CONCLUSION

If history is to perform properly its function as an agency of instruction, it must be careful to record human events fairly and accurately. The most reliable sources of information concerning all that has happened in the past are the contemporary records themselves. The writings of those who had a hand in the events themselves and the public documents which ascertain the veracity of such narratives are unavoidable. The makers of history are the most competent ones to write about it. They are the ones best qualified to interpret their own experience. These writings are the piers upon which the historian builds his long bridge of narrative, and the historical structure can be no stronger than its foundations. Due allowance must of course be made for human shortcomings even in the records left to us by the most wise and open-minded of writers. But the fact remains that contemporary materials afford the only sure foundation to build our knowledge of what had occurred in the bygone era. Fear and flattery are the worst enemies of historical truth and these very much vitiate a historical narrative. If a person is influenced by these emotions, his work becomes dishonest. Individual and the society complement each other in many ways. The individual self-assertion is a human want, which must be weighed with others, simply because all wants cannot be satisfied. The interests of the society are of paramount importance. However, the claims of an individual to assert his individuality, to exercise his free will, are not to be altogether rejected. Law acts as coercive power to compel the people to

perform their duties and obligations. The idea of retributive and exemplary punishments as being a deterrent on crime had held sway in the society for long. Lately, the stress has shifted to correction, reformation and rehabilitation of the offenders

The Constitution of India has accorded top priority to the concept of justice. The system of administration of justice was conceived as an effective and expeditious instrument at the service of the people. A sound justice delivery system leads to affection and reverence in the minds of the citizens towards the government. The attitude of the citizens also influences the performance of the judiciary. Dr. Rajendra Prasad had rightly said, “If the people who are elected are capable and men of character and integrity, they would be able to make the best even of a defective constitution. If they are lacking in these, the constitution cannot help the country.”

Legal institutions helped man to strengthen the society and overcome the state of anarchy which is said to have preceded the establishment of the earliest social organizations. Individuals well versed in law assisted not only the king but also the heads of towns and villages. The glory of a place was very much associated with the quality of dispensation of justice existent there. Accessibility to the judicial forums was relatively easier and formalities were negligible. There was scriptural and societal support for awarding rigorous punishments to the convicted criminals. Petitions and grievances were heard and decided locally. The troublesome and tiring practice of appeals was unheard. The king heard and decided cases at the capital city. His

officers, who otherwise worked under various designations, did not fail to attend to the needs of administration of justice in areas under their jurisdiction. When the king and his officers occasionally went on circuit, they functioned as a mobile court of justice.

The English East India Company made steady gains due to their diligence and resourcefulness. As a trading concern they made territorial acquisitions at the grace of local powers. The Company was subject to the laws of the land. The Charter Acts had authorized the English Company to administer their possessions and establish legal institutions for the benefit of the Company and its dependents. The application of English laws was subject to the convenience of the Company. The power and prestige of the East India Company grew by leaps and bounds after the grant of *Diwani* in 1765. The legal institutions fostered by the Indian rulers gradually faded into oblivion. The Supreme Courts and its predecessors had to some extent coexisted with the Indian courts. All these were obliterated by the Indian High Courts Act of 1861. The High Courts thus created, had sweeping jurisdiction over a plethora of realms, namely civil, criminal, admiralty, testamentary, intestate, matrimonial, original and appellate jurisdiction. A High Court was the highest court of the land and appeals against its judgments were entertained only by the Privy Council, which sat in England. There was practically no hindrance or control over the powers of a High Court. The primacy of the Calcutta High Court was indicated by the fact that its Chief Justice received a salary which was 20% higher than those of his counterparts in Bombay and Madras. One of the accomplished provisions of the Government of India Act, 1935, was the establishment of the Federal Court. It was conceived to settle disputes between the

federation and its constituent units. However, the federation itself never came into being; the federal part of the 1935 Act remained inoperative. The power of the High Courts and that of the Privy Council remained undiminished. The jurisdiction of the Federal Court was of a very limited nature.

The kings of Travancore and Cochin, as in any other princely state, were the fountainhead of the judicial establishment in their kingdom. The Prime Minister or the *dalawa*, oversaw the administration of justice. *Dalawa* Velu Thampi himself conducted trials and ensured that the guilty were punished mercilessly. His successor Ummini Thampi established courts named *insuaff cutcheeries.* A new chapter began with the initiatives of Colonel Munro who was virtually the *de facto* ruler of both Travancore and Cochin, for quite some time. He is credited with laying the foundations of modern judiciary in these two principalities. The Principal Court and the Appellate *Huzur* Court, of Travancore were more or less an appendage of the executive; the *diwan* or the Prime Minister sat along with the judges of these two successive institutions. The Appeal Court was a definite advancement in this regard to the extent that it was free from the executive. The inauguration of the Appeal Court coincided with the codification of laws of Travancore at the behest of Cunden Menon. This paradigm shift took place during the reign of Swati Thirunal Rama Varma (1829-40). This Appeal Court later became the *Sadr* Court which in turn was transformed into the High Court. Similarly, in Cochin, the *Huzur* Court, the Appeal Court and the Chief Court, ultimately gave way to the High Court.

The consequences of the World War and the mounting struggle for freedom compelled the British to quit India. Both Travancore and Cochin joined the Dominion of India in 1947. Soon, these erstwhile princely states were integrated resulting in a new entity called, United States of Travancore-Cochin, on 1 July, 1949. The Covenant signed by the former rulers of these two principalities, with the concurrence of the Central Government, formed the birth document of the new United State, which was to have a common executive, legislature and judiciary. The Maharaja of Travancore was designated as the Rajpramukh in order to function as the *de jure* head of the Government. The seat of the High Court of the United State was decided to be at Ernakulam, in Cochin. Trivandrum, which had housed the Travancore High Court from its very inception in 1882, was thus deprived of a judicial landmark. Moreover, the Law College at Trivandrum was also shifted to Ernakulam. This was the direct result of the Integration Committee Report, better known as the Buch Committee Report. Panampilli Govinda Menon, who was a vehement and un-relenting votary of Cochin, was one among the three members of the said Committee. By disregarding all the advantages present at Trivandrum, the Buch Committee preferred to 'respect the sentiments of Cochinites'. The employees of the High Court, lawyers, students of the Law College and the litigants were subjected to untold hardships due to the ill-conceived and hastily executed displacement of the High Court and the Law College. This matter was discussed in the Legislative Assembly more than once, but it all turned out to be a futile exercise. Proposals for shifting the High Court back to Trivandrum or at least for having a Bench at that place, failed to materialize. Many legislators who were supportive of these demands did not dare to express their wish while casting their vote in the Legislative Assembly. This occurred at a time when the

legislators were legally free to follow their conscience, by even disregarding their party whip. The silver lining appeared in 1953, when the United State was under the President's Rule. The Union Parliament amended the High Court Act and made provision for a Bench of the State High Court at Trivandrum, the capital city. The Bench was inaugurated when a minority government led by the P.S.P was at the helm in the United State. The Congress Party played the role of a 'supporting opposition'. As a matter of fact, it was the dissensions within the State leadership of the Congress Party which caused an avoidable delay in establishing a Bench of the High Court at the capital city. All other political parties including the Communist Party, the P.S.P and others were supportive of the demand for a High Court Bench. Prior to the introduction of the States Reorganization Act, 1956, the bifurcation of a High Court was well within the competence of the respective State Legislatures.

The birth of the linguistic Kerala State on 1 November, 1956, was generally hailed as a victory of the linguistic policy. It was also considered as the fulfillment of a long cherished desire of the people of this part of India. Cultural and symbolic significance was also attached to it. The High Court of the United State of Travancore-Cochin transformed into the Kerala High Court. The Bench at Trivandrum continued to function as before. When the Kerala State was just over a month old, the Trivandrum Bench was deprived of its filing powers. Later within a year, the Bench itself was abrogated. The then judges of the Kerala High Court would never be able to escape from the guilt of this highhandedness. Justices, K.T. Koshi and P.T. Raman Nair, had openly displayed their hostility towards the very idea of a Bench of the High Court at

Trivandrum, the capital city of Kerala. Outside Kerala, Benches of the respective High Courts established at Gwalior, Indore, Nagpur and Rajkot, under section 51(2) of the States Reorganization Act, were having filing powers. Strangely, the Chief Justice of Kerala High Court adamantly held that this section did not permit the conferment of filing powers to a Bench. This was nothing short of a perverted interpretation of a valid statute. The cry for a High Court Bench at the State capital continues unabated even to this day. Numerous initiatives in this direction turned out to be futile exercises. There was a ripe possibility during the tenure of successive Chief Justices, Om Prakash and Uday Pratap Singh. Both of them were favourable to this popular aspiration. Unfortunately, the then State Government failed to utilize this golden opportunity. The Official Language Policy has not yet reached its logical conclusion. There would be no harm at all, in proving concessions for the linguistic minorities who form less than 6% of the population of Kerala. The mother-tongue of the rest is Malayalam. It's the elite presence in the bureaucracy which defeats the efforts towards enforcing the State language. The judiciary too, is plagued by such elitism. Judicial proceedings in many other States in India are being conducted in their own local language. Some of those States have for decades, provided the institutional facility to impart legal education in their local language, alongside the English medium; such measures have to a considerable extent diminished the barrier between the ordinary people and the judicial forums in those regions. Meanwhile, the judgements of the Kerala High Court in the constitutional realm have enriched the legal arena.

The impact of British supremacy was more or less strangulation for the Indian rulers. The kings, who claimed celestial descent, were compelled to take orders from an alien power. The royal regimes of Travancore and Cochin enriched their coffers by

plundering the assets of Hindu temples. This naked usurpation was styled as nationalization. The ground for this extreme step was told to be the mismanagement and maladministration of temples by the traditional trustees. At any rate this white lie cannot be swallowed by any sane individual. First of all, the accusation that all the temples were being misgoverned was in itself, an arbitrary generalization, something which was not based on hard facts. Moreover, not a single trustee of a temple was punished on this count. The kings claimed to be servants of god, but, they had no qualms while usurping the god's own property. Perhaps, their conscience might have been kept in suspended animation for quite some time. When they finally awoke from their deep slumber, it was too late. The catastrophe that had fallen upon the temples of Travancore and Cochin could never be mitigated. Matters pertaining to the Devaswom were under the personal domain of the kings. This practice was endangered by the emergence of popular governments. The Covenant signed by the rulers of Travancore and Cochin and the Government of India, stipulated the creation of two statutory entities, each to manage the temples of Travancore and Cochin. The authority invested in the kings of Travancore and Cochin, regarding Devaswoms, was transferred to the respective Devaswom Boards. The Travancore Devaswom Board and the Cochin Devaswom Board owe their existence to the Covenant. The Constitution guaranteed the payment of the Devaswom Fund from the Consolidated Funds of India. The Hindu Religious Institutions Act, 1950, empowered the State High Court to disqualify and remove erring members of the Devaswom Boards and also to appoint Auditors for verifying the annual accounts of the two Boards. In addition to these, the High Court was authorized to issue an order of surcharge against a member of a Devaswom Board for misappropriation or willful wastage of funds. In a sense, both

the Travancore and Cochin Devaswom Boards were held accountable and answerable to the State High Court.

The scope and jurisdiction of the Hindu Religious Institutions Act, 1950, was limited to the erstwhile Travancore and Cochin regions. Malabar was a part of the former Madras State. The Guruvayoor temple in Malabar was a very famous shrine which possessed immense wealth. The Zamorin Raja and the Karanavan of the Mallisseri *illom*, were the joint hereditary trustees of the temple. This fact was acknowledged by the Madras High Court. While recognizing the rights of hereditary trustees, some regulations were imposed on them on the basis of the Madras Hindu Religious Act of 1927. The courts did not entertain the demand for the appointment of non-hereditary trustees for the Guruvayoor temple. The scheme for administering the temple, as settled by the Madras High Court in 1930, continued more or less unchanged even after the formation of Kerala State. In 1965, the then Commissioner for Hindu Religious and Charitable Endowments, filed a petition in Subordinate Judge's Court at Trichur, praying for the modification of the then existing scheme of administration of the Guruvayoor temple. During the pendency of this petition, the Kerala Legislative Assembly passed the Guruvayoor Devaswom Act, in 1971. This enactment was preceded by a mysterious fire accident at the Guruvayoor temple. It was as though the Government was waiting for a pretext to serve as a smokescreen for the nationalization of yet another rich Hindu temple. The Legislature passed the enactment in a hasty manner. It was neither subjected to a Select Committee, nor circulated for eliciting public opinion. A religious issue was thus dealt with in a cavalier

fashion. Sweeping financial powers were conferred on the State Government, which in the process got one more milch cow for its stable. Some of the provisions of the Guruvayoor Devaswom Act, 1971, were challenged in the High Court of Kerala. However, the petition failed because the Court opined that religious matters were kept outside the purview of the new Managing Committee. The judgement was delivered by a Full Bench consisting of the then Chief Justice T.C. Raghavan and Justices, V.P. Gopalan Nambiyar and G. Vishwanatha Iyer. The nominees of the State Government were in a majority in the new Managing Committee. As a result, the Government was virtually ruling the Guruvayoor temple by proxy. This fact, shockingly, escaped the attention of the learned judges of the Kerala High Court. In 1972, the Act was amended to install the Minister for Devaswoms, as the chairman of the Renovation Committee of the Guruvayoor temple. Thus, the pretentions of the State Government came out in the open. The aroma of power and wealth are equally irresistible. The High Court provided the cure for the arbitrary actions of the Government. Another fresh petition had challenged the 1971 Act on grounds of it being violative of Articles 25 and 26 of the Constitution. The Court was convinced of the veracity of the claims made in the new petition. The direct involvement of a Government in the administration of a religious institution was held to be inconsistent with the secular character of a State. The Government's attempt to camouflage the usurpation of effective authority was coupled with deprival of the rights of the denomination. The judgment of the State High Court mutilated the Guruvayoor Devaswom Act. It rendered the Act inoperative, in its original form. The Legislature hastily executed suitable enactment to replace the impugned Act. Thus the intervention of the High

Court saved the religious institutions from the arbitrary actions of the executive and the legislature.

Supremacy of law is the essence of a sound social life. Law is just a means to achieve justice. The judiciary is one of the pillars of the Constitution. Democracy rests on the legislature, the executive and an independent judiciary; these three should work in unison for the betterment of the society. Each of these entities should not overstep into the realm of others. Denial of justice would ultimately become a curse for the nation. The system of administration of justice should be brought closer to the people. The will of the masses is undoubtedly superior. The organs of Government are accountable to the citizens.