

Wrongs and Rights in the Maratha Country: Antiquity, Custom and Power in Eighteenth-century India

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Introduction

There are few areas as beset with problems of evidence and interpretation as that of the study of conceptions of rights in past societies. In complex literate societies with written codes of law the problem might be approached via an analysis of those codes, but even so there would remain the problem of determining how far the codes encapsulate the extant conceptions of various social groups at the time, and the more difficult issue of establishing the extent to which the codes actually governed social practices. This would be the case in a territory with defined boundaries and a unified legal system, but the issue becomes vastly more complicated when we consider a region of shifting political boundaries, often indefinite jurisdictions, in which several unwritten and written bodies of law and custom could be invoked or set aside as the case might be—and this was the situation in eighteenth-century Maharashtra.

The notional monarch, the *chhatrapati*, was increasingly allowing his powers to be exercised by his principal minister, the *peshwa*, but various subordinate chiefs also claimed parity with, or autonomy from, the latter, and administered justice according to their lights.

* An earlier version of this paper was read at the seminar on 'Changing Conceptions of Rights and Justice' held at the Nehru Memorial Museum and Library (NMML) from 13 to 17 March 1994. I am grateful to the participants for their many helpful suggestions, and to Michael Anderson for detailed written comments on the paper. The responsibility for any surviving errors or inaccuracies is exclusively mine.

So, for example, in 1771 there was a theft in the temple of Mahadev in the Western Ghats; the temple priests traced the thieves, and informed Babuji Naik of Baramati, a great man at the Peshwa's court, who came, recovered the stolen property, and despatched the thieves to Pune for trial. Thereupon the Ghatge *deshmukh* of Malavdi, within whose lands the temple was located, arrested the Brahmans and confined them, beating them daily 'like thieves', because they had sent thieves from 'our realm' to the peshwa.¹ Finally, in some areas there was even a jurisdiction shared with another sovereign—and the Maratha records exhibit cases in which the fees and fines levied in such places were duly shared with another power.² The State itself was tolerant of adjudication or arbitration by unofficial authority, provided the revenue arising thereby was remitted back to the State. So one Satvoji Gavde, a commander of government cavalry, was addressed in 1783-4 as follows: 'You consider and settle people's quarrels and disputes. The fines, fees and debt-recovery charges that have accrued, and will accrue, you will credit to the account of the unit in your charge.'³

It must be evident that there was a considerable range of authorities offering some type of justice, and fortunate litigants might be able to choose between them. With the multiplicity of legal authorities, there was also a multiplicity of scriptural and customary sources of right, which might be invoked or set aside as the case might be. Even after the Mughal administration had been dislodged, the Marathas generally allowed the hereditary Muslim law-officers (*qazi*) to remain in office, though their authority may well have been reduced. A Marathi proverb collected in the nineteenth century runs: 'The king speaks—an army moves; the qazi speaks—his beard moves.'⁴ But in the middle of the eighteenth-century we still find a woman appealing to the qazi of Ahmadnagar for justice, and then appealing from his verdict to the peshwa.⁵ Even when in office, however, we cannot presume that the qazis were either sufficiently learned, or sufficiently independent of local opinion, to adhere to the strict letter of one of the various schools of Islamic jurisprudence as defined by modern scholarship. An Islamic scholar wrote disgustedly of them in the later eighteenth century: 'What shall be said of the hereditary qazis of the townships, for to be in touch with science is the lot of enemies [i.e. is a misfortune] and the registers of the *despandya* [district accountants] and the words of *zamindars* [gentry] are their law and holy books.'⁶

There was probably an even wider range of authorities available to those who did not appear before the qazis, and one of the most frequently invoked authorities was custom or usage. When Steele carried out his enquiry in 1825-26,

Fifty-six castes stated that that they have no written documents or books to which they might refer as authority in points of disputed custom. Ancient usage as determined by the caste on creditable evidence is the general guide. In cases of extraordinary difficulty, Brahmuns are called in, who decide according to the written law of the Dhurmasastru.

In disputes among Brahmuns, the assembled caste profess to be guided by the decision of Sastrees. The Konkne and Kanure Sonars, and the Kayusth Prubhoos have latterly made the same assumption.⁷

From Satara, Steele received the opinion that custom 'has sanctioned many things in opposition to Sastru.'

It must be evident therefore, that many difficulties beset the effort to recover the conceptions of right from such a milieu, and I make no claim to have solved any or all of them. I shall, however, bypass some of them by abandoning the high ground of scriptural law and global conceptions of rights, and move directly into cases where rights were invoked or affirmed, thus trying to tease the broader conceptions out of the tangled narratives, the bitter complaints and the complex investigations that we find in the sources.⁸

It is perhaps necessary at the outset to specify whose voices we have on record, and in what context. The statements that we shall consider were almost all made in situations of conflict—sometimes by a complainant denied some right, more frequently enunciated by a powerful arbiter deciding a dispute, or checking a transgression. The instances themselves are taken from a variety of sources, and cover a period of more than a century. It is not, therefore, to be presumed that we are recording the functioning of a homogenous, or even a consistent, system of rights: rather we are trying to catch the general conceptions that lurk behind the concrete complaints that the plaintiff thinks may be invoked in his favour, as also those that the powerful choose to cite in justification of their decisions.

The Sources of Right

Antiquity itself was a source (perhaps the chief source) of right:

the old way was by definition right, and innovation wrong. In a land dispute, the villagers of Malegaon reproached the men of Peth—'Why do you seize the ploughs of Malegaon? And why have you broken the old and done the new?'⁹ Antiquity of tenure or practice was therefore a strong *prima facie* evidence of its rightness, and many complaints began with an assertion of such antiquity. Thus the headman (*patil*) of Chichvad came before the court, and deposed

the headmanship of the aforesaid village has been our hereditary property for generations as follows: Jauji Patil's son was Ramji Patil, my grandfather, whose son was Navji Patil my father ... he died and as the heir I functioned as patil for many days, but now Keroji and Kamlaji of Chichvad have come and deny that I am entitled to the headmanship ...¹⁰

A more emphatic assertion of age in another suit runs: 'There were twelve villages which have grown to forty villages; from that time our family has held the headmanship.'¹¹ A similar invocation of old usage in confirming rights is evident in an award of 1723 A.D., which stated: 'Enjoy the third share and seniority of headmanship of the aforesaid village *according to the old way* and bequeath it to your sons and grandsons from generation to generation, and live happily.'¹² The same respect for ancient practice is found in an order from Manaji Angre to Bal Patil, Amboji Patil and Ram Patil; he supports their claim, because 'Your headmanship is ancient, and you have been in enjoyment of it from the time of the late Shrimant Aba Sarkhel ...'¹³ The *shet* was the head of the merchants in a town or village, and had certain perquisites as well—here also old practice was to be preserved; 'The rules and customs of the office of *shet* have been handed down from ancient times, and they are hereby confirmed.'¹⁴

The transition from antiquity to genealogy is an obvious one, as some of the citations above exemplify, and many claimants sought to substantiate claims by proving genealogical connection with an acknowledged holder. Genealogical enquiry often determined the outcome of a suit. For example, two families were in contention for the hereditary preceptorship of the caste of Sonars and Panchals in several subdivisions of south Maharashtra. The matter was handed over to a *panchayat*, which asked the litigants of their enjoyment of the right in question. 'It was then agreed by the whole assembly that "you come from the same root, and are of the same

fraternity ...” and the right would therefore be equally shared.¹⁵ Genealogical connections, however, were not biological but social—adopted heirs were entirely legitimate, but sons born of secondary marriage or concubinage had definitely inferior rights.¹⁶ The destruction of ancient rights was clearly wrong, and even the highly centralizing text on politics, the *Ajnapatra*, attributed to Ramachandra Pant and dated to the early eighteenth-century, while strongly warning the king against allowing patrimonial claims to increase at his own expense, also cautioned against the seizure of existing ones.¹⁷

The king was, of course, permitted to innovate by creating new claims at his own expense; indeed he must frequently have been importuned to do so. However even royal grants improved with age, so much so that ousted dynasties were cited as the sources of grants in preference to currently ruling ones. Thus Thomas Coats commented in the early-nineteenth-century that the holders of patrimonial rights preferred to claim that they had been awarded by the Emperor of Delhi or the Raja of Satara who preceded them rather than by the peshwas.¹⁸ Similarly, a late-seventeenth-century petition to the Maratha king Rajaram asks him to reconfirm various rights as they had existed under the Adilshahi dynasty, which had preceded his own.¹⁹ Indeed, in one instance he is explicitly told that the arrangement made by his father should be set aside, and the practice that had existed under the Adilshahi dynasty restored.²⁰ Such tactlessness on the part of the petitioner indicates the significance of antiquity as a source of legitimacy.

Rights to Land, Office and Service

The rights that have appeared so far have been rights to land and office. Disputes over these matters are frequently found in the record, but many other rights also existed. So for example, certain mendicants came and petitioned the governor of Pune in 1722 that they went from village to village exhibiting performing animals, and were supposed to receive four coppers from each house annually, as well as some bread, and unpaid labour to transport their goods. They were found to have orders to this effect from previous governments, and so their rights were reconfirmed, and an order issued to the headmen of villages in the tract specified.²¹ *Watans*²² could exist in highly incorporeal form: the hereditary astrologer-priest of a village had the right to inform its residents of the auspicious moment (*muhurta*)

for weddings, and claim fees (*hak*, meaning right) for the service. However, in one village another Brahman told the local Mahars what the moment was, whereupon he was challenged ‘you destroy the *watandar’s* hak, what is this?’²³

Hak itself is a term worth considering. Molesworth’s Dictionary²⁴ gives us this entry: ‘1 Right, title, justness of claim or pretension; 2 The share or portion due (of the revenue or of the crops ...); 3 Province, peculiar office or business. Ex. [trans. mine] Climbing trees is the monkey’s hak.’ This illustrates how quick the transition was from right to income from that right; and the example of the monkey shows that certain kinds of persons might have rights by virtue of their generic nature. This would determine eligibility: but not everyone who was eligible could possess any specific right. So, for example, accountants were almost everywhere Brahmans, and village watchmen Mahars; this would not prevent specific members of those castes from excluding others from the duties and emoluments of their watans.²⁵

Rightful Honour

Emoluments have figured largely in the various claims that we have considered so far, but many other claims to right were made, and on occasion, upheld. An important component of these was honour, and its active expression through such acts as being the first to receive betel leaf (*pan*) on ceremonial occasions. This was not a notion confined to the upper ranks of society: a village blacksmith had his honour, and when dishonoured by a charge of theft, left the village and settled elsewhere.²⁶ When a share of a village headmanship [*patilke*] was sold, the honours [*man-pan*] attached to the office were partitioned as scrupulously as the pay and perquisites. These are enumerated in practically every deed of sale that I have seen, and I cite one of the shorter lists as an example. Two-thirds of the office was being sold to Pilaji Gaikwad in 1728, and one-third retained by Gadge. The former received ten rights beginning with the right to put his name and the patil’s identifying mark—the plough—on official papers, to receive the first honorific turban from the State, to be greeted with the consecrated flame from the temple, and so on, while Gadge had precedence at the *Holi* festival, to water from the water carrier, and also shared the right to have the musicians play before him.²⁷

Honour, and the display of honourable status were important not only for the landholding classes, but for artisans and traders, who on occasion came to blows over the parading of bridegrooms through the public space of the market. They were ordered not to go through the market, but to confine themselves to their own streets.²⁸ Nor were the lower castes outside the competition for relative status, and at least one document sets out the steeds that bridegrooms of the different castes were permitted to ride upon in their marriage processions in Mungi Paithan; so, for example, the Brahman's bridegroom was allowed on horseback, as also the *deshmukh's*, the shepherd's, the farmer's, the Muslim's and so on but the oilman, the Jain, the leather-worker, the barber, the potter, the stone-worker etc. had to ride a bullock, while wanderers, hunters, basket-makers and others had to go on foot. The document was intended to define certain rights of the Mahars, and it asserts that they were also entitled to go on horseback.²⁹ Affronts to personal honour could bring down punishments from the State: so, for example, when the conversation between Yeshwant Shivaji and Vishwanathbhatt grew heated, the former struck the latter on the face and was subsequently fined the considerable sum of 325 rupees.³⁰

Lesser folk might also suffer for derogating the honour of their fellows—we have cases of fines inflicted for false charges of unchastity. Or, to take another charge, Mahadu Mali falsely accused Brahmaji Dhangar of theft and dishonoured him (*be-aab kela*). Both parties were obscure villagers, but the matter duly came before the village administrator, and Mahadu was fined two rupees. In the same village, Appa Sonar spoke in an unwarranted (*gair-sanadi*) manner to Govindpant Kulkarni, and was fined one rupee; and Nava Chambhar had to pay the same sum for an impertinent speech to a [government?] peon.³¹

Rights in the Household

Members of a household, needless to say, had very unequal rights. Those of young children were particularly tenuous, and parents could, and did sell them into slavery during hard times,³² give them away in marriage, or hand them over for adoption. Female slaves or concubines might have only a conditional right to life in a royal household; when Janoji Bhosle died in 1772, the chronicler records 'all the dancing girls committed *sati*?—and it seems unlikely that

this was of their own volition.³³ On the other hand, a favoured concubine could exercise considerable power on behalf of her master. Thus Kusaji Pant, a village astrologer, had a Rajasthani (*Rangdi*) slave-woman whom he despatched to collect his *baks* in kind, and she seized whatever she chose from the fields; if the farmers protested then she subjected them to vile abuse.³⁴

Regularly married wives would have more definite rights in the household, especially after they had borne children. Although the proverb ran 'the daughter belongs to the father; the land belongs to the monarch'³⁵, yet examples are not lacking where the mother acted independently on the all-important issue of marriage. Thus, five years after the marriage of her daughter, the wife of Nimba Pathara decided that the groom came from a low-status family, and asked the learned (and, it transpired, avaricious) Brahman Vireshwarbhat to annul the match.³⁶ In another instance, when a Brahman took a lower-caste mistress and rejected his wife, the latter was able to move the Peshwa's government to suspend her husband's land rights until he agreed to live conjugally with her. Characteristically, the mistress was more severely punished: she was imprisoned in a fort, and her three children handed over to the legitimate wife to bring up.³⁷

Marital conduct was private to a very limited extent as a case of 1782 makes clear. Kusaji Hazari and his wife were expelled from the village of Vagad for reasons that remain unclear; he took her to the boundary of Khatav and began beating her. The villagers of Khatav came out and asked 'What reason do you have to beat your wife in the forest?' They then took the couple back to Vagad, and the people of Vagad told him to give them security (*zamin*) that he would not beat his wife before they would allow him to take her away. He went away and lodged a complaint that they were detaining his wife which led to a record of the facts of this case.³⁸

Respectable women or women of status (*garti bayka*) could also expect protection; thus some women who had been lured from home and taken to Pen to be sold in 1780 informed the customs officers and guards there that they were respectable, whereupon the sale was stopped, and an enquiry instituted.³⁹ The meaning of respectability is made clearer by a case from 1754-5. The widow of Devji Parata, a Koli, was charged with sexual misconduct and arrested; thereupon her kinsfolk came and petitioned, saying 'do not enslave our kinswoman'. Therefore, with due regard to her respectable status,

she was to be fined fifty rupees and set free.⁴⁰ Avowal by the extended kin rather than wealth or status seems to be the proof of respectability here.

Husbands were often able to get their wives restored to them after they had eloped or been abducted; and in one case a husband who had abandoned his wife, and gone to another province returned after many years to find her remarried. A panchayat met and he 'nobly' gave up his rights in favour of the second husband.⁴¹ In another case where the husband did not return for many years, the father remarried his daughter, and undertook to provide another wife for the missing husband if he returned.⁴² He had an evident right to have a wife, but not necessarily a specific one. The gift of a bride could also be a part-settlement of a debt; thus Dadaji Raghunath's father was owed fifteen hundred rupees by Bhagvant Uddhavmall at 5 per cent per mensem, and it was finally arranged that the ensuing debt would be liquidated by Bhagvant giving his sister in marriage together with gold ornaments weighing a *ser*, (worth approximately twelve hundred rupees at the time).⁴³

Respectable widows had enforceable claims on their sons for maintenance—so Kali of the Jadhav family was able in 1768-9 to secure provision for herself from her sons.⁴⁴ Similarly, when a low-caste man, Subhana, unwarrantedly troubled his mother he was fined half a rupee.⁴⁵ In many cases in fact, widows controlled large estates as guardians of infant heirs, and the widowed mothers of princely sons could exercise considerable power even after their children reached maturity. But such families would be few: all too often older widows, with no value on the marriage market, would have no effective rights or claims, and be excluded from the household or the kin-fraternity to take their chances among the beggars who thronged the courts and temples.⁴⁶

Female-headed households were only regarded as normal among professional entertainers or prostitutes—the subordinate members in this case would frequently be slaves, and the powers of the head of the household would be considerable. Gajra Naikin told a questioner c.1820: 'If I have a girl who is of no use at all, I sell her if I get a good price.'⁴⁷ And a half-century earlier, the Qazi of Pune had his estate seized (perhaps temporarily) by the government because he presided over the marriage of a dyer with the daughter of a dancing-girl's (*kalavanti*) slave-woman despite being warned not to do so.⁴⁸ The professional independence of the dancing girl was

recognized by the Peshwa Madhavrao. In 1763-4 one Birajkuwar complained that she had joined the entourage of a retainer of Sher Jang and gone with him, leaving her goods in the city. The local Maratha administrator learned of this and (perhaps on account of consorting with the enemy) seized her property and fined her a hundred rupees. The Peshwa ordered full restitution to be made, adding: 'A professional woman went where she saw an opening; this being so what right have you to take her goods and fine her?'⁴⁹

The Right to Private Force

The Powers of the Creditor

The economy that we are discussing was characterized by widespread recourse to credit on the part of both great and small, and the authority of the State could be invoked to recover debts. This was a slow process, however, and furthermore involved the payment of a fee amounting to a quarter of the property recovered. Many creditors preferred to attempt direct recovery by harassment and dunning; Thomas Coats, who lived for many years in Pune when it was ruled by the Peshwa Bajirao II, recorded that debtors 'were seldom submitted to imprisonment, but the modes of annoyance resorted to by the creditor were perhaps more effectual in bringing them to a speedy settlement.'⁵⁰ These rights were widely accepted; thus, while reporting a case in which a businessman was punished for pressing a debtor, the Peshwa's agent at the Court of the Raja of Nagpur added scathingly: 'Such is the political ethic (*rajnii*) here!'⁵¹

Despite Coats' comment, creditors did sometimes seize their debtors—in the late-seventeenth-century one Sambhaji Patil fell into debt to the Gosavi fraternity, and so they confined his family and children. This compelled him to sell his hereditary rights in order to satisfy them.⁵² The same powers existed a century later: thus in 1787 Ganoba Naik Kumadi took two debtors to his house and employed heavy pressure against them; he was ordered by the government to desist, but did not do so, and they both died. He was therefore fined twenty thousand rupees.⁵³ Clearly, the right of the creditor extended to coercing the person of the debtor but not to taking his life.

Similar rights to direct enforcement could be claimed over runaway servants. For example, Arjuna Koshti employed a servant who had

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run away from the employment of one Tulgavkar, and then obstructed the latter's attempt to recover him. Arjuna was fined three rupees.⁵⁴ Such rights would obviously depend on there being a sufficient imbalance of force between the parties and persist as long as such an imbalance existed. It is, therefore, not surprising to find examples of such private redress well into the present century.⁵⁵

Powers within the State

The ability to exercise such rights obviously depended on the political strength of the persons concerned, just as the right to buy an elephant would depend on having the wealth to do so. So the wealthy and powerful had (and have) more rights than the lowly and poor. An act of robbery or private vengeance that might cost a poor man his life, or at any rate, everything that he and his kin possessed, would bring a powerful man (or woman) only a few words of reproof. So, for example, when the eminent lady Daryabai Nimbalkar besieged and plundered a *math* (religious foundation), she and her associates were merely sent reproachful letters from the king (chhatrapati), telling her to restore the looted property.⁵⁶ Great families were given much latitude in the way they conducted their internal disputes. Rajasbai Patankar complained, in 1752-3, that Dharrao Patankar had plundered the traders of Sambhapur, looting all their property. The king wrote back: 'You are kinsfolk. It is well if you come to an arrangement among yourselves; the Court cannot be useful in this matter.'⁵⁷

That great men might adopt Dharrao's methods even in relation to the monarch is shown by a letter of the same year, addressed to Rajshri Shivaji Salokhe, who evidently had some money-claims on the State. 'You have been disturbing the subdivision of Atpadi and what need or right (*prayojan*) have you to do this? Despatch your accounts with a clerk to the Court. After considering them the appropriate orders will be issued.'⁵⁸ The power of the chhatrapati was in decline at this time, as real authority shifted into the hands of his nominal subordinate, the peshwa; but the same methods were adopted by the latter's retainers as well. So, in 1784, the noble Manaji Sinde set off from Shrigonda with two hundred soldiers, and (probably) extorted money from, or robbed some villages. The complaint against him was sent to his superior and kinswoman Sakhubai Sinde, whose report we have. She states that she summoned

him, whereupon he said that he had merely gone on a hunting expedition.

Then I told the noble [*chiranjiv*—an honorific title] that, if after this you go anywhere and cause turmoil, it will not be good for you. There is an order from the government to that effect and I concur. Thereupon he spoke much, saying: 'The expenses of my following are great, my resources do not cover my expenditures ... How long can I hold my breath?' [Sakhubai resumes] Let the Peshwa be gracious and make a settlement. I myself have been tangled in [Manaji's] debts for the last twenty-seven months. I have repeatedly petitioned the government, but no settlement has been made to date. Therefore the government should make an arrangement for Manaji's past debt and future needs.⁵⁹

Otherwise he would presumably go on levying tribute at random from the villages.

Liberties stemmed from powers. So, in 1799 Gavhar and other leaders of the Sindhi soldiers employed at Pune went to Sakharam Ghatge and demanded pay—no doubt in a riotous and insolent manner. Ghatge, however, was connected with the powerful ruler, Daulatrao Sinde, and the latter had some of the leaders put to death. The remaining soldiers then protested: 'We have served in this realm for forty or fifty years, but nothing like this has ever happened; but now this has occurred. Then let the *Sabeb* consider this, and we shall follow his orders.' Then came the threat: 'If our lord does not do us justice then all the Sindhis will die' (i.e. mutiny).⁶⁰ The sense of grievance was evidently strong in this case, and it is interesting that the lapse of forty or fifty years was considered sufficient to authenticate a 'traditional' right—this is the period that Clanchy believes to be the limit of non-literate memory.⁶¹

Conclusions: Rights and Customs

It would be far from original to say that Indian society in the eighteenth-century was characterized by a normative inequality. This has been said not only of the past, but of the present, by Louis Dumont⁶² and others. However, this inequality certainly seemed to characterize the society whose conceptions of rights we have been trying to fathom through the materials presented above. It would certainly be difficult to find a universal or equal right anywhere in the evidence that we have seen. Men and women, chiefs and

servants, peasants and clerks, buffoons and prostitutes—members of these and various other social categories had various rights, but not as partakers of a universal right of man, citizen or anything else. If their rights had a source it was the dead past resurrected in the present as custom; and custom, I would venture to say, was largely an epitome of past balances of social power. The customs of the country aligned themselves silently along past lines of force, just as the palaeomagnetism of the Deccan lavas still follows the lines of the earth's magnetic field fifty million years ago. But as those rocks were open to erosion and deposition, so also was custom subject to contest and redefinition. And it may be because of this that we find that the deep respect for past practice discussed in the opening section of this paper: even if those powerful in the present were not the lineal descendants of the powerful of the past, they intended to retain all their privileges, and, if possible, to revive others that (in their eyes) the corruption of modernity had allowed to decay. The procedures of authentication were by their nature such as to ensure that they would have their way, since the eminent and powerful would gather to scrutinize documents and attest traditions.⁶³

Customary rights might all too often be but ancient abuses; indeed at times none too ancient: how long after the institution of universities, examinations and the Bar has it taken for customary rights to riot, to pay without work, or to obstruct justice, to be established by privileged groups of students, academics, and lawyers (to mention only the likely readers of this paper)⁶⁴? I would certainly be prepared to maintain that, like myself, all my readers also belong to that happy category of those who are 'customarily' more equal than others.

Notes

1. G.S. Sardesai, ed., *Selections from the Peshwa Daftar* (Bombay 1931-34) vol. 39, pp. 141-2; here, and throughout this paper, all citations from Marathi sources have been translated by me.
2. V.T. Gune, *The Judicial System of the Marathas* (Poona 1953) p. 350. Four valuable appendices of Marathi documents occupy pp. 13972 of this work.
3. G.C. Vad et al., eds., *Selections from the Satara Raja's and Peshwa's Diaries* (Various parts, Poona 1906-11; henceforth SSRPD) vol. 8 p. 129.
4. A. Manwaring, *Marathi Proverbs* (Oxford 1898) no. 674.
5. SSRPD, vol. 1, doc. 309, pp. 183-4.
6. *Maathir-ul-Umara*, trans. H. Beveridge, rev. Bains Parshad (repr. Patna 1974) p. 77. For a wider consideration of these issues see M. Anderson, 'Islamic Law and the Colonial Encounter in British India' in David Arnold and Peter Robb, eds., *Institutions and Ideologies* (London 1993), and also Radhika Singha in this volume.
7. A.T. Steele, *The Law and Custom of Hindoo Castes within the Dukhun* (2nd ed. London 1868) pp. 122-3.
8. The issue of change over the period 1720-1818 from which our evidence is drawn has also been left in abeyance—in large part because, in my judgement, neither norms nor processes changed significantly over this period.
9. Sardesai, ed., *Selections*, vol. 43, p. 132.
10. V.T. Gune, *The Judicial System of the Marathas* (Poona 1953) p. 271.
11. G.C. Vad et al., eds., *Decisions from the Shahu and Peshwa Daftar* (Poona 1909) p. 29.
12. V.T. Gune, *The Judicial System of the Marathas* (Poona 1953) p. 287, emphasis added.
13. A.G. Pawar, ed., *Tarabalkalina Kagadpatren*, vol. I doc. 62.
14. *Tarabalkalina Kagadpatren*, vol. 2, pp. 301-2.
15. Pawar, ed., *Tarabalkalina Kagadpatren*, vol. 2, pp. 169-70.
16. A government order of 1771-2 puts a younger son in control of his deceased father's office because he was born of a regular marriage, while his older half-brother was born of a secondary union. SSRPD, vol. 7, pt. 2, p. 182.
17. S.N. Banharti, ed., *Ajnapatra* (Pune and Nagpur 1986) pp. 95-6.
18. Thomas Coats, 'Account of the Present State of the Township of Lony', *Transactions of the Literary Society of Bombay*, vol. 3, (1823) p. 183.
19. Sardesai, ed., *Selections*, vol. 31, pp. 80-1.
20. V.G. Khobrekar, ed., *Records of the Shivaji Period* (Bombay 1974) pp. 92-3.
21. R.V. Oturkar, *Peshvekalin Samajik va Arthik Patravayavahar* (Pune 1950) p. 24.
22. *Watan* is a term difficult to translate—the term was usually applied to an exclusive hereditary claim to render service and receive emoluments.
23. Oturkar, *Patravayavahar*, p. 67. He responded with abuse, and was fined and punished.
24. Molesworth compiled his dictionary in the 1820s, and it was revised in the middle of the nineteenth-century. I have used the Shubhdha-Saraswat reprint, Pune 1982.
25. For a full discussion of the village *watandari* system see H.K. Fukazawa, *The Medieval Deccan—Peasants, Social Systems and States*, chap. 8.
26. Case cited by H.K. Fukazawa, *The Medieval Deccan—Peasants, Social Systems and States*, chap. 8, pp. 213-15.
27. *Selections from the Baroda State Records*, vol. 1 (Baroda 1934) p. 7.
28. *Tarabalkalina Kagadpatren*, vol. 1, p. 230.
29. This document was published by V.K. Rajvade in *Bharatiya Itihasa Sam-*

- shodhaka Mandala* [henceforth BISMT] *Chaturtha Sammelanvritta*, pp. 56-7. It purports to be a copy of a decision made around the time of the legendary famine of 1396-1408, but it is almost certainly a later fabrication. The fact that such documents came to be fabricated is (in my view) significant in itself.
30. Gune, *Judicial System*, p. 355.
 31. *BISMT*, vol. 6, nos. 1-4, N.G. Chapekar, 'Chiplonkar', pp. 133-4.
 32. A petition to the Gaikwad of Baroda from the peasants of a famine-stricken tract states matter-of-factly, 'we have subsisted up till now by selling our children and cattle ...'
 33. The phrase is a cryptic one: *Natakshala sati gelya*; literally 'The dancing-hall went to immolation.' The chronicle also records the strenuous (and successful) effort to prevent the legitimate queen Daryabai from following their example. K.N. Sane, ed., *Kavyotihasa Sangraha*, no. 16 (1885) p. 79.
 34. Oturkar, *Patravayavahara*, pp. 65-6.
 35. Manwaring, *Marathi Proverbs*, no. 1424.
 36. He tried to extort an extra fee by beating the groom, who complained so the whole matter came on record. G.S. Sardesai, ed., *Selections from the Peshwa Daftar*, vol. 43, pp. 3-4.
 37. SSRPD, vol. 8, pp. 259-60.
 38. V.V. Khare, *Aitihāsik Lekhasangraha*, part 7 (Miraj 1912) pp. 3680-1.
 39. Sardesai, ed., *Selections*, vol. 43, p. 52.
 40. Vad, ed., SSRPD, vol. 2, pt. 2, p. 67.
 41. Oturkar, *Patravayavahara*, pp. 92-3.
 42. Oturkar, *Patravayavahara*, p. 96.
 43. V.K. Rajvade, (*Marathyanchya Itihasanchi Sadhanen*, 24 vols., Pune) MIS, vol. 6, pp. 7-8.
 44. Vad, ed., SSRPD, vol. 7, pt. 2, p. 171.
 45. Chapekar, *Chiplonkar*, pp. 133-4.
 46. An undated report from an official in charge of distributing charity on behalf of the peshwa states that he had been instructed to bestow alms to the mendicants and holy men accompanying the government cavalry, but they were few. But a great uproar was being created by the throng of women beggars, including many widows. He was instructed not to give alms to the latter unless the distribution to Brahmans, both men and women, was complete, and something was left over. Sardesai, ed., *Selections*, vol. 43, p. 97.
 47. Sardesai, ed., *Selections*, vol. 42, pp. 56-7.
 48. Vad, ed., SSRPD, vol. 8, p. 259.
 49. Vad, ed., SSRPD, vol. 7, pt. 2, p. 244.
 50. Thomas Coats, 'Notes Respecting the Trial by Punchiet, and the Administration of Justice at Poona under the Late Paishwa', *Transactions of the Literary Society of Bombay*, I, vol. 1, p. 277 (1819).
 51. T.S. Shejwalkar, ed., *Nagpur Affairs*, vol. 2, (Poona 1959) p. 312.
 52. G.C. Vad et al., eds., *Decisions from the Shahu and Peshwa Daftar* (Poona 1909) p. 34.
 53. Gune, *Judicial System*, p. 353.
 54. See note 32.
 55. See D. Symington, *Report on the Condition of Aboriginal Tribes* (Bombay 1938) pp. 12, 41-2.
 56. Vad, ed., SSRPD, vol. 1, p. 111.
 57. *ibid.* p. 187.
 58. *ibid.* p. 115.
 59. Satara Historical Society, *Historical Papers of the Sindhias of Gwalior 1774-1794* (Satara 1934) vol. I, p. 36.
 60. Sardesai, ed., *Selections*, vol. 41, pp. 18-19.
 61. M.T. Clanchy, 'Remembering the Past and the Good Old Law', *History*, no. 184 (1970).
 62. For a telling critique of Dumont, however, see A. Beteille, *Homo Hierarchicus, Homo Aequalis, Modern Asian Studies*, vol. 13 (1979) pp. 529-48.
 63. See the excellent description provided in Gune, *Judicial System*, chap. 4.
 64. Scarcely a week passes without the vigorous exercise of such rights somewhere, e.g., a riot in Calcutta because a professor is caught for travelling without a ticket (*Statesman*, New Delhi, 25 September 1994, p. 6) or the Delhi High Court having to intervene to protect judicial officers at the Shahdara courts from intimidation by lawyers (*Indian Express*, New Delhi, 22 September 1994, p. 4) and seventy persons injured during riots in Bangladesh as the right to cheat in examinations is reaffirmed (*The Guardian*, London, 15 July 1995, p. 14).