Constructing Corruption: Narratives of Panchayat Justice under British Rule During the Early Nineteenth Century

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Abstract:

This article examines the ways in which the structures of norms of the British administration of civil law in colonial India constructed the meanings and definitions of corruption. Its evidentiary base is founded upon the analysis of several particularly notorious and complicated corruption cases from the early 1820s; that is, the cases administered by William Hockley, a British judicial administrator who was charged with bribery and corruption of panchayat cases. While his actions may have come under scrutiny at any other time, his malfeasance in office in 1820-1 was considered to be especially serious because they arose within the first years of the British occupation of the Deccan. Thus, the record of the investigation, including, petition and interrogations, is both extensive and unique for this period.

Through an analysis of these complaints, it is argued that the British norms brought to the new judicial arrangements in the Deccan were adopted, re-shaped, and reconstructed by Indian litigants who sought to pursue their cases in British-administered panchayats. Their cases focus upon the construction of stories that fit the new administration's definition of justice, equity, and fairness.

Corruption has been defined and described in any number of ways. In most definitions, 'political' corruption has been taken as the standard unit of analysis. Thus, some of the most common attempts to define corruption describe it as the supersession of the public interest by private interests, the abuse of public political offices for personal gain, or the use of public offices as an income-producing unit.[50] Equally, nearly all definitions assert that corruption can only be judged against a set of norms that circumscribe proper behavior in public office.

Less common, however, has been the attempt to closely analyze the normative standards employed by the victims; that is, the standards by which victims of corruption evaluated, recognized, and even sought to adapt to corrupt practices. The cases presented here seek to analyze these practices, but in a rather unusual setting. In the first instance, it expands upon the most common descriptions of political corruption by highlighting the problem of judicial corruption. Rather than subsume

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50 Of course, these are much over-simplified characterizations of several important schools of thought and are employed only for heuristic purposes. For a cogent and perceptive analysis, see Mark Philp, "Conceptualizing Political Corruption," in A. J. Heidenheimer and Michael Johnson, eds., *Political Corruption: Concepts & Contexts*, 3rd ed. (New Brunswick, N. J.: Transaction Publishers, 2002), pp. 41-57.

judicial corruption into the political sphere, this analysis of judicial corruption presents a unique opportunity to discuss the evolution of contemporary norms of justice, equity, and fairness, key rhetorical elements of British sovereignty in India. Thus, close attention is paid not only to the practice of corruption, but also to the languages and meanings that were created to explain and comprehend what contemporaries considered to be legitimate and illegitimate behavior.

Second, these cases occurred at a unique historical juncture, during the early nineteenth century when British control of western India expanded significantly and new methods and systems of judicial administration were being tested and implemented. It thus presents an opportunity to assess both transnational and cross-cultural perceptions of justice and corruption. Corruption had long been a key concern of the British East India Company, but its importance in the governance of India had been given even greater emphasis by the impeachment and trial of Warren Hastings, governor-general of Bengal, which dragged on between 1787-1795. Key elements in this trial were charges of corruption through bribery and extortion, charges from which Hastings was eventually exonerated.[51] Nevertheless, the legacy of this trial and therefore the relationship between the East India Company and the British Parliament clearly made Company officials quite sensitive to similar instances of corruption during the first decades of the nineteenth century.

Finally, the cases examined below occurred at the local level and thus can provide a view of corruption and its effects from the ground up, as it were. Principal among the new methods of administration in this early period was the attempt to incorporate local panchayats (or village councils) into the British system of justice. These case studies thus can provide access to popular conceptions of corruption and justice, an aspect of the study of corruption that heretofore has been neglected in historical enquiries in favor of discussions of the analysis of corruption in high political or socio-economic theory.[52] Therefore, this article examines several cases of British judicial corruption for evidence of how contemporary standards of justice and equity in western India were transgressed, how the victims' notions of corruption were created and developed, and the role of British administrators in this process.

Unique among the studies of modern corruption in India, Akhil Gupta has sought to employ ethnographic analysis to interrogate the discourse of corruption

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51 See P.J. Marshall, *The Impeachment of Warren Hastings* (London: Oxford University Press, 1965) and, for legal-historical perspective, James Lindgren, "The Elusive Distinction between Bribery and Extortion: From the Common Law to Hobbs Act," *U.C.L.A. Law Review*, vol. 35 (1987-1988), pp. 858-861.

52 Examples of such analyses for this period include Philp, *ibid*.; Bruce Buchan and Lisa Hill, "From Republicanism to Liberalism: Corruption and Empire in Enlightenment Political Thought," http://www.arts.monash.edu.au/psi/news-and-events/apsa/refereed-papers/political-theory/buchan-hill.pdf, accessed 25 March 2011; Lisa Hill, "Adam Smith and the Theme of Corruption," *The Review of Politics* 68 (2006), 636–662; Brian Smith, "Edmund Burke, the Warren Hastings Trial, and the Moral Dimension of Corruption," *Polity*, 40:1 (January 2008), pp. 70-94; W. D. Rubinstein, "The End of 'Old Corruption' in Britain 1780-1860," *Past & Present*, No. 101 (Nov., 1983), pp. 55-86; Philip Harling, "Rethinking 'Old Corruption'," *Past & Present*, No. 147 (May, 1995), pp. 127-158

and its popular meanings in contemporary village India.[53] Key among Gupta's insights has been the recognition that discourses of corruption can be deployed not only "as a means to demonstrate how the state comes to be imagined"[54] by citizens and subjects, but also as a "fecund signifier" of "conflicting systems of moral and ethical behavior."[55] Such insights can be applied equally albeit with care to the study of corruption during the early colonial era. During this period, western Indian society found itself enmeshed not only in competing concepts of the state, but in the rapid transformation of administrative structures and governing practices. In this situation, western Indian litigants struggled to comprehend and adapt to the changing legal and judicial environment as East India Company institutions replaced those of the former Peshwa. Simultaneously, British Company officials sought to comprehend "native" judicial institutions and adapt their 'rule of law' to them.

In this remarkably fluid space, not only were openings created for new practices of corruption, but also concepts and discourses of justice and corruption necessarily became contested and the site of conflict.[56] In the cases examined below, attention is paid to both of these elements. As Gupta notes, "the 'system' of corruption is of course not just a brute collection of practices whose most widespread execution occurs at the local level. It is also a discursive field that enables the phenomenon to be labeled, discussed, practiced, decried, and denounced."[57] Thus, an understanding of the colonial origins of concepts and practices of corruption may be understood as essential to an understanding of their modern iterations. Equally important, however, is the fact that this mode of analysis is an especially appropriate one for the examination of legal cases. For quite some time now, there has been a confluence between the study of law and the study of narrative.[58] It is no longer unique to describe case-law analysis as the study of competing stories, or of the imaginative reconstructions of events, or the transactional relationships between narrators and their audiences. Indeed, the cases presented below should not necessarily be taken as expressions of 'fact,' but as stories created to convince and persuade a specific audience, in these cases, the regional East India Company officials to whom they appealed their complaints. However, it is perhaps only in this guise that we can come to a clearer understanding of how litigants fashioned themselves before the courts, what expectations they brought to the judicial process, how they sought to adapt to the changing structures of judicial administration during this period, and how they formulated and expressed what they thought was just.

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53 Akhil Gupta, "Blurred Boundaries: The Discourse of Corruption, the Culture of Politics, and the Imagined State," *American Ethnologist,* vol. 22: no. 2 (1995), pp. 375-402; *idem*., "Narratives of Corruption: Anthropological and Fictional Accounts of the Indian State," *Ethnography*, vol. 6: no. 1 (2005), pp. 5-34.

54 Gupta, "Blurred Boundaries," p 389.

55 *Idem*., "Narratives of Corruption," p. 7.

56 For a compelling analysis in the African context of the ways in which the transition to colonialism opened new social and legal spaces, see Martin Chanock, *Law, Custom and Social Order: The Colonial Experience in Malawi and Zambia* (Portsmouth, N.H.: Heinemann, 1998).

57 *Idem*., "Blurred Boundaries," p. 385.

58 For just two of the more prominent scholarly examples, see Peter Brooks and Paul Gewirtz, eds., *Law's Stories: Narrative and Rhetoric in the Law* (New Haven: Yale University Press, 1998) and in its historical iteration, see Natalie Zemon Davis, *Fiction in the Archives: Pardon Tales and their Tellers in Sixteenth-Century France* (Stanford: Stanford University Press, 1987).

As is well-known, the panchayat, or village council, is a traditional forum for the adjudication of disputes common to Indian society. During the late eighteenth and early nineteenth centuries, British administrators working for the East India Company, led by such powerful and influential men as Thomas Munro and Mountstuart Elphinstone, roughly understood the panchayat to be an indigenous form of Indian arbitration although this perception was often confused as well with an understanding of the function of the panchayat as a type of 'native jury.' Undoubtedly, panchayats came in any number of forms and followed a variety of different customary practices. While the ideal-type of panchayat may have consisted of five male members, hence the derivation of the term from *panch* or five, it was not uncommon in the west of India to find panchayats of three, five, seven or sometimes even more members. Moreover, as Upendra Baxi and Marc Galanter noted several years, while some panchayats were very informal others could be quite formal and legalistic. "Some panchayats," they wrote of pre-British era panchayats, "purported to administer a fixed body of law or custom; some might extemporize. In some places and some kinds of disputes, the process was formal and court-like. Some panchayats were standing bodies with regular procedures, but many of these tribunals were not formal bodies but more in the nature of extended discussions among interested persons in which informal pressure could be generated to support a solution arrived at by negotiation or arbitration."[59] British administrators recognized several advantages to the employment of panchayats over British courts. Most importantly, they saw in the panchayats a means by which to gain access to local customs, language, and knowledge as well as a means by which to provide cheap and efficient justice to their new subjects. Because they were perceived of as 'native courts,' informal, and free from the expensive and lengthy forms and pleadings common to the British legal system, the panchayat became a foundational element of the British judicial project in western India.

However, the panchayat system as practiced in pre-colonial western India was quite different from British preconceptions. In many disputes in the Bombay Presidency, especially those involving debts and rights to landed property, the panchayat adopted highly legalistic and formal practices. In such cases, documentary evidence was relied upon to establish legitimate claims and the panchayat was expected to produce several documents in turn establishing and explaining their decision. Moreover, panchayats were composed of representatives voluntarily selected by each party to negotiate a settlement rather than having the decision of their dispute left to a group of elders, disinterested parties, or judges.

The British emphasis on the role and functioning of the panchayats served to bureaucratize and regularize panchayat procedures. In particular, British authorities established certain standards of procedural justice that together came to constitute a 'fair' panchayat. Reflecting some of the most common British practices of arbitration, these standards included the presentation and validation of written

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59 See Upendra Baxi and Marc Galanter, "Panchayat Justice: An Indian Experiment in Legal Access," in M. Cappelletti and B. Garth (eds.), *Access to Justice: Vol. III: Emerging Issues and Perspectives* (Milan: Guiffre; Alphen aan den Rijn: Sijthoff and Noordhoff, 1979) pp. 341-386.

documentary evidence. As we shall see below, the production of panchayat awards, bonds, and memos took on striking significance and became key elements in the construction and presentation of the narrative of litigants' cases. In addition, as in the British common law of arbitration, litigants could not be forced into these proceedings. Thus, in panchayat cases, evidence of compulsion were key signifiers of injustice. Finally, the voluntary nature of panchayat proceedings in western India included the litigant's authority to appoint their own representatives, or *panchayatdars*, to serve on the panchayat. Such procedural justice therefore was deemed by British administrators to be an essential element of panchayat justice precisely because they were most comprehensible in terms of British legal practices. As will be suggested below, Indian litigants responded by shaping their stories and cases upon precisely these issues. In part, these new narrative elements were constructed through the process of the British interrogation of witnesses and litigants, but they were equally constructed by the litigants themselves who sought to adapt their justice claims to British standards and practices.

As previously noted, according to British administrators, the great advantages of the panchayat over British courts lay in its access to local knowledge as well as its relative cheapness. While litigants were obligated to provide food and drink for the members of the panchayat during the time in which they met, the proceedings of the panchayat were not matters of court record. Thus, the litigants were spared the expense of travel to the British courts located in the major towns or cities as well as the costs of submitting evidence on official stamped paper. Perhaps of even greater importance was the fact that members of a panchayat, being local men of some standing, were possessed of the knowledge of local languages, personal experience, and understanding of local customs and practices that could never be fully acquired by British judges. Under British administration, the legal purview of panchayats was exceptionally broad. Archival records indicate that they attempted to settle disputes regarding caste, marriage, maintenance, adoption, inheritance, personal injury, and employment. However, the panchayats were undoubtedly most active in the settlement of commercial disputes. To give but one example of many, in the Collectorate of Khandesh (now Jalgaon) to the north-east of Mumbai, in the first six months of 1826, more than half of the disputes settled by panchayats were cases concerning contracts and debts.[60]

While there is an extensive archival record of the attitudes, inspirations, and motivations of the British administrators who sought to invigorate the panchayats during the early colonial period, evidence of the attitudes and aspirations of Indian litigants is naturally much more difficult to come by. However, this is not altogether impossible. Indeed the most striking evidence of these attitudes survives in the petitions and appeals of litigants, especially in those cases involving alleged corruption or gross error, the only two grounds upon which panchayat awards could be appealed. The cases presented here thus open a unique window not only upon concepts of judicial corruption, but also upon litigants' perception of and response to it.

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60 Maharashtra State Archives, East India Company (hereafter MSA, EIC), Judicial Department, Annual and Periodical Reports, Vol. 1/102, 1826.

Such issues became prominent in the first years of the 1820s under the local administration of William Brown Hockley, an East India Company officer who was later charged and convicted of bribery and corruption in several panchayat cases. Considering the fact that Hockley's malfeasance in office occurred during the very first years of the British occupation of the western Deccan, they came under special scrutiny and left a lengthy archival record that includes a number of petitions and interrogations that are unique for this period.

Hockley was an Assistant Collector stationed at Ahmadnagar east of Mumbai. The Collectorate of Ahmadnagar was a province that had only recently been ceded to the British by the Maratha Peshwa at the end of the third Anglo-Maratha War of 1817-18. As such, the organization of British judicial administration was at this time in its very infancy. One of the primary judicial responsibilities of the Collector and his assistant was to promote the settlement of disputes through the convening of panchayats. Over the course of his brief tenure there in 1820 and 1821, Hockley proceeded to cajole, threaten, and intimidate members of panchayats as well as litigants in an effort to extort money from them. Eventually, he was tried, convicted, and dismissed from the service of the East India Company in 1823.

The case of Panderong Krishnu and Lumkray Bullal Narsawey *v.* Hungeykur and Khatgaonkur[61] reveals not only the grievous intervention of Hockley, but it also lends significant credence to the argument that narratives of panchayat injustice were built upon notions of voluntariness, due process, and the valid representation of interests. Among the surviving documents from this case is a petition to the Governor-in-Council, Mounstuart Elphinstone, dated 26 December 1820.[62] The dispute concerned the disposition of property after the transfer of power from the Peshwa to the British. However, in this case, the defendants were *coolcurnee* (*kulkarni*), that is, village accountants, whose office entailed lands and other perquisites for their support. The disposition of three villages near Ahmadnagar became the subject of this dispute after they had been seized by the British and two claimants, Panderong and Lumkray, on the one hand, and the Khatgaonkur, on the other, came forward to claim the lands. Subsequently, Hockley examined the papers presented by both claimants and granted the property to Panderong and Lumkray.

The situation remained stable for almost eighteen months thereafter until a third claimant, the Hungeykur, appeared. He prevailed upon Hockley to call for Panderong and Lumkray to attend to him at the Ahmadnagar adalat. "We accordingly went," Panderong and Lumkray wrote in their petition, "and explained the nature of the case, when we were directed to refer it to a punchaet [panchayat]. We represented that we had nothing to do with the Hungeykur, but without attending to this, the case was referred to a punchaet."

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61 The suffix 'kur', or 'kar,' indicates the town, village, or region of origin or residence, as in the modern 'Mumbaikar.'

62 MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3, 'Translation of a petition from Panderong Krishnu and Lumkray Bullal Narsawey Koolhurnees of the Villages of Wajooray [,] Boojoorg [and] Khoord to the Honorable the Governor, Dahot the 7th Magsur Vud 1742 Lalbahan or 26th December 1820' [hereafter 'Petition']. Contemporary spellings have been retained throughout.

The element of compulsion in submitting to a panchayat became an important element in the British investigation of the case and, in effect, began to structure the nature of the investigation. Further investigations into Hockley's actions left a remarkable record of interrogations of both Panderong and several members of the panchayat. Panderong testified that upon being ordered to submit the dispute with the Hungeykur to a panchayat,[63]

> I said, that I had nothing to do with the Hungaykur, that my Dispute was with the Khatgaonkur, and that I was ready to have a Punchayet with him.
> I had originally complained against the Khatgaonkur, who had placed my Papers in pledge with the Hungaykur, [which] had led to my Wuttun being 'Zubted' [attached], and he also wanted to establish it, that I was his Gaomashta or agent.
> Question – When you expressed your aversion to a Punchayet with the Hungaykur what reply did Mr. Hockley make?
> Answer – He said I must submit to one; and I at length was forced to agree.

Indeed the British investigation became less a matter of the story the witnesses wanted to tell and more of a matter of what the investigator wanted to hear. Panderong and Lumkray tried to explain that as the discussion with Hockley had proceeded, "we then mentioned that as the matter related to a wutun[64] it should be referred to the Jameedars [*jamindars*] and Gataururs[65] (Village Officers) and that the Saheb [Hockley] on seeing their decision should issue such orders as were conformable to justice; this being the practice of our former Government and our country."[66] Hockley, nevertheless, ordered a panchayat "without listening to this."[67] To the British interlocutor, therefore, the legitimacy of the panchayat as the proper forum in which to hear the case was not at issue. Instead, in the eyes of the British, it was whether or not there had been an element of compulsion in agreeing to a panchayat. Thus, the litigants' testimony was directed along this line of inquiry.

The examination of Panderong also provides an interesting insight into precisely how members of a panchayat were selected by the parties. The process often was an exceedingly informal one as litigants endeavored to secure friends,

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63 MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3, 16 April 1821, 'Examination of Pandoorung Krishen as to allegations against Mr. Hockley' [hereafter 'Examination'].

64 In Marathi, a 'wutun' indicated an hereditary estate often associated with a political office.

65 *Jamindars* were local village judicial officials under the Peshwa. The term 'gataururs' may refer to members of a *gota*, or village assembly, a judicial body that had fallen out of use under the Marathas in favor of the panchayat. See V. T. Gune, *The Judicial System of the Marathas* (Deccan College Postgraduate and Research Institute: Poona, 1953), pp. 54-9.

66 MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3, 'Petition.'

67 *Ibid.*

relatives, or allies to serve as *panchayatdars*. Panderong explained that after meeting with Hockley[68]

> I went to search for members to sit in the Punchayet. I met Mahadjee Punt Joshee Poonakur in the Road and told him that I was seeking for Punchayetdars. He advised me to apply to Moro Madhoo Row Daishmookh of Wankooree. I then went to the Daishmookh's house, told him I had been ordered to have a Punchayet, and could get no members, showed him my Papers and asked him to be one of my Punchayetdars to which he agreed, and also desired me to try and get Krishnajee Mahayun as the other. I accordingly proceeded to the house of the latter, and told him what I had before said to the Daishmookh and he in like manner consented to sit for me: the following day, I again attended at the Adawlut and gave in the names of my two Punchayetdars.

It was not uncommon for litigants from the countryside to rely upon the advice of others to secure members of their panchayat, as Panderong was forced to do. Since he was not a resident of Ahmadnagar, he had but little choice. As he noted, he "could get no members." Unfortunately, unbeknownst to Panderong and Lumkray, Moro Madhoo Row was one of Hockley's corrupt accomplices.[69] At their first meeting, Panderong testified that "I was told by Moro Madhoo Row Daishmookh to bring 500 Rupees for Mr. Hockley. I replied that I knew nothing of Mr. Hockley, and the Daishmookh then said 'Bring it to me, and I will place it in Hindoo Mull Sowkoers hands and get your Punchayet decided as you wish.'"[70]

One should not underestimate the sense of injustice engendered by this blatant act of corruption. Although the judicial systems under both the Marathas and the British were replete with payments, charges, and costs of all kinds – to draw up papers, to feed the members of a panchayat, to pay for travel to and housing near the court, or to feed a *tugaza* peon, to name but a few – normative concepts nonetheless required that justice not be for sale. In this regard, the obsession of British administrators with Indian corruption is untenable at best. When Panderong was first approached for the payment, he hesitated but reluctantly agreed. "As we had no resource," the petitioner stated, "and the cause would not be tried without the payment of money, and as we were afraid of losing our wutun, we went round to different places, and having got our relations and a Waree to stand forword [sic], we paid four hundred rupees in cash thro' the hand of the mediator (Moro Madhow Row Deshmookh)."[71] Thus, while panchayats might very well be costly, the plaintiffs certainly were unprepared to entertain this extraordinary charge.

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68 MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3, 'Examination.'

69 Moro Madhoo Row was eventually apprehended for his role in the case and agreed to testify against Hockley. See the letter of 4 May 1821, Henry Pottinger to William Chaplin, MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3.

70 *Ibid.*

71 MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3, 'Petition.'

Shortly thereafter, even further demands for money were made upon them. This time, the plaintiffs balked at the payment. "The next morning," Panderong testified, "after we had eaten something we went to the Adawlut where the Punchayetdars were sitting, and they began to examine us and Pungobha Dahorey [a member of the panchayat] told us the Hungaykurs [the defendant] had agreed to give 1000 Rups., and unless we made up as much we should lose our suit. We said we could not command so much money, and that the Punchayetdars must act as they chose."[72] At this point, Panderong and Lumkray went back to Moro Madhoo Row and demanded their money back, a demand that appears to have been fulfilled but only after several attempts. The extent to which Panderong and Lumkray now acted out of resignation or principle is not altogether clear. Upon some readings, the testimony suggests that both sentiments were involved. Yet, once again, the fact that such extortion was contrary to contemporary standards of panchayat justice and not a matter common to the judicial business of the era needs to be noted.

Much of the remaining testimony from the case relates to the procedures adopted by the panchayat itself, the elements of judicial administration that especially occupied the British in western India. This testimony is especially revealing not only for the insight it gives into how the panchayat was expected to function, but also the circumstances that garnered attention most from British investigators. As the discussions of the panchayat dragged on for over two months, Hockley inserted himself into the panchayat process by aborting the panchayat's investigation and ordering it to produce an award. Although the dispute had evolved into one between Panderong and Lumkray, on the one hand, and the Hungeykur, on the other, the sitting panchayat sought to interview the plaintiff from the original case, the Khatgaonkur. According to the testimony of Rungo Moraishwer Dahorey, a panchayat member for the Hungeykur, early one morning, the *panchayatdars* were all called to meet at the *adalat*:[73]

> Mr. Hockley did come to the Adawlut about 11 o Clock. The whole of the Punchayetdars immediately went to him and represented to him 'that we require the Khatgaon Takleekur Coolkurnies before we could finish the "Sarounsh," that the Hooly was at hand and that we therefore begged to be excused till it was over.' M. Hockley snatched the papers from our hands with some abusive expressions, and told us to get along. We went into the Kucherry where we had been sitting to get our Inkstands &c, and whilst there, a Peon came & called us into the Adawlut. We obeyed the summons, and Mr. Hockley gave back the papers and said 'There is no occasion to call the Khatgaon Tankleejurs. Prepare a sarounsh between these two (the Hungaykurs and Wagoondaykur) and let me have it immediately.' We five persons accordingly went back and prepared a 'Sarounsh' to the best of our judgement.

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72 MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3, 'Examination.'

73 *Ibid*. 'Adalat,' or court.

Hockley's interference was remarked upon in the interviews of other panchayat members and was a significant contravention of panchayat procedures.[74] Equally notable, however, was that fact that Hockley's accomplice, Moro Madhoo Row, had long ago stopped attending the panchayat's deliberations and had been sending his *gumashta*, or agent, to attend in his stead. This irregularity was compounded even further by the fact that Moro ultimately refused to sign the award, or *sarounsh*, and ultimately deputed his agent to do so. Both actions were later uncovered by the investigation into Hockley's actions and both actions seriously undermined the legitimacy of panchayat justice.

Moro's actions may very well have been an attempt to avoid further involvement in the case and perhaps insulate himself from possible prosecution. But the later investigators were clearly troubled by the fact that Moro had not sought Panderong and Lumkray's permission to send an agent to attend the panchayat's meetings and that he had not personally signed the *sarounsh*. Moro testified as to his role in the case on 16 April 1821:[75]

> The two Wagoodaykurs[76] (Sumkrajee [Lumkray] Bullalls and Pandooruung Krishen) came to my house to ask me to sit as their member. I refused twice, but the third day when they met me in the street I agreed, and went to the Adawlut with them. I attended there several times, but did not look at the Papers and I appointed a Carkoon[77] to sit on my part whose name is Shakoo Luximon Govindah an inhabitant of Ahmednuggur.
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> Question – Did the Wagoodaykurs never tell you, that the Punchayet has not acted fairly towards them and that they had suffered injustice?
> Answer – Yes they did; they said that the Punchayet had not been fair.
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> Question – What reply did you make to these observations?
> Answer – I told them not to trouble me, but to act as they thought best.
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> Question – You were one of their Punchayetdars and why therefore should they not trouble you?

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74 See the testimony of Mahadew Gondajee Saupkur, MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3, 16 April 1821, 'Examination of Mahadew Gondajee Saupkur, Shroff, and member of the Punchayet,' who noted "The whole of the members immediately went into the Adawlut with the Papers and represented to Mr. Hockley that the 'Sarounsh' was not ready, and that we required the Khatgaon Tankleekur Coolkurries before we could finish it. Mr. Hockley took the Papers, abused us, and told us to be gone, at the same time observing that the dispute had no connection with the Tankleekurs. We returned to the Kucherry where we had been sitting and about a quarter of an hour after a Peon came with the Papers and ordered us to prepare the 'Sarounsh' between the Wagoondaykur and Hungaykurs instantly."

75 MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3, 16 April 1821, 'Testimony of Moro Madhoo Row, Deshmookh of Wankoree in the Turuff of Kuwelleenuggur.'

76 Wagoodaykurs here refers to Panderong and Lumkray, residents of the village of Wagooday. At various times in the petition and examinations, the village is spelled 'Wajooray', 'Wagooday', 'Wagoondy', or 'Wagoonday'. The spelling that occurs most frequently is 'Wagooday,' which I have adopted throughout to facilitate identification.

77 A *carkoon*, *carcoon*, or *karkun* is a clerk or auditor.

> Answer – I told them that my Goomashtee (who has signed the Sarounsh in my name) had acted like the others.
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> Question – By whose authority did you put your Goomashtee into that Punchayet?
> Answer – I informed the other members that I could not attend, and therefore, with there [sic] permission, I sent my Goomashtee.
>
> Question – Did you ask the Wagoodaykurs permission to put in your Goomashtee?
> Answer – No I did not.
>
> Question – Did you ever tell the Wagoodaykur you had not signed the Sarounsh and give your reason for not doing so?
> Answer – I told him I had not signed the 'Sarounsh' but said nothing of my reason.

Considering the procedural expectations of British judicial administrators, the connection drawn here between fairness and justice, on the one hand, and the valid representation of interests, on the other, is not surprising. In their eyes, Panderong and Lumkray had secured Moro's services as their duly deputed member of the panchayat and his absence did much to de-legitimize the tribunal's claim to those values.

Moro's refusal to sign the award obviously disturbed other members of the panchayat as well. Krishnajee Mahajun, who served as a member of the panchayat for Panderong and Lumkray, testified that when Moro refused to sign the *sarounsh*, he refused as well. According to Krishnajee's testimony, Moro "then said, if you will sign it first, I will do so afterwards. This I did, and he afterwards caused it to be signed by the hand of Shahoo Goomrah, his agent."[78] One of the Hungaykur's members of the panchayat similarly testified that he had at first refused to proceed without Moro's signature. Rungo Moraishwer Dahorey explained that Moro "said he had sworn not to do so. On hearing this Krishnajee Mahajun and myself likewise declared we would not put our names to it. At last he agreed to have it signed by one of his Dependants [sic] in his name, and then we did so."[79]

The apparent dismay caused by the failure of Moro to sign the award further underlines the importance attached to the elements of procedural justice needed to legitimate an award. However, it also underlines the ambivalence many *panchayatdars* may have brought to their service on these tribunals. Panchayat cases could be long, complicated, and conflictual, as this case certainly was. Service on a panchayat could bring one into conflict with the litigants themselves as well as the

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78 MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3, 16 April 1821, 'Testimony of Krishnajee Mahajun, member of the Punchayet on the part of Nareesawaz.'

79 MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3, 16 April 1821, 'Testimony of Rungo Moraishwer Dahorey, member of the Punchayet..'

judicial authorities. There was a certain sense of frustration and resignation in Krishnajee Mahajun's voice when he was interviewed by the British authorities:[80]

> Question – Has the Wagoondaykur Nareesawuz ever complained to you since or not?
> Answer – Sunkrajee Bullall did complain to me of the manner in which I decided for him and [I] reminded him that I had asked Mr. Hockley to send for the Khatgaon Tankleekur Coolkurnies, and as he had refused I could do nothing else.

Further evidence from this case does not survive, however, other cases corrupted by Hockley also explicate the relationship between British corruption and the claims to procedural justice during this era. For example, the case of Sukhoo Punt Apte *v.* Nilkunt Myraul came to the attention of William Chaplin, the Commissioner of the Deccan, in April 1820 and had its origination in a suit filed by Sukhoo Punt to collect his portion of the revenue returns from two districts in the *subha*, or province, of Joonur. [81] Sukhoo Punt held these returns in partnership with Nilkunt Myraul.[82] Chaplin, whose initial letter is lost, apparently requested Henry Pottinger, the Collector of Ahmadnagar, to inquire into the case, which somehow had resulted in Sukhoo Punt's imprisonment for debt. Relying upon information supplied by Hockley, Pottinger replied that Sukhoo Punt's imprisonment had been the result of two separate panchayat investigations and decisions. Pottinger explained that the first panchayat had found in favor of the Sukhoo Punt, but had not settled upon the exact amount of award. This led the defendant, Nilkunt Myraul, to deposit approximately Rs. 1500 with a local goldsmith to settle the debt. A second panchayat was then assembled to establish the exact amount, an award which eventually totaled Rs. 1326.3.25. Thus, according to the second panchayat, Sukhoo Punt owed Nilkunt just over Rs. 653. According to Pottinger, Sukhoo Punt then protested that the money had never been put into his account with the goldsmith, but since he could offer no proof and also refused to pay the amount in question, he was imprisoned for debt.

In December 1820, Sukhoo Punt was released from prison when Nilkunt stopped paying for his daily sustenance.[83] He immediately went to Pottinger and complained that the final award had not been duly signed by all the members of the panchayat. Pottinger reviewed the *sarounsh* and "was equally vexed and astonished to find that it was not properly authenticated."[84] He then wrote to his subordinate, Arthur Crawford, asking him to find out why the *sarounsh* had not been signed by

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80 MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3, 16 April 1821, 'Testimony of Krishnajee Mahajun.'

81 Henry Pottinger to William Chaplin, 25 April 1820 and Henry Pottinger to William Chaplin, 4 November 1821, MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3.

82 Henry Pottinger to William Chaplin, 4 November 1821, MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3.

83 Under the East India Company's regime, imprisonment for debt was supported only so long as the debtor's sustenance was paid for by the creditor. In the 1820s, this rate was fixed at 2 annas per diem.

84 Henry Pottinger to William Chaplin, 27 January 1821, MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3.

all the members of the panchayat. "A Person called Succoo Puntaply," Pottinger wrote to Crawford, "who has been confined in jail at this place for some time for debt having been lately released he appealed against the award of the Punchayet under which he was imprisoned and on examining that document, I find that one of the members (and that too the only one on the part of the appellant) has not signed it."[85] Pottinger, beginning to doubt Hockley's initial report, concluded rather ominously that "I have also other reasons to doubt the fairness of that award."[86]

In fact, Pottinger had only just begun to uncover the web of intrigue and extortion that marked Hockley's tenure in Ahmadnagar and that had relied upon the manipulation of panchayat justice. As we shall see, Chaplin also had begun to sense the extent of Hockley's malfeasance and within several months would request a formal investigation of his actions by a Bombay solicitors' firm. Pottinger's initial investigation revealed that the dispute had begun about two years previously and that the litigants had taken their case to a panchayat, which awarded the plaintiff just over Rs. 712. Hockley had correctly noted that Nilkunt claimed to have deposited Rs. 1500 worth of gold with a banker, or *sahukar*, in Pune. However, he had not informed Pottinger that the panchayat had also examined the banker and had found that the gold had not been deposited as a security against Sukhoo Punt's claim, but for another purpose altogether. "It was proved," Pottinger wrote, "that the deposit of Gold related to quite a different affair, and had only been brought forward in this instance to mislead the members of the Punchayet, whose decision in every respect was final, and apparently very just."[87] In fact, Nilkunt's deposit was made into the account of the Pune province and not the Junoor province, which he shared with Sukhoo Punt, and "the accounts of the two Soobhas were necessarily to be kept distinct from the very agreements made by the Parties with the Paishwa's Government."[88]

At this point, Hockley interfered in the panchayat proceedings once again and appointed a pair of arbitrators and an umpire to review the original award. The encouragement of dispute resolution through British-styled arbitration had been a standard aspect of British judicial administration in all of the Indian presidencies at least since the passage of the Bengal Regulations in 1793. In Pottinger's view, the appointment of arbitrators was not in and of itself inappropriate, if they were appointed only to examine whether the gold was indeed intended as security. Hockley, however, ordered the arbitrators to review the entire award and as such clearly went beyond their legitimate purview. The validity of the award, Pottinger reasoned, was not in question here and could not be appealed. The precise amount in dispute, however, could be subject to arbitration.

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85 Henry Pottinger to Arthur Crawford, 23 December 1820, MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3.

86 *Ibid.*

87 Henry Pottinger to William Chaplin, 27 January 1821, MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3.

88 Henry Pottinger to William Chaplin, 4 November 1821, MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3.

The arbitrators, as we have seen, subsequently reviewed the entire award and found in favor of Nilkunt for an amount of just over Rs. 650. For Pottinger, however, equally unnerving was the fact that the award was not signed by all of the arbitrators. Moreover, there were indications that this new award had been written without the concurrence of one of the arbitrators and contrary to the full tribunal's initial recommendations. Pottinger explained that Sukhoo Punt's claim had been fully supported by the first panchayat, but Hockley had seriously mishandled the subsequent inquiry by the arbitrators. After the first award, Pottinger wrote,[89]

> The only thing therefore that remained to be done, was to see the award of the Punchayet enforced, but instead of this, it now would appear the [sic] Mr. Hockley allowed two persons, who ought to have been simply charged with ascertaining the truth or falsity of the assertion about the Gold, to enter into scrutiny of the sarounsh of the Punchayet, and after setting aside some items, and deducting from others, a second sarounsh was submitted to Mr. Hockley by one of the members, in which the charge of 1500 Rupees for Gold was admitted, on a copy of a memorandum ('Yadachee Nukl'[90]) and consequently the Plaintiff instead of having to receive the sum stated in the 3rd Paragraph [of this letter], was brought in as debtor to the amount of 651.[0].50.
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> The sarounsh was, as I have said above, presented to Mr. Hockley by one of the two arbitrators and the 'Aspree' or Umpire, and that Gentleman I am informed sent for the other member (if such he can be called) and demanded from him why he did not subscribe his name to the Paper. The man replied that the award was unjust and that it had been prepared by the arbitrator and the umpire without his concurrence; that a Draft of their real sentiments as settled by all three, was then in his hand, and that he would not sign what he knew to be false and illegal.

Pottinger's further investigations revealed not only that the new award was improper and not duly signed, but also that the arbitrators had relied upon an unsubstantiated memorandum in order to reach their decision. Quoting from the arbitrators' award, Pottinger discovered that the banker had been called before them to produce any documents he had relating to the gold account. When the banker replied that he did not have any, the arbitrators asked the same of Nilkunt. Nilkunt then submitted a copy of a memorandum purporting to support his claim. Pottinger was clearly aggravated by such unorthodox procedures. "It appears," he wrote, "even from the document, that the Gold was admitted on a copy of a memorandum given in by Nilkunt Myraul and which should have been utterly rejected on every principle of just arbitration, for had it been proper to receive an alleged copy of a Paper on either

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89 Henry Pottinger to William Chaplin, 27 January 1821, MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3.

90 Perhaps refers to a *yachita*, which in Hindu law is a form of deposit that the holder may have use of. A *nakl* is a copy or transcript.

side, Succo Punt Aptay could have had no difficulty in fabricating one to suit his purpose."[91]

The accumulated evidence of improper procedures in the case eventually led Pottinger to set aside the second award and to restore the original *sarounsh*. Although he was "averse to speak harshly" of Hockley's motives, he indicated to the Deccan Commissioner that Hockley had acted improperly by espousing the cause of the one of the parties.[92] Moreover, the full extent of Hockley's corruption was becoming too obvious to ignore. Pottinger discovered that several of the same people were repeatedly involved in disputed panchayat cases under investigation. Nilkunt Myraul, for example, had been the complainant whose suit had landed the Warrekur's *gomashta* in jail a year earlier; and, another man, Moro Bulwunt, had served as a *punchayatdar* for the opposing side in both the Warrekur's and Sukhoo Punt's case. Eventually, Pottinger would discover that Hockley had extorted over Rs. 30,000 from litigants in return for favorable panchayat decisions and be dismissed from the Company's service.[93]

Pottinger had long held that he had "but one object in view which was to see justice done in the affair."[94] However, the path to justice was obstructed in a number of ways. Most apparent in these cases were the numerous instances of the corruption of procedural justice that was fundamental to panchayat justice. As in the other case described here, the production of valid documents, the valid representation of interests, and the avoidance of elements of compulsion and coercion were framed by litigants to constitute the normative foundations of justice and fairness.

In conclusion, corruption may commonly occur when public offices are treated as "maximizing units" for personal gain. However, victims of corruption during this period may have experienced corruption in quite different ways. The principal narrative structure of these stories instead revolve around procedural injustices, that is, when the commonly-accepted practices of application, awards, and the constitution of panchayats were violated.

One must be careful nevertheless to avoid coming to the conclusion that these cases therefore indicate that violations of procedural justice were more important to litigants than the actual act of graft or extortion. Instead they suggest not only that litigants had a clear understanding of the issues and concepts that would appeal most to their British administrators, but also that British investigators actively participated in the construction of the litigants' narratives to fit their preconceptions of propriety and legitimacy. Therefore, textual evidence in the form of written awards, written memoranda, signatures, and other forms of written as well as evidence of

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91 Henry Pottinger to William Chaplin, 4 November 1821, MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3. Emphases in original.

92 Henry Pottinger to William Chaplin, 27 January 1821, MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3.

93 MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3, 'Statement of Kaishao Row Mistry,' 18 May 1821.

94 Henry Pottinger to William Chaplin, 4 November 1821, MSA, EIC, Judicial Department: Civil Judicature, Vol. 10/11, 1821-3.

correspondence to British practices of arbitration, especially voluntariness, came to be understood as essential to ensuring success in the panchayat.

As Martin Chanock has explained in the case of African customary law under the British, the process of taking evidence, examining witnesses, and the like was part of a more general project by British administrators to "discover" the rules of customary law. Yet this process of "discovery" inevitably led not only to the stultification of law, but to its partial and perhaps biased recovery. Such legalistic procedures as the taking of evidence or the examining of witnesses should therefore be understood "not as part of the process of discovering the rules of customary law but as a vital part of the rule-making process. What kinds of rules would be made out of this process, and how and whether they would be applied, depended on a number of circumstances: the rules would reflect the current aims and anxieties of the witnesses, and if these coincided with the moral predilections and administrative purposes of the officials, a 'customary law' might become established."[95] Perhaps more than anything else, these cases serve to exemplify this process as Indian litigants sought to adapt themselves to the newly-imposed system of British justice at the same time that they sought to use the system to project and restructure their standing in this new world.

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95 Chanock, *Law, Custom and Social Order,* p. 201.