from the Sarkar. Then an order from the Sarkar went to Shinde's Dewan to say that Garge had no case, and the fee the Mules had paid should be returned to them.

At this point, the Mule's narrative continued, the contending parties fell into argument about the value of the parties taking an ordeal by water in the Godavari river, to demonstrate the strength of their case. They decided against it, but Garge then resorted to another tactic. 'He wrote out a document admitting his defeat. He said, I will make a copy of the papers and give it to you. Then he took our papers to make copies of them, but instead of returning them, he tore them all up'. The Mules pointed out another difficulty. 'In his impudence, Garge would not write a letter admitting defeat. An order can be issued to him, but it is not possible to punish a Brahman'. Eventually, the court officials resorted to summoning the villagers and asking them, under oath, who their hereditary priest really was. The villagers testified that the office belonged to the Mule family, and wrote out a document to confirm the fact. With this confirmed, the panchayat judgement concluded with a brief declaration in favour of the Mule family.[36]

The complex history of the Padhye family, whom we saw above in the *majālis* of 1636 in contest with the Joshi family, further reveals how hard it was for the peshwa government to narrow the social and institutional base for its judicial procedures. With the coming of the peshwa government, the Joshis once more raised their challenge the Padhyes' rights, but now, perhaps, with greater hope, since they were family relations of the peshwas. We have two accounts of what happened: one in a *nivāḍapatra* given in a panchayat of 1763, and another in a later Padhye family history. According to the lengthy narrative of the *nivāḍapatra*, the peshwa Madhavrao Ballal convened a panchayat to look into the matter. The panchayat asked the Padhye family for documentary evidence of their claim. Disputing the panchayat's competence, the family head Kashi Padye refused to attend or to produce their documents, asserting 'You have no capacity to give a just judgement in this matter'.

The panchayat was convened anyway, at the Pune court. Fourteen people, a combination of state officials and holders of *mirāsī* rights, attested in favour of the Joshis, who seem to have had two star witnesses. One was a goldsmith, Ramshet Sonar who described how Kashi Padhye had some years back taken him to his home back in the Konkan.

> He told me he wanted me to engrave a copper plate. I said to him, I am a poor man, I can't do something like that. Padhye said, don't be afraid. Our copper plate is very old, and it has

[36] Gune, *Judicial System of the Marathas*, Appendix B-II, no. 6, pp. 312-3.

> worn out. I just want to make a new copy. So saying, he brought a new copper plate three hands long and one hand span wide and gave it to me. Then, in a private place, he would write four or five lines neatly in ink on the copper plate, and I would engrave it. After 10 or 15 days, three letters in all had been written and engraved in this way.

Seals were added by the goldsmith, one circular, and one eight sided. He was rewarded for his work with gifts of cloth. Another witness, Bal Joshi, testified that 'Kashi Padhye asked me if I would calculate what day of the week did the third day of the dark half of Vaishakh month fall on in the sake year of 106. I did the calculation for him, and told him. This was about 20 years ago.' The panchayat therefore decided that Kashi Padhye had forged his documents of right. The Joshis were declared rightful owners of the watan, and were entered in the Pune daftar as such.[37]

But the family history presents a narrative of events outside the panchayat. After Kashi Padhye's refusal to appear, the peshwa's court sent men to the Padhye home in the Konkan. They found the faithful family servant, Govind, and demanded that he produce the family's copper plate and paper documents. Govind protested that he did not know where the papers were: he had heard that some were destroyed during local warfare on the coast some years before, and he thought others had been sent back to Pune. The peshwa's men took him out into the forest and beat him, then imprisoned him in Torna fort. News of his maltreatment reached the Padhye brothers in Pune. At this point, the peshwa was in camp on his way to Aurangabad, so the brothers pursued him and installed themselves in front of his tent, staging a fast. The peshwa released the servant, but persisted in his demand that the brothers bring their documents of right to the panchayat. The brothers retorted 'You have already committed violence at our house in pursuit of these documents. If we bring them to the court, you will seize them from us'. The peshwa disregarded their complaints, went ahead with the panchayat, and through its trickery the Padhyes rights were transferred to the Joshi family. The end was dramatic. The elder brother Anant went back to the Konkan and set fire to the family home. He brought some of the ashes back with him to Pune, where he accosted the peshwa one day riding in his palanquin. He threw the ashes into the palanquin with the words 'You have brought ruin on our house, and in the same way will your whole lineage be destroyed'.[38] As a renunciate from his new base in the shrine town of Pandharpur, Anant and his successors remained persistent opponents of the peshwa's family, finding support and patronage instead from the powerful Shinde family.

This case illustrates further limitations in the attempted centralisation of the panchayat. Powerful families that might have found it difficult to defy the massed *mirāsīdars* of the *majālis*, could call into question the panchayat's more narrowly based authority. With its smaller and more selective witness base, its proceedings were more open to manipulation. There seems good evidence that the Padyes were accepted as possessing some at least of the rights they claimed. Their documents may have been lost, as the family servant insisted, or they may simply have become illegible through use and passage of time. Given the family connections between their challengers and the peshwa government, the Padhyes may not have felt able to go to Pune to ask for their renewal, as we saw them do in 1659 following their house fire. So the family took steps to manufacture duplicate copper plates to replace them, based no doubt on family memory of what had been on the original. Perhaps they did

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[37] This document is printed in M.B. Saha, ed., *Itihāsācārya Vi. Kā. Rājavāḍe samagra sāhitya*, vol. 11. Dhule: Rājavāḍe Sāśodhana Maṇḍaḷa, 1995-8, no. 55, pp. 443-8.

[38] This family history is in L.R. Pangarkar, *Moropant: caritra āṇi kāvyavivecana*. Mumbai: Hindu Agency booksellers and Publisher, 1908, pp. 108-110.

not regard it as forgery, but simply re-making what had been in existence before. Challenged to present these documents before the Pune panchayat, they refused, giving their reason the fear that the court would seize and destroy them.

Some of the limitations in the more centralised form of the panchayat may have be reflected in popular usage of the term. The young linguist and army officer James Molesworth, who began in 1818 to compile the first Marathi dictionary, gave its conventional meaning as an assembly of arbitration. However, he also provided some of its popular usages. A panchayat was the assembly of arbitrators or the deliberations of such an assembly, but was used freely to denote 'a state of exigency or of bewilderment or of difficulty in general'; 'Blabbing abroad or making to be publicly talked about'; 'Vain or needless discussing or objecting'.[39]

Conclusion

It seems clear, then, that efforts to centralise justice and to narrow the channels through which petitioners could seek redress were not new to the colonial period. The governments of the peshwas had already displaced the older and more egalitarian institutions of *gota* and *majālis* from which seventeenth century petitioners could seek redress. In the systems that Elphinstone observed, however, the panchayat was still very much a part of the broader judicial structure, although petitioners with influence and resources could still find multiple arenas and sources of authority to which they could appeal.

In his prescriptions for the future, Elphinstone argued that

> Our principal instrument must continue to be the Punchayet, and that must continue to be exempt from all new forms, interference and regulation on our part. Such forms would throw over this well-known institution that mystery which enables litigious people to employ Courts of Justice' as engines of intimidation against their neighbours, and which renders necessary a class of lawyers, who among the Natives are the great fomenters of disputes.[40]

He was successful in this argument for retention of the panchayat as the most local level of justice in the new administrative order of the Bombay government. On good Benthamite principles, the Elphinstone Code of 1827 created a three-tiered judicial system, composed of a Sadar Adalat, a Zillah Adalat and 'Native Commissioners of Justice' who would oversee a continuing panchayat system. But this attempt to weld a Benthamite judicial system to the older institution of the panchayat created longer term difficulties. As the peshwas themselves found, the creation of higher levels of authority in a formal court judiciary meant that authority leaked away from these local structures, in offering to dissatisfied petitioners alternative and higher levels of appeal. The new spaces for petition had, of course, their own new protocols, and in them success relied not so much on local knowledge and the ability to appeal to local solidarities, and more on the mastery of the technical language of colonial law.

[39] J.T. Molesworth, *A Dictionary, Marāṭhi and English*. Bombay: Education Society's Press, 1857, p. 482.
[40] Elphinstone, *Report on the Territories*, pp. 99-100.