at any rate prepared to give the dacoits a warm reception. The Inspector-General of Police said in his report: "The effect on the crime returns from action of this sort has been extremely encouraging. In most villages I have found the people are quite alive to the advantages to be looked for from concerted action of the kind, and a sufficient number are generally found ready and willing to take their turn." [1]

27. In this connection reference may be made also to the levy system in Baluchistan, started by Sir Robert Sandeman for the security of the country and the frontier. It consisted of a small number of tribal horsemen taken into Government service; but was subsequently extended by "offering the headmen allowances for maintaining a certain number of armed horse and foot, by whose means they were expected to keep order in their tribes and to produce offenders when crime occurred." [2]

[1] *Bombay Police Report*, 1900, para. 12.
[2] *Imperial Gazetteer of India*, vol. iv, p. 334.

CHAPTER VII

ADMINISTRATION OF JUSTICE

1. THE usual method of settling differences in the old village community was by referring them for arbitration to the headman, who settled small disputes himself but secured the assistance of a council of elders in determining more important matters. The headman possessed also powers of criminal justice, which though often enough in the disorganization of later times he exercised with some degree of oppression, he was restrained and moderated by the influence of village opinion. The duty which the headman and the *panchayat* felt in any case submitted to them seems primarily to have been rather to find a means for composing differences and satisfying both parties than to award a decree in favour of one and to leave the other an absolute loser. Nearly all the reports of early British Administrators in India speak of the headman as the main judicial authority of the village. The *Fifth Report* (1812) mentions among his various duties in Madras the "settling of the disputes of the inhabitants."[1] Elphinstone recognized him, in 1821, in the territories under the rule of the Peshwa as the primary authority for settling disputes in the village.[2] The Court of *Sadr Dewani Adalat*[3] in Bengal, in a report on the judicial powers of headmen, said (1827): "We are decidedly of opinion that every encourage-

[1] Pp. 84, 85. [2] *Report on the Territories Conquered from the Paishwa*, p. 26.
[3] Principal civil court.

ment should be given to . . . the heads of villages to arbitrate and settle *as heretofore* any trivial disputes between the inhabitants of their respective villages, which may be voluntarily submitted to their adjustment and award." [1]

2. The procedure adopted by the headman must have been exceedingly irregular and informal; and even if a fairly definite system could be traced in any particular area, it must have varied considerably from the system which obtained in other parts. The only reports available which deal in any detail with the question are confined to Western India, to the regions which passed under Maratha rule. Elphinstone thus described the procedure in a suit for the recovery of a debt. "If a complaint was made to a *patel*, he would send for the person complained of, and if he admitted the debt, would interfere partly as a friend to settle the mode and time of payment. If the debt were disputed, and he and his *kulkarni* could not by their own influence or sagacity effect a settlement to the satisfaction of both parties, the *patel* assembled a *panchayat* of inhabitants of the village, who inquired into the matter with very little form, and decided as they thought best; but this decision could not take place without the previous consent of the parties. If the complainant were refused a *panchayat* or disapproved of the decision, or if he thought proper not to apply to the *patel*, he went to the *Mamlatdar* who proceeded nearly in the same manner as the *patel*, with this addition—that he could compel the party complained of to submit it to a *panchayat*, or else make satisfaction to a complainant." [2] The method of administering criminal justice was stated in Mr. Chaplin's Report on the Deccan (1824) as follows: "*Patels* exercised formerly without any defined limits to their authority the power of slightly punishing for all minor offences, such as abusive

[1] *Report of Select Committee*, 1832, App. H.
[2] *Report on the Territories Conquered from the Peishwa*, p. 76.

language, petty assaults, and trespasses. The punishment seldom went beyond a few blows with the open hand or confinement for a couple of days in the village *choultry*, the prisoner paying subsistence money to the *havildar*, or peon, who was placed over him. A *Musala*, or fine, was perhaps occasionally exacted, which did not, however, exceed a rupee and a quarter; the rupee going to the *sirkar* and the rest to the *havildar*. If the crime were of such a nature as to require the infliction of a greater penalty, the delinquent was sent to the *mamlatdar* for trial." [1] To the same effect was a report by the Collector of Ahmednagar (1827): "The heads of villages still have and do exercise the power of confining persons who are guilty of crimes till they can report about them, of chastising petty delinquents to the extent of a few stripes, and of forcing the ryots to pay their rents by the usual means of *tukhuza*, such as setting the defaulter in the sun, putting a stone on his head, etc." [2]

3. The authority of *panchayats* was, as a rule, confined to important civil cases. They were probably not fixed local tribunals, but were appointed for the adjudication of each particular dispute for which their services were required. The duty of constituting and summoning a *panchayat* probably lay with the headman, but in a village he was often bound, if not to accept, at least to consider, the wishes of the parties. No one, however, felt bound to submit a dispute to a *panchayat*, but whenever it was decided to submit one, it was customary to enter into an agreement to abide by the award. The agreement was sometimes put in writing, but was often sealed by the making of a sign. There was no definite limit to the number of members; it might range from five or less to fifty or more. The usual place of meeting was under a tree or in the village temple or *choultry*. There was no direct

[1] *Report on the Deccan*, W. Chaplin, 1824, p. 142.
[2] *Report of Select Committee*, 1832, App. M.

remuneration offered for the services of the members. The chief motives which led men to accept the position were the obvious respectability attaching to it, the chance of a present from one or both of the parties, and the desire to avoid the odium of shirking a public duty. The proceedings were thoroughly informal, and took the form of an animated conversation in which more people than one took part at the same time. If in any case it was thought necessary to commit the award to writing, it was left to be done by the village accountant.[1] The intimate local knowledge of the judges was generally sufficient to secure a tolerable degree of justice in the awards; and the strength of communal opinion in the village often guaranteed the performance of the verdict. On the whole, the village communities were not subjected to interference, and their verdicts were final, though interference was not altogether unknown in notorious cases. On the apparent resemblance between a *panchayat* and a jury, Holt Mackenzie made this statement before the Select Committee of 1831–2: "The *panchayat* can scarcely in its native shape be said to bear any distinct analogy to a jury, being, in fact, merely a body of men to whom a cause is generally referred. They are not bound to decide; there is no issue given to them to try; they are under no direction, and are left to scramble out of their case as best they can."

4. The chief advantage of a *panchayat* was, of course, the obligation which the very nature of the tribunal threw upon parties and witnesses to tell the truth. In a small concentrated community, it was not likely that any one who cared to live a comfortable life would venture an untruth before a council of his fellows. Sleeman, in his *Rambles and Recollections*,[2] has an interesting comment on the difficulty he sometimes

[1] Elphinstone, p. 78.

[2] *Rambles and Recollections of an Indian Official*, Sleeman, Constable, 1893, vol. ii, ch. ii, pp. 34–5.

felt in arriving at the truth in cases in which *sepoys* were involved, "and yet, I believe, there are no people in the world from whom it is more easy to get it in their own village communities where they state it before their relations, elders and neighbours, whose esteem is necessary to happiness and can be obtained only by an adherence to truth." Another advantage which must have helped the long continuance of the system was that in the greater or lesser degree of isolation in which village communities often found themselves, there was no other tribunal of any competence before which disputes could be easily lodged. Moreover, the local authority and knowledge of the elders rendered the *panchayat* in ordinary cases—that is, in cases which did not entail undue labour—"clear and prompt in its decision."[1] And this was helped by the additional circumstance that so long as a *panchayat* held its sitting, its members were being kept from the more insistent work of earning their daily bread and so were not likely to brook "needless complaint or affected delay."[2] But it is noted that they were apt to be dilatory in cases where the matter before them involved the examination of some laborious and intricate account. Then "it adjourns frequently; when it meets again, some of the members are often absent, and it sometimes happens that a substitute takes the place of an absent member."[3] The chief weakness of the *panchayat* was probably the absence of sufficient power to carry through the necessary preliminaries to a judicial proceeding, such as seizing the defendant and summoning witnesses. Perhaps also, when the members of a *panchayat* were appointed, as often happened, by the parties themselves, the fact that they would try to play the part rather of advocates than of judges might have caused difficulty.

[1] Minute on the state of the Country, etc., Munro, December 31, 1824.
[2] Elphinstone, p. 88.
[3] Minute on the state of the Country, etc., Munro, December 31, 1824.

5. For some time during the early years of British rule, there appears to have been a definite attempt made, with a degree of enthusiasm which differed with each locality and the individual officers concerned, to make use in an informal way of the old *panchayat* system. It is clear that from the beginning there was a somewhat strong feeling among the officers of the East India Company against the institution of *panchayats* in ordinary disputes, but their usefulness in the determination of purely social questions such as those relating to caste and of revenue matters, was recognized. The question was gone into at some length by the Select Committee on East India affairs in 1831–2, and their evidence bears out the foregoing statement. A civil servant from Madras [1] gave the following account: "I have had considerable experience of the use of *panchayats* as a revenue officer in the Bellary Division of the Ceded Districts, and found them exceedingly useful there in adjusting matters of dispute, both between the inhabitants themselves and between myself as the representative of the Government and the ryots paying land revenue, as well as the merchants; I have often found the parties resist all argument on the part of my native servants as well as of myself, but immediately concede the point with cheerfulness when decided in favour of the Government by a *panchayat*. . . . In such cases, as well as in numerous disputes regarding village offices, such as the right to the privileges of the head of the village or of the watchman or other village officers, *panchayats* have been most extensively employed by the revenue officers in Bellary. . . . In the *Ryotwari* settled districts, such as Bellary, there are constantly in attendance at the offices of the Collectors and Magistrates many hundreds, sometimes thousands, of the ryots, particularly at the period of the annual settlements, when occasionally 10,000 to 12,000

[1] A. D. Campbell.

people of that description may be congregated together at the same time. The parties themselves are left to select out of those bodies of people whom they choose, and the Collector generally nominates one of the leading agricultural inhabitants, known to be a person of good sense and discrimination, care being invariably taken to ascertain from both parties that he is one to whom neither have any objection. If a case were between a lender of money and a borrower of it, the *panchayat* would consist in all probability of two wealthy monied men, chosen by the native banker, two respectable cultivators chosen by the ryot, and a fifth person of the description above mentioned, selected by the Collector. A great deal in a *panchayat* depends upon the proper selection of the fifth person; the other persons enter into violent disputes and the fifth acts as the moderator. Some of the decrees drawn up by *panchayats* at Bellary are admirable specimens of native intelligence, seldom equalled by some of our own European decrees. The members are never paid. They are not sworn. Even intricate disputes in the revenue department are settled at least in the course of a single day. Where the parties agree to settle a dispute by *panchayat*, there is no limitation in amount—the decision is final except on the proof of partiality or corruption of members."

6. In the Bombay Presidency, Elphinstone had laid down in 1821: "Our principal instrument must continue to be the *panchayat*, and that must continue to be exempt from all new forms, interference, and regulation on our part."[1] In the rules for the regulation of *panchayats* in the Southern Maratha Country (as given in the Appendix to a Minute by Sir John Malcolm in 1829),[2] all causes relating to the internal regulations of particular castes were to be exclusively settled by *panchayats* composed of members of the caste concerned.

[1] *Report*, p. 99.
[2] Minute on the Revenue and Judicial Administration of the Southern Mahratta Country, April 23, 1829.

All causes relating to the following subjects were to be referred to *panchayats* for adjustment, unless the parties agreed to bring their suit before a *Munsif*: (1) religion, (2) marriage, (3) peculiar customs of places, (4) *Wuttuns* or *Huks*,[1] (5) division of property, (6) maintenance, (7) old and intricate accounts, (8) disputes between two inhabitants of the same village within the sum of 50 rupees, personal property or value, (9) suits for damages for alleged personal injuries and for personal damages of whatever nature, (10) boundary disputes. These *panchayats* worked under the general superintendence of the *Amildar*. He forwarded the decrees to the Collector, by whom they were referred to the chief law officer, Hindu or Muhammadan, of the religion of the parties concerned. If he approved, the Collector set his seal and signature to the decree and carried it into execution. Appeals were allowed, though rarely, to a superior *panchayat* (*Sir-Punnah*) if sufficient primary grounds were shown. The establishment of regular courts and forms of justice was leading to a great decline in the influence of *panchayats*, "but these are still universally resorted to in cases of arbitration and in the small causes that come under the jurisdiction of the village officers. They are also resorted to to fix the settlement of disputes about caste or religion, and are . . . generally well employed in fixing the details of the amount of revenue assessment."

7. The following extract from Holt Mackenzie's evidence before the Select Committee (1831–2) describes the use made of *panchayats* in Upper India. It will be noticed that with the system of joint land-holding communities which prevailed there, their use in revenue matters was more often to settle rights as between different village communities than among members of the same community. "In cases relating to questions of caste, they are frequently very

[1] Hereditary estates or rights.

numerous. Revenue officers have used the *panchayat*. I believe the native collectors use it extensively to adjust various disputes between the village communities and the different members of such communities. The collectors too frequently have recourse to it in the determination of questions of private right when making settlements. One officer in particular, with whom I had made much communication and who is singularly well acquainted with the natives of the country where he has been (Mr. W. Fraser) systematically employed it to a great extent in settling the boundary disputes between villages, preparatory to the survey of the Delhi territory and the districts immediately adjoining, and he stated that he had found the plan very successful, having obtained the decision of 300 cases in that way. . . . His scheme was partly on the principle of a jury, and partly on that of the *panchayat*, that is, the members were generally chosen on the nomination of the parties, but they were required to decide without delay ; the matter in dispute was brought to a distinct issue, and the whole proceedings were regularly recorded by a Government clerk who was deputed for the purpose. The disputes were generally between (what I may call republican) communities of yeomen cultivating their own fields, for the possession of land generally of little value, but very eagerly contested by the people. The headmen of the contending villages, acting for, and in the presence of, the whole body, were required to nominate six on each side, making on the whole twelve. The right of challenge was freely allowed, and the jury (so to term it) was required to be unanimous. Mr. Fraser's reason for having so many as twelve was, as he said, chiefly that they might, by their number and weight, be placed above the reach of intimidation or danger from the vengeance of those against whom they might decide ; and it was with the same view also, with that of putting down party spirit, that he required unanimity."

8. A highly unfavourable account of the way in which *panchayats* were worked in Bundlekand under former governments was given by an official of the Company who served there, and was reproduced in a letter from the Bengal Government to the Court of Directors (1827).[1] It is extremely difficult at this stage to pronounce an opinion on the general truth of this report, but it is at least interesting as a spicy account of what to a British official at the time seemed the possible misdoings of an ill-controlled *panchayat*. "Under the former government of this district, the superintendence or management of *panchayats* was never from the earliest times that I have been able to trace confined to any particular individuals or body of men whatever, and the consequence was that they were very often either futile in their results or terminated in a murderous conflict between the parties and their adherents. The selection of the arbitrators proceeded always from the disputants themselves, and they were chosen generally from the most respectable of the tribe or profession to which the parties belonged. If the subject was rent, the head *zemindars* or *canongoes* were generally chosen, but residents of neighbouring villages were commonly referred to their own townsmen. Boundary disputes were settled in the same way, and a large assemblage of men from all the surrounding villages were often invited by the parties to witness the settlement. This almost invariably led to violent affrays and the loss of many lives, and which again branched out into innumerable feuds, laying the foundations of continued disorder and bloodshed. The officers of the former Government seldom interfered, until matters got to such extremes as to endanger the realization of their revenue, which was the primary, I may say, the only object of their care; they then interposed their influence to bring about a final adjust-

[1] *Report of Select Committee*, 1832, App. I.

ment of the dispute. . . . As the disputes connected with land and its produce were generally settled by *panchayats* composed of *zemindars* or *canongoes* . . . so were the claims and accounts of bankers settled by arbitrators, consisting of the most respectable of that profession, and the same obtained with other professions; but the habits of those classes being more peaceable than those of the *zemindars*, the greatest evil arising from the inefficiency of the system with respect to them, lay in the frequent futility of the award, from inability to enforce it."

9. Besides the employment of informal village *panchayats*, there are a few provinces which have tried the experiment of incorporating the institution by law in the regular judicial system. One of the earliest to start it was Madras, where, under the influence of Sir Thomas Munro, a regulation was passed in 1816[1] permitting the trial of cases by *panchayats*. This regulation still remains on the statute-book, however little it has been put to any real use. It was passed, in the words of the preamble, "with a view to diminish the expense of litigation and to render the principal and more intelligent inhabitants useful and respectable, by employing them in administering justice to their neighbours." The right of summoning a *panchayat* is left to the village headman; but this right is to be exercised only in cases where both the parties to a suit agree to submit the dispute to a *panchayat*, and where they do, there is to be no limitation in the amount or value of the suit. The *panchayat* must consist always of an odd number, never less than five nor more than eleven, and the majority shall decide. It must be composed of the most respectable inhabitants of the village, who shall be called upon to serve in rotation whenever their number is sufficient for the purpose. Any inhabitant who refuses may be fined. Where the

[1] Reg. v. of 1816.

parties belong to different castes the headman must nominate an equal number of each caste and complete the *panchayat* by the selection of a person or persons who belong to neither caste. There is to be no appeal from the award of a village *panchayat*. But in cases of gross partiality, the matter may be taken by petition to the District Judge. If the latter is convinced of partiality, he must refer the whole matter to the Court of Appeal, who may annul the decision and refer it to another *panchayat*; and where this second *panchayat* agrees with the first, the matter is settled finally. The depositions of witnesses are to be taken down in writing, on paper or on *cadjan* leaves,[1] in cases of above the value of 20 rupees. The parties are exempt from duties and fees of any kind, except the cost of the paper or leaves on which proceedings are written down.

10. Judged by its actual working, this regulation has proved almost a complete failure. Taking the period 1817–27, that is, the first eleven years following the passing of the regulation, village *panchayats* disposed of 738 cases in the first five years in the whole of the Presidency (or an average of 150 a year), and 199 in the last six years (or an average of 35).[2] Since then there has been no improvement whatever. In 1848[3] we get these figures:—

Cases disposed of	...	19
„ pending	...	16
		35

The Report on Civil Justice in 1880[4] mentions ten

[1] Palm leaves.

[2] *Report of Select Committee*, 1832, App. (2), Jud. iv.

[3] *Report, Civil Justice, Madras*, 1849, p. 6.

[4] Para. 101. *The Report on Civil Justice in Madras for* 1883, mentions a case valued at Rs. 5,307, which was decided by a village *panchayat* in the North Arcot District (para. 132); and the Report for 1884 mentions two cases before village *panchayats* in Salem, valued at Rs. 661 and Rs. 3,750 respectively (para. 127). But they were clearly exceptional.

cases as decided by village *panchayats*. The view of judicial authorities in Madras on this unpopularity of *panchayats* was thus put in 1829, in a report of the Court of *Sadr Adalat*: "Considering that parties in suits referred to village *panchayats* are not chargeable with any costs whatever, it was natural to expect that, with these advantages, arbitration would be more generally resorted to. The result of the experiment seems to warrant the conclusion that with the great mass of the people . . . its prevalence in former times was a matter of necessity, from the want of other tribunals, rather than the effect of a prepossession in favour of an ancient institution." The existence of other courts with rather slow and elaborate modes of procedure, composed of judges who did not know local matters too closely, was undoubtedly an incentive to a party conscious of a weak case to shun *panchayats*. But the constitution given to *panchayats* under the regulation was itself a cause. The old *panchayat* was a thoroughly informal affair. It took its own time, met where and when it liked, was ignorant of the blessedness of odd numbers and of decision by a majority, and was not as a rule accustomed to having its decrees annulled by a petition sent over the heads of its members. It must also be remembered that the headman was becoming increasingly rather a representative of the government than a man of the people; and the large powers given to him in the constitution and conduct of *panchayats* were not likely to impress the villagers with the popular character of the institution.

11. Within more recent years, in Madras, there have been instituted what are called Village Bench Courts under an Act of 1889.[1] This Act lays down primarily the civil judicial powers of the headman, who is empowered to try certain classes of suits, provided their value does not exceed twenty rupees, or if the

[1] *Madras Village Courts*, Act I. of 1889.

parties give their written consent to it, two hundred rupees. The headman's powers will be dealt with hereafter. The point to be noted here is that in every such case which the headman is empowered to try, it is open to either party to the suit to claim that it shall be tried by a Village Bench of three judges. One of these three judges is always the headman himself who acts as president, the other two are nominated by the parties out of a list prepared by the collector, of qualified residents in the village.[1] The essential distinction, if such a distinction can be made out, between a *panchayat* and a Bench Court would appear to be this, that the former looks upon arbitration as its primary duty, while the latter is rather concerned about adjudication in some form, not necessarily arbitration. The system has now been introduced into nearly every part of the province. The following figures will show the progress made :—

Year.		Cases.
[2] 1900	...	1167
[3] 1907	...	4117
[4] 1912	...	9935

These figures would indicate, so far as may be judged, a good amount of well sustained progress. But the remarks of district officers and of Government on it are, as a rule, cast in a tone of pessimism. An experienced officer of the Madras Civil Service,[5] in giving evidence before the Royal Commission on Decentralization, characterized as "disappointing" the working of Bench Courts. The reasons that he gave for this failure were three : (1) that there was a lack of interest on the part of superior officers of Government ; (2) that the ordinary jurisdiction of Bench Courts is the same as that of headman sitting singly, and so low

[1] Sec. 9.
[2] *Report, Civil Justice, Madras*, 1900, para. 20.
[3] *Ibid.*, 1907, para. 20.
[4] *Ibid.*, 1912, para. 7.
[5] H. W. Gillman, I.C.S.

that the members do not care to attend; (3) that the raising of the jurisdiction is only possible where parties mutually consent, but whenever they are prepared to consent, they also settle the matter themselves and do not trouble about going to court. The Government of Madras in their latest report apparently agree in thinking the Bench Courts unsuccessful.[1] The Madras High Court observed in 1912: "The extension of the Bench system offers the people of the village the best method of settling their disputes promptly and cheaply, and the Honourable Judges consider that every effort should be made to induce petty litigants to resort to these tribunals. The chief obstacles to success in this direction are the existence of faction in the village on the one hand, and the presence of law touts on the other. It is however hoped that primarily in the interests of the people themselves, and secondly as a relief to the congestion of the regular courts, the number of suits filed in these courts may continue to increase."[2]

12. In the Bombay Presidency the first attempt to use *panchayats* in the regular administration of justice was made by a Regulation of 1802, which was modified by a Regulation of 1827. As in Madras, the system almost entirely failed in actual working, and it was definitely abolished in 1861. Since then it has not been revived in the Bombay Presidency. A proposal to revive it was made by Mr. (now Sir William) Wedderburn, who was then District Judge of Ahmednagar, in connection with the serious agricultural disturbance which took place in the Deccan in 1875. The measure which was ultimately fixed upon is what is embodied in the Deccan Agriculturists' Relief Act (1879) for organizing, in selected areas, village courts presided over by village headmen. Sir William Wedderburn's proposal aimed, broadly, at appointing

[1] *Report, Civil Justice, Madras*, 1914, Orders of Government.
[2] *Ibid.*, 1912, para. 7.

arbitration boards or *panchayats* in place of courts presided over by headmen sitting singly. It had the support of a large body of educated Indian opinion in Bombay at the time, but although it received serious consideration in the Governor-General's Legislative Council, it was ultimately thrown out, chiefly on account of the strong opposition of the provincial Government in Bombay. The Government member in Calcutta, who was in charge of the Bill,[1] made the following statement on the proposal: "I must say frankly that I look upon as wholly visionary the idea that it is possible nowadays to find in every village or even in every small circle of villages, a body of men sufficient in number to allow selection from them by litigants for the formation of a *panchayat*, and at the same time qualified to be arbitrators by influence, intelligence, and absence of interest. And even were this otherwise, I should expect that the strict regulations, involving checks and delays, which the proposal just referred to comprises, would practically destroy the freedom, simplicity, and promptitude supposed to be the chief recommendations of the *panchayat* system."

13. More recently in the Punjab, a law has been passed (1912)[2] for the trial of civil cases by village *panchayats*. The Act has not been sufficiently long in operation for any reliable estimate of its results. Its main features are these. The appointment and summoning of *panchayats* are in the hands of the *district munsif* (the lowest civil judicial officer of Government). The consent of the parties must first be secured. The judgment of the *panchayat* is to be put on record. There is to be a small Court fee. The District Judge has the right to vary or set aside the decree of a *panchayat* if he thinks that a serious miscarriage of justice has resulted. The Local Government lays down rules regarding the qualifications and appoint-

[1] The Hon. T. C. Hope, Speech in the Imperial Legislative Council, October 24, 1879.

[2] VI. of 1912.

ment of members of *panchayats*. No legal practitioner is to be allowed to appear. *Panchayats* have no exclusive jurisdiction.

14. The idea of entrusting *criminal* cases to village *panchayats* was, perhaps alone among the provinces, put forward by the Punjab Government in 1912, about the same time as their other measure. There has been some doubt expressed by competent observers as to whether village *panchayats*, as a rule, had jurisdiction in criminal cases, and therefore if this measure passes into law, it will constitute an interesting step. For the present the Bill has been held in "suspended animation" till it is known how the *Civil Panchayats Act* works in practice. Sir Louis Dane, who as Lieutenant-Governor of the Punjab was responsible for the proposal, made a very suggestive speech on it in the Punjab Legislative Council, in which he traced the inspiration of the scheme chiefly to the example of Ireland, and in some measure also to that of Egypt. "For nearly two years I was a magistrate in a very remote agricultural district in the South-West of Ireland. It was my duty to sit with a great number of magistrates drawn from all classes of the community. . . . The magistrates are not all landed magnates—they are of all classes—shopkeepers, petty farmers, and exactly the sort of people who we contemplate in this country would sit upon these *panchayats*. . . . What often happens in such cases before a *panchayat* of magistrates—if I may call it a *panchayat*—in the South-West of Ireland is that a case which might have led to very high feeling and possibly given rise to a vendetta, even have led to murder, is disposed of by the magistrates sitting more or less as a body of conciliators . . . and by the process of conciliation the fount and origin of the quarrel are wiped out. . . . That is why I attach considerable importance to the action of the *panchayats* as conciliators if ever we can get them to work. Shortly after this measure came

before the Council . . . H.H. the Khedive introduced in Egypt what are known as Cantonal Courts. Now these Cantonal Courts . . . are exactly the same, to all intents and purposes, as the *panchayats* contemplated by us. Great stress is laid in Egypt upon the action of the Cantonal Courts as conciliators, and I understand from the papers and also from friends in Egypt . . . that although these Courts have only been in operation for six months, they show signs of giving the greatest satisfaction to the people in the disposal of agricultural disputes." [1] It may be pointed out that the Judges of the Punjab Chief Court were strongly opposed to criminal *panchayats*, chiefly for fear that increased facilities for administering criminal justice might spell an increase in petty accusations. Another reason was this: "The Judges view with great alarm the idea of entrusting wholly untrained, inexperienced, and often uneducated persons with no knowledge of law or of elementary principles of the administration of justice, with powers which, though in themselves apparently small, can be used to cause an infinite amount of injury." [2] It must be said that this sounds rather academic. In trying to compose differences in a petty criminal case between the complainant and the offender—in such a case, for example, as that A stole B's spade when B was away at the next village to find a husband for his daughter—it is conceivable that a village *panchayat* might get on without a knowledge of Analytical Jurisprudence.

15. Besides these judicial *panchayats* formally constituted as such, it has been found that whenever a village council is set up for any purpose under the time-honoured title of *panchayat*, it almost instinctively shows a tendency to settle disputes among the villagers. The ideas of *panchayat* and arbitration are so closely linked together in the minds of the people that such an

[1] October 2, 1912. [2] *Punjab Gazette*, 1912, part v, p. 190.

assumption of power does not appear to them strange or irregular. The best instance is that of village co-operative credit societies. These societies, as a rule, are based on the principle of unlimited liability, so that it is to the interest of each member to see that the other members do not misbehave and land the society in difficulties. It is recognized that litigation often leads to indebtedness, and to check litigation, therefore, becomes an interest of the society. There is an excellent account of this aspect of the co-operative credit movement in Bengal in the last Census Report.[1] It is stated there that in Midnapore alone the societies decided 112 village disputes in a year. "In some societies no member is allowed to go to Court without first consulting the members. . . . In one society a member was fined one rupee for assaulting his aged mother. Another expelled a member for eloping with his neighbour's wife. In . . . it was decided at a general meeting to smoke only tobacco and not cigarettes—the cigarette smoker was to be fined. In another society two members were fined five rupees each for mortgaging their land surreptitiously and their loans were called in." The following incident which occurred in a co-operative credit society in the United Provinces was reported by the Registrar. "The *panchayat* enjoined on one Fakhr-ud-din, who was kept under police surveillance owing to his previous convictions, to be of good behaviour for one year, after which he would be enrolled as one of its members. Fakhr-ud-din did so, and he has now become a member on condition of his committing no more offences in future, and I find he is now quietly carrying on his agricultural pursuits like a good tenant."[2] Similarly it used to be noted years ago in Bengal that village police *panchayats* (*chaukidari panchayats*) sometimes acted as arbitrators in village

[1] *Census of India*, 1911, vol. v, part i, p. 490.
[2] *Report, Co-operative Societies, United Provinces*, 1907–8, App. B, para. 13.

offences which resulted in some districts in a perceptible decrease in criminal cases, though, of course, this was not included by law within their powers.[1] Their duty under the law was to report offences and not to arbitrate.

16. Village *panchayats* of the old communal type, not organized in any way either for judicial or for non-judicial purposes, but with the traditional, unorganized methods of proceeding, have been found, though rarely, in certain places within the past thirty years. It was reported in Bengal in 1880, by a judicial officer in the district of Dinajpore, that "remnants of the old system of village *panchayats* are still to be seen there, and that not a few differences are adjudicated upon by those agencies."[2] The Chief Commissioner of Burma said in 1887: "The custom of referring disputes of all kinds to village elders is deeply rooted in the nature of the people, and it still prevails to a considerable extent notwithstanding the introduction of definite laws and codes."[3] In the North-West Provinces a special officer who was deputed to inquire into the existence of *panchayats* reported in 1892 that "there was ample evidence to show that the custom of appealing to the leading men of the villages in the case of disputes was still alive and in force, though in different degrees in different localities, being at its lowest ebb in Oudh and the eastern districts of the North-West Provinces, and being followed to a great extent in the Western districts."[4] An English honorary magistrate in Chota Nagpur, in giving evidence before the Decentralization Commission in 1907, said: "I use the *panchayats* largely myself. . . . In cases which can be

[1] *Report, Criminal Justice, Lower Provinces of Bengal*, 1881, p. 4; *Ibid.*, 1885, p. 5.
[2] *Ibid.*, 1880, p. 5.
[3] *Report, Civil Justice, Lower Burma*, 1887, Orders of Chief Commissioner, para. 1.
[4] Quoted in North-West Provinces Legislative Council by the Hon. J. Deas, August 13, 1892.

compromised, I advise the parties to lay the matter before a *panchayat*; the *panchayat* meets outside my office, and they generally settle matters more satisfactorily than I could myself."[1] So the chairman of the Assam Tea Planters' Association said: "I use the *panchayats* largely myself in my work, and I always try and let the *coolies* settle their disputes by their own *panchayats*, because they do it more satisfactorily than I would."[2] "The *mels* or *panchayats* of Assam still carry on a fair amount of informal judicial work."[3] And in Madras in 1909 the collector of Tanjore, in explanation of a fall in the institution of regular suits among villagers, reported that there was a tendency among the rural population "to settle their affairs without resorting to any tribunal."[4]

17. It is interesting to recall a memorandum written by Sir Henry Maine thirty-five years ago on the question of reviving the old village *panchayat*.[5] It was written in answer to a report on the condition of India by Mr. James Caird, who was sent out from England as a member of the Indian Famine Commission of 1880. Mr. Caird, on his return to England, sent a report[6] to Lord Salisbury, who was then Secretary of State for India, setting out his views on the causes of agricultural distress in India. In his opinion, the decay of village institutions was one of the chief causes. On this Sir Henry Maine wrote: "I am the last person to deny interest and value to the village community and its characteristic institutions. It is a primitive, natural, social organism. It seems to have been continued longer among the Hindus than among other communities of the same race by the prevailing anarchy of the country, and doubtless they owed it to some rudimentary administration of justice when no Government existed

[1] Dr. Andrew Campbell. [2] William Skinner.
[3] *Imperial Gazetteer of India*, vol. vi, p. 83.
[4] *Report, Civil Justice, Madras*, 1909, para. 3.
[5] *Life and Speeches of Sir Henry Maine*, Murray, 1892, pp. 425–6.
[6] *Report on the Condition of India*, 1879.

outside the village capable of giving authority to court or judge. But to abolish the tribunals which have now existed in parts of British India for more than a century, and to go back to the village courts, is to follow the precedent set the other day by the Chinese Government, which, having got possession of the only railway in the country, proceeded to take up the rails and destroy the earthworks. You may dismantle the road, but you cannot prevent travellers from again wasting their time and becoming footsore. You may revive the village courts, but you will inevitably resuscitate the barbarism which went with them. Speaking generally, he who would bring to life again one of these barbarous institutions is placed in the following dilemma: either he must connive at many of their accompaniments which are condemned by modern morality and modern civilization, or in the attempt to give them a new character, he must so transmute them that they cannot be distinguished in any sensible degree from the modern institutions by which civilization has superseded them."

18. Nobody will now question the enormous contribution by Sir Henry Maine to the study of the village community in India. We owe it to him, to the immense width and variety of his learning and to his comprehensive outlook, that the Indian village community has been set in its right perspective in relation to the general progress of human society. But it is well known that the information on which Maine worked must have been necessarily defective, and that some of his specific conclusions were largely coloured by his preconceptions. Most of the *District Gazetteers* in the different provinces, which now constitute our most valuable storehouse of information, were compiled since his time; and the great commissions of inquiry beginning with the Famine Commission of 1880 and ending with the Decentralization Commission of 1907, have all been held since he left India. It is, therefore,

permissible to suggest that much value need not be attached to Maine's criticism on village courts. Mr. Caird in his report, which contains some rather sweeping generalizations, does not conceal his strong prepossession in favour of the old village community, but it does not appear from a perusal of the report that he asked for any abolition of existing tribunals. He asked only for a recognition of village *panchayats*. It is not clear that village *panchayats* were so irrevocably wedded to ideas "condemned by modern civilization" that such a recognition would necessarily bring back with it a tide of "barbarism." They had no codes of law, either substantive or adjectival, in which whatever ideas they had could be embodied in any fixed form, nor, so far as we may make out, had they any written record of their decisions spreading over many generations. They merely trusted to their native wit, to experience, to a shrewd sense of passing events, to a fleeting memory of what their fathers did. They were plain men of the world, unsophisticated by much education, who, in spite of frequent failures, tried by whatever means lay in their power to heal quarrels and make peace, and knew by bitter experience how good a thing it was for brethren to dwell together in unity. That the revival of such an institution should bring back with it any fixed system of revolting ideas is incomprehensible. It is also not defensible to say that in any attempt to revive them, they would necessarily be so transmuted as not to be distinguishable from the regular tribunals. These tribunals deal with the formal suit, with the quarrel fitted up in all the trappings of the law and made to look bigger than it really is. They do not and cannot go to the root of the quarrel and settle it before men waste the fortunes of a lifetime on it. That even after the first decade of the twentieth century they can set about their work without putting the village back into barbarism and, at the same time, in essentially different ways from the legally constituted

tribunals, is rendered probable by the story of the co-operative credit movement in recent years.

19. We must now go back to the village headman and notice his judicial powers as organized by law. Madras again takes the lead. His position here as a civil court was first formulated by a regulation of 1816,[1] which was modified in respect of certain matters of jurisdiction by an Act of 1883.[2] These two enactments were superseded by a later Act in 1889, the *Madras Village Courts Act*,[3] which to this day has remained the law on the subject. The matters triable by a village headman are confined to claims for money and for personal property; other matters are entirely outside his jurisdiction. The value of the claim must not exceed twenty rupees ordinarily, but if the parties execute a written consent to it, the limit may be raised to two hundred rupees. The village headman, who is styled the *munsif* when he acts in this capacity, is required to write down the proceedings of his court, and in doing so he may demand the assistance of the village accountant. The watchman acts as the messenger of the court, serving summonses, notices and orders, and is employed by the headman in seizing, selling, and delivering movable properties attached under the Act. The decision of the village headman may be revised by a *district munsif* if sufficiently serious grounds are shown. The *district munsif* has also the power, if any of the parties desire it, to transfer a case from one village court to another, or from a village court to his own court. Moreover, the jurisdiction of a village headman in the matters which he is empowered to try is not an exclusive jurisdiction, but concurrent with that of a *district munsif*—that is to say, it is left entirely to a litigant whether he takes a case to a village headman or to a *district munsif*.

20. It will be noticed, then, that the village

[1] Reg. iv. of 1816. [2] Act iv. of 1883. [3] Act i. of 1889.

headman as a regular civil court has been in existence in Madras for very nearly a century, and it is instructive to take note of the estimates which have been formed of his work from time to time. The figures which are available as regards the actual outturn of work show fluctuations now and then, but there has been on the whole a fairly steady rate of progress. The first year after the passing of the Regulation (1817–18), the number of suits instituted in village courts was from about 8,000 to 10,000. In 1883 it it was 49,000. There was an increase in the extent of the headman's jurisdiction in 1883, and from that year on to 1889, when the present Act was passed, the annual average was somwhere about 68,000.[1] The figure for 1911 of suits disposed of by village headmen was roughly 96,000.[2] As pointed out above, the course of progress has not been uniform, but has shown more or less frequent ups and downs. The number for 1911, for example, shows a fall compared with the previous year, and sometime before, and for a year or two after, 1889 there was a somewhat unaccountable fall in the institution of suits. Neither the steady general progress nor the fluctuations have been accounted for in any really satisfying manner. The reports often appear to take shelter in generalizations which are disproved by specific facts or in circumstances of an obviously casual and sporadic character. The question is worth fuller investigation, since it touches two matters of great moment to the rural population. In the first place, a considerable amount of rural litigation is in the hands of village headmen, and the amount and character of rural litigation is a good index to the economic and moral condition of the ryots. In the second place, the confidence reposed in the headmen and their judicial competence, which these figures bring

[1] Speech by the Hon. J. Deas in North-West Provinces Legislative Council, August 13, 1892.

[2] *Report, Civil Justice, Madras*, 1911, para. 7.

out, are of obvious interest in any attempt to improve or modify village local government.

21. A point of great interest in a study of these figures is the fact that the village headman and the *district munsif* have a concurrent jurisdiction. So there might be a simultaneous increase of cases in the two kinds of courts, or a simultaneous fall, or a rise in one and a fall in the other. In each case a different explanation would have to be sought, mainly turning on the point whether the change is due to a rise or fall in the amount of general litigation or in the confidence and popularity inspired by village courts. A great excess in the number of cases before *district munsifs* over the number in village courts which took place in the early years of the working of the system was thus explained by the Court of *Sadr Adalat* in 1829: "It would be going too far to say that the disproportion between the work before the village and that brought before the *district munsifs*, is attributable solely and exclusively to the preference manifested by the natives to the courts of the latter, because from the information before the Court, it would appear that a disinclination to undertake the office of *munsif* prevails to a great extent among the heads of villages, and that in point of fact comparatively few willingly perform, and many have positively refused to perform, the duties assigned to them. This, of course, may be supposed to have contributed largely to the institution of so many petty suits before the *district munsifs*; but in the provinces most of the petty suits which come before a legal tribunal are those in which the moneyed interest, or the village and district bankers sue the ryots and cultivators, who are usually the defendants. In such suits the village judge, however just, must be liable to a bias in favour of his fellow-cultivators. It is therefore natural that the opposite party should prefer the district to the village court, more especially as the very distance of the former, by increasing the inconvenience of litigation to

the party sued, may be held out by the suitor *in terrorem* to his other debtors in order to induce payment of their just debt without recourse to law. Whilst therefore the village *munsif* may compose many village feuds, and allay many feuds between ryot and ryot before they ripen into a lawsuit, the judges are of opinion that when recourse to law is decided on, the suitor, from a knowledge of his bias in favour of his fellow-cultivators or from his influence having already been exercised against the suit, is inclined to prefer another tribunal." [1]

22. An increase of cases in village courts which is not accompanied by a corresponding decrease in cases of the same character in *district munsifs'* courts would indicate that village courts have not succeeded in what is accounted to be one of their primary purposes, namely to relieve the regular courts of their ordinary petty work. On this a special officer of the North-West Provinces Government who was deputed by the latter to inquire into the working of the Madras system with a view to its introduction into their own province, offered this explanation (1892): "The disputes they (village courts) decide are, as a rule, those which, on account of the petty interests at stake and the expense and inconvenience involved in prosecuting them before the regular courts, would never go to those courts at all. It is not, therefore, in the direction of affording any tangible relief to the regular courts that the institution of village *munsifs* in Madras has been effectual. The work they have done and the benefit they have been to the people lie in this, that through their means thousands of wrongs have been redressed which the machinery of the regular courts was too cumbrous and too costly to remedy, and which would presumably in most instances have remained unadjusted." [2] Since the

[1] *Report of Select Committee*, 1832, App. (2), Jud. iv.
[2] Speech by the Hon. J. Deas, North-West Provinces Legislative Council, August 13, 1892.

above was written, there has been in the Madras Presidency an enormous expansion in general civil litigation. And the Madras Government, in their latest review of judicial administration (1913), record the "significant" fact that the increase per cent. in the number of suits before *district munsifs* of the value of 20 rupees and under (which are the suits which might also be taken to village courts according to the pleasure of the party) was much less than the increase in suits above 20 rupees.[1] The significance is that the existence of village courts must have drawn off a considerable proportion of the general increase in civil litigation which might otherwise have gone to swell the regular courts.

23. The cause of the steady decline which was noticed in the work of village courts for a few years before and after 1889 formed the subject of an interesting argument between the Madras High Court and the Madras Government, in which it must be confessed that, in spite of their daily practice in the disputations of the law, their Lordships of the High Court did not exactly cover themselves with glory. The position of the latter was this: "With the development of the habit of travelling, which naturally ensues on the increased facilities of communication, the expansion of trade, and the general progress of the country, the isolation of the village community is destroyed, and the patriarchal influence of the headman consequently weakened, while at the same time the accessibility of the regular courts becomes more widely known. The spread of education, too, has increased the number of authorized Legal Practitioners and others who live by the law, and it is to the interest of these classes to promote recourse to the regular courts instead of the primitive village tribunals. Moreover, there has been a marked

[1] *Report, Civil Justice, Madras*, 1913, Orders of Government.

improvement of late years in the supervision exercised over the village courts, and by the introduction of Act i. of 1889 such increased powers of control over village *munsifs* are provided as must doubtless make these officers more circumspect in their conduct and less prone than of old to abuse their authority in the interest of those classes who must frequently have occasion to claim the aid of the civil law."[1] It fell to the lot of the Madras Government to throw its mantle over the Legal Practitioner and save him from the attack of the High Court—a very chivalrous thing to have done, seeing that their normal relations have never been marred by any excessive love! The argument of education, of increase in communications, and in the number of Legal Practitioners somewhat broke down, because, as the Government pointed out, the decline in the work of village courts was most manifest in the least developed districts of the Presidency, such as Kurnool and Cuddapah, and scarcely noticed in such advanced districts as Tanjore and Madura. The Government themselves pointed to a proportionate decrease in petty litigation of all kinds during the period in question as the cause of the decline.[2] And in another connection they drew attention to a fact, which perhaps will bear fuller inquiry, that village courts seem to be more popular in the Tamil than in the Telugu parts of the Presidency.[3]

24. In Bombay the appointment of village headmen as civil judicial officers was sanctioned in 1879 by the Deccan Agriculturists' Relief Act.[4] This Act was passed in consequence of a serious riot which took place in certain districts of the Bombay Presidency to resist the exactions of village money-

[1] *Report, Civil Justice, Madras*, 1889, para. 17.
[2] *Ibid.*, Orders of Government, para. 4.
[3] *Report, Criminal Justice, Madras*, 1889, Orders of Government, para. 4.
[4] Act xvii. of 1879.

lenders. The agricultural scarcity which prevailed at the time made these exactions felt with exceptional acuteness. It is interesting to look upon this riot as a rough sort of protest which the patient Indian villager is sometimes driven to make when the social system in which he lives works too hard on him. Most village riots in India are sporadic occurrences, in which the impulse of the moment is the prime factor, but this one was of a different kind. It was of the same character as the riot which occurred in some districts of the Madras Presidency in 1896 as a protest against the methods of criminal tribes engaged privately as village policemen. Their significance lies in this, that things must have got pretty intolerable when the villager was induced to break through his immemorable patience in revolt against a system which has ever been part of his social life. The unique feature of the Bombay Act is that along with investing village headmen with judicial powers there is also a system of what are called Conciliators. "Their functions are, on the application of either of the parties to a dispute, to endeavour to induce them to agree either to a compromise or a reference to arbitration. If the Conciliators succeed, they may send the settlement arrived at, or the reference agreed to, to the Court to be filed, when it has the effect of a decree or reference to arbitration under the Civil Procedure Code. If they fail, they grant a certificate to that effect, and either party can then seek redress in court; but without such certificate no suit to which any agriculturist residing within any local area for which a Conciliator has been appointed is a party, may be entertained in a Civil Court." [1] Some other differences from the Madras system may be noticed. The jurisdiction of the headmen is limited to suits of ten rupees in value, and is an exclusive jurisdiction

[1] *Bombay Administration Report*, 1911–12, para. 27.

not concurrent with that of the regular courts. The matters triable, though generally the same as in Madras, are slightly more limited in range.

25. The application of the Act was originally confined to select areas in four districts, but since August, 1905, it has been extended to the whole Presidency. The Act has not been worked with any conspicuous measure of success so far. The total number of village headmen who exercised judicial powers under it in 1910 was only 194, and the number of Conciliators 644.[1] The figures for 1903 —that is, two years before the general extension of the Act—were 92 and 256.[2] During the earlier years, the special judge who was in charge of the Act remarked from his observation that the cases which went to the new village courts were not due so much to a diversion of existing litigation from the regular courts as to the creation of new litigation.[3] The fact would admit of two explanations: either, as was pointed out with regard to Madras in paragraph 22, that the new litigation represented wrongs which were honestly felt but were suppressed for want of courts cheap, prompt, and near at hand, or that it was merely the result of a frivolous and vexatious litigiousness. The Conciliators have, on the whole, come in for a great deal of criticism. The complaint has been throughout on the question of the *personnel*. One of the earlier reports pointed out that the appointments were made too hastily, and that sufficient time was not allowed for the selection of right men.[4] "In theory the Conciliator is a local magnate who gives much time to the noble occupation of peace-making. In practice he is often a man of no influence or ability or energy, and he merely takes up the post by way of increasing his own importance."[5] A district judge,

[1] *Bombay Administration Report*, 1911–2, para. 27.
[2] *Report, Civil Justice, Bombay*, 1903, para. 10.
[3] *Ibid.*, 1880, para. 19.
[4] *Ibid.*, para. 22.
[5] *Ibid.*, 1910, para. 7.

who was on the whole sympathetic towards the principles of the Act, gave the following account of how it has been received, which may be quoted for what it is worth. "Lawyers dislike it, as it decreases their work. Lenders object to it because they are no longer sure of getting exorbitant interest and compelling the cultivator to give up his land. And the cultivator thinks that the Act has decreased his credit." [1]

26. In the United Provinces village courts are set up in pursuance of an Act passed in 1892.[2] But the first appointments of headmen were not actually made till three years after. The character of the system mainly follows that of Madras, and on the whole a fair measure of success may be said to have attended its working hitherto. The number of headmen exercising powers of civil justice in 1913 was 305, and they tried between them nearly 11,000 cases.[3] A few years ago the High Court of Allahabad said: "It is true that the village courts failed to check the increase of litigation in regular courts. . . . But this is not a sufficient ground for believing that the undoubtedly large amount of work done is wasted. That substantial justice is done may be inferred from the fact that only 78 revisions were filed against 1,231 decisions in contested cases, and of these only 14 were successful. But the system has not yet been fully accepted by the people, and therefore the greatest care is necessary to keep up its credit by appointing only thoroughly qualified men as village *munsifs*." [4] In Burma headmen receive their judicial powers under the Burma Village Act, 1907, which amended and consolidated the previous enactments in Lower and Upper Burma. In 1913 there were in Upper Burma

[1] *Report, Civil Justice, Bombay*, 1910, para. 7.
[2] United Provinces, Act iii. of 1892.
[3] *Report, Civil Justice, North-West Provinces*, 1913, para. 9.
[4] *Ibid.*, 1906, para. 10.

598 headmen empowered to try civil cases. Of these, however, only 278 made use of their powers, and they decided 2,162 cases.[1] The disproportion between the number of those who are empowered and those who actually exercise their power has been frequently commented on in recent years as a disappointing feature. But as it was expressed in a report of 1910, "Public opinion is strong in Burman villages, and headmen may be trusted to do justice in petty village disputes."[2]

27. Village headmen possess also powers of criminal justice by law. In Madras they exercise these powers under two old Regulations—one of 1816[3] and the other of 1821.[4] The cases triable by them as magistrates are petty cases of abuse, assault, and theft, and the punishments which they are authorized to inflict on convicted persons are imprisonment in the village *choultry*[5] for a term not exceeding twelve hours, or to put them in the stocks for not over six hours. This latter punishment is confined to lower castes upon whom "it may not be improper to inflict so degrading a punishment." Christians and Muhammadans have had to be specially mentioned as classes whom it would be improper to punish in this way.[6] In Bombay village headmen are appointed magistrates under a provision in the Village Police Act, 1867. Ordinarily their powers are limited to petty assault and abuse, but headmen may be specially selected for enhanced powers and authorized to try various other petty offences such as mischief, theft, and nuisance. The punishment awarded in ordinary trials is imprisonment in the village *chaunri*[5] for a period not exceeding twenty-four hours, but when

[1] *Report, Civil Justice, Upper Burma*, 1913, para. 17.
[2] *Ibid.*, 1910, para. 14.
[3] Reg. xi. of 1816, secs. 10 and 14.
[4] Reg. iv. of 1821, sec. 6.
[5] Village meeting-house.
[6] *Madras Village Officers' Manual*, 1913, ch. iii, para. 44.

selected headmen exercise extraordinary powers they may inflict a fine extending to five rupees, or in default, imprisonment for forty-eight hours. Somewhat similar powers are conferred on village headmen in Burma under rules framed in pursuance of the Village Act, 1907. The Police Commission (1902–3) made this remark on the system of village magistrates generally: "In Madras the Commission have had before them strong evidence that the powers of the headmen in disposing of petty criminal cases may safely be enlarged to some extent. It would not, perhaps, be expedient to give them powers to sentence to longer terms of imprisonment than at present allowed, for that involves the housing, guarding, and dieting of prisoners, but enhancement of their power of fine might well be considered. This enhancement of powers might be carried out in this province and elsewhere on the principle of sec. 15 of the Bombay Village Police Act (viii. of 1867), namely, that enhanced powers may be conferred on selected headmen. This would serve to encourage others to good work, as the experience of Burma has shown. In provinces where the custom of employing headmen in the disposal of petty cases does not exist, the Commission would strongly urge that it should be experimentally introduced. It is in accordance with native custom and sentiment. Village opinion forms a strong check on the resident headmen. It would relieve the people from police interference in petty cases." [1]

28. Before concluding this chapter it is necessary to refer briefly to local tribunals connected with castes and tribes, which, though not strictly village institutions, are yet engaged in carrying on a considerable amount of informal judicial work among the rural population. A caste is often just a section of a village community, and sometimes includes in its organization similar

[1] *Report*, ch. iii.

sections of other communities. A tribe generally represents an organization which extends over more villages than one, and the administrative notion of a village in a tribal region is the area occupied by a sub-division of a tribe. A clear-cut distinction between "caste," "tribe," and "village community" may be hazardous, but the characteristic principles of each may be roughly expressed thus. The bond of a *caste* is *occupation*, of a tribe *kinship*, and of a village *locality*.

29. The organ by which a caste administers justice is the caste *panchayat*, similar in constitution to a village *panchayat* except that the membership is restricted to the particular caste. The usual offences with which they concern themselves relate to the social laws of the caste, especially offences of a domestic kind, not generally recognizable by the regular courts. But these do not altogether exhaust the jurisdiction of caste tribunals, and interesting cases have been noted, even in recent years, of castes encroaching on what is properly the work of the courts, sometimes to help and sometimes to hinder the regular administration of justice. In criminal matters they are found to try small offences of theft and abuse, and have also been known to handle more serious offences like murder. Their civil jurisdiction is exercised in such matters as the recovery of debts, inheritance, and the partition of joint-family property. The main sanction of a caste tribunal is the fear of excommunication, which is seldom, if ever, lightly regarded. But before this extreme step is taken, fines, compensations, the feeding of the caste, some act of degradation such as carrying a shoe on one's head, are prescribed as punishments.[1]

30. Tribal institutions for the administration of justice are found in the North-West Frontier Province, Baluchistan and Sind. The characteristics of the different tribes who inhabit these provinces are not

[1] See chapters on "Caste Government" in the *Provincial Reports of the Census of India*, 1911.

always the same. The *Pathans*, for example, on the Afghan frontier, are a more democratic body than the *Baluchis*, and are not organized under a common leader like the latter. But in every tribe, the elders or leaders of clans have great influence, and much of the work of administering justice is done through them. Councils of elders, called *Jirgas*, have now been formally constituted under the Frontier Crimes Regulation, 1901, and the Sind Frontier Regulation, 1892. The nomination of the members, who number in each case three or more, is made by, or under the direction of, the Deputy Commissioner, and their primary purpose is the settlement of offences in which there is sufficient evidence for moral certainty but not for a judicial conviction. The local knowledge and authority of the elders are to supply the lack of legal evidence. The Council, in fact, is to supplement, not to supersede, the regular courts. The matters on which a Deputy Commissioner may make a reference to a Council of Elders are those which he believes likely to cause "a blood-feud, or murder or culpable homicide not amounting to murder, or mischief, or a breach of the peace";[1] and their findings are carried out by him if they are not opposed "to good conscience or public policy."[2] The compensation of the aggrieved party, and the distribution of the obligation to pay among the relatives and fellow-tribesmen of the offender, is the real object of a tribal council. But the award of imprisonment instead has become usual, though it is regarded by those who have experience of the system as an undesirable exercise of power. The rates of compensation which now prevail by tribal custom are about 1,000 rupees for a person killed, and from 100 rupees to 300 rupees for a person seriously wounded.[3] In Baluchistan a Central Tribal Council called a *Shahi Jirga* is held half-yearly at the head-

[1] Reg iii. of 1901, sec. 8. [2] Sec. 9.
[3] *Report, Criminal Justice, North-West Frontier Province*, 1913.

quarters of the Government for the decision of inter-tribal disputes. The weaknesses of the *Jirga* system appear to be principally the difficulty of getting impartial competent men to sit on them, and the temptation for magistrates and police officers to transfer to the tribes the responsibility for inquiring into cases which are more properly within their jurisdiction.

APPENDIX

RESOLUTION OF THE GOVERNMENT OF INDIA ON LOCAL SELF-GOVERNMENT ISSUED IN MAY, 1915, PARAGRAPHS 37, 38 AND 39

37. THE Commission[1] recommended the constitution and development of village *panchayats* possessed with certain administrative powers, with jurisdiction in petty civil and criminal cases, and financed by a portion of the land cess, special grants, receipts from village cattle pounds and markets, and small fees on civil suits. This proposal, favourably commended by the Government of India, who expressed their readiness to acquiesce in some form of permissive taxation, if need be, has in general been sympathetically received. The practical difficulties are, however, felt to be very great in many parts of India. The Government of Burma and the Chief Commissioner of the Central Provinces deprecate the introduction of a system, which, in their judgment, is alien to the customs of the people, and will not command public confidence. Other Governments are willing to experiment, but on different lines. The Punjab Government has already established *panchayats* for civil cases only and of a voluntary character. Sir Leslie Porter, when officiating as Lieutenant-Governor of the United Provinces, expressed his willingness to entrust selected *panchayats* with criminal as well as civil jurisdiction. The Madras

[1] *The Royal Commission on Decentralisation in India*, 1907.

Government are desirous of experimenting in the establishment of *panchayats*, but consider that action should be confined for the present to the encouragement of voluntary self-contained organisms, independent of statutory sanction and consisting of village elders conferring together for common village purposes. So far as judicial functions are concerned they are content to rely on the provisions of the Madras Village *Panchayats* Regulation, 1816, and the Madras Village Courts Act, 1888, which authorize the assembling of *panchayats* and the convening of village bench courts for the settlement of particular civil suits on the application of the parties, and to encourage the operation of these enactments wherever practicable. The Governments of Bengal and of Behar and Orissa are of opinion that their existing laws sufficiently provide for the establishment of *panchayats*, with administrative duties, while powers to dispose of criminal cases could be given under the existing Acts dealing with these matters. The Chief Commissioner of Assam has expressed his readiness to develop village government, and the Local Self-Government Bill which has recently passed the Legislative Council of that province permits the constitution of village authorities, the grant of funds by Local Boards and from other sources, and the delegation of minor powers of local control. The whole question has now been raised again in the discussions contained in the report of the Bengal District Administration Committee, 1913–14.

38. The Commission recognized that any policy of establishing *panchayats* would be the work of many years, would require great care and discretion, and much patience and judicious discrimination between the circumstances of different villages. The Government of India desire that where any practical scheme can be worked out in co-operation with the people concerned, full experiment should be made on lines approved by the local Government or Administration

concerned. Throughout the greater part of India the word "*panchayat*" is familiar. The lower castes commonly have voluntarily constituted *panchayats*, to whom they allow quasi-judicial authority in social matters. The more artificial administrative committees, such as *chaukidari panchayats*, local fund unions, and village sanitation and education committees, and, in places even village *panchayats*, already exist. The spread of co-operative societies and distribution of Government advances in time of famine and scarcity on joint security are educative influences. Village tribunals for the disposal of petty civil suits have got beyond the experimental stage in some places and are in the experimental stage in others. There is, therefore, some material with which to build. The Government of India agree, however, with the view prominently brought forward by the Bengal District Administration Committee that much will depend on the local knowledge and personality of the officers who may be selected to introduce any scheme.

39. With this general commendation, the Government of India are content to leave the matter in the hands of local Governments and Administrations. They are disposed to consider that the following general principles indicate the lines on which advance is most likely to be successful :—

(1) The experiments should be made in selected villages or areas larger than a village, where the people in general agree.

(2) Legislation, where necessary, should be permissive and general. The powers and duties of *panchayats*, whether administrative or judicial, need not and, indeed, should not be identical in every village.

(3) In areas where it is considered desirable to confer judicial as well as administrative functions upon *panchayats* the same body should exercise both functions.

(4) Existing village administrative committees, such as village sanitation and education committees, should be merged in the village *panchayats* where these are established.

(5) The jurisdiction of *panchayats* in judicial cases should ordinarily be permissive, but in order to provide inducement to litigants reasonable facilities might be allowed to persons wishing to have their cases decided by *panchayats*. For instance, court fees, if levied, should be small, technicalities in procedure should be avoided, and possibly a speedier execution of decrees permitted.

(6) Powers of permissive taxation may be conferred on *panchayats*, where desired, subject to the control of the local Government or Administration, but the development of the *panchayat* system should not be prejudiced by an excessive association with taxation.

(7) The relations of *panchayats* on the administrative side with other administrative bodies should be clearly defined. If they are financed by district or sub-district boards, there can be no objection to some supervision by such boards.

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