

INTRODUCTION

The thesis entitled, 'History of the High Court of Kerala', offers an insight into the evolution and working of the apex court of the linguistic entity of Kerala. It is a relatively unexplored area. Kerala High Court is widely acknowledged to have made immense contributions towards strengthening the constitutional fabric of India. Outstanding judgements had no doubt given an impetus to legal thinking. The achievements of any court depend on the caliber and outlook of its judges. The early beginnings of modern judiciary in the erstwhile principalities of Travancore and Cochin have also found place in the narrative. The High Courts of these erstwhile principalities were truly supreme because they were the ultimate courts of appeal in their respective realms and their decisions were final. This situation underwent a sea change after the formation of the Union of India. Princely States were amalgamated into the body-politic of the national life of independent India. The High Court of the United State of Travancore-Cochin was the immediate predecessor of the High Court of Kerala. The realm of administration of justice existed even during the days of dictatorial monarchies. However, instead of being a distinct branch of government, it was the executive officers themselves who played their judicial roles. Such acts of administering justice were considered to be a serious responsibility vested in the

officers of the State. Matters continued in such a fashion until the Indian rulers had their sovereignty intact. English institutions were gradually assimilated and naturalized.

The formation of the United State of Travancore-Cochin was the prelude to the linguistic Kerala State. The hastily executed union of the two erstwhile principalities more or less carried the message that the said act was more due to the compulsion of the Central Government than due to any local initiative. In the process the two former kingdoms were relegated to the pages of history. The element of political mistrust soon overtook the goodwill generated by popular elections and responsible governments. The regime's communal affinity became a subject of much criticism and the editor who dared to do so earned the wrath of the rulers. The measures inflicted on this account were challenged in the High Court. The fiscal policy of the State became a cause for another legal confrontation. The authorities sought to ameliorate the ever increasing fiscal deficit by resorting to newer avenues of taxation. The rising governmental expenditure led to the State hunt for funds, which were mostly met by burdening the honest tax payer. When faced with questions over its authority to issue prerogative writs, the High Court affirmed its power to act positively in this regard. The continuity of the office of the Chief Justice irrespective of the change in its personnel was asserted by the High Court. The Court also did not hesitate to declare that judicial tenure was different from any other employment under the State. Similarly, subordinate judges were told to observe propriety by refraining from going beyond the necessities of the cases under their consideration. Remarks in bad taste were told to be unworthy of being part of judgements. The High Court witnessed the fallout of political antagonism

resulting in the petition against the Speaker of the State Legislature, accusing him of unlawful usurpation of office. The Legislative Assembly witnessed a dramatic clash of regional aspirations. The scene was dominated by eminent statesmen like P.S. Nataraja Pillai, Pattom Thanu Pillai and Panampilly Govinda Menon. Tumultuous events in the political spectrum spilled over to the judicial arena. The cases related to the Tamil partisans are very much noticeable.

The States Reorganization Act paved the way for the formation of linguistic States. The predecessor of Kerala, the United State of Travancore-Cochin had come under the President's rule towards the end of its lifespan. As a result, the States Reorganization Act and its implications did not get the required attention of the public realm in Kerala, which was under the President's rule from the moment of its formation. On the contrary, the then Madras State had its own elected regime during this decisive phase. There were changes in the composition of the services. The Kerala High Court from its very inception possessed a full-fledged Bench at the capital city of Kerala. The first Government of Kerala performed the task of enacting a unified legislation pertaining to the High Court and its jurisdiction. The legislative activism displayed by V.R. Krishna Iyer and the near unanimity of views of the Union and the State on the matter of official language policy were positive signs. However, the Central Government refused to override the wishes of the High Court, regarding the latter's bifurcation. Eminent jurists, who adorned the Kerala High Court, earned the respect and adoration of the whole of India. They contributed a lot in instilling

confidence in the minds of the people, regarding the virtues of the Constitution and the law.

The constitutional cases settled by the Kerala High Court gives ample proof of the sharpness and wisdom of the judges. The statutes enacted by the legislature, were subjected to a close analysis. The executive actions too came under judicial scrutiny. The High Court ensured that the State continued to honour its commitments and liabilities irrespective of the changes in the form of government. This indeed was a step in the direction of guaranteeing civil order and contentment. That the Chief Minister himself was not spared by the High Court, itself makes it clear that a person, no matter how powerful, could be subjected to the will of the highest judicial forum. The sensibility and sensitivity shown while considering certain cases is worthy of appreciation. The gesture of the High Court of respecting the judgements of foreign law courts raised the prestige of the judicial system of India, in general and that of Kerala, in particular. The concern for the life and liberty of citizens has imparted an aura of sanctity to the High Court of Kerala.

The alienation of the assets of Hindu religious institutions was the direct result of the enslavement of native polity to the wishes of the English East India Company. The ownership of the temples themselves was usurped by the princely states at the behest of their alien overlords. Later, the princes themselves became convinced of their monumental crime and for the sake of repentance, took some initiatives to compensate the temples for the deprivation of their valuable property. The affairs of

the temples remained to be a closely guarded preserve of the rulers of Travancore and Cochin. With the end of the monarchy, new problems which were not at all anticipated came to the fore. The erstwhile royal rulers, being Hindu by religion, had accorded top priority to the administration of temples. But with the advent of popular legislature, the realm of Devaswom became subject to the whims of political requirements. The worshippers did not get any stake in the management of temples. This resulted in the ironic situation wherein an avowed secular state and its officers enforced their will on the religious institutions of a particular faith. It could well be termed as a mockery of the preamble. The vicissitudes in the political spectrum came to be reflected in the administration of temples. Numerous cases related to the Devaswoms consumed the attention of the High Court. Some of the judgements made in this regard helped to enforce transparency in the system. Instances of highhandedness by the State were severely criticized. The High Court acted only on issues which were brought before its consideration by the vigilant citizens.

Judiciary is the least popular organ of the State. This does not mean that it is unpopular. The Executive and the Legislature often feel compelled to reflect and at times even anticipate the will of the people. The judicial forums generally do not entertain such concerns. Judges enjoy awesome power and they could not be penalized for their judicial acts even after their retirement from service. Such preferential treatment is in stark contrast to the situation with regard to other public servants. A citizen can freely criticize the President, the Prime Minister and the civil servants for any of their actions, without having any fear of the likelihood of being

prosecuted on this count. On the contrary, the criticism of the courts, the judges or their judgements could readily attract the provisions regarding the contempt of courts. This remains to be a weapon to silence critics.

Methodology

The present work has been modeled on the pattern of a historical narrative. Factual details have been presented chronologically. A sequential style has also been followed in the thesis. The High Court forms the nucleus of the thesis and all other matters are discussed in relation to it.

Hypothesis

1. The Kerala High Court is the rightful inheritor of the legacy of the High Courts of the erstwhile principalities of Travancore and Cochin.
2. Some of the judgments delivered by the Kerala High Court are indeed models for posterity. The letter of the law was implemented only after an exhaustive verification of all the relevant statutes.
3. The High Court has remained as the watchdog of freedom and liberty. The freedom of the individual has received the highest consideration of the Court.
4. The attitude of the High Court, in its totality, presents a paradox. The sense of righteousness displayed by the Court towards aggrieved individuals remains absent while dealing with popular issues, which are actually on a higher plane

than that of the individual concerns, such as the demand for a Bench of the High Court in the Capital city of Kerala and the issue of replacing English with Malayalam, as the language of the courts.

Review of Sources

Primary sources such as Legislative Proceedings, Government Gazettes, Orders, Acts, Ordinances etc pertaining to Travancore, Cochin, United State of Travancore-Cochin and Kerala, were intensely examined. Enquiry Reports too, have been utilized. The Report of the Devaswom Separation Committee was authored by Ananthanarayana Aiyar. It had served to effect the separation of the Devaswom from the Revenue Department of the Travancore State, in 1921. The Report of the Buch Committee, actually called the Integration Committee, deals with the matters pertaining to the integration of Travancore and Cochin in 1949, which resulted in the formation of the United State of Travancore-Cochin. This Report was crafted by N.M. Buch I.C.S, along with Panampilly Govinda Menon and V.O. Markose. The Covenant of 1949 was the founding document of the United State of Travancore-Cochin. It was signed by the Maharaja of Travancore and his Cochin counterpart with the consent and concurrence of the Dominion Government of India. The Report of the High Level Committee for Unification of Laws relating to Hindu Religious Institutions and Endowments, of 1964, is a commendable work done by K. Kuttikrishna Menon, the former Advocate General of Madras. It went into the feasibility of having a single unified system for administering Hindu temples and endowments throughout Kerala. The Kerala Devaswom Administrative Reforms Commission Report was authored by

K.P. Sankaran Nair in 1984. It gave clear suggestions for actively empowering the devotees in the management of temples. The author had worked as Law Officer in the Travancore Devaswom Board for a decade. The Justice K.K. Narendran Committee Report of 1987 enquired into the matters related to imposition of Malayalam as the language of the Kerala High Court and the subordinate judiciary.

Works on constitutional history by A.B. Keith, B.B. Misra, S.R. Sharma and others, were consulted. *Indian Constitutional Documents* by P. Mukherji and *Shorter Constitution of India* by Durga Das Basu, were very useful. The latter is of a monumental nature and is of great utility for all those who deal with the Constitution and the law. *Travancore State Manual*, written by both V. Nagam Aiya and T.K. Velu Pillai and *Cochin State Manual* by C. Achuta Menon, were unavoidable; these works which were sponsored by the then princely regimes are the official version of events. Politicians and accomplished personalities have very often written about their career and achievements. Strange as it seems to be, only a handful of judges have written their memoirs. Erskine Perry's *Cases Illustrative of Oriental Life* which pertains to the work of the Supreme Court of Bombay in the 19th century was a valuable work; it throws light on the days when codification of laws had not yet happened. The author himself was a Chief justice of the Supreme Court of Bombay. Likewise, *The Federal Court of India* authored by eminent political scientist M.V. Pylee, was of much help in the preparation of the present thesis, as a veritable pathfinder. *The Legal Profession in Colonial South India* authored by John.J. Paul is a monumental study of its kind, dealing with the Madras Presidency. The legal profession as such and professional

associations have been neatly dealt with in the said book. The author of the book was fortunate enough to be the very first individual who was allowed by the Madras High Court to consult the latter's files and documents. Likewise, a similar work on the judiciary of Bombay is P.B. Vachha's *Famous Judges, Lawyers and Cases of Bombay*. Interesting facts regarding eminent jurists and lawyers, who adorned the Bench and the Bar, are present in it. The trial of Tilak and Gandhi and the Nasik Conspiracy Case are some of the many incidents told in the book, which was published on the occasion of the Centenary of the Bombay High Court, in 1962. The book was written at the request of the then Chief Justice of the Bombay High Court and voluminous files and documents possessed by the High Court were placed at the author's disposal. The poignant account of the struggle for justice waged by Eachara Varier against the murder of his son Rajan, is vividly told in the book entitled, '*Memories of a father*'. It also throws light on the dark days of the National Emergency, when the people were at the mercy of the ruthless autocracy. The Librarian of the Kerala High Court frankly admitted to the absence of material pertaining to the present thesis, in the High Court. The Kerala Law Times, proved very useful for the construction of the thesis. Judgements of the High Court along with arguments presented by counsels were immensely valuable. Newspapers namely, *The Hindu*, *The New Indian Express*, *Mathrubhumi* and *Malayala Manorama* also provided rich information especially regarding the events connected with the High Court Bench and the controversies surrounding it.

Chapterisation

The thesis consists of five chapters excluding an introduction and a conclusion. The first chapter is entitled, The Historical Background. As the name goes, the chapter throws light on the practices pertaining to judiciary as told in early Indian scriptures. The unique position enjoyed by the king is noticeable as he was the fountainhead of not only the judicial branch but also the executive and legislative realms of the State. Decisions of the monarch were at times arbitrary ones and the possibility of revision was almost non-existent. Grievances were mostly heard and decided at the local level. Responsible authorities presided over the dispensation of justice within their immediate locales. The phenomenon of appeal, as such, was more or less rare in those days. The advent of British supremacy sowed the seeds of change. The germination and naturalization of English institutions took place in the three Presidencies- Bengal, Madras and Bombay. Gradually, the East India Company transformed itself from being a commercial enterprise into a political power. They soon began to exercise sovereignty over their territorial possessions in India. Political and strategic advantages added to their strength. The impact of the British paramouncy was felt by the Indian States and the latter were relegated to the background. Indian princes simply failed to anticipate the conquest of India by the British.

The second chapter is named, The High Court of Travancore-Cochin. It deals with the emergence of the United State of Travancore-Cochin, which was a direct result of the centralized plan to liquidate princely states. This had led to the integration of all branches of government of these two principalities. As a result, the High Court of the

United State of Travancore-Cochin came into being. The location of the High Court, the arbitrary shifting of the Law College and the demands for bifurcation of the High Court became emotional issues. The State Government became involved in litigations pertaining to its policies. The appointment of the Chief Justice and the election of the Speaker of the Legislature were challenged in the course of litigations in the High Court. Parochial concerns and vested interests sought to undermine and even frustrate popular aspirations. The High Court handled cases related to the violent agitation launched in demand for the separation of Tamil areas from the State. The scenario was one of interplay of the forces of regionalism. Political instability coupled with the absence of an assertive leadership, plagued the nascent State. The fanatic opposition of the High Court towards the demand for a Bench of the High Court at the State capital, and the inability of the legislators to act in unison, were vivid scenes of those days.

The third chapter called, The Kerala High Court. It is concerned with the work of the High Court of Kerala. The abrogation of the Bench at the State capital amounted to nothing less than a judicial misdemeanor. The Bench had fulfilled the genuine need of the people for easy accessibility to the highest court of the State. The positive initiatives of the State Government and the State Legislature, in this regard, were indeed appreciable. But the relevant statute was a formidable impediment. The Union Government did not show much enthusiasm. Similarly, subsequent regimes in Kerala did not pay their attention towards this matter. Belated efforts were invariably futile. In

a sense the High Court obstructed the implementation of the official language policy of the State in the judicial machinery.

The fourth chapter is called, Notable Cases in the Constitutional Realm. It discusses the most notable cases adjudged by the Kerala High Court in the constitutional realm. The questions concerning the validity of the High Court Act, the liability of the successor state with regard to liabilities of its predecessor were raised during the early years. The constitutional provisions for legislators and the law of contempt of court also were subjected to the scrutiny of the High Court. The sensitive case of dispute on the guardianship of minor children had international ramifications. The verdict in the infamous 'Rajan case' threw light on the brutality displayed by Police during the days of the National Emergency.

The fifth chapter is titled, Landmark Cases in the Religious Realm. It deals with the origin and growth of state control over Hindu Temples. For the kings of Travancore and Cochin, it was in their personal domain to handle matters pertaining to Hindu Temples. This power was passed on to the elected regimes, on the eve of the abolition of kingship. However, the temples of Malabar were free from the menace of governmental usurpation; their trustees were to comply with the relevant rules regarding their accounts. Indeed, the rulers of Travancore and Cochin could never escape from the sin of having usurped the assets of Temples, that too, in an arbitrary manner. The tripartite accord called the Covenant gave birth to the two Devaswom Boards, which were to be more or less having autonomy. Unfortunately, there have

been instances of maladministration in these statutory bodies. Already, the changes effected by various legislations on land tenure, had adversely affected the financial position of the temples. With their near virtual nationalization, temples became a milch cow for the Government and its collaborators. A plethora of cases pertaining to the various aspects of Hindu religious institutions were decided by the High Court. Issues such as the ownership of shrines, mandatory qualifications for the temple administrators, transparency in financial matters, priesthood etc gained the attention of the Court.