Chapter IV
The Emergence of a More Equitable Social Order
1816-1858

A close scrutiny of the Cornwallis system reveals that the system was an attempt to build an administrative structure from above. Making it imperfect with regard to the intention of the rulers and the expectation of the ruled. The long prevailing institutions that were organically related to the social set up of the region and the mental makeup of the people had been radically modified and in some instances, entirely wiped out as part of the implementation of Cornwallis system. It may be noted that for Cornwallis codification of rulers connected with administration was almost an obsession with the result that all minute aspects of law were painstaking codified that created, as observed by Malcom, despotism of law having a binding effect upon the rulers and the ruled. But administrators who followed Cornwallis were more considerate and sympathetic towards existing Indian institutions. Hence they were persuaded to provide a new orientation to the prevailing old system and they found that liberating themselves from the rigid codes was a Herculean task owing to the influence of the despotism of law. It was clear that Cornwallis stood for the political and administrative policy that attempted to strengthen the racial supremacy of the white and the superiority of the English institutions.

A conspicuous defect in the scheme of 1793 was the exclusion of the Indians from any effective share in public administration. Cornwallis started with a wrong premise that the Indians from their character and bearing were unworthy of holding any position of responsibility and trust and that they
could be employed only in humble positions\(^1\). But in future Indians gradually secured an increasingly larger share in the function of administration to justice\(^2\). This patronizing attitude was insensitive and often callous with the result that the reforms failed to integrate with the native society. This highly orthodox and reactionary political stand was based on the unbalanced perception that the Indians were untrustworthy and hence they should not be appointed to any responsible post in the government.

To overhaul the old system and to infuse new life into the administration of justice, Col.Munro was appointed the first Commissioner\(^3\). As part of the effective implementation of his reformed and progressive system, Munro took pains and conducted a tour all over the land where he proposed to try his scheme of administration and did an impartial study of the prevailing conditions and changes in customs, conventions, manners and institutions with regard to the locality. He had to countenance formidable difficulties in matter of collecting information from the judicial officers who were firmly opposed to his views and the proposed reforms, as they believed that this was a veiled attempt to abolish the system to which they were attached and to throw them overboard\(^4\). But finally Munro’s opinion prevailed in the end and bore down all opposition, which ultimately paved the way for the transfer of the whole civil administration of the country into the hands of Indians, to their own great moral resuscitation and increased material benefits to the country. With these cautions and preparations, he prepared and perfected his policy to the extent to which it is practical and pragmatic so that the scheme would be in harmony with the dominant

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\(^3\) Judicial Despatch, 4\(^{th}\) May, 1814.

\(^4\) Ibid
concepts of the majority of Indians. In addition to these, there were many other factors and reasons which prompted him to accept the policy of Indianization of administration. In the light of the mistakes committed by the early administrators of India, he stated as follows which reveals his stature as a genuine statesman, “We make laws for them [Indians] as though they were Englishmen and are surprised that they should have no operation. We forget that one great principle, the freedom of the people from which they derive their influence, does not exist here”\(^5\).

The following facts related to the background of Munro’s system and the historical unique distinction of being the first official of the East India Company to negate the Cornwallis system by putting forth an alternative method of approach. Munro regarded law as the means to achieve equitable justice which made him a liberal in policy. Cornwallis regarded law as an end in itself which made him dogmatic in outlook and implementation of policies. As Marshman observed, “there was in fact, too much law for there to be much justice”\(^6\). With his progressive and liberal attitude towards Indians and their problems and his total dedication to the principle of justice, Munro secured a very high place in the heart of Indians. The major guiding principles that streamlined Munro system were such as principles of Ryothwari settlement, toleration of customs, justice by panchayat and religious neutrality were comprehended and assimilated by him during his official tenure as assistant to Col. Alexander Read. Later on when he become a collector, he learned the practical application of three principles which he amplified in a more comprehensive manner as he become commissioner and Governor. In his evolution as an administrator of

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excellent caliber, Duke of Wellington and Col. Mark Wilkes exercised notable influence. But more than to anyone else, his integrated and alien compassing development of the ideas related to proper administration drew nourishment out of his own experience, attentive and conscientious historical research, sincere sympathy and the insightful intelligence that he devoted in that direction. It was self-evident that he was no lazy and negligent traveler in India in search of a job; he took to the field of administration with clan and dedication and with attention and patient examination, carved out viable and more perfect system of judicial reform that drew applause from the coming generation of people as well as administrators.

As a central principle of administration, always a legislator should attempt to integrate the native people with the system of administration imposed on the soil. Hence Munro stated: “We can never be qualified to government against when we are prejudiced. If we entertain a prejudice at all, it ought rather to be in their favor than against them”\(^7\). Though Munro’s policy had been inspired by an underlying current of imperialism, it had the highly distinguishing positive aspect of being infused with the spirit of enlightened approach which made it all the more constructive and progressive in solving Indian problems faced by the British. The primary object of Munro’s system was “good government”. Which would eventually enable the natives to have “self government”. Robert Rickets told a Select Committee of the House of Lords; “such indeed is my opinion of native Indians, that I think they might be trusted with greater judicial authority, and employed in higher offices, than are now conferred on them”\(^8\). In every

\(^7\). Ibid.
\(^8\). Deposed on 14th May, 1830; House of Commons, Vol. VI of 1830, paper No. IV, P.277.
sense, especially in those days, it was a radical and progressive outlook on the part of colonial administrators. Col. Munroe brought peace and prosperity and rule of law in Kerala and leading her in the right path on the road to radical progressive modernity and her present eminence. It is all the more notable that Munro made this radical and constructive shift in his outlook regarding the relationship between the rulers and the ruled when the colonial people could not even have a distant idea about this ideal. His statement in this context is to be especially examined: “We should look upon India not as a temporary possession but as one which is to be maintained permanently until the natives in some future age have abandoned most of their superstitions and prejudices and become sufficiently enlightened to frame a regular government for themselves and to conduct and preserve it. We shall see no reason to doubt that if we pursue steadily the proper measure, we shall in time so far improve the character of our Indian subjects as to enable them to govern and protect themselves.”

Munro was the representative of a new category of British administrators who were led and inspired by the ideology of neo-imperialism that argued for the inclusion of Indians in the colonial administration. He was a man of imperious qualities who had the courage not only to arraign the prevailing system but also to stand forth single-handed as a champion of Indians and an initiator of a more generous and enlightened policy. He was disdainful of the criticism that sought to deter him from his purpose and had inaugurated the liberal school of neo-imperialism, characterized by the policy of association of Indians in the

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10. Ibid.
administration of the country\textsuperscript{11}. He wrote the following words to Lord Canning on June 30, 1821, “Our present system of Government, by excluding all natives from power, and trust and emolument, is much more efficacious in depressing, than all our laws and school-books can do in elevating their character. The improvement of the character of people, and the keeping of them, at the same time in the lowest state of dependence on foreign rulers to which they can be reduced by conquest, are matters quite incompatible with each other”\textsuperscript{12}.

With political insight gained from their experience of ruling India, they realized that exclusion of Indians from the government of their own country was a deplorable policy which should be avoided by a good imperialist government. A policy of administration devoid of the oneness and equality of all subjects belonging to the empire would create discontent in the mind of the ruled. British Empire looking proper integration between the rulers and the ruled would be a burden and constant source of political trouble to Britain. Hence by resorting to the administrative policy of appointing Indians in public service was an effective defense against the political unrest and a means that will later on integrate the system. It was perceived that ignoring the time old institutions of India in the system of administration was indicative of absence of wisdom on the part of the British.

In having this lenient attitude and showing flexibility of approach, his primary guiding principle was to perfect and not to destroy the already existing practices, to revise and not to radically restructure the Indian system. Whenever he decided to change the system, it was undertaken with a

\textsuperscript{11} Arbuthnot, op.cit, p.502.
wish to strengthen or perfect the same and not to radically restructure it. Munro was not in favor of changing the form of administration. His major aim was to introduce a shift in character and orientation of Indian administration which he achieves in a striking manner. In the initial stage of the company administration in Madras it was toyed with idea of introducing permanent settlement of Bengal in this presidency also. In 1798 Richard Wellesley was in favor of the Bengal system would be established in Madras. But the Court of Directors held that no permanent revenue should be established without a better knowledge of existing system of tenure in these territories and rejects the idea. Later under the Governor generalship of William Bentick, Thomas Munro was successful in able to convince him to the merits of the Raythwari system of revenue administration and it was adopted as general system in Madras presidency in 1805.

The Reforms of 1816 were framed and implemented in the Madras Presidency by Sir Thomas Munro exclusively to extend, support and amplify this policy that primarily aimed at the creation of an enlightened attitude among the natives with a view to form negative government for themselves. The justice administered by the company was lax and costly and the cure of the entire malady lay in admitting Indians more freely to judicial administration. There were many obstacles and hindrances to be overcome for the fulfillment of the aim of the evolution of grad government. Initially, there was mutual ignorance about each other regarding their respective character and intention. Now that the Indians were in a subjugated position, they looted at the British with suspicion and fear because they deemed than to be their autocratic masters bent on political domination and economic

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exploitation. Their outlook and sensibility remained closed system embodying darkness of ignorance and irrational concepts for centuries so that it was not easy for the enlightened approach of the British to succeed. The British administrators had to take extra caution to strengthen the foundation of administration so that it would successfully resist the onslaught of these reactionary and negatively orthodox outlooks on the part of the ruled. At the same time it should be observed that the British people had no genuine love for the people whose destiny they had been shaping.

On account of the political, cultural religious and social differences that separated than from Indians, they could not live among the Indians on equal footing; also they could not live for the people as equals\(^\text{14}\). In their heart of hearts, they had little respect for Indian ways to, customs, conventions and institutions. Often they deemed Indian peculiarities of existence bad and deplorable because they were Indians. Hence there existed a considerable gulf between the natives and their masters. Another tangible defect of the system was that in the initial period of English rule, the administrative officers did not have sufficient experience and adequate knowledge of local conditions and conventions as a result of which they committed many serious mistakes so that the helpless natives had to approach one source of authority after another in search of justice. Yet another handicap experiences in those days was related to the inadequate means of communication so that the distance to be covered for the transmission of messages related to administration created a considerable barrier causing much delay which often amounted to denial of justice. A very important idea that emerged in the mind of the British was that adoption of separate rather than general and uniform principle of

\(^{14}\)Interview with Ravindran.T.K, former Vice Chancellor, Calicut University, Calicut, dated 25-06-2009
government should guide the British policy on account of the existence of
tangible difference in the degrees of culture, economy, morality and
religious prejudices that existed in diverse regions of India. When Lord
Cornwallis started tackling these barriers and hindrances related to the
implementation of the reformed system, initially he was at a loose as to how
to face and overcome these multitude of obstacles. When he started the
business of administration, he had the British hard stick to measure and
evaluates the Indian customs and conventions. The cordial difference that
distinguished Munro was that he accepted India as it appeared because he
believed that “it is one of the primary obligation of a government like ours to
suit its rules and reforms of local administration to the conditions of the
people, to provide every establishment which it may require and not to
withhold anything which may be necessary to its efficiency for the sake of
avoiding either labor or expense”\textsuperscript{15}.

In accordance with the direction contained in the dispatch, Col.
Munro got instructions to go to Madras as the head of the commission to
implement the orders and recommendations of the court of directors. While
recommending his mane as the Head of the commission, they stated as
follows; “the extensive knowledge and experience of Col. Munro in the
interior administration of affairs under your presidency have induced us to
deviate in his particular instance from the rule which we have laid down of
not employing military officers in civil situations”\textsuperscript{16}. The chief secretary
instructed the government of Madras to direct Munro to conduct enquiry and
report on the means suitable for effecting the modifications proposed by the
court of directors in the judicial dispatch dated 29\textsuperscript{th} April 1814 and to outline

\textsuperscript{15} Arbuthnot, op. cit, p.502.
\textsuperscript{16} Judicial Despatch, 4\textsuperscript{th} May 1814.
in detail as to what extent these modifications could be introduced. Also he was expected to answer the objective for the adoption of reforms and measures for the improvement of the existing system. For the proper functioning of his office and to know more about present legal system he was enjoined to corresponded with the Board of Revenue, the court of Sader Adalath and also with magistrates and collectors and the subordinate courts of judicature\(^\text{17}\).

As for the precise state of affairs in the Indian provinces, the political authorities in England were uninformed. The British officials meticulously prepared and sent to England detailed dispatches containing a perfect picture of immense progress and prosperity and data pointing to extended seasons of peace and happiness that prevailed in India. Though the extensive reports written by the Zillah judges and collectors contained distressing news, they were not incorporated into the reports prepared for transmitting to England as a result of which the higher authorities in England remained ignorant as to the ground reality in India thereby eliminating the possibility of any positive shift in the purpose and method of British administration. Hence for decades at a stretch, the stark he benevolence truth related to the ground reality of India remained unknown and the complaisant attitude shown by the British officers in India was never opposed. The unreliability of these reports came to light only gradually. With regard to the revelation of ground reality, the fifth report of 1813 had a great impact because it decisively revealed the myth of the British rule. That, report pointed to the callous insensitivity of the colonial rule. So many administrative reforms were brought forth for the tangible refinement of the administrative system. Eventually the court of directors took the decision to

\(^{17}\) Judicial Consultations, 23th Sept. 1814.
initiate proceedings in this direction and sent the judicial dispatch dated 29th April 1814 to the Government of Madras in which they clearly stated “we propose in this separate letter to communicate to you the ideas and views we formed after a careful examination of your official records and after collecting the sentiments of many of your servants now in England upon the subject in regard to both these branches of internal administration [justice and police] under our government and to finish you with such orders and instructions as we have deemed expedient”\textsuperscript{18}.

From the officers in the judicial department, there was a staunch and concerted opposition to the appointment of Col. Munro as the first commissioner as a result of the proceedings of the court of directors, the judicial officers that the Court of Directors intended to eliminate the prevailing judicial system and to expel them from their profession. The directors who fore saw the opposition gave them assurance in repeated dispatches that their intention was reform and not abolition of officer. They categorically stated that the modifications would not involve,“the introduction of any novel or untried principles nor any essential departure from ancient and long established order of things but rather the revision and amendment of one of recent creation which has existed a few years only in the province”\textsuperscript{19} under the presidency of Fort St. George. In spite of these assurances, the judicial officers considered this new step as an unthinking attempt to eliminate a system which had been whole heartedly praised as a monument of human wisdom”, a plan which was solid, wise and has proved beneficial to the country” Hence the counter-move of the judicial department impeded the progress of the commission in its every stage of action.

\textsuperscript{18} Judicial Despatch, 29\textsuperscript{th} April 1814
\textsuperscript{19} Judicial Despatch, 29\textsuperscript{th} April 1814.
The directors put forth the suggestion that the prevailing system should be revised and perfected in such way that a major part of the judicial proceedings conducted by the Zillah and provincial courts should be assigned to intelligent Indians as judicial officers. The means of administrating justice might be enlarged through their agency and thus a foundation should be laid for decreasing the expenses needed for functioning the existing establishments. The courts were persuaded to regard Potails [Patels] or head of villages and village Curnums or registers the most powerful administrative agency at the disposal of any government for conducting an extensive operations of its administration and also the dispensation of justice through the supervision of the police. They concurred with the fact that these native officials were the natural and innate authorities of the country. They were of the firm opinion “that the business of the government can be adequately conducted in a foreign country like India in which the population is so extensive and the habits and manners of the people so different from our own”, with their help and agreement alone.

As specifically stated in the dispatch from the directors, the points which were to be referred to the Sader and subordinate courts for their learned opinion based on which the government could exercise their discretion were in plenty. A modification of the forms of process in the Sader and subordinate courts “with the view of rendering the proceedings in the civil cases as summary as be compatible with the end of justice”, was the main instruction issued by the directors. As part of this general instruction, the commissioner was expected to focus his attention and regard on the following specific matters.

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20 Ibid
In trial of offences at quarterly sessions, whether the collector should take part in official procedure along with Zillah Judges also should be examined by the commissioner. Also he should scrutinize and decides whether the verdict of the provincial courts could not be immediately executed, without a reference to the Foujdary Adalath when the guilt was proved beyond doubt. The commissioner was required to examine and find out whether the current procedure in the courts of circuit would allow scope for simplifications in accordance with the principle of justice\textsuperscript{21}. The Court of Directors was especially categorical and strong on some matters and definite with regard to implementation. The points of modifications in the legal system which he recommended for immediate execution were outlined in the following three paragraphs

With regard to an appeal from the registrar or from native tribunal, no further appeal should be permitted to lie from a decision of a Zillah court. As for hearing and determining suits, village panchayats were empowered. In order to execute functions of commissioner in the village according to ruler specified in the regulations, the Potail or the Head of the village should be allowed. Formation of intermediate native judicature between the village and the Zillah court having the jurisdiction over a specific number of villages was implemented with the judges receiving a fixed salary. The Panchyath on a wider range than the village was organized so that there was more scope for selection as native district judge. Petitions submitted under the cognizance of the Potails and Curnams should be relieved.

\textsuperscript{21} J.C.\textsuperscript{1\textdegree} March 1815, Munro to Chief Secretary, 24\textsuperscript{th} Dec. 1814.
The powers and the office of the Zillah Magistrate should be shifted to the collector. The implementation of the Puttah registration should be effected through official procedure under the supervision of the collector using his power as magistrate. Demanding of a Zamindar for arrears of rent should be accepted in court only with the condition of Puttah. Without an explicit order from the collector to this effect, the Zamindar should not be allowed to sell under distrait. Cases involving dispute of boundary should be decided by the collector according to the verdict of the Panchayat\textsuperscript{22}.

While acknowledging the receipt of the instructions, Col. Munro mentioned that the recommendations specified to be incorporated in the police and magisterial departments were the move important aspect of the proposed reform. But before the actual implementation of the reforms, Munro pointed out that he should develop close familiarity with the present state of these respective departments. To develop the close familiarity with the existing system, he mentioned that he should be provided with the proceedings of the committee of general police that were prepared in 1805 and 1806. Further, he required the reports and statements and other relevant documents based on which the reports of 1805 and 1806 were prepared. Since the instructions of the court of directors were in favor of changing many regulations, Munro believed that another commissioner also should be appointed. In accordance with the desire of Munro, on 3\textsuperscript{rd} January 1815, George Stratton was appointed second member of the commission and third judge of the Sader and Foujdary Adalath by the Governor-in-council. After scrutinizing the report submitted by Col. Munro to the Government of Fort St. George on 24\textsuperscript{th} December 1814, the Governor-in-Council divided it into three different sections, that is, the established system of judicature, the

\textsuperscript{22} Ibid.
present police arrangements and the administration of criminal justice. The supervision of these three sections was handed over to the Sader Adalath, the Board of Revenue and the commission. The measures of administrative reforms and regulations required on their part were clearly formulated as part of eighteen separate resolutions. In addition the commission was instructed to supervise the specific details of the proposed plan.

The matter related to reform was of urgent nature so that without any delay, it had to be implemented. The regulations framed by the commission had to be submitted for revision to the Sader Adalath and the government of Madras. After incorporating necessary revisions, it had to be submitted to supreme government for getting sanction. In accordance with this plan, the commission framed a questionnaire for collecting information related to different aspects of proposed reform and dispatched it to the collectors of different Zillah’s.

It is to the credit of Sir. Thomas Munro to note that the whole project of reforms had its origin with his original vision regarding administration and enthusiasm for initiating progressive changes in the system. Being the originator of this reform, he was quite eager to translate it into administrative practice. He was of the conviction that after the implementation of the reforms its defects can be closely observed and positively rectified.\(^\text{23}\)

In its essence, Munro’s system was a provincial one which was supremely suited and quite effective in the context of Madras presidency. The proposed system effectively envisaged and superbly succeeded in building the structure of the judicial administration from below on a firm foundation. But it must be noted that the success of the system, to a very

\(^{23}\) Selections, Letter from Munro to Coming, 20th June 1815.
great extent relied on the controlling and co-coordinating authority at the centre.

In spite of the slashing criticisms aired by many judges including Judge Fullerton and the proposed suggestions containing reforms, the proposed Munro’s system was officially accepted as the most proper and effective solution for the defects and drawbacks that troubled the existing judicial administrative system. Hence the government of Madras passed orders to implement Munro system as part of the administrative machinery.

The delay that happened in connection with the judicial process and the absence of any considerable benefit to the native population in relation to the Adalath regulations even after the introduction of the Cornwallis system in Madras was a noticeable experience related to administration which was closely observed and critically examined by the colonial government. In 1781, Governor-General Warren Hastings introduced certain changes to improve the administration of criminal justice. Appreciating the contribution of Warren Hastings, Lord Macaulay said, internal administration, with all its blemishes, gives him a title to be considered as one of the most remarkable men in our history. He dissolved the Double Government. He transferred the direction of affairs to English hands. Out of frightful anarchy, he deduced at least a rude and imperfect order. The whole organization by which justice was dispensed, revenue collected, peace maintained throughout a vast territory’”24. In the light of these observations there appear sufficient justifications when Professor Person states that, Cornwallis built on foundations already laid or begun to be laid by his predecessors and especially by Hastings. It was the emphasis

rather than the principle that was new, but the principles were not clearly stated and the strength of the home government was used to enforce them. Eventually it became clear that in provinces with dense population having a strong antagonism to the colonial government, it was very difficult for the colonial government to maintain peace and order. The dominant mental outlook and the disposition of people being hostile to the government, the administration of criminal law and the dispensation of justice proved to be problematic thereby making the system of administration ineffective.

The need for foresight, extra-caution and utmost restraint with regard to the introduction of new reform such as Munro system was extremely high on account of the comparative ignorance of the British, especially during the early phase, about India and its people, the startling callousness of Indians with their lack of modern education, innumerable local customs, a host of religious prejudices and presence of many states which are entangled in conflicting relationship among itself in Indian subcontinent. Here the pattern of official action followed by the colonial rulers was similar to John Trot mode of marching that stood for following the beaten track and at the same time undertaking some action as part of the onward move.

It was to the credit of Munro as an administrator to note that simultaneously he followed his predecessors and at the sometime implemented the reforms, avoiding friction and conflict. The primary guiding principles that inspired his predecessors were political settlement of the provinces and education of the natives. To these, Munro added crystal clear laws for tackling civil as well as criminal problems in the society and provision of employment for the natives within the limits of the resources.

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and infrastructure development within a colonial set up. Munro aimed at definiteness, impartiality and precision regarding the definition of laws so that its application in concrete problems would be easy and comprehensible. He did not attach much significance to laws being new or strange and emphasized on its practical utility in settling political problems. Munro rightly perceived that by employing educated Indians in the service, their attachment bond to the British would become strong and at the same time the British authorities would be able to feel the pulse and measure the temper of the native people. Cornwallis ably tried to handle the problem of European corruption and self seeking tendency in administration which eroded its stability and credibility. It shows the political insight and practical ingenuity of Munro that he tackled the problem of employing Indians in public service with considerable success, thereby eliciting accolades on the part of natives which in turn ensured their attachment for the new system of administration. Both Cornwallis and Munro drew lessons out of history to illuminate their path of administrative reform.

As a preparation for the introduction of the reforms of 1816, the commissioners closely examined as to the objective condition prevailing in the principalities after the resolutions passed by the Governor-in-Council on 1st March 1815. The government instructed them to conduct the investigation with the help of the native officers and also to observe that the investigation was in accordance with the established system of internal administration. The government advised the commissioners to be careful and cautious so that it would not disturb the mind and disposition of the people in relation to the prevailing system. The government thought that the legitimate influence of the administrative authorities should be strengthened with the result that the confidence of the native people in its permanency could be reinforced.
As a matter of facts the commissioners were empowered and enjoined to ascertain whether the office of Patel universally existed and was vested in one person, whether he was willing to undertake the duty to be assigned to him and whether the mauniems, fees and shares of the produce, which were supposed to constitute the recompense of his labors were in all cases still continued. Prior to the actual inquiry on their part, the commissioners stated that, “the office of Potail, which answers all the objects for which that office can be required, is universal, is the actual manager of the village, who commands the village servants and directs its affairs, that under the permanent system where the internal economy of the village has in some instances been deranged by the removal of the ancient Potail either the actual renter or some person appointed by him acts in his room.” With regard to the willingness of the Patel to take up the duty and responsibility allocated to him, the commissioners pointed out that “there is nothing in the duty now proposed different from that which has been discharged by the Potail at all times under the native Governments and even under our own until the introduction of the Judicial System, that he has always been accustomed, either himself or by means of a Panchayat, to settle the petty suits of his village, that the observance of his custom has always been obligatory never optional and that to leave such a body of men as the heads of villages the option of performing or nor, one of the most important duties of their office would be productive of very great inconvenience.” In relation to the third question they remarked that “whatever that allowances formerly were, they are in general the same now, that upon them he discharged the duty in question under the native government and even under

26. J D, 13th May 1815
27. Ibid, Letter from Commission for internal administration to Chief Secretary, 28th March 1815
28. Ibid
our own until lately and may therefore do so again\textsuperscript{29}. The investigations exposed and revealed that no part of its rents or revenues was even appropriated in enam either for Kavalgars, Polligars, Talliaries or any other description of officers for discharging police duties nor any enam lands granted to heads of villages in Malabar\textsuperscript{30}. Responding to the queries of the commissioners, Thomas Warden, the collector of Calicut observed that “The heads of villages in Malabar were government officers appointed by the Collector, the inhabitants having nothing to say to their appointment. Their duties at that time were confined to the collection of revenues immediately from the ryots. The official designation of the heads of villages was Parbutty and he was a person whose situation mostly corresponded with the Potails of villages in other districts. The Parbutties were all competent to the duty of superintending the police of their respective circles of collectors. At least they were found equal to it before the institution of the Zillah courts\textsuperscript{31}.”

The above observation points to the fact that the state of Malabar in the judicial administrative structure in the Madras presidency had characteristics that made it different from the situation in other regions. The main difference was that the Patels in other provinces of the Madras Presidency were provided with rent free lands or inams, the Parbutties in Malabar were employees of the government who were paid fixed salary. They had no mauniums or service lands, fees and shares of produce as part of the remuneration for their duty.

With a view to the indigenization of the administrative machinery, the court of directors envisaged and took suitable administrative reforms and

\textsuperscript{29}.Ibid \\
\textsuperscript{30}.Enam lands are rent free lands. \\
\textsuperscript{31}.JC, 1816, Vol.119, pp.4481-82.
restructuring so that the time honored and venerable institution of the panchayats would become an organic part of the modern judicial system.” As the panchayats of native juries appear also to have prevailed uniformly under every native government in India, it is necessary that they should make a part of any consideration involving in it a return to the ancient form of judicial administration.”32.

With the purpose of solving difficulties and conflicts in the working of the government machinery in connection with the native population, the regulations of 1816 were systematically introduced in Malabar Province. For the immediate promulgation and implementation of regulations, IX, X, XI and XII of 1816, the secretary of state gave official direction to the collector of Calicut on 28th September 1816. The commissioners gave directions to the collectors of the Zillah’s in Malabar to dispatch their reports specifying whether copies of the translation of regulations IV, V and VII of those years had been circulated so as to make known to the native population that these rules and regulations had to be accepted and obeyed by all with immediate effect. In case this action was not taken, the collectors were further instructed to undertake that duty “without delay in the most public manner possible33. In replay Thomas Warden stated that the above mentioned regulations had not been circulated or promulgated yet.

The government officials like collectors in Malabar were somewhat lazy and even lethargic in implementing the new administrative reforms into practice. Greame, commissioner remarked: “I have in almost every Talook found that the village Munsiff regulations IV and the regulation XI, respecting the police, have never been explained to the inhabitants and from

32 Court of Directors, Judicial Despatch from the Court of Directors,,29th April, 1814, para 49.
the novelty of the subject, many of the Naduvalis and Desawalis declined in the first instance, to undertake duties to which they had attached unfavorable impressions. They thought that as in the case of Mukhyastas, they were required to supply articles necessary for detachment and travelers and also had to act as witnesses in connection with the trial of criminal cases. But they were not really aware of the dignity and respectability associated with the office. Higher officials in the authority did not take concrete steps to make it known to them thereby creating a gulf between the colonial government and the native population. On account of the pressure exerted from above and the persistent work of the commissioners who came to Malabar to rectify this problem, there emerged a better familiarity regarding the nature of duties. Still, generally, they were inclined to accept the situation. Many of them continued to keep away from the new responsibility on account of poverty, over assessment of their land, exorbitant land revenue being imposed on their village so that collecting it regularly expected by the British government was very difficult. Some declined to accept the new responsibility stating that they were Brahmins for whom physical exertion was troublesome. Since they were regarded as the elite section of the society, they refused to submit themselves to hard work, the state of being subordinate to the colonial government and possible decline in social status once the new duty was accepted. Some Naduvalis and Deshwalis refused to accept the new responsibility on account of their disappointment in that they were not granted the full authority and privileges which they enjoyed during the rule of the Rajas.

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We have to consider the pattern of reforms incorporated as part of the Regulations of 1816 which was drafted by Munro and his colleagues. The head inhabitants of the villages were officially declared as Munsiffs in their particular villages by the Regulation IV of 1816. This administrative reform was implemented in order to decrease the heavy load of suits and petitions of the Zillah courts, to lessen the expense of litigation in petty suits and to increase the speed of settlement of suits without causing inconvenience to natives in that often they had to away from house to deal with cases in Zillah courts. The person who collected the revenue and under whose authority the village servants acted was termed the headman or patel.

The Village Munsiffs or Judges as the heads of village had original jurisdiction in suits for real or personal property not exceeding ten rupees\(^{35}\). In the official capacity as arbitrator the Head of Village had extended jurisdiction to suits for real or personal property up to one hundred rupees, in cases when both parties agreed by a bond to obey his Judgment. The recommendation put forwarded by the court of directors was that the Village Munsiff should decide without limitation as to the amount and without appeal, except in cases of alleged corruption and act as an arbitrator in all suits brought before him by voluntary consent\(^{36}\). Commissioners set a limit to the jurisdiction up to Rs 100, since that would be reasonably extensive to meet every useful purpose, all the more so because in the same village, the contending parties had the option to approach the panchayath having jurisdiction which was wider and often unlimited.

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\(^{35}\) Regulation IV,1816,Sec.XXVII

\(^{36}\) Court of Directors,op.cit,29\(^{th}\) April 1814,para 63.
The headman or Patel should be a permanent resident of that particular village in which he was headman. In order to point out the importance of his office, the court of directors specified that “he is the most powerful instrument that any Government can possess for conducting the detailed operation of its internal administration as well in regard to the distribution of justice as the direction of the police. It appears to be through this agency that the frame and constitution of the little village communities have been held together for so many centuries. They are unquestionably the natural and permanent authorities of the country and true policy strongly dictates the expediency of our availing ourselves of their services, for it is thus only, as we are now firmly convinced that the business of the Government can be adequately conducted in a foreign country like India in which the population is so extensive and the habits and manners of the people so different from our own\textsuperscript{37}.”

Appeals was admitted from the village Munsiffs court not beyond the District Munsiffs court since one appeal was reasonably adequate in petty suits that were limited up to Rs.10. He was not allowed to try suits for damages of any kind in which he or his servants were interested and suits against residents outside his jurisdiction. He was prevented from demanding any security and from allowing in his verdict a rate of interest above 12 present per year. In the case of loan having a lower rate of interest mentioned in the bond, the same lower rate was to be granted. In no context, a greater sum than the amount of principal should not be allowed for

\textsuperscript{37}Court of Directors, Judicial Despatch from the Court of Directors,29\textsuperscript{th} April 1814.
interest. Except in certain cases the village Munsiff could not punish any party, Vakil or witness. \(^{38}\)

In case the defendant appeared within the time specified, the complaint should be read to him after which the village Munsiff should advise the parties for amicable settlement. If and when the plaintiff was satisfied by the defendant, the Munsiff was empowered to cause him to execute before him a “Razeenamah” stating how the defendant had reached an amicable settlement with him. The village Munsiff had to certify as having been executed in his presence in this instrument and deliver to the defendant\(^{39}\).

In case the suit was not amicably settled, the village Munsiff would give a copy of the complaint to the defendant and demand him to deliver his answer within a time limit of five days. No further pleading was allowed after the submission of the answer in writing. The Munsiff gave his judgment after examining the truth of the complaint, if the parties dispensed with witnesses and on due consideration of the documents produced\(^{40}\). In case either of the parties was willing to allow the cause to be settled by the verbal oath of the other party, the Munsiff was empowered to supervise the oath taking and pass Judgment in accordance with that procedure.

The judges conducted official proceedings of the trial in a simple and intelligible manner. After the submission of a petition in writing to the village Munsiff, by verbal summons, the Munsiff would demand the defendant to appear before him in person or by Vakkil, either immediately or within a limit of two days after the summons was conveyed. The village

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\(^{38}\) If the witness refused to attend, he could fine him 8 annas. If the fine imposed was not paid, the Munsiff at his discretion, commute it for 12 hours confinement in the Village Choultry.

\(^{39}\) Regulation IV, 1816, Sec. XIII

\(^{40}\) Ibid, Sec. XIV
servant would normally serve the summons and he would be accompanied by the plaintiff or his Vakil to point out the defendant and to make known the complaint against that person. The Village Munsiff should proceed to give judgment if the defendant failed to appear within the time specified, on the plaintiff’s vouchers and the evidence of his witnesses, after taking the oath from the village servant to the service of the summons. There is also provision to witnesses were summoned verbally41.

With the intention of settling legal disputes at the local level, the court of directors proposed that Zillah court was empowered to refer specific causes to the village Munsiff as part of which the village Munsiff was in a position to function as referee for speedy and effective disposal of suits. When the commissioners, finally drafted the regulation, they were not in favor of resorting to this mode of settlement because the village Munsiff was already overburdened with his duties associated with the official capacity as village Munsiff, as head of the police as revenue officers. To decide any suit for money or personal property to an unlimited amount of value the village Munsiffs was authorized to summon a village panchayath at the request of both parties who were within his jurisdiction according to another regulation42. This administrative reform was incorporated in order to decrease the expense of litigation and also to make the notable inhabitants of the region useful and honorable by empowering them in the process of dispensing justice to their natives in the neighborhood.

The village Munsiff had the power and authority to attach the property of the party who failed to satisfy the other in whose favor the Judgment had been made within the specified period. In that case, he had to

41. Ibid, Sec.XII.
42. Regulation V,1816.
communicate the same in writing to the district Munsiff along with the day decided for the sale of the property thus attached. After this, the district Munsiff had to send a peon to sell the property by auction in the presence of the village Munsiff, when the time specified in the notice of sale expired. The peon was not entitled to have any charge on the property under legal procedure. As a part of his duty he was to sell it and receive the purchase money out of which he had to pay the amount decreed to the party concerned. His duty included taking his receipt which was to be attested by the Karnam and the village Munsiff. During his deputation the peon was allowed a bata of two annas per day.\footnote{J C,1832,Vol.245}

The formation and institution of the district Munsiff was an important administrative reform included in the Regulation of 1816. This was not altogether a new office. Actually the District Munsiff was a modification of the office of native commissioners after incorporating certain changes in the role and function. The rules related to the office of the native commissioners were modified and their powers in the trial and decision of civil suits were extended by the regulation VI of 1816. They were authorized to discharge certain additional duties also under the designation of district Munsiff.

With regard to the vacancy to the post of district Munsiff, the Zillah judge was entitled to nominate a suitable person for the post. In performing such duties the judges” should be left at liberty to pass over any one or the whole of the court servants whenever they think they can find other persons better calculated for the office of the district Munsiff.\footnote{J C, Letter from the Commissioners, 19th August 1815}.
According to the orders of the provincial court, three district Munsiffs had been designated for appointment in each of the two Zillah’s in Malabar Province. Pearson, Judge of the Zillah of south Malabar informed the commissioners that the duties and responsibilities connected with the administration of his Zillah should be compared with that of North Malabar pointed out that North Malabar was inhabited by little more than half of the population of the south. As a matter of facts he specified that if three Munsiffs were considered necessary in the North, at least five would be required in the South.\textsuperscript{45} The commissioners formulated the general rule to be followed in connection with the nature and function of district Munsiff. It stated that” no district Munsiff should be fixed at the station of the Zillah court.” In formulating this rule, their idea was that the convenience of the inhabitants can be protected by deciding the station of the Munsiff at some other principle village. Also the number of district Munsiffs was limited with the result that they should be distributed in such a way that the whole population would get equal access to justice. At the Zillah court, the presence of the district Munsiff was not very essential because, without the trouble of traveling far from their homes, the people had the opportunity to seek the service of a judge, registrar and Sader Ameens to handle their legal suits. Certain Zillah stations like Calicut with considerable population and diversity of business required the presence of a district Munsiff more convenient for the population. “ In such cases, therefore, the commissioners recommended that the judge should be authorized to fix one of the District Munsiffs at the Zillah station provided it could be done without sacrificing the convenience of the inhabitants of other village of the district\textsuperscript{46}”.

\textsuperscript{45} J C, 1816, Vol.120, pp.5066-84
Sir. Thomas Munro and Stratton favorably responded to the suggestion put forth by Pearson to increase the number of District Munsiffs in the Zillah of south Malabar with the purpose of evaluating to what extent it might be essential or not whether the government should treat this problem, they demanded the judge to answer regarding the following aspects. Up to 1st of November 1816, the number of suits referred by him to the district Munsiffs of his Zillah under sec. L. VI, Regulation VI and the number of original suits and appeals referred by him to the Sader Ameens under section VII and VII of Reg. VIII of 1816 and the number of suits referable to the district Munsiff and Sader Ameens but not referred to those authorities that might remain on the judges file and that of assistant judge and registrar 47.

As for the disputes related to inheritance and succession to landed property, the Mohammedan law in the case of Muslims and Hindu law in the case of Hindus were to decide and guide the decisions of the district Munsiffs. In such cases, the district Munsiff should get an explanation of the respective laws from the law officers specifically appointed for that purpose as part of the establishment of the Zillah courts. For that the District Munsiff should draft and present a written summary of the case to ensure precision in the exposition of personal laws. The district panchayath was to be assembled by the district Munsiff was another remarkable feature of Munro system 48.

Petition for real and personal property below an amount of two hundred rupees could be submitted to the district panchayath by the district Munsiff, for completing legal proceedings and proper decision, when one of

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47. J.C., 1816, Vol.120, pp.5066-84.
48. Regulation VII, 1816.
the either parties made proper request, though the other party objected to that step. In cases when both parties entered into a written agreement to obey the verdict, the district panchayath could conduct legal trial and arrive at a proper decision in connection with real or personal property of an unlimited amount that was involved in dispute. When only one of the parties requested the trial of the panchayath, an appeal was allowed to the Zillah judge on the condition that the amount decreed or disallowed was above Rs.100.

The appointment of the Hindu law officers of the provincial courts to be Sader Ameens or head native commissioners for the trial of cases referred to them by the judges of Zillah’s was a notable reform introduced in 1816. Similarly the Hindu and Mohammedan law officers of the Zillah courts were designated as Sader Ammeens. In Bengal law officers of the city and Zillah Courts were ex-officio Sader Ameens, though later they were divested of this privilege. In suits for real and personal property not exceeding Rs.300 in appeals from the decisions of the district Munsiff and District Panchayaths, they were bound to function as ex-officio with referee jurisdiction. Appeals lay from their decisions to the Zillah judge in referee cases. Their decisions were final in their appellate jurisdiction. It was widely regarded as true that with their respectable office and high salaries, these judicial officers would not given in to corruption in their decision, neither would they arrive at erroneous decisions with their wide experience and in depth knowledge in the legal proceedings. As the commissioners clearly stated, “If they confirm the decisions of the panchayath, it is not at all

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49. Section LXII of Regulation XXIII of 1814; Bengal Regulations, Vol.VI.
50. Section III of Regulation VIII of 1816; Clarke; Madras Regulations, 1802-47, p.288.
probable that both should be wrong, and if they reverse it, it is not likely that they should do so without cause, under the eye of the judge\textsuperscript{52}.”

The introductions of the system of using the expert service of vakils were another notable reform of the existing legal system. This system of the appointment of native pleaders was in service, the cause of certain corrupt practices. In this context the court of directors observed as follows; “The employment of licensed vakils is so connected with the judicial system now established that we are certainly not prepared to do away with this class altogether, but we are very desirous that the subject should be maturely considered by you, as well as by the surd court, with a view to devising, if possible, a remedy for an evil, so generally acknowledged\textsuperscript{53}.” With the purpose of effecting this positive change, the commissioners took the decision that they should be prevented from practicing at all courts of native jurisdiction. The generally accepted practice that prevailed in those days was that no vakils should be accepted and recognized as proper to render service in any Munsiffs court or before any panchayath if he is not a relative, servant or dependent of the party for whom he intends to provide legal assistance. The Sader Ameens were attached to the provincial and Zillah court. Under the existing rules and regulations, pleading in before them was carried out the same manner as in the courts by the acknowledged vakils of the Zillah courts.

During regime of Lord William Bentinck at the apex of the subordinate Indian judicature were principle Sader Ameens who made their first appearance in Bengal under regulation V of 1831\textsuperscript{54}.

\textsuperscript{52} J C, Letter from the Commissioners, 19\textsuperscript{th} August 1815.
\textsuperscript{53} Court of Directors, op.cit,29\textsuperscript{th} April 1814,para 26.
\textsuperscript{54} Section XVII of regulation V of 1831; Bengal Regulations, Vol .IX.
Bombay\textsuperscript{55} and Madras\textsuperscript{56} they came into existence only in 1836. This office was created with an objective of employing Indians in the judiciary more extensively and assigning greater responsibility to them in the dispensation of justice. In Madras\textsuperscript{57} principle Sader Ameens adjudicated upon appeals from district Munsiffs referred to them by Zillah Judge. In Bengal\textsuperscript{58} and Madras\textsuperscript{59} principle Sader Ameens had criminal jurisdiction similar to that of Sader Ameens.

Another reform that elicited considerable attention and also evoked criticism was related to the office of the magistrate. The reason for this was that the reform tried to transfer the functions of the Zillah magistrate from the judge to the collector\textsuperscript{60}. The duties and responsibilities of the magistrate was handed over to the collector of the Zillah. The most notable recommendation on the part of the court of directors included in the dispatch dated 29\textsuperscript{th} April 1814 was the recommendation specifying the transfer of the police and magisterial duties to the collector. Earlier these duties were part of the prerogative of the judge.

In the resolution taken on 1\textsuperscript{st} March 1815, the government of Madras pointed out that the letter of the court of directors specified no instruction for taking away the magisterial powers from the Zillah judge. It only intended the transfer of the supervision of the police. In addition, the powers of the magistrate were not essential for the effective supervision of the police by the collector. The firm stand taken by col. Munro and Stratton was that powers and office of the magistrate should be handed over to the

\textsuperscript{55} Section II of Act XXIV of 1836 designated native judges who were appointed under Bombay regulation XVIII of 1831 as principle Sader Ameens; Theobald Vol.I,p.36.

\textsuperscript{56} Section I of act XXIV of 1836 changed the designation of native judges and criminal judges appointed under Madras regulation VII of 1827 to principal Sader Ameens; Theobald; Vol.I,p.36.

\textsuperscript{57} Clause 3 of section VIII of regulation VII of 1843;Clarke;Madras regulations,1802-47,p.687.

\textsuperscript{58} Clause 6 of section XVIII of regulation V of 1831;Bengal regulations, Vol. IX.

\textsuperscript{59} Section IV of regulation VIII of 1827;Clarke;Madras regulations,1802-47,p.470.

\textsuperscript{60} Regulation IX,1816.
collector. They arrived at this conclusion based on their previous year’s official experience. They reasoned that no other way of avoiding the conflict of the European local authorities existed in those days. It was almost impossible to divide the powers of the magistrate and the powers of the superintendent of police into watertight compartments. So long as this conflict existed, the respectability and esteem of both would suffer in their relationship with the natives. Also they won’t be able to discharge their duties perfectly. The subordinate native officers would have to respond to the official call of both the magistrate and the superintendent of police, making them divided and confused in their day to day duties and the priority of respective functions. In case the transfer of power was not implemented, complaints, punishment for petty offences such as the use of foul language, calumny, petty assaults etc. must be brought to the Zillah court which would be a source of irritation to the people in that they were forced to travel considerable distance to settle the matter. On the contrary, after the implementation of full transfer, these matters would be cognizable by the collector as magistrate so that it could be settled on the spot by the collector or by his Amilder. When the officer of the magistrate and the judge bestowed upon one person, he would be obliged to devote a considerable portion of his time on his magisterial duties with the result that a little time would be left for handling civil cases. As a result of this, the official decision would be slow and long drawn out. Consequently this would discourage many people from submitting their causes because they would be conscious of the difficulty involved in their suits being settled without undue delay. To answer the demands of the country, justice would be so expedited as to enable the courts in civil suits by effecting the transfer and limiting the
jurisdiction of the Zillah judge. Manifold facets of the role and duties of the magistrate should be analyzed at this juncture. In crimes of a heinous nature no private compromise or Razeenamah could be admitted by the magistrates such as might require on conviction exemplary punishment for meeting the ends of justice. Another condition was that they should not receive any formal charges of perjury against the parties involved in the legal proceedings.

Magistrates had the power to transfer police officers belonging to their respective jurisdictions from one station to another, irrespective of any external authority. As part of their official duty, the magistrate should submit to the criminal judge of the Zillah two detailed lists. The first list should contain the details of all persons apprehended for alleged crimes and let free on account of absence of any concrete and convincing evidence. The second list should contain the details of punishments meted out to the offenders. With regard to acts done and decisions taken as part of their official role, both the magistrates and their assistants were accountable to the Zillah courts in the official hierarchy.

Regarding the office and functions of the village Munsiffs and his subordinates, different regulations were passed. Also possible variations for these regulations were considered so that it would be more appropriate in the context of the local conditions in Malabar. One general regulation required that the resident head of the village, who was empowered to collect the sirkar revenues should be the Munsiff. The Potail or Patel of Kanara belonged to this category of government official. Simultaneously he was a resident, native and Mukhyastan of a group of villages called the Hobily for

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62. Regulation IX, 1816, Sec. XXIX
which he discharged duties as Patel. It was necessary that he should be a Mukhyastan and that he discharged his duties in the Hobily where he was the Mukhyastan. This effected the assimilation of the Parbutty to the system of Patel envisaged in the regulation. An intensive study made by Munro here, revealed the local peculiarities with regard to the offices of village Heads or Parbutties, Menons and Kolkars. Accordingly, some alterations were effected especially in the village Munsiff Regulation and the Parbutties, Menons and Kolkars who were employed in the collection of the revenue immediately from the people were assimilated to the offices of Patel, Karnam and Kotwal. There is also provision to dismissal for incapacity, oppression, and embezzlement of public revenues or any other misconduct. Regular monthly pay were given to them and they received no mauniums assigned to them. Except in the Madras presidency, where the village Munsiffs (heads of villages) exercised penal powers in petty cases, the Munsiffs in Bengal and Bombay did not enjoy any criminal jurisdiction. Enunciating the principal that each court of every class “should be charged with both civil and criminal jurisdiction”.

Munro and Stratton jointly proposed a revised scheme in a dispatch dated 14th January 1817 to the Collector of Malabar in which they suggested that the number of Hobilies should be 260 with a Munsiff and Menon to each and 650 Kolkars to the whole. With the intention of integrating local arrangement with the general regulations, the commissioners suggested that the second article of the proposed draft should be revised as follows: “That the present Parbutties being Mukhyastans and of respectable families, shall

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64 D R, Malabar, 1817, Vol.2283, pp.77-83.
65 Section X of regulation XI of 1816; Clarke; Madras Regulations, 1802-1847, p.314.
be made Munsiffs of the Hobilies in which they are Mukhyastans”. There is also provision that every Parbutty Mukhayastan or Patel should be ex-officio Munsiff of that Hobliy who, aided by the village Silbendy, collected the government revenues. 67.

The commissioners were of the opinion that the appellation of Parbutty Mukhyastan in Malabar to that of the Munsiff was very suitable in the local context especially because the duties of the Munsiff were comparatively of lesser importance. Later on, as the system evolved and took firm roots as part of the government machinery in Malabar, these officials were termed Adhikaris. Likewise Hobily came to be known by the corresponding term as Amsom which formed by combination of more than one village or grama. The system envisaged that Parbutty and Menon should have their office by inheritance. As a safeguard against the possibility of decline in power, the collector retained the authority to select a substitute for the office of Parbutty or Menon from the family or the relatives, provided the case of incapacity of the present official is proved. In the original draft there was a provision to grant the Parbutties, Menons and Kolkars a share in the rent of waste lands which was converted for cultivation and also of lands exempted from rent. The commissioners suggested that their provision should be referred to the government of Madras. They instructed the collector to institute the proposed reforms in the Malabar province without undue delay.

The heads of villages like the Mukhyastas in Coimbatore and districts bordering on Malabar were involved in smuggling and also protecting tobacco smugglers. Also they were caught up in activities that harmed the village revenue. These circumstances should not prevent their being

employed with advantage both as Munsiffs or Parbutty Mukhyastas and collectors of revenue of their respective villages maintained by the commissioners\textsuperscript{68}.

The regulation envisaged that their illicit action should be controlled by the Thasildars and their district servants. For every breach of the regulation they were liable to punishment. In Malabar as well as elsewhere these checks and provision for punishment were sufficient safeguard to ensure general good behavior. Many rules and regulations were formed to administer the constitution of these village officers and control the conduct of the officials in Malabar. Many radical suggestions were put forwarded by Col. Munro Recommended by Greams, the commissioner, in 1819, these rules to be adopted, including the provision of by calling upon the Thasildars to select the individuals and to enter into the detailed arrangements in the first instance subject to the ultimate approval of the collector\textsuperscript{69}.

Munro and Stratton formulated these opinion and instructions after a detailed study of the information provided by Thomas Warden. Warden was of the opinion that the regulation IV of 1816 could be adopted in Malabar without much difficulty. Though they were enthusiastic desirous of implementing the plan which was outlined in the dispatch of 14\textsuperscript{th} January 1817, they were careful to see that the introduction of the reform should not decrease the revenue income of the government. Hence the commissioners instructed the collector: “should you, therefore, still be of opinion that such would be the consequence, we would recommend that you prepare everything for the new system but defer its actual introduction for a few weeks until the First commissioner who is now on his way to Malabar shall

\textsuperscript{68} Ibid, pp.316-17. Letter from Munro and Stratton to the Collector of Malabar. Madras, 28\textsuperscript{th} Feb.1817.

\textsuperscript{69} D R, 1819, Vol.2364, pp.65-81.
have had an opportunity of communicating with you on the subject. But if, on the other hand, you apprehend no detriment to the revenue from the measure proposed, we request that you will carry it into execution without delay.”

The following were the ruler framed for the purpose of governing the constitution of village officer. The officials who were the chiefs and village Munsiffs under the regulations IV and V, 1816 were substituted with the designation of heads of revenue and police in the villages and they were selected from the class of Naduvalis and Desavalis.

The village Munsiff was to be assisted by a village Karnam in legal proceedings such as hearing, trying and deciding cases. His official duty consisted of attending as assessor and recording the proceedings of the Munsiff. In addition to this, he was the keeper of the registers of suits submitted to the village Munsiff. The village Karnam was authorized to keep a register of all such sales of property. Suits dealt with by the village Munsiff were exempt from all fees, stamp duties, batta and charges of all types. He had to send all fines levied by him to the district Munsiff by the end of every month as part of his duty. In addition to this, he was entitled to communicate in writing to the district Munsiff a report prepared by the Karnam of the suits legally settled during the preceding month, in a form prescribed for that purpose. Every year, on the first of January and the first of July, a similar report containing details of the causes pending before him for trial or settlement was to be drafted and submitted to the district Munsiff.

71 J C, 1832, Vol. 245, pp. 269-86
When a complaint related to treason, murder, robbery or other crimes was submitted to him in writing, the Zillah magistrate had the power to issue a warrant against the accused, provided he belonged to his jurisdiction. The warrant should contain specific description of the charge and should direct the officer concerned, to apprehend and arrest the criminals. When the accused could not be arrested and at the same time known that he was somewhere in the society, the magistrate had the power to issue a public proclamation in the native language, demanding him to appear in person in the court within a specified date with regard to cases involving gang robbery, murder and other heinous crimes, the magistrate had the power to declare an offer of reward not above hundred rupees, in case it was necessary, with the purpose of apprehending the offender. In order to declare a bigger amount of reward than hundred rupees the magistrate had to get the prior permission of the Foujdary Adalath.

As a result of the above mentioned reforms, a regulation was passed for designating the judges of the court of Adalath of the several Zillah’s as criminal Judge of their respective Zillah’s. Hence some Zillah judges got a special jurisdiction as part of this reform. By virtue of the reform, these criminal judges were empowered to take cognizance of criminal charges brought before them by magistrates or the police officers. In the case of prisoners against whom convincing evidence for conviction was absent, they had the power to release them. With these exceptions, all other prisoners should be kept in jail so that their trial before the courts of circuit could be conducted, when demanded.

A significant reform was implemented in the system of police organization. A general system of police having jurisdiction all over the territories belonging to the administrative boundary of the government of
Madras was established by regulation XI of 1816, with the effect from 1\textsuperscript{st} November 1816, the prevailing Darogah and Tanadar establishment were abolished. As part of new arrangement, their duties were handed over to officials such as the Heads of villages or village Munsiffs, Tasildars or native collectors, Zamindars, Ameens of police, Kothwalls and magistrates of the Zillah’s.

The prevailing administrative system required that the heads of the villages should be considered as ex-officio heads of police. As part of their duty, they had to apprehend and arrest the offenders and hand over them to the police officer belonging to the respective district. They were not entitled to acknowledge confessions and they had no right to detain any person in their custody more than twenty four hours. They were empowered to demand the service of the people belonging to the village to help them in apprehending and arresting the offenders and the natives were legally responsible to help them in the discharge of such duties. In order to facilitate the apprehension of the culprits, the head of the villages were bound to communicate any information they got of offences committed or regarding suspicious characters who sought shelters in the villages.

With regard to petty offences like abusive language inconsiderable assaults or affrays, the heads of villages were empowered, after conducting an interrogation, to dimes the parties. If the charges were proved, he had the power to put the offender in the village Choultry for a period of time not more than 12 hours. The offender could be put in the stocks for a period of not more than six hours in the case of the accused who belonged to any of the lower caste\textsuperscript{72}. The Karnams were entitled to keep register of persons confined by the heads of villages. These official records should be handed

\textsuperscript{72} Stock was a wooden frame in which the offenders ankles were held, as he sat exposed to ridicule.
over to the police officers of their respective districts by the heads of villages. The police officers were bound to submit them to the Zillah magistrate for verification.

As far the transfer of police duties to the district collector, Munro and Stratton pointed out that when the transfer of police servants was made, the police and revenue establishments should be employed without distinction, in police and revenue duties. When they were appointed in that manner without distinction, they were inclined to aid each other with the result that there can be a reduction in the present number of officials. Since the purpose was that the Tanah system need not be continued as part of administration. The Tanahs were gradually withdrawn and the villages where they were stationed earlier were handed over to the supervision of the heads of the villages. For the general security of the people and country such a distribution should be made of the united police and revenue establishments\textsuperscript{73}.

As part of the administrative system the district Munsiffs had been employed for a long period of time as per the regulation VI, 1816, which enabled the authorities to form an idea regarding whether the office was sufficient or not. When duties were assigned to the district Munsiffs without considering the time and energy at their disposal for discharging the duties in the regular and punctual manner specified in the regulations, there was a tendency for them to become lazy and negligent in their performance of duties. The logical development of the negligence and laziness was that the officials began to fall as prey to unethical practices like bribery and corruption. Actually the government expected that from the implementation of these regulations, these unethical practices could be checked. According

\textsuperscript{73}D R, 1816, Vol. 2283, pp. 33-34, Letter 29\textsuperscript{th} Oct. 1816.
to the commissioners, the most effective solution for this defect mentioned by the judge of the Zillah of south Malabar was appointing of village Munsiffs who would take up the trial of a number of suits usually handled by the district Munsiffs. Even after a period of one year since the introduction of the regulations for the appointment of the district Munsiffs, no steps were taken by the colonial government for the appointment of the village Munsiffs. As a concrete step to solve the difficult in the administrative system, the commissioners recommended that the judge of south Malabar should be empowered to make the appointment of an additional district Munsiff.

From Coimbatore, Col. Munro proceeded to Malabar with the purpose of evaluating by examining the present administrative system whether the introduction of the new proposed regulations would be advantageous to the province. Also he intended to study the local conditions and point out changes, if necessary, to the proposed regulations. He collected each and every information which he received from the Nair’s and other inhabitants of the land, who seemed to him to be best informed with regard to the details of village administration, ancient usages and internal government of Malabar and he submitted it to the government for further action.\footnote{Munro, A Report on the Revision of the judicial system in the Province of Malabar, 4\textsuperscript{th} July 1817.}

Several European administrators and able statesman nurtured in the spirit of enlightenment and liberal democratic tradition thought in favor of this move to make meaningful use of the ancient and respectable institution of panchayats for administration of justice. In early days the local institutions played a remarkable role in correcting the evils and autocratic tendencies of the rulers and curbing the royal excess and in asserting the
rights and privileges of the people. They were eager that they should honorably keep up all the privileges or rights which their ancestors enjoyed in old days\textsuperscript{75}. They had the insight to view and assess that this solid social structure served as the firm foundation for dispensing justice for centuries in India. Sir. Thomas Munro categorically stated,” There can be no doubt that the trial by panchayath is as much the common law of India in civil matters, as that by jury is of England. No native thinks that justice is done when it is not adopted, and in appeals of causes formerly settled, whether under a native government or under that of the company, previous to the establishment of the courts, the reason assigned in almost every instance was that the decision was not given by a panchayath but by a public officer or by person acting under his influence or sitting in his presence. The native who has a good cause always applies for panchayath while he who has a bad one seeks the decision of a collector or a judge because he knows that it is much easier to deceive them\textsuperscript{76}”.

As for the number of persons on the panchayath for handling a suit, the regulation fixed it in clear terms. The regulation stipulated that always it should be odd, never less than five nor more than eleven and the majority should decide the outcome of the suit. Earlier the number of the panchayath changed from five to fifteen, sometimes, especially where the subject of litigation was a share of land of a village held rent-free by Brahmins, the total number of the proprietors often sat as a panchayath. With regard to ordinary cases where the parties belonged to different castes or occupations, the panchayat usually comprised men belonging to different castes so that the possibility partiality could be prevented. When the Regulation V of 1816

\textsuperscript{76} Munro’s Report,15\textsuperscript{th} August,1807.
prescribed that the panchayath should consist partly of persons of the same caste as the parties respectively and partly of persons of the different casts, it was following the time honored custom and long held convention prevailing in the country thereby ensuring the connection between the system of dispensing justice that had been existing for centuries and the newly introduced modern system by the British. The Indians placed more reliance in their panchayaths than in the artificial system of courts founded upon the European model and which was presided over by European judges. “the native who has a good cause always applies for a panchayath while he who has a bad one seeks the decision of a collector or a judge”77.

According to the rules clearly outlined, the village panchayath should comprise respectable persons belonging to the respective panchayath. They are required to discharge their duties associated with panchayath [in rotation] according to their turn. In case an inhabitant of the village refused to serve as the member of the panchayath, the village Munsiff is empowered to impose a fine up to Rs. 5 as punishment for neglecting the civic duties. “This also is conformable” remarked the commissioners,” to the practice of the natives, for among them it is no more optional to decline sitting on a jury. By the ancient usage of India, every man with the exception of a few individuals belonging to the religious orders is compellable to act on a panchayath. It is regarded as a duty which he owes to the community and which he ought to discharge without compensation of any kind”78. The governments all effort to secure justice for people of all ranks and classes,

78. J C, 19th August 1815
the net result of all their pains, expense and labor should be “discontent and disquiet among the people”\textsuperscript{79}.

In their respective Taluk, the Thasildar or native collectors were the ex-officio heads of the police. Their duty was to maintain peace and order as part of which they had to report to the magistrate all important activities and developments in connection with their official duties. They were required to provide all assistance to the village police or to arrest offenders involved in cases. As part of their duty, they were empowered to send peons to the market and other places where the public gathers in order to maintain peace and order. In towns having wider geographical area where the police duties could not be effectively discharged by the head inhabitant, the magistrate was empowered to appoint a person to discharge duties as Ameen of police.

As part of the new system implemented, the collectors were relieved from the administration of civil justice. In order to effect a reduction in the heavy workload of the collector, the heads of villages and Thasildars were given power in the cognizance of so many types of petty offences that had been earlier decided by the collector. In comparison with the former duties of the collector, the present system relieved them of many time consuming and troublesome petty duties as a result of which they got time and energy for handling main duties related to district administration.

Instances of gang robbery, assault, arson and murder become quite frequent in Malabar from which it is clear that the police administration was far from effective. The Thasildars or native collectors could not perform with adequate efficiency of the double duties of police and revenue was of

\textsuperscript{79} Ibid.
the opinion of the magistrate and the three judges of the court of circuits of western division\textsuperscript{80}.

With regard to towns where the Europeans inhabit or regularly frequent visit for personal or official purposes, an assistant magistrate was appointed for undertaking respective duties, provided the employment of the natives as Ameens of police was inadequate to maintain law and order. Within his jurisdiction he should have the same police authority as was granted to the magistrate\textsuperscript{81}. The purpose of the commissioners in the incorporation of the reform was the dispensation of justice without much expense and at the same time retains the conventional form as far as possible. They stated their objective in the following words: ‘‘we have endeavored to render the village Munsiff efficient by simplifying his duties by dispensing with writing wherever it could br done, by making all his summonses verbal and by giving him sufficient power to maintain his authority. Any attempt to restrain the panchayats by rules unknown to their own ancient forms would render them unpopular. Though justice is everywhere the same, the mode of dispensing it differs in all countries and that which is acceptable under one state of society, may be quite the reverse under another. We should therefore give to the natives, village and district courts suited rather to the present state of society among them than to our ideas of what such courts ought to be and leave them at liberty to follow their own choice in seeking redress, either from these simple tribunals or from our regular courts. The natives themselves are the best judges of what is suited to their present condition. We are persuaded that through the agency of the Munsiffs and panchayats, a greater mass of essential justice

\textsuperscript{80} J C, 1819, Vol.146, pp.4097-4101, Minute written by Hodgson, 22\textsuperscript{nd} Nov. 1819.
\textsuperscript{81} Regulation XI, 1816
will be distributed than could be done through any other means. But we ought not to regard these institutions merely in the narrow view of their utility in settling causes, but of their influence in improving the character of the people and attaching them to the government under which they live.  

After detailed investigation and on the spot examination of the working of the system, Col. Munro concluded that the village establishment in Malabar was imperfect so that a total revision and rearrangement was necessary. When the province was under the administration of the rajas, the village system was suitable to achieve the aim of the military government. When the province came under the administration of Mysore government, the absence of sufficient period of time and the much needed peaceful atmosphere prevented the formation of a new system of administration that can fulfill its proper objectives.

The general attitude of the Madras government was clear from the appointment of village Parbutties which was later reduced in terms of the number of officers thereby converting it into a subordinate district establishment. As for the British, they had a more refined administrative system with the Thasildars who were called Sheristadars in Malabar and a Huzur or provincial one under the supervision of the collector. Regarding these officers, the Head Native servants were provided with unsatisfactory remuneration so that it was unlikely to get good service from them. Even though those establishments existed, there was no reliable means to obtain and preserve precise accounts at the village level. There existed double district establishment without a similar one at the village level which created a gulf between the district collector and the landholders. As a result of that

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82 J C, 19th August 1815. Letter from the Commission for the Revision of Judicial System to the Chief Secretary, 15th July 1815.
the real condition of landholders was not officially known to the collector. To rectify this gap in the administrative system, the first commissioner recommended increasing allowances for the principal officer of the Huzur and district Catcheries to make it more respectable and to implement a proper and systematic establishment at the village level.

With regard to criminal matters, the Zillah judge was relieved from conducting correspondence with police officers, from receiving original complaints except in cases related to European British subjects, from cognizance of petty offences and thefts, from boundary disputes and illegal possession of land and water, from cognizance of criminal prosecution against police and revenue officers for extortion, oppression or other abuse of authority. As for the administration of civil justice, the Zillah judge was relieved by the village Munsiff, village panchayath, district Munsiff and district panchayath from different categories of suits. In all original suits up to Rs. 300 and appeals against decisions of the district Munsiffs was lightened his work by the Sader Ammeens.  

In connection with appearing to give their evidence before the magistrates and criminal courts, the prosecutors and witnesses experienced greater convenience and ease as a result of the changes implemented under the new system. The reason for this change was related to the provision that for the trial of all important civil suits, the court must be fixed and in the case of the hearing of complaints related to personal injuries, the court should be movable. In order to understand the real condition that existed in villages, it was necessary that the magistrate should go round the country and visit every look and corner of it which would give them an opportunity to be aware of the injuries people suffered from police officers or the

\[83\]. J C, 1818, Vol.130, pp.1192-1228
injustice suffered by the poor people at the hand of their wealthy and influential neighbors. The poor people found the system of traveling tribunal were fixed; the majority of these people would not have been able to seek the assistance on account of poverty, lack of knowledge.

An important sociological attribute of the people was that they were closely bound by their own customs, conventions and usages. As an organizing system existing as part of their society down the centuries, they were familiar with the administration of justice by panchayaths. Consequently, people belonging to all classes were inclined to act as numbers of panchayaths.

The important point to be examined in this context was whether the present regulations provided scope for the detection and prevention of abuse of power on the part of the officials who were entrusted with the administration of the village and district police. The village police was rotten to the core. Indian officers proved to be the worst judges of their own fellow men. Extortion of confessions, ill-treatment of prisoners, fabrication of false dates of apprehension, were some of these abuses of authority by the police officials. These defects were not remedied until 1857, when the Torture Commission was appointed to enquire into the condition of the scandalous increase in the police atrocities\textsuperscript{84}. The complaints of extortion, oppression and other types of abuse of power by the heads of villages and other police officers were received by the commissioners. These crimes were cognizable by the magistrate alone and the criminal judge was not empowered to consider such cases. If such cases were made cognizable by the criminal judge, it would lead to conflict of authority. As a result of that there was real

\textsuperscript{84}. Report of the Commissioners for the Investigation of alleged cases in the Madras Presidency, St.George,1855.
chance for the magistrate to be partial to his servants; sometimes their offences and abuses were ignored by the magistrate. It was evaluated that the existing laws contained provisions for the detection and punishment of abuses of power. After investigation, the commissioners came to the conclusion that the rate and volume of abuses happening in the system declined considerably. In this context, it is worthwhile to record the official opinion expressed by Col. Munro about the prevailing system of administration. As he stated: “In the course of my circuit, I have everywhere endeavored to ascertain how far the new system was agreeable or otherwise to the inhabitants. All classes expressed their satisfaction at being relieved from the police and the vexations of its officers, and in some districts they spoke of it as a system of organized oppression. They expressed also much satisfaction at the modifications in the judicial system by which they are enabled in so many instances where they wish it to have their suits settled in their own villages or districts instead of being obliged to consume their time in attendance at the Zillah courts.\footnote{J C, 1818, Vol.130, pp.1192-1228.}

The court regarded it as its duty to prevent the continuance of this abuse of power that obstructed the administration of criminal justice and undermined the security of a person. For the happiness and security of the individual as well as the society, these matters should be set right. The court did not believe that a widespread and deeply rooted practice could be totally and effectively eradicate easily. At the same time it was true that the evil having serious magnitude and frightening consequence should be suppressed so that the Foujdary court suggested that the police officers should recognize that confession of an accused person was a matter of subordinate consideration. The inclusion of different clauses of section XXVII of
regulation XI, 1816 was made to this effect. The provisions of the above section within their respective jurisdiction was noticed and should direct the attention of the Tasildars by the magistrate of the several Zillas 86.

The practice of appointing Indian judges as district Munsiffs resulted in the reduction of the duties which relieved the European courts of its heavy workload. It provided scope for handling a major part of the litigation in the country. But the value of these positive changes lost its luster when the very nature of the legal system created a situation where the native courts, after being saturated with the business of original jurisdiction; they had to handle additional work in the form of appeals. As a result of that, the relief in the form of original jurisdiction was nullified on account of the increase in the form of appeals.

Certain instances of inordinate irregularities in the administration of criminal justice had been stated by the Fougdary Adalath. A wrong idea that apparently existed among the police officers was that strongest proof of guilt was confession. Many of these confessions were taken by giving false hopes and promises. Often confessions were extorted by corporal persecution. There were several instances of fabricated evidence. Eventually such malpractices and abuse of power considerably increased so that it became accepted official practice. As an evidence the court maintained that confessions were entitled to little credit unless subsequently confirmed before the criminal court or strongly corroborated by other genuine circumstances87.

Using crude and often cruel methods, confessions were exacted by police officers, which was not a new characteristic of the present system.

86 C.O.F.A.18th June 1817, pp.16-17.
87 Ibid
This practice had been in existence for a very long time before Munro. Under the pre-colonial legal system this forced confessions were practiced as a part of the trial by ordeal. But unfortunately it was widely practiced as a part of judiciary under the Cornwallis system\textsuperscript{88}.

In the history of the growth of the institution in a country, a period comprising four or five years is of comparatively insignificant magnitude. In determining the advantageous and disadvantages of a system of judicature, it cannot be regarded as sufficient for proper and balanced estimation. Only through a process of trial and error can the project for progress be perfected. Hence it can be estimated that the scheme implemented by Munro was a definite step forward for evolving a better organization. The apathy that the people of the region showed towards the company officials in general was sometimes attributed to the company’s judicial system. Many of the Company official believed that “They (people) would have preferred the Company’s government had they not been made subject to the courts which in their own figurative language they described as scorpion”\textsuperscript{89}. Some of the other officials observed yet more badly; “If we could poll votes and the question was fairly put to the people whether they would rather remain under the present judicial system or recur to their ancient forms of administration, a return to former practices would be desired by an immense majority”\textsuperscript{90}.

In spite of the existence of these positive factors, we should not come to the conclusion that the system was perfect. Actually system left much to be desired for making it perfect. For example, there were different

\textsuperscript{88} C.O.F.A, 27\textsuperscript{th} May 1806, p.1
\textsuperscript{89} Stated by the Magistrate of Cuddapah and referred to by J. Sullivan in his Minute dated 28\textsuperscript{th} July, 1840, Home, Judl. Cons. No. 4 of 21\textsuperscript{st} December, 1840.
\textsuperscript{90} Minutes dated 12\textsuperscript{th} June, 1841 by W. Bird; Home, Judl. Cons. No. 9 of 6\textsuperscript{th} May, 1842.
incidents showing abuse of power and authority by subordinate officers in the revenue and police departments. These cases were brought before the courts of judicature. Before the prisoners were forwarded to the criminal judge of the Zillah, they were detained either at the police stations or with the Magistrates. In certain cases, the delay was considerable and undue as a result of the irregularities on the part of the police officers. In the usual practice, the prisoners should have been forwarded directly to the criminal Judge of the Zillah instead of to the magistrate which also caused delay.

Apart from these defects in the working of the system, there were other defects which were related to the causes existing as part of the structure of the system. The punishment of crimes attached to the police to a limited extent was a judicial duty and not a proper police duty. The combination of executive and judicial powers in criminal cases is more harmful than in civil cases. As Fullerton categorically stated, “Magistracy, police and revenue, have now been in the hands of the collector for three years, and I must freely confess that the success of the measure, even as police only is concerned, has not been equal to my expectations. It was observe, that the separation of revenue and police paralyzed both. The observation, however plausible, has not been justified by the results which it has produced; the truth is that police was not in a paralyzed state in the year 1814. It was in a better state than it ever was before and in a better state than it has been since. I am afraid indeed, it will be found, as regards police at least, the union and not the separation has produced paralysis”.

Administrators like Munro and Stratton was not unaware of the defects and loopholes in the system. But they believed that the merits of the system were greater than the defects and drawbacks. It is to be noted that the

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91 Fullerton, Minute, 7th June 1820, para 41.
sponsors of the plan was not in a position to foresee the defects in the working of the system. Eventually the defects in the system become apparent. On 20th January 1819 in the extract of the proceedings of the Foujdary Adalath some of the cases of official oppression and abuse of authority had been dealt with. The irregularities that had been taking place in the administration of the police and criminal law administration in Malabar were noted by the Governor-in-Council. Consequently, he expressed his regret that the acts of oppression in the form of abusive exercise of powers not warranted by regulations had been committed by the local agents belonging to the police department. Contrary to the nature of the reform in administrative system, the magistrate delegated duties to police officers instead of exercising those powers themselves or by the assistants. Some practices followed and implemented by the revenue and magisterial departments were equal to denial of personal freedom. The practice which was prevailing in Malabar during this time of distraing and selling to the slaves of revenue defaulters by public auction was reported and informed the authorities in Madras by Baber. As a result for further investigation the Governor-in-council reported this matter to the Board of Revenue.

Let us now analyze the impact of this system in Malabar. As a result of the transfer of the office of magistrate to the collector, the court of judicature at Cochin faced a problem. In the new judicial regulations, there was no clause rescinding regulation V of 1817 according to which the court at Cochin was specially constituted. Hence the collector and magistrate to the Zillah of the south Malabar specified that Money, the judge should be directed to continue until an assistant could be transferred from the

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93 J C, 1819, Vol.141, Fort St. George, 28th April 1819.
The commissioners who examined the judicial system regarded it as not in tune with the provisions of the regulations. The authority of the magistrate must be exercised either by the collector or by his assistant, under section III, IV and V of regulation IX of 1816. The Governor-in-Council directed that the court at Cochin should be abolished and its jurisdiction re-annexed to the Zillah of south Malabar as per the direction and recommendations of the commissioner. As a result, for giving effect to the above resolution the Sader Adalath was there on required to frame the draft of a regulation.

Trial of time eventually brought to the fore some defects and drawbacks of the system in the light of which the commissioners adopted certain reforms in the administrative system. With the purpose of ensuing the effectiveness of the system, they put forth some specific measures to the government. For the better administrative expediency and clarity the jurisdiction of the district Munsiffs was to be enhanced and to understand the various laws and regulations provision should be made for the proper education of the village Munsiffs. Another notable administrative reform was that authority should be entrusted to the native servants in every department. This is mainly to ensure the support of the natives. The duties of the European officers were clearly demarcated that to control, superintend and direct the native machinery under them. Another remarkable reform was that the government should restrain the Sader and Foujdary Adalaths from issuing any order until they had previously received the sanction of the government. This is mainly because regarding the regulations it was inconsistent with the spirit of legislation that the power vested in these

courts to decide without appeal on all doubts. In accordance with this objective, the Governor-in-Council passed a regulation for the establishment of a college meant for the native population with the curriculum comprising the study of Hindu and Mohammedan laws and the various regulations passed for implementation by the government as and when it was required.

It is self evident that the hallmark of these reforms was the provision of greater scope for Indians to have role and responsibility in the internal administration of the country and more integrated utilization of the time-honored indigenous institutions like the panchayeths that supported local administration and ensured justice. This shift in administrative vision transformed the government into machinery that was more responsive to the desires and expectations of the native people. Hence the political principle of justice began to have greater equal consideration in the day to day duties associated with administration. The system favoring the equitable law and impartial dispensation of justice exerted a greater attraction to the Indians which in turn influenced an ordered political society that was gradually emerging.

With regard to the administration of justice in the Presidency of Fort.St.George and throughout Indians, the reforms framed and implemented from 1816 onwards had all pervasive and radical effects which was acknowledged and welcomed by many contemporary and succeeding statesmen in India. In the words of Sir. John Malcom, Munro system was one of the best in the world. Though William Bentinck was a critic of Munro, he acknowledged the uniqueness of Munro system and assimilated

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95 J C, 15th October, 1818; Report from the Commissioners.
96 Regulation V, 1819
and accepted his ideas while he became Governor-General. Administrators like Malcom and Elphinston also assimilated ideas from Munro. Malcolm translated the administrative ideas of Munro in central India and Elphinston did same in Bombay so that their administrative reforms were closely following what Munro was doing in Madras. Lord Dalhousie recognized the uniqueness of Munro as an administrator. For noted civil servants like Metcalf and Henry Lawrence, the administrative reforms of Munro proved to be steadily fountain of inspiration.

What made Munro system really notable and unique was not the immediate result it produced or the general acceptance it generated among the people as well as administrators. Its genuine worth stemmed from the enduring values and attributes which it had in plenty as a system of administration. The foremost virtue it possessed was that it was the only system which introduced the principle of liberty in India. In those days it was the only means through which “union has been united with unison. And the weaker section of society got protection against the atrocities of the strong and the affluent. Another notable virtue of the system was that it was the only viable system which enabled the poor people to preserve their life in the overall context of incessant hardships and sufferings. Also, Munro system proved to be the sole administrative means for the well integrated and harmonious confluence of east and west.

The remaining of rules by Munro was undertaken with the vision and intention that the British authorities in India would form laws for Indians in such a way that they are regarded as worthy subjects who were assessed from their own interest. “It is one of the primary obligations of the government like ours” remarked Col. Munro,“ to suit its rules and forms of local administration, to the condition of the people, to provide every
establishment which it may require and not to withhold anything which may be necessary to its efficiency for the sake of avoiding either labor or expense\textsuperscript{97}.

His guiding principle was that laws should deal with operative ideals and the freedom of the people should be safeguarded using the laws. His empathy for Indians and his sympathetic assessment of the time-old institutions that remained disused and neglected in India was embodied in the form of another innovation put forth by him in 1827. With a view to improvising and strengthening the administration of justice in Madras presidency, jury system was introduced in criminal cases which were an important part of the Munro system.

In the study of the system of judicial administration, an important area covers crime and punishment. In 1793, the Raja of Cochin reported to the Commissioners from Bengal and Bombay, in his state, “if any one commits a small theft, he is to be kept for six months or a year, in confinement; after being so exemplarily punished, and a fine taken from him, a little of his flesh or his nose is cut off and he is set at liberty”\textsuperscript{98}. A seminal principle to be considered in this context is that, usually, for evaluating the degree of civilization existing in a country, the specific modes of punishment meted out to criminals and offenders should be taken into consideration as an indicator. Even in the context of multiplication and proliferation of crimes, an important principle is that as the civilization advances, the measure and presence of cruelty and barbarity of punishment become less severe. In modern times we find a marked departure from the primitive brutality in punishment. The degree of punishment increased

\textsuperscript{97} Arbuthnot, op.cit.p.255
\textsuperscript{98} Duncan. Observations, Reports of the Joint Commissioners from Bengal and Bombay, Madras,1862.
according to the number of times the offence was committed. Duncan observes that according to the report of the Raja of Kadathanad in cases of thefts or petty larcenies “the criminal is in the first instance to be confined and receive corporal punishment; if guilty of the like crime a second time, to be deprived of a member and if guilty a third time, to be put to death with sword”\textsuperscript{99}. In the context of the increased instances of crimes in society, the nature of crimes should not be evaluated on the basis of the outcome of events, but from the evil intentions of human being.

With the intention to sweep away the conspicuous defects of the current administrative machinery of the government, Munro took upon himself the task of revitalizing and rejuvenating the judicial system. A significant contribution on his part to the connection between the people and the government was that as a result of his administrative reforms, there was greater accessibility thereby making justice cheaper and readily available. Despite all these reforms to root out evils and defects, it should be admitted that the administration of criminal justice continued to be riddled with malpractice and corruption.

In the case of imprisonment as a mode of punishment, it was often used even to an undue and severe extent by courts. Very often, that severe punishment produced bad consequences. In this context the court of director’s critised this practice in very strong words; As they stated;” A sentence of imprisonment for life or even for terms of 14 or 7 years is wholly unknown in England but in India, is by no means uncommon. Imprisonment for one or two years accompanied with labor rigorously enforced would in most cases prove as efficacious as that of protracted period to which we have adverted. The great object is to produce salutary

\textsuperscript{99} Ibid.
dread in the minds of others and that object would be generally attained without filling our jails with men hardened and made desperate, more by their punishment than by their guilt."

An objective observation reveals that stripes with ratton could be out of proportion with the severity of the crime because it’s interesting and severity changed with the size and type of the instrument and the physical strength of the person who inflicts this punishment. Often this mode of punishment led to corporal injury which was more severe than was intended by law. Hence, by regulation VIII of 1828, the use of rattom was abolished after considering all these factors. Then onwards, according to the regulation offenders who were sentenced to receive stripes with ratton should, instead, be punished in the form of lashes with cat-of-nine-tails. One stroke of a ratton should be considered equivalent to five lashes. The korah was also substituted by the cat-of-nine-tails in 1830. In 1833 a notable humanitarian reforms took place in which the females were totally exempted from the punishment of flogging.

Facts related to many instances of large scale torture for collection of revenue and of confession in criminal cases can be understood from reports submitted by the circuit judges belonging to western division to the Foujdar Adalath. In the reports, they admitted that they had been trying often without result to enforce the regulations on the police officials. A notable case involving two persons, who were convicted for torturing a prisoner for obtaining confession. The nature of the torture, as inspected and recorded by the Zillah surgeon, was that there was not prospect for the person to recover

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100 Despatch from England, 1845, para 5
101 J C, 15th April 1828, p.1091; 29th April 1828, p.1611; 20th June 1828, p.2158
102 Regulation II, 1830.
103 Regulation II, 1833; J C, 12th April 1833, p.1495.
the full use of his hands. To the credit of the court, the authors of this crime were sentenced to two years rigorous imprisonment and to pay a fine of Rs. 200 and on failure to pay the amount both of them faced two years further imprisonment\textsuperscript{104}.

On several occasions, the Foujdary Adalath had animadverted on the power at the disposal of the heads of district police, of dismissing cases of highly offensive nature. There was possibility for serious abuse of this power. Only the extreme vigilance shown by the magistrates could prevent the abuse of this power vested with the heads of district police. Cases showing compromise to dismiss serious abuse of power existed in those days. This is an illegal practice and if the complinent declined to prosecute, the government Vakil should be directed to conduct the prosecution as per the direction of the criminal tribun\textsuperscript{105}.

Abuses of power involving police officers were often handled with extreme leniency by the magistrates when such cases were presented before them. In addition to that, the magistrates had displeasure in control from above. Very often, acts of disobedience by them were reported to the authority of court of circuit. A percept asking the magistrate of Malabar to direct the assistant magistrate in charge of the southern division to conduct an enquiry into the case of cruelty and oppression shown by a subordinate police officer was issued by the third judge of the court of circuit. Instead of initiating the official proceedings according to the precept issued by the judge the magistrate entrusted the enquiry to a police Gumasta. But unfortunately this act was calculated to encourage the acts of oppression and to deter and prevent from seeking redress by the injured and complinent \textsuperscript{106}.

\textsuperscript{104} J C, 1824,P.549-64
\textsuperscript{105} C.O.F.A.,27 August 1829
\textsuperscript{106} J C ,1824,P.549-64
In certain cases reported the stupendous magnitude of the official
misdeeds of the police and they sometimes connived at the offenders by
their studied silence. In a letter written on 12th October 1825, the judge of
the court of circuit of western division referred to a case of murder in which
the Tahasildar and the village police showed extreme negligence and apathy.
It proves that the provisions of law demanding the conduct of inquest
without delay were not taken care of by the responsible officials which
points to their negligence and irresponsibility. In another instance, it was
pointed out that many of the crimes were not at all seriously considered. In
fact, the criminals escape punishment even when they were well known to
the police and the village headman. During trial, it was a very common
occurrence that during the trial before the criminal courts, it often becomes
clear that the prisoners were old offenders who were not brought before the
public tribunal before. The magistrate of Calicut conducted illustrates the
wanton disregard and iniquitous procedure in the case of a kidnapped girl of
12 years old, which involved a charge of extraordinary barbarity.

Such serious defects and irregularities in the system could not be
eradicated with the help of circular orders issued by the Foujdary Adalath.
There were sensational and alarming news reports related to incidents of
torture in Indian newspapers which was noticed by the Governor-in-Council
in 1854. In connection with this news, members in the British parliament
raised pertinent questions that necessitated some action. To investigate the
cases of torture a commission was appointed and the torture commission
submitted its report which is a revealing document. “I have no hesitation”

109. Report of the Commissioners for the investigation of alleged cases of torture in the Madras
    Presidency, 1855
wrote Mackenzie, “in stating that the so called Police of the Mofussil is little better than delusion. It is a terror to well disposed and peaceable people, none whatever to thieves and rogues and that if it was abolished in to the saving of the expense to government would be great, and property would be not a whit less secure than it now is”\textsuperscript{110}. Another important official named Salfelt also shared the same attitude towards the activities and acts of commission and omission on the part of the officials belonging to the police department which was clearly expressed in the following words. “The police establishment has become the bane and pest of society, the terror of the community and the origin of half the misery and discontent that exist among the subjects of the government. Corruption and bribery reign paramount throughout the whole establishment. Violence, torture and cruelty are their chief instruments for detecting the crime, implicating innocence, or extorting money. Robberies are daily and nightly committed and not infrequently with their connivance\textsuperscript{111}.”

As for the verity of the evidence and facts related to the case, there is reason to believe that the alleged confessions were often got by unlawful means and many of these evidences were mere fabrications. There is one more direction related to this sinister manner of handling cases. In the case of confession or pretended confession, as a rule, the examinations in the presence of the officials belonging to the police department bore very little evidence, either direct or circumstantial. There were numerous examples where they either consciously neglected or failed to examine the most important material witnesses. Perhaps it happened as a result of ignorance or as part of their conscious plan to fabricate evidence to suit their or others

\textsuperscript{110} Quoted in Srinivasa Raghavaiyangar; *Memorandum on the progress of the Madras Presidency during the last forty years of British Administration*, Madras, 1892, p.216

\textsuperscript{111} Ibid.
purposes. Whatever it is, the certain consequence was that the end of justice failed to be realized. With regard to cases such as these containing fabricated or distorted facts and evidence, what was lacking in terms of veracity of the case could not be compensated through subsequent legal proceedings in the court. The one result was that many commitments happened based on evidence barley sufficient to warrant them. In many cases, trials were followed by the acquittal of persons who would probably have been convicted if irregularities and defectiveness of primary investigations did not happen. Hence it can be seen that a defect of serious consequence in this state of affairs was that the actual convictions born so small a proportion to the commitments. It so happened that murders, gang robberies, thefts and many other types of serious crimes increased on account of the fact that actual culprits escaped from the clutches of law and justice, owing to the irregular and imperfect organization and activities of officials belonging to the police department. Purification of magistracy and police was the need of the hour and it led to the welfare and progress of the natives.\textsuperscript{112}

In spite of the existence of all these drawbacks and painfully obvious defects, the system for detecting crimes and imparting punishment which was established in the year 1816 and improved up on later was quite appropriate in the existing conditions of the country. It is not right and proper to attribute the evils mentioned above as related to the defect of the system. In fact, the defects and faults are not innate and intrinsic to the system as such. Rather it stemmed from many factors the important of which is related to the outlook and attitude of those officials who are responsible for implementing the system in the society. It is to be clearly perceived that often, incompetence, error, lack of experience and even personal prejudice.

\textsuperscript{112} J C, 1825,pp.2110-23.
of the officials who were responsible for the implementation and supervision of the various activities that happen as part of the administrative system was the source from which abuses, corruption and abortive the end of justice occurred. Those defects and drawbacks are of equal importance and relevance in all institutions existing in the society. Probably similar drawbacks could be identified in the working of the modern judicial establishment provided an impartial inquiry is conducted into various aspects of the functioning of the system. Hence it is obvious that what was of utmost importance and value was extreme and ever vibrant vigilance which should be shown by all concerned enchanting the officers belonging to the higher ladders of official hierarchy interdependence and mutual accountability that creates a more equitable system ensuring more appropriate working of checks and balances will lead to the evolution of a more satisfactory and legitimate administrative order which can eventually fulfill the end of justice for all.

With regard to the features of the organization that was subjected to reform and improvement, it is to be conceded that the fault was not in the system as such. Rather, what was lacking was related to the absence of energetic and active measures and steps to enforce laws and implement reforms without delay. Some people may recommend that to stop instances of gang robbery the government may revert to the example set by, for instance, Haider Ali, who ordered for cutting of noses and legs of the culprit, or another example related to the Rajah of Mysore who gave orders for the seizure and summary execution of the gang leaders involved in robbery. The British officials thought that beheading of a culprit whose crime is nothing other than mere stealing a nut, was barbarous. To resort to such modes of
callous punishment to prevent petty theft would not contribute to the end of justice.

By examining the condition of the districts at different periods and also by analyzing the character and education of the people in general, the reason for the high rate of crimes in the country could be found out. It is obvious that the socio-economic conditions prevailing in any society have a central role to play in determining the crime index of that country. A striking and memorable aspect that needs close attention is that in any society, scarcity and crime grow in direct proportion as a result of which one cannot be arbitral and autocratically controlled and suppressed without paying attention to the other. Hence to lessen instances of crime, positive attention should be paid to the alleviation of scarcity and poverty in the society. This fact is clearly illustrated in the years of dump and famine during 1833-34, a period when, owing to increased instances of crime, jails were thickly populated by criminals of all sorts and types. An important and interesting point related to the growth of crime rate is that in Malabar, which noted for the presence of religious fanaticism and the gradual growth of the trend for many decades, the communal frenzy and religious fanaticism become the major reason for the upsurge of crime level that is out of proportion to the geographical area and the general moral slandered of the people. In short, socio-economic conditions contributing to scarcity and poverty, in turn, impel the increased instances of different types of crime. It also acts as a catalyst for the growth of communal frenzy and religious fanaticism, which in turn, elevates the crime rate and degenerates the standards of safety and security in the society. In other words, the vigor nexus among scarcity, religious fanaticism and crime should be considered in the context of the attempts aiming at the improvement of judicial administrative system. The
perfection of the system of judicial administration and ensuing of justice for all cannot happen in isolation. A holistic and well integrated approach and vision become necessary for the appreciation of the positive aspects of the existing system and the adoption of better steps for greater improvement of the judicial system.

Munro’s maxim is really meaningful and relevant: “there must be one authority in a district; authority to be efficient must be single and the collector will best uphold his own by maintaining that of his Tasildars”. It is clear that the office of the collector was the centre round which the whole system of Munro revolved without hindrance. Indians being a country populated by people whose main occupation is agriculture, the official who regulated the assessment of the land rent had in his control the vital structure of the society and he could maintain the dominant power relation involving mode of production and distribution in the society. The Collectors position, power and prestige and equal to his authority and responsibility.

In the existing system, magistracy, police and revenue had been under the control of the collector. It is interesting to note that there had been criticism against the concentration and focus of many functions, powers and responsibilities in the office of the collector. William Oliver, registrar, stated “The importance of the duties of a magistrate to the population within his jurisdiction is obvious. The indispensable necessity that those duties should be correctly discharged is not less so; and the impossibility of a collector devoting the time or attention that would be necessary to a correct discharge of this duty appears hardly to admit a question”. 

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Almost all reports from the judicial and the revenue departments pointed out that the police had declined into a stage of serious inefficiency, after its transfer to the most of the collectors said that they were fully engaged in the revenue duties. Hence magistracy and police engendered a constant hindrance that effectively prevented them from attending to both the duties. Usually the police duties were generally handed over to their assistants. With regard to Thasildars and the principle revenue servants, it must be accepted that the same view reflected the truth. Since the revenue officers were dealing with their duty related to settlements, those who were involved in robbery and murder escaped from the clutches of law so that the law and order situation become deplorable. The officials who were in charge of the duty of maintaining peace and order, doing their duty in which they were ought not to do at all and where their own self interests and their revenue interests were also concerned 114.

The hierarchy of offices and officer with which this administration was undertaken and implemented possessed different significance. The administrative machinery comprised the village police, district police, magistrates and their assistants, the Zillah criminal courts, circuit courts and Fougdary Adalath. Out of these official systems, the officials in the first two that is village police and district police were all Indians.

The drawbacks related to the arrangements adopted for the enforcement of the system were pinpointed and presented by Fullerton. The first defect pointed out by Fullerton was that the criminal judge possessed no power and authority to communicate by percept with the officers belonging to the police department. So he could not supply deficiency of evidence or correct clear mistakes or avoid improper delays other than by a long and

114. Fullerton, op.cit, p.41
detailed written correspondence with the collector which would normally result in discussion, arguments and counter arguments in the form of letters. The second defect was that the criminal judge had no power to accept original complaints. So he could not impose his power and authority against any abuse of power on the part of the native officers working in the revenue and police departments. Hence it becomes obvious that the administration of criminal justice was far from any possible level of perfection. In many respect it showed signs of decay and degradation.

From all these, it is obvious that the village and district police, the two administrative sections totally made up of Indians, did not produce any positive effects so far as the end of justice was concerned. The reports prepared by the courts reveal the fact that instances of acquittals were more than two-third out of the total number of cases. This points to the confinement and trial of a considerable number of innocent people and also that many actual cuprites were not apprehended. These drawbacks related to the police department were not rectified until 1857. In the year 1857 many reforms were suggested for eradicating defects by the commissioners of investigation.

In those days the condition of the officials in the village police was deplorable. In fact, it was totally infused with corruption and malpractice. It was found out that the reforms of 1816 did not bring in any positive change in this department. There was the prevailing belief that the safety and interests of the ordinary people would be protected by the police force made up of officials belong to their own race. But the reports related to the actual working of the department revealed that the belief was entirely groundless. The defects and evils which were attempted for eradication by the new system continued to persist in spite of all reforms and defects. In the case of
confessions on the part of persons implicated in crimes, it often happened that the confessions were fabricated using many illegal and devious methods. Later it had become general and systematic and up to that this practice seemed to have increased\textsuperscript{115}. With the intention of confusing and misleading the judge and also to inherence the result of trial, false certificates related to the date of apprehension were framed. The Foujdary Adalath stated; “It is of the highest importance that some efficient method should be devised for checking the irregularities and abuse which seem to prevail almost universally among the lower agents of police. Experience has shown that the instructions issued by the judge of the circuit have not produced material amendment in the conduct of the police officers\textsuperscript{116}.”

There existed many reports related to the gruesome cruelties imposed on the persons of the prisoners with the intention of extorting confessions. In this connection, there is the evidence of the Foujdary Adalath who pointed out that “practices of this atrocious description, not only involving in themselves the most aggravated criminality, but calculated utterly to subvert the administration of criminal justice, continue to prevail among the native officers of the police\textsuperscript{117}.”

In those days, there was a recommendation to legalize confessions, because, as long as the confession was illegal in practice, the courts of criminal justice become fruitless and its attempt to administer justice fail miserably. Hence the court articulated its position and stand against the prevailing condition. It stated; “the personal security of the innocent is a result of the pure administration of criminal justice, at least as important as the punishment of offenders and that the proposition of legalizing

\textsuperscript{115} C.O.F.A, 18\textsuperscript{TH} June 1817  
\textsuperscript{116} C.O.F.A, 30\textsuperscript{TH} June 1830  
\textsuperscript{117} C.O.F.A.29\textsuperscript{TH} Oct. 1824.
confessions would tend, if adopted, to destroy security of person and render our criminal courts an object of terror, instead of confidence, to the guiltless, without ensuring the certain condemnation of the guilty."118"

In the case of the civil side of the judicial administration observes form a different picture based on existing practice. The village panchayath and the village Munsiff, the district panchayth and the district Munsiff, the Zillah court and the Sader Court were the governmental agencies that aimed at the dispensation of civil justice. Even the most stringent critics of the Munro system such as Fullerton were persuaded to state that “On the whole, there can be no doubt that the results of the late arrangements as regards the administration of civil justice, are extremely favorable."119"

It is to be understood that the appointment of the native judges as district Munsiffs was undertaken with the intention of the reduction of the duties and also to effect relief in the workload of the European court. As its first noticeable effect, it absorbed a considerable part of the litigation that took place in India. The courts of the district Munsiffs, enjoyed popularity and prestige among the natives interested in litigation. The native people realized that they were more accessible, involved less expense so far as litigation is concerned and were more expeditions in comparison with other courts existing in the country. In this context, it is interesting to examine the factors that helped to increase the efficacy of the courts. The words of Fullerton in this respect are revealing; “The district Munsiffs are to all intents and purpose servants of the Government, stipendiary native judges, a new description of persons unknown under the native government; they are not the native gentry of the country, nor has their appointment any

118 Ibid, 7th September, 1820.
119 Minute, 7th June, 1820.
connection with the gratuitous labor formerly required by ancient municipal arrangements, nor is it anyway dependent on the execution of revenue or other duties of the Government; on the country, it is exactly the complete disconnection with revenue that constitutes their efficiency”\textsuperscript{120}. The district Munsiff courts enjoyed early success with regard to its administration of justice and operation during the period 1816-1836 which persuaded the government to widen their area of jurisdiction in the year 1828.

In this context, it should be noted that the functioning of the court of circuit was far from satisfactory and defective. The fact that so many cases were pending for long period of time in the court defeated the very objective of imparting justice. Often, the prisoners had to wait for many months at a stretch for the arrival of the court of circuit. In many instances, the poor prisoners had to wait for the next circuit. In this context, the courts of directors understand the danger in relation to this inordinate and asked the Governor-in-Council to “instruct the Foujdary Adalath to require the circuit judges a short account of the ground on which they postponed the trials at the sessions. The long and repeated journeys to the Zillah stations to which prosecutors and witnesses are subjected, are so exceedingly vexatious that their reluctance to attend cannot excite any surprise\textsuperscript{121}.” Later on, it was proved that in the three years, 1831, 1832 and 1833, related to cases committed for trial before the different courts of circuit, on an average, the intervening period between the arrest and trial of the culprits was 133 days. Related to cases that should be tried by these courts and referred for sentence to the Foujdary Adalath, the intervening period between the arrest and the judgment was, on an average, 266 days. The average interval between

\begin{footnotesize}
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\item \textsuperscript{120} Ibid.
\item \textsuperscript{121} Despatch from England, 1831, para 38.
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apprehension and trial was 164 days and between apprehension and sentence 274 days from 1833 to 1839\(^\text{122}\). Until the abolition of the circuit courts, the defect of such serious consequence continued to exist thereby defeating the genuine dispensation of justice.

The officials belonging to the lowest ladder of judicial hierarchy had no significant part to perform in the dispensation of justice on account of the perception that their role and function did not have much tangible contribution to the material well-being of the people in the province. The officers in the province who were disposed to represent the character of the village Munsiffs in the favorable light agreed that they were, generally speaking illiterate and in the handling of law suits presented before them, they could pay little attention to the provisions included in the regulations. The commonly held opinion appeared to be that these officials were, on the whole, unable to discharge the duties entrusted upon them in the capacity as village judges. It must be recognized that their courts were not viewed with high respect and honor. Also people seldom turned to that agency for solving disputes. This opinion is confirmed when we compare the number of cases handled and solved in the village courts with the number of cases tackled in the district Munsiff courts. Another notable factor was that under regulations IV and V of 1816 both the Curnums and the Kolkars did not enjoy any consideration for the official tasks discharged by them as part of the regulations. The privileges they enjoyed and the material allowances they got were originally provided to them as reward for their duties related to the department of revenue.

Sheffield, the principle collector of Malabar sated as follows in this context; “the persons who have been appointed village Munsiffs appear,  

\(^{122}\) Arbuthnot; Select Reports of the Criminal Cases determined in the Court of Foujdary Adalah. 1851.
generally speaking, to be qualified to preside in the village courts but as yet I am not prepared to offer an opinion regarding the character of those courts, for although the Deshadhikars were long ago furnished with sunuds and duly empowered in every respect to receive and determine civil suits, they commenced entering upon their respective duties so very recently that until about four or five months ago scarcely a single suit was preferred to any one of the village court throughout the province”¹²³.

As a result of the comparatively negligible range in which the village courts had been relied on for tackling disputes, their effect in listening the expense of the legal process was limited. It seemed that the cases brought before the village Munsiffs were not, generally speaking, quickly talked in those days. When the number of cases tackled in each division is compared with the number of cases handled in the previous year, the pending cases proved to be larger than the agency could possibly tackle now that the cases had to be disposed without causing delay. Hence the aim and objective of the legal agency had not achieved to the satisfaction of all concerned. Probably as a result of the negligence or refusal on the part of the village Munsifss to perform their legal responsibilities and duties or on account of the unwillingness of the suitors to rely on these village tribunals, they aim of the agency could not be satisfactorily fulfilled.

Generally speaking, it is obvious that the aims and objectives related to the establishment of the village tribunals could not be achieved to the satisfaction of all concerned. It is even a debatable point whether these village tribunals really functioned to decrease the workload of the Zillah courts. In most cases, the cases handled in the village tribunal were again brought before the district Munsiff and the whole process of trial and verdict

had to be repeated there. From 1825 to 1827, a total number of 1887 suits were considered and disposed in the village Munsiff in Malabar. That means on an average 629 suits were handled every year. At the same time the district Munsiff during the same period handled 16534 suits, the average per year being 5511. From thus, it is clear that the possible additional number of suits to the district Munsiff would not have been regarded as heavy. In the event of the equal division of the suits, each district Munsiff would receive only 43 suits additionally which is insignificant as additional workload in the overall context of the yearly decision taken by them.

The village panchayath and district panchayath that were constituted as part of the judicial system of 1816 were also not frequently resorted to by the people. The reason for this might have been the general distrust of the people in the impartiality and integrity of the officials concerned which might have prevented them from depending on their services. It is obvious that this method of solving disputes was really unpopular from the statement related to the cases handled by the village and district panchayath from 1827 onwards.

During these years, only 4 suits were filed in the district panchayath and only 10 suits were filed in the village panchayath. As the statement of Campbell clearly indicates, “the result of the experiment seems to warrant the conclusion that with the great mass of the people, this mode of settling law suits is held in little estimation and it can now hardly be doubted that its prevalence in former times was a matter of necessity from the want of other tribunals rather than the effect of a prepossession in favor of an ancient institution.”

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An important point to be examined was whether the duration of time of confinement in the case of persons involved in crimes was of shorter duration in comparison with earlier times or not. It is clear from the periodical reports and trials forwarded from time to time to the Foujdary Adalath that the practice of long detention of persons involved in crimes before trial was a common occurrence.

The next important point that needs close examination is whether the prosecutors and witnesses experienced more convenience than before in being present to submit their evidence in front of the magistrates and criminal courts. Despite the advantages the system was credited within reports and documents point to drawbacks of the system of judicial practice that existed then. In many cases, the criminal judge had faced problems and difficulties in getting the attendance of witness and prosecutors. To a very great extent, the reason for this was either negligence or lack of proper familiarity with their duties and responsibilities in the case of police officers since, often, they did not forward the prosecutors and witnesses along with the prisoners. This absence of proper co-ordination causing difficulties existed for long thereby counting to create hindrances in the smooth functioning of the legal system.

Another major point to be examined is whether the current regulations effectively created the proper atmosphere for the apprehension and eventual proper punishment in the case of corruption and abuses of power that occurred in the case of the village and district police officials. A related point that is to be examined, in whether such instances of corruption and abuse of power were increased or decreased in volume and frequency in comparison with earlier times. In the case of corruption and abuse of power, there were provisions to apprehend it and mete out suitable punishment. But
in actual practice, the higher authorities rarely punished then. On the whole the people were unwilling to raise complaints against officials, because they feared the consequences resulting from the resentment of the officials belonging to the establishment and also the anger of the particular official against whom the complaint had to be raised. Along with the general unwillingness that the people showed to raise complaints against the officials, it was also very difficult to find out and establish convincing proof against the officials who were involved in corruption and abuse of power. It often happened that when complaints against police officers were made before the magistrate, as a rule, the magistrate was lenient and partial towards the officials in the police department and desisted from punishing them. A specific presentation of many instances of abuses and crimes on the part of servants belonging to different strata of official hierarchy under the colonial government during this period form part of the chapter.

After 1816, only slight fundamental changes were effected in the main structure of the administrative system. The most important change implemented as part of the reform was the separation of police functions from the public servants in the revenue department. The introduction of auxiliary courts, the jury trial in criminal cases, the abolitions of circuit courts and the establishment of sessions courts were the other notable changes in the system. The jurisdiction of the Zillah judges, the registrar, the Sader Ameens and district Munsiffs were extended with regard to the civil matters. The steady extension of the powers of all judicial officers of the district evolved during the years following the reforms of 1816 with regard to the criminal matters.

In 1818, under the reform the Zillah magistrate was empowered to delegate the whole or any part of his authority to his assistant on the criminal
In the case of extortion, oppression, or other abuse of authority, all native officers of police were made liable to be sued in a Zillah court or to be prosecuted in a court of criminal judicature. The British subjects, who residing in the interior parts were under the jurisdiction of Zillah magistrate for assaults and trespasses against Indians in 1820 onwards. By a writ of certiorari to the Supreme Court their conviction was made removable in such cases. Under this new reform the authority of the police Ameens was clearly demarcated and extended beyond the limits of the towns to which they were appointed and they were liable to perform revenue duties and along with their subordinates they were subjected to the authority of Thasildars. The magistrate was empowered to select and appoint the subordinate staff and was also authorized to conduct inquiry in offences, arrest offenders and conduct inquests etc. In the year 1822, the criminal judge was empowered to take cognizance of burglary without violence and punish the criminal with 30 strips and imprisonment with hard labor for two years. If burglary was accompanied with violence, the criminal judge had the power to commit the criminals to the court of circuit. The circuit court was empowered to punish the criminals by 39 strips and imprisonment by 14 years or banishment. The matter was to be referred to the Fougdary Adalath in the case of a conviction in which the burglary was not attended with attempt to murder or wounding. The criminal judge was imparted with a higher power to punish thefts not exceeding Rs.50 if it was not attended with attempt to murder. In case of the attempt led to occurrence of wound, the criminal judge was empowered to imprison the criminals for two years and

126. Regulation IX, 1818.
127. Regulation III, 1819
128. Regulation II of 1820.
129. Regulation IV, 1821.
130. Regulation VI, 1822.
30 rattans. In the case of mere theft, the judge should refer the trial to the circuit court.

Became an ultimate authority the Governor-General ceased to hear appeals from the Sader Adalath and the Privy Council in 1818\textsuperscript{131}. The year 1820 saw a very significant administrative reform that reflected the spirit of equality before law. One remarkable reform in 1820 was in the case of suits brought by Indians the Zillah Judges was empowered to try suits against British subjects residing in the districts and in the case of appeals the Supreme Court or the Sader Adalath was being made liable\textsuperscript{132}. By an order-in-Council, the Governor-in Council was empowered to establish and abolish the provincial and Zillah courts and to alter the stations at which they were held and the order of succession in the jail deliveries of the Zillah’s and to extend and contract the jurisdiction of these courts\textsuperscript{133}. The jurisdiction of the registrars, Sader Ameens and district Munsiffs were extended in 1820 to Rs.1000, 750 and 500 respectively\textsuperscript{134}. Under the regulations of XXVIII and XXX of 1802 the collectors were authorized to take primary cognizance of suits of the nature of those summarily cognizable by the Zillah courts\textsuperscript{135}. All decisions of the district Munsiffs regarding suits for property in land were permitted to submit appeal to the Zillah court in 1825.

In 1818, there had been as attempt to curtail the expenditure of the different courts by a general downsizing of the establishment and a uniform scale for all divisions. Though the aim was desirable, the explanations

\textsuperscript{131}Regulation VIII 1818.
\textsuperscript{132}53rd George III,C.55,Regulation II of 1820.
\textsuperscript{133}Regulation I of 1821.
\textsuperscript{134}Regulation II,1821.
\textsuperscript{135}Regulation V,1822.
provided by different provisional courts pointed to the stand that the local conditions and unique attributes in each division would make the general scale inapplicable and out of place. In the light of the duties to be discharged by the establishment, there was little possibility for a reduction in the existing staff and the scale of expenditure.

As far the transfer of the duties of the native registrar to the Sheristadar, the judge gave by the Zillah court were lesser than before detailed explanation of the duties of the Sheristadar. According to the Judge in the Zillah of north Malabar, the appointment of Munsiffs prevented many petty suits from being submitted in the court. It was expected that this would lead to reduction of the number of servants, since the duties related to investigation of civil suits were the important work of the civil court. But the situation was different in the Zillah, where different duties were of equal importance and required more time consuming work, which was not decreased in magnitude. The performance of such duties formed major part of the business. A total of 782 miscellaneous petitions had been examined within six months proceedings from June 1819 and in consequence of the non-attendance of the witnesses required many of the claims urged in these petitions still remained for decision.\footnote{J C, 1821, Vol.157,pp.1799-1855.Letter from the Registrar for the Sader Adalath to the Secretary to Government, 28th June, 1819.}

On their own experience by the provincial court, the statement of the Zillah judge was confirmed in this regard. In the words of the judge in the Zillah of south Malabar said that “the native registrar’s situation may be abolished, but there should be an increase, in consequence, among the Gumastas.”\footnote{Ibid.} Now that the reports from the Zillah courts did not verify the conclusion of the commission that the
business of the Zillah courts had been diminished, the Sader Court took the position that the proposed reduction could not be recommended.

As a first step to achieve reduction in expenditure, the commission recommended the abolition of the post of the native registrar. The fact that the Sader Adalath and provincial courts of appeal were without native registrars was pointed out as the reason for the adoption of this step. Also European registrar was attached to each Zillah court and his service was available. There was also the belief that the duties assigned to native registrars could be taken up by the Sheristadar and his Gumastas since the duties handled

As for the proposed reduction of two Persian writers, there was no difference of opinion. Measure to the retrenchment of native doctors of the Zillah courts was not accepted since it was not act against the claims of humanity. The proposal to remove one Masalgee was not opposed. As for the reduction in the jail establishment proposed by the commission, the judge of the Zillah of north Malabar pointed out that the number of jail guards could not be decreased because in the Zillah the three prisons were situated at places for one another and also much away from the head station. The judge of the south Malabar was of the opinion that the proposed reduction would not ensure the safety and security of the jail.

The provincial court for the western division argued that uniform modification of the establishment of the different Zillah courts and limitation to a common scale of expenditure was impractical and unrealistic. Under the presidency of Madras they expressed their conviction that from the character, habits and disposition of the peoples the criminal duties in the
Zillah court of the division were more than equal to those experienced in any other districts\textsuperscript{138}.

With the intention of attaining economy in the administration of justice, Col. Munro put forth a regulation in 1821 to effect a reduction in the number of provincial and Zillah courts. As part of the implementation of this regulation many Zillah courts in Malabar and adjoining districts were abolished based on the argument that the work assigned to then be lesser than in the case of others. This led to protest among the people which were expressed in the form of petitions to the government.

Very soon the court of directors realized that the measures taken for reduction in establishment were unrealistic and often involved breakdown of the system. In this respect, they came out with sharp criticism. They seriously considered the hardships faced by the people when they were deprived by the protection of the chief courts of justice as a result of which they had to rely on the protection of a court that was far away from their residence. As a result of that access to courts become very difficult, justice denied, the line of communication broke down, illegal acts become rampant, resulting in making the people miserable. Often the innocent people had to suffer and they were deprived of justice.

An economy drive was set on foot to bring down the expenditure of the courts. A Regulation was passed to abolish many of the Zillah Courts on the plea that the number of suits filed before them was considerably small. Munro’s argument for the abolition of these courts was based on the reason that only small quantities of suits were filed in this court. But the court of directors stated; “the usefulness of the courts cannot be measured by mere file of cases: it can only be estimated from the effect they produce, by the

\textsuperscript{138}Ibid.
silent and unseen operation of the law which they are believed to administer. When the radical suggestion was abruptly implemented, it disregarded the claims of justice and created an atmosphere of insecurity and panic. In a sense, it was a form of turning back to the disorganized pre-regulation days.

The only restraining influence upon the unruly and ill-disposed elements in the society was the presence of the courts. In addition to that the Zillah courts exercised a positive check on the village and district Munsiffs who were invested with unlimited power in both civil and criminal matters. The village and district Munsiffs were accountable to the Zillah courts for official misdeeds. When the Zillah courts were abolished, these officials got the opportunity to abuse their power and to oppress the common people for private gains. Actually what was needed at that time was greater control by the Zillah judges over the district Munsifs because they had power to exercise extensive judicial functions without appeal and without recording evidence. Before the introduction of this measure of great consequence, the superior judicial officers were not consulted.

On account of ignorance, rashness and over zeal, this power was often abused. Though the government had issued orders in particular cases, it did not achieve success in the expected manner to meet this evil. For every contingency, it was not possible to lay down ruler. At the same time, to answer almost all cases that are likely to arise, the ruler might be framed. The most important rule was that no civil authority should call out troops until he had full conviction that such an action was absolutely essential for which an impartial and objective consideration of all circumstances should be made. The civil magistrate has the power to address his requisition for

139 Judicial Despatch from England, 11th April 1826, para 21.
troops to the officer commanding the division and not to any subordinate military officer in such a circumstances that when he deemed it inadvisable to wait for the government.

The principal merchants and residents of Tellicherry, Katathanad, Chirakkal and Kottayam submitted representations to the government in which they stated the consequences that would result from the Zillah of Malabar being consolidated with Calicut as the station of the Zillah court. Consequently, the court of directors instructed the government of Madras to restore the courts that were earlier abolished.

After the implementation of the reforms of 1816, conditions underwent rapid changes. Increase of disputes and crimes led to a big expansion in the quantity of cases. As a result of that different courts from that of the village Munsiff to the Zillah judge were not able to dispense with justice so that satisfaction among the people could be created by taking into consideration the necessity of the community. Hence the government was impelled to adopt some remedial measures. For the prompt and efficient administration of justice, it was found necessary that auxiliary courts with the full power and authority of the Zillah courts should be established. They were in the charge of Assistant Judge of the Zillahs in which they were stationed. The ministerial establishments of these Courts were to be selected by the Zillah Judges. The Assistant Judge also acted as the Joint Criminal Judge. This greatly improved the existing condition and Munro was solely responsible for it. A decision to the effect was that a convenient part of the Zillah, where such auxiliary courts might be established should be

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141 Regulations I, II, VII, VIII, XI of 1827.
transferred to the separate jurisdiction of these courts. The Governor-in-
Council had enacted the regulation I of 1827 to achieve this purpose.

It was envisaged that each auxiliary court should be superintended
by an assistant judge of the Zillah where it might be founded. Necessary
number of pleaders and ministerial officers should be appointed to each
auxiliary court. In their local jurisdiction the assistant judges were entitled to
exercise the same power as was vested in the Zillah judges. The assistant
judges had to follow the same rules and restrictions. Appeals related to the
decrees of the district Munsiffs within their jurisdiction should be submitted
to the assistant judge. In particular suits, related to the decisions of the
assistant judge, appeals were allowed to the Zillah judge. The Governor-in-
Council was empowered to authorize the appointment of Hindus and
Muslims who were not already appointed as law officers to be Sader
Ameens in the auxiliary courts. Appeals related to their decisions were laid
to the assistant judge. From the decisions of Sader Ameens in appeals
referred to him by the district Munsiff a second appeal was also upon to the
assistant judge\textsuperscript{142}.

The subordinate collector became the joint magistrate whereas the
assistant judge acted as the joint criminal judge of the Zillah \textsuperscript{143}. The
principal Sader Amen was the Indian judge who came to be appointed at this
time was designated as the Indian criminal judge. The duties and powers
entrusted with them was the same powers as those exercised by the
magistrates but he has no jurisdiction over any Americans or Europeans\textsuperscript{144}.
An Indian judge was appointed in 1827 whose designation was changed as
the principal Sader Amen in 1836. He was invested with a separate territorial

\textsuperscript{142}. Regulation I, 1827, Sections-2-7.
\textsuperscript{143}. Regulation II, 1827, Sec. 2 and 5.
\textsuperscript{144}. Regulation VIII, 1827, Sec. 33.
jurisdiction and powers similar to that of the assistant judges. A special condition attached to his appointment was that he had no power to try Europeans or hear appeals related to the decisions of European officers. The assistant judge has the power to transfer any pending suit to him whenever any circumstances necessitated. Related to the decrees of the assistant Judge, appeal was laid to the Zillah judge. From the decrees of the Zillah judge in appeals from the assistant judge or principle Sader Ammen Similar appeals were open to the provincial court. The ministerial establishments for the Auxiliary Courts were to be selected by the Zillah Judges, on the formation of these courts, first from among such of the native servants of the abolished courts as might still be unemployed or in lower situations than they held there; next from among their own court servants, on the principle of promoting those who were most able and deserving; subsequent appointments and dismissals were to be made by the Assistant Judges as the Heads of those courts.

Apart from this, after the establishment of the auxiliary courts the Zillah judge had to send orders to the district Munsiffs whose jurisdiction were made part of the ancillary court. The assistant judges were empowered to recommend to the provincial court persons to appoint in the vacancies in the office of the district Munsiffs belonging to their jurisdiction. An authenticated copy of all circular orders received from the provincial court of Sader and Foujdary Adalats, the Zillah Judge would transmit to the assistant judge on the establishment of the auxiliary court.

145 Regulation I,1827,Sections 2-7.
146 Regulation XI, 1827.
147 J C, 1827, Vol.198, pp.855-59; Circular to the Provincial Court of Appeal and Circuit.
148 Ibid.
The public servants proposed to be appointed were divided into two categories by the judge of the Sader Adlath. The first category included those who held officer in the court and the second category of those who nearly performed work. The following denomination of officers such as Sheristadar, Native Registrar, Record Keeper, Nazir, Brahmin, Mulla Koranel, Shroff were included in the first category. The Sheristadar was an important official. The office of Shroff was not created in Malabar for which no reason was given. The judge of the Sader Adalath thought that a Shroff should be appointed and deemed as part of each auxiliary court. In each court, a government Vakil was appointed. Comparing to the salaries of these officers to the same description of servants in the Zillah court their salaries were to be less mainly because of the labor, responsibility and dignity of their respective situations would be less than the servants of the Zillah Courts. The second category included English Writers, Translators, Gumastas, Munshis and Peons. With regard to meet the expenses related to the jail establishment, the judge of the Sader Adalath recommended that each auxiliary court should be granted an amount equal to one third of the expenses of the same class of servants in the Zillah court.

Tellichery was selected for the location of the auxiliary court in Malabar. In Tellichery, there was a building suitable for use and also a very spacious jail which could be used quarterly without causing any trouble to the business of the half yearly circuit. Holland who was the judge of the Zillah court at Calicut proposed that the five Talooks of Cavai, Cherical, Kotioti and Tellichery, Kartaned and Wynad should be enclosed within the jurisdiction of the assistant judge and criminal judge in total; it would consist of about more than one-fourth of the population of the district.
The collector of the respective district were the auxiliary court was stationed was empowered to discharge the monthly indents of the court provided the indents were signed by the assistant Judge. Under the rules and regulation prescribed in the circular order of the 9th February 1819, he was also authorized to receive a sum of money taken as deposit from the assistant judge.\footnote{149 J C,1827,Vol.198,pp.867-75.}

When the people were deemed to be the main factor in the country and their happiness as the major aim in view, they should be granted permission to take part in all spheres of state activity. Hence Munro stated: “in proportion as we exclude them from the higher offices and a share in the management of public affairs, we lessen their sprit in the concerns of the community and degrade their character.”\footnote{150 Arbuthnot,op.cit.p.255.} Munro suggested that they should be permitted to seek distinction not only in offices of profit and honor but also by serving their countrymen in those of utility. This is mainly because of to boost up the morale of the people and to excite the public sprit.\footnote{151 Munro,Letter,3rd July 1827.}

It can be seen as the inauguration of a new era of humanitarian reforms in India. In civil cases, trial by jury may be seen as a sequel to the panchayath system. From his long experience and contact with the political and social institutions in Madras, Munro was convinced that the panchayath were a better administrative agency in tracing facts from evidence than the Mohammedan law officers. Another important factor was that the Muslim criminal law was new and the Muslim law givers were strangers in most places in Madras presidency, especially in Malabar because the Hindu social and political institutions had an upper hand for many centuries. The short
period of Muslim rule under Hyder and Tippu was a weak attempt to erase the old polity and to implement a new one.

His concern for Indians and his regard for the time-old institutions which lay disused and disregarded in India found expression in 1827 notable innovation the Jury System in criminal cases which improve and revitalize the administration of justice in Madras Presidency. So in clear terms, Munro argued for the introduction of trial by jury. Considering the above mentioned aims in view, the system of trial by jury provided many advantages to the people and also to the government. As part of the procedure adopted in the system, the written evidence was dispensed with which was a considerable relief to both the government and the public. Also it was possible to avoid the delay and expense that warmly resulted from the search for the Mohammedan officers. At the same time the system of trial by Jury ensured the cause of justice in this context. In addition to that, the new system relieved the judges of the necessity of inducing upon the services of the clerks and the translators for preparing many records for reference to be used by law officers of the establishment. Another advantage of the system was that it enabled them to devote their total attention to the trials for the dispensation of justice. Yet another positive effect generated by the system was that it aroused public curiosity and interest in the legal proceedings in the presence of the native people acting as jury. Hence, during the trial, the spectators would gather to witness the proceedings and the presence of the local people would surely persuade the jury to consider and scrutinize the evidence so that a true and just verdict could be pronounced.

It was obvious that the reform incorporated a vital principle of taking the people into confidence and attempting to associate than in all areas of administration. Some judges tried to defend the old order by
criticizing the proposed innovation as totally unsuitable to its purpose saying that it provided no hope of improvement in the dispensation of justice or improvement in the general moral standard of the people. They argued that the new system would definitely lead to corruption among the natives. In civil cases the native panchayats disuse was general known fact\textsuperscript{152}. The Indians were also distrust among Indians in the sense of morality and justice and which was contrasted with their increasing confidence in British integrity and honesty equality\textsuperscript{153}. Munro’s response to his critics was that “whatever is defective will be discovered and corrected by time and practice and that the innate excellence of an institution will gradually carry it through every difficulty”\textsuperscript{154}.

In the Madras Presidency the jury trial was gradually introduced in this effect a regulation was passed in 1827\textsuperscript{155}. Prior to conducting the quarterly or half yearly jail deliveries, the judge of the circuit court would inform juries to be present for the trial of all criminal cases that were brought before him. In case the necessity arose, he could himself try any particular case. The defining qualities clearly pointed out that only the Hindu and Mohammedan resident of the Zillah’s were eligible to function as furors and also that every juror should possess intelligence, respectability and consideration and they should belong to an age group between 25 and 60. The persons having the following specific attributes were exempted from serving on juries. Persons suffering from diseases making them confined to their house, Zamindars and Jagirdars, ascetics and people who had given up worldly life, persons devoted to saintly people like peers, Faqueers and

\textsuperscript{152} In the whole Presidency, in the four years preceding 1828, not more than 237 out of 263990 cases had been decided by them.
\textsuperscript{154} Arbuthnot, op. cit, p.324.
\textsuperscript{155} Regulation X, 1827.
gurus, full time practitioners belonging to medical profession, personals belonging to legal profession such as Vakil and court servants, employees of the revenue department, Subedars and commissioned officers in the military service and all persons who were declared exempt by the Governor-in-Council.

At least twenty days prior to the probable day of opening the sessions, the circuit judge was empowered to issue a circular to the criminal judge of the Zillah, informing him to assemble a sufficient number of jurors. The criminal judge had the power of discretion to fix the number of jurors between 30 to 72. Then he should take by lot the names of the proposed number of jurors taking into consideration to exclude those who had been summoned to serve on the jury at any time within two years. Then the criminal judge sent summons to the persons selected so that they would be get it at least four days before enabling them to set out the journey. Sickness, death of relation, family economy etc were regarded as reasons excusing the absence of jurors. In the case of jurors who were not attending or withdrawing themselves without the permission of the judge concerned were imposed a fine comprising a sum not exceeding Rs. 20 per a person. A fine of a sum not exceeding Rs. 200 was imposed in those who attended and withdrew through contumacy or contempt\textsuperscript{156}.

The officers of the government periodically prepared lists of all persons within their respective jurisdictions qualified as jurors who were not exempted. Later, these lists were submitted to the criminal judge and consolidated as one general register for the whole Zillah and kept in the criminal court which was periodically renewed. In the event of unjust exclusion or inclusion in the list, there was provision to submit an appeal to

\textsuperscript{156} Ibid
the officer concerned who prepared the original list. The general provision is that in due course it would be forwarded to the superior authority. He was liable to be fined a sum not exceeding Rs. 20 in such circumstances that if he refused or neglected to receive or forwarded it to the superior authority\textsuperscript{157}.

It was not compulsory that evidence should be presented in Persian language. In the case of trials which need not be referred later to the Foujdary Adalath, the presiding judge was empowered to dispense with written depositions. With regard to cases that could be referred to Foujdary Adalath, the judge concerned had to take evidence in the current language of the district. Once the examination and cross-examination of each witness were over, each juror had the liberty to raise any question related to the case. At the same time, the presiding judge had the power to prevent unjustifiable questions being raised. Once the consideration and taking of evidence of both sides were over, the judge own circuit made such observations to the jury which were relevant in the context in connection with the nature of evidence and points of law involved in the case at the same time, taking care to see that matters that may produce bias may be avoided. The next step was that the jury should pronounce their verdict. In case they wanted to consult together, prior to declare the verdict, they were allowed to retire to a proper room adjacent to the court, where they were safe from interference by others. The jury members were not allowed to disperse until they had declared their verdict which is to be considered by the judge concerned.

A significant change from the old system was that it was not essential either for the judge on circuit or the Foujdary Adalath to require the fatwa of their law officers about the guilt of the prisoners for establishing or substantiating the verdict of the jury. After explaining their reasons, the jury

\textsuperscript{157}Ibid.
was empowered to recommend a guilty prisoner to mercy. If the presiding judge concurred with it, he could forward the recommendation without delay to the Foujdary Adalath. The Governor-in-Council had the prerogative to pardon the person under trial. With regard to the independent and fearless exercise of their functions, the jurors had to be accorded safely and protection. On account of the verdict they might give, the jurors were prohibited from accepting any gift or profit or advantage, previously or later. If any breach of this rule would be occurred, he would liable to be punished and by conviction to imprisonment for one year and a fine ten times the value or amount of the bribe offered or received by the jurors\textsuperscript{158}.

There were a number of law officers who were actively associated with the judicial administration of the country to safeguard and protect the judicial interests of the Company and to interpret the laws. The most important officers were the legal Remembrancer, the Advocate-General, Registrars of the Sader Courts, the company’s Solicitor and the standing council. The superintendent and Remembrancer of legal affairs was first appointed under Regulation VIII of 1816\textsuperscript{159} in the presidency of Bengal. He was to be designated as solicitor to the government and the superintendent of government law suits. In Madras the office of legal Remembrancer was never created and the important reasons being economy in expenditure. In the Queen’s court, before the passing of the charter act of 1833 the advocate general\textsuperscript{160} was the only law adviser of the government of India. The duties assigned to him were give his best advice and counsel to the company and to their governors. In the judicial set-up of the country the registrars attached to the Sader court played a notable role. The heavy and multifarious duties

\textsuperscript{158} Ibid
\textsuperscript{159} Passed by Governor-General-in-Council on 29\textsuperscript{th} March,1816; Bengal Regulations, Vol.VII.
\textsuperscript{160} Legislative Consultations.No.2 of 10\textsuperscript{th} May,1843.
assigned to him were both the secretary and the registrar of the court and his office was important, responsible and onerous. In Madras\textsuperscript{161} the additional duty performed by him was the preparation of records of the cases appealed to the king-in-council. In different presidencies the company’s solicitor acted as the liaison between the Sader Court and the advocate general. He discharged all the duties of an ordinary attorney and his functions\textsuperscript{162} were co-extensive. The standing council\textsuperscript{163} acted in all cases in which the services of a council were required as junior to the advocate-general on behalf of the government. These law officers were the watch-dog of the company’s legal interests and protected the government from any encroachment upon their legitimate rights by any person or party under the cover of law.

It is sad to note that Munro did not live long enough to see this regulation being implemented in its full and complete form. Though it was passed on the 11\textsuperscript{th} September 1827, it was not effectively made a part of the judicial establishment then. In this regard, the honorable court of directors express instruction was that no changes should be made in the principles and practice of the reestablished system without the prior consultation of the opinions of the superior and local judicial officers or without the permission of the court. Hence, copies of the regulation were sent to the judges of the different courts and other judicial officers who were part of the judicial system with the purpose of getting their considered opinion on this matter.

\textsuperscript{161} Letter No 9 of 15\textsuperscript{th} January, 1836 from Registrar, Sader Adalath, Madras to chief Secretary, Madras government; home; judicial consultations. No.25 of 19\textsuperscript{th} September, 1836.

\textsuperscript{162} Letter dated 6\textsuperscript{th} May, 1849 from W. Ritchie, advocate-general, Bengal to secretary, Bengal government describes the duties of the government solicitor; home; judicial consultation. No.10 of 7\textsuperscript{th} October, 1859.

\textsuperscript{163} Home’ Judicial Consultations. No.10 of 7\textsuperscript{th} October, 1859.
The opinion of some officials who were responsible for the dispensation of justice in Malabar are important in this context Mr. Vaughan, the second judge in the provincial court of the western division was of the view that the immediate introduction of the system would produce nugatory consequence within a definite duration of time. Vaughan regarded the natives to be devoid of honor and honesty. According to him, they had a total disregard for the sacredness of an oath making them incapable of undertaking the role of jurors in a conscientious manner. He goes on with his reasoning against the jury system by observing that “the native, as a juryman would have no character to maintain or which would suffer in the eyes of his fellow subjects by the grossest dereliction of his duty; he has no interest at stake, which can be of the smallest consequence to him or which cannot be cloaked under the semblance of the most perfect zeal and apparent honesty of intention”. Hence, his view was that, “the nature or rather the disposition of the man must be changed before he can be fit to be entrusted with the lives and liberties of his fellow subjects and creatures, and something approaching to the morality of a true Christian or at least pride must be instilled into him before he can be considered worthy for such a trust”\textsuperscript{164}.

The thrust of the argument put forth by Vaughan was that the natives were unworthy of holding any honorable and responsible position. He believed that the Indians lacked honesty, integrity and morality. He regarded the progress and evolution of intellect and positive change as very slow in India with the result that the people were steeped in superstition. He believed that all the institution that evolved in India were creations of selfishness, existing with the only aim of securing a place in the paradise and they had

\textsuperscript{164} J C ,1828,Vol.201,pp.1681-92.Letter from Vaughan to the Secretary to Government.
no desire or inclination to do something for the betterment and greater confront of the fellow human beings. “The morality of the Hindu which gave rise to the religion may be pure enough in this respect, but it is either felt by or practiced in its genuine form by the heatless devotee.” The lives and liberties of their fellow creatures and subjects should not be entrusted to their own care mainly because Indians were a race so prone to shameless and wanton perjury.

It is self-evident that these charges sprang from imperialist ideology, colonial hegemony and the feeling of racial superiority shared by Mr. Vaughan. Illustrating their attend in clear terms, he states as follows: “Our ancestors were a brave, frank, generous and honorable race, with whom trouble was held at naught in the discharge of their duties as jurymen, for with them it was a sacred duty”. When we read this, the ideas woven into the context reminds us of Munro’s notable observation, that other conquerors had treated their subjects with violence and cruelty whereas none had ever treated them with such scorn and contempt as in the case of the British. In fact, they had branded a whole nation as unworthy of trust, lacking in honorable conduct and suitable to be employed only as menials or servants. It has been specified by Aspinal that subjection to a foreign domination was imposed in order to destroy the national character and undermine national sprit. The relevant question whether it ought to be the policy of the company’s government to improve the character as well as the economic condition of the people or not was ignored for long by the authorities. It seemed that the policy of distrust and exclusion was adopted to ensure the annihilation of the people’s self-respect. By declaring that Indian’s were necessarily corrupt making them unreliable and dishonorable, the authorities

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165 Ibid.
tried to justify their degradation. They forget the fact that underpaid excise and customs officers in 18th century England were not really models for purity, however and integrity. It was a fact that the company’s European employees were notorious for their careless and unreliable behavior so that later Cornwallis decided to ensure their honesty by substantially increasing their salary. If the same policy was adopted in the case of Indians, the similar positive results would definitely happen.\\n\hspace{1cm}166\\n
Whereas the opinion of Vaughan is noted for its imperialist and anti Indian trait and character, the view of Thomas Gahagen is striking for its pro-Indian learning’s. Thomas Gahagan, the judge in the Zillah court of Calicut, was of the view that general effects of native juries would be to familiarize the natives with the new system and make them interested in the forms and principles of the administration of judicial system which would disseminate the knowledge among the people creating an inclination for public welfare and improvement. According to him, there was no evil consequence from the trial by jury among the people. He was of the firm view that whatever be the prejudice related to the introduction of native jury system, the same would be diminished in future. What is to be noted in that the system of native jury would increase the confidence of the and the principles based on which they conduct the dispensation of justice, their personal interest in the administration of justice and also police administration of the country could be improved thereby making them responsible in personal and social behavior. Hence Gahagan thought that there was no reason for having further delay in the introduction of native jury system. Gahagan strongly recommended that the jurors should be selected from all classes and castes of Hindus and other people including

166 Aspinall, op.cit, pp.174-75
the very inferior grads of Pariahs, Pulayas and others pursuing menial occupations irrespective of caste, creed and religion as a measure of fairness and expediency in the jurors system\textsuperscript{167}.

Hence, trial by jury consisting of the natives was introduced in 1827 in the Zillah of Chittoor as an experiment. Later on, in 1828, this was extended to Malabar and also others districts in Madras Presidency. In spite of the sterling merits of the system, it is to be observed that the system did not meet the expected support and positive response from the people. One reason for thus was that after years of British rule, the people had developed a type of inferiority complex making them dependents so that they looked up to the British for impartial justice. Consequently they underestimated their own caliber and ability in this respect. Hence, till 1840, the system of trial by jury functioned only every now and then.

In the criminal cases, usually the fatwa of the Kazi had a decided role in the dispensation of justice. In fact, the system of using native jury had to wait for getting the recognition of the people. After that the Futwa was abolished and the Muslim law officers were discontinued. When the session’s courts were established in 1843, the juries were summoned on a regular and frequent basis. Hence it is clear that though the Regulation for Trial by Jury was legally introduced in 1827, the system began to function successfully after 1843. Once the system began to work properly, it led to effective and speedy disposal of justice. Probably, the hostility shown by many judicial officers against Munro and the prejudice against the Native July system might have been responsible for initial rejection of the system. It is self evident that a new plan and its implementation cannot attain success and earn momentum when the officers in charge of the control of the system

\textsuperscript{167} J C.1829, Vol.217, pp.840-49.
show signs of apathy and even antipathy. Once the system began to function properly, it gathered energy and momentum.

Since the proposal to abolish the offices of the law officers was not favorably viewed by the higher authorities, the law officers continued to function as part of the system. The Fojdary Adalath was of the opinion that the delay in deciding cases was caused by the tendency of the court to adhere to the Mohammedan law. In every case involving this, the Kazi was bound to submit fatwa based on which the judge passed the verdict. For this, enormous time and labor was required for tracing the relevant facts in the law books of Islam. Hence, it was argued that the abolition of Mohammedan criminal law was of urgent necessity. But the court of directors did not approve this action. They stated that the Mohammedan law should be the criminal law of the country until the new criminal law was codified. In spite of that, as a step to speed the process of reform, they directed the government of Madras to do away with the futwas\textsuperscript{168} when dealing with criminal cases without causing harm to the authority and significance of the Mohammedan law as part of the legal proceedings.

As per the directions of the higher court the inquiry had been made from the lower courts of the western division which led to different opinion. The Zillah judge of Malabar stated that the law office of his court could be abolished. In addition, he was of the view that the substitution of the two Sader Ameens instead of the law officers of the Zillah courts would bring benefit to the public. In case such additional Sader Ameens were selected from the group of experienced Munsiffs and the most intelligent and respectable Vakil and officers of the Zillah courts, it would further enhance the class of native functionaries attached to the judicial system making it

\textsuperscript{168} J C. 12\textsuperscript{th} May 1814.
more useful for the people. If the natives were eligible to the post of law officer to the provincial court as a result it would confer more benefit to the whole community and improve the confidence and character of the people. For interpreting the laws, the judges of Calicut adversely opined the reduction of the existing establishment. The judge of the provincial court of the western division stated that the services of the law officers connected to the Zillah courts could be abolished without causing any harm or injury to the interest of the people or the company. In contrast to the above mentioned opinions, the judge of the Sader Court expressed their opposition to such a proposal. “It would not only be an impolitic but an unpopular measure” they stated “to abolish these situations for it would be a retrograde step in that liberal and conciliatory policy, which it is the interest and has been the object of the Government, to pursue. Indeed, with the exception of the law officers attached to the Courts, no civil office is now open to the Mussalmans who, as the previous rulers of the country, are the most jealous of our power, and whom it is, in consequence, material to attach to our Government, more especially as both the Mussalman and Hindu law officers, from their talents and acquirements as from their situation are natives of extensive influence over their countrymen.

The first century of British justice in India, that is till 1833, was a period of unceasing experiments making and unmaking of various systems of courts in an Endeavour to achieve the best and most suitable system of judicial administration. The courts sought to administer justice between man and man without an adequate, certain and precisely defined body of law. In

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the words of Macaulay, what they applied was not law, but a “kind of rude and capricious equity”\textsuperscript{172}. Later on some minor improvements also were introduced. In the investigation and decision of criminal cases other than those that can be committed for trial before the court of circuit, criminal, joint criminal and native criminal judges were authorized to employ the Sader Ameens in the year 1833. The judges overrule the decision of the Sader Ameens and also the power to declare not to have jurisdiction over Europeans or Americans\textsuperscript{173}. For trial, commitment or confinement to the Principle Suder Amen the magistrate were authorized to send persons in 1837 except the American or European citizen\textsuperscript{174}.

After the establishment of the auxiliary courts in the civil side important changes occurred in the jurisdiction of the registrars, the Sader Ameens and the district Munsiffs to Rs. 3000, 2500 and 1000 respectively\textsuperscript{175}. The privilege of the British subjects to the special appeals enjoyed from the decisions of the Zillah court to the Supreme Court was abolished. It was enacted that no person should be incapable of being appointed as a Principle Sader Amen, Sader Amen or a district Munsiff \textsuperscript{176}. No person by reason of birth or descend should be exempted from the jurisdiction of the Companies court. So we can understand the though these changes were minor on the surface, their impact on the administration of justice in general and the judicial system in particular was of considerable importance and consequence.


\textsuperscript{173}.Regulation III,1833.

\textsuperscript{174}.Act XXIV,1837.

\textsuperscript{175}.Act XXIV,1836.

\textsuperscript{176}.Act XXIV,1836.
In case of judgments made by the justices of peace in the Mofussil [magistrate] on the British subjects living in the districts for crimes like assaults or trespasses against the natives, appeals could be submitted in the regular course, just as in the case of ordinary judgment passed in the ordinary function of a magistrates jurisdiction. If the judgment passed there is no further chance to be liable to revision by certiorari by the Supreme Court\textsuperscript{177}.

Until 1841 the circuit court or by special courts appointed by the government, consisting of three judges has been tried treason against the state\textsuperscript{178}. In that year, for the trial of treason, rebellion or any other crimes against the state, the government was empowered to issue a commission to one or more judges who would be often assisted by law officers. The commission had await orders for three months before executing the same after report its sentence to the Foujdary Adalath and the latter in turn had to report its sentence to the government \textsuperscript{179}.

Before the passing of the Charter Act of 1833, Bentinck had taken some radical changes\textsuperscript{180} in the administration of justice. The powers of the subordinate un covenanted judicial functionaries like Munsifs\textsuperscript{181} and Sader Ameens\textsuperscript{182} were considerably increased. The Sader Ammeens\textsuperscript{183} and the principle Sader Ameens\textsuperscript{184} possessed petty criminal jurisdiction also. It was further proposed to invest the Munsifs\textsuperscript{185} too with some penal authority.

\textsuperscript{177}Act IV,1843.
\textsuperscript{178}Regulation XX,1802.
\textsuperscript{179}Act V,1841.
\textsuperscript{180}Regulation V of 1831;Bengal Regulations, Vol. IX.
\textsuperscript{181}Section III to Xii, Ibid.
\textsuperscript{182}Section XIII to Xvi; Ibid.
\textsuperscript{183}Regulation III of 1821;Bengal Regulations, Vol. VIII.
\textsuperscript{184}Provisions of the above Regulations were extended to Principle Sader Ameens under clause 6, Section XVIII of Regulation V of 1831;Bengal Regulations, Vol. IX.
\textsuperscript{185}Letter No.10 dated 23\textsuperscript{rd} January,1837 from Secretary, Government of India to Secretary, Government of Bengal;Home;Judl.Cons.No.9 of 23\textsuperscript{rd} January,1837.
The legislative enactment of 1843 was a radical change and a landmark in the history of judicial administration, which changed the pace of administration of justice and helped to accelerate the momentum of the silent revolution. Its aim was the abolishing of the provincial courts of appeal and circuit and the civil and criminal Zillah courts and also the establishment of new Zillah courts as a result of the Act of 1843 to discharge the civil and criminal functions earlier carried out by those courts.

The civil and criminal courts that existed earlier became the civil and criminal court under the supervision of the subordinate judge as a result of the new Act. For the trial of all persons implicated in crimes formerly cognizable by the court of circuit, the new Zillah judge was directed to conduct permanent sessions. As part of the legal proceedings, the judge could get the help of respectable Indians or other persons by employing them as assessors or jury to be present during the trial so that they could put forth points of enquiry to be incorporated in the judgment. As any rate, the judge was empowered to pass decrees in the light of his legal opinion, whether it agrees with the suggestions of the assessors and jury or not. In the case of his decision being opposed to their opinions, it had to be referred to the Foujdary Adalath. Sessions judge had the power to overrule the verdict of Sader Ameens. Prosecutions initiated against the magistrates should be presented before him. The duty of the session’s judge comprised bringing to the notice of the magistrates any neglect or omissions or transgressions of the subordinate officers of police that came under his observation or that had been reported to him. Also he had to report misconduct of magistrates and their subordinate officers to the Foujdary Adalath. The session’s judge and

subordinate judge had the power to communicate directly with the officers belonging to the police department.

In Tellicherry and Calicut, new Zillah courts were established. The system required that the Zillah courts established according to this act should be under the control of one judge whose designation was civil and session judge of the Zillah. Within their limits, these courts had the power to exercise the same civil jurisdiction as in the case of the provincial court of appeal, with the difference that the original jurisdiction assigned to that court in guilt’s for an amount of Rs. 10000 or above. This original jurisdiction of the provincial courts was now transferred both the subordinate judge and the provincial Sader Amen. They were provided with jurisdiction over Americans and European British subjects. In the capacity as civil judge, the new Zillah judge had the power to hear appeals related to the judgments of the subordinate judge and the principal Sader Ameens, the Sader Amee and the district Munsiff. He was empowered to refer appeals related to the decisions of the district Munsiff to subordinate judge or the principal Sader Amen. But the difference was that the new scheme did not allow him to have the assistance of the registrar’s court because that court had been abolished. Related to the decisions of the subordinate judge and principal Sader Amen, summarily appeals were presented to his court. Related to the judgments’ taken in his court, appeals could be submitted to Sader Adalath. The Zillah judge had the power to refer to the subordinate judge or principal Sader Amen applications for the implementation of decisions taken by the district panchayath. The official actions and legal proceedings taken against the corruption on the part of district Munsiffs and Sader Ameens had to be

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187 The Assistant Judge came now to be so designated except in the case of officers appointed under Section 52 of Act VII, 1843.
initiated in the respective Zillah courts. The judges of the Zillah courts exercised the same criminal jurisdiction as was exercised by the courts of circuit under this act\textsuperscript{188}. But later the Law Commission implemented a general plan for the abolition of Sader Ameens and that was approved\textsuperscript{189} by the Madras Government, the Sader Court of Madras and with a few exceptions by the mofussil judicial authorities of the presidency, but subsequently, the Sader Court protested\textsuperscript{190} against the proposed reduction of Sader Ameens.

After two centuries since the reforms were implemented by Munro, with hindsight, we examine and evaluate the changes effected by Munro and come to the conclusion that the original vision and the official position that inspired Munro to frame and implement the reforms had a far reaching and quite impressive consequence with respect to the self governing ability of the natives and the evolution of self-governing institutions in India. The concept of enlightened despotism coupled with paternal consideration acted as the background for his set of reforms which were eagerly accepted and followed by the successors belonging to the imperial Government, making them able administrators and effective reformers and his arrival marked a new spirit which was infused into the dead-wood of British Indian administration. He symbolized in himself the new liberal ideals of liberalism and ideals of political philosophy and he set out to be their exemplar during his stewardship of the company’s extensive dominions.

In the articulation of suggestions and administrative reforms, many successors of Munro appear to be echoing the ideas and principles originally

\textsuperscript{188} J C., 1\textsuperscript{st} August 1843, p.2740; and 15\textsuperscript{th} August 1843, pp.2854-90.

\textsuperscript{189} Letter No. 282 dated 5\textsuperscript{th} April, 1845 from chief secretary, Fort St. George to secretary, Government of India; Home; Judicial Cons.No.6of 2\textsuperscript{nd} November, 1849.

\textsuperscript{190} Home; Judicial consultations, No.23A of 2\textsuperscript{nd} November, 1849.
expressed by their great predecessor. A relevant extract from none other than Macaulay’s speech on the Charter Bill of 1833 through much light on this aspect. As Macaulay observes, “The destinies of our Indian Empire are covered with thick darkness. It may be that the public mind of India may expand under our system till it has outgrown that system; that by good government we may educate our subjects into a capacity for better government. To have found a great people sunk in the lowest depths of slavery and superstition, to have so ruled them as to have made them desirous and capable of all the privileges of citizens, would indeed be a title to glory all our own. The scepter may pass away from us. Victory may be inconstant to our arms. But there are triumphs which are followed by no reverses. There is no Empire exempt from all natural causes of decay. Those triumphs are the pacific triumphs of reason over barbarism; that Empire is the imperishable empire of our arts and our morals, our literature and our laws.\textsuperscript{191}”

The attempt on the part of Munro and his successors belonging to the government to codify the practices and proceedings connected with administration of justice in Madras in general and Malabar in particular secured for him a title having glory and grandeur which in turn granted the people the talent for self rule and genius of self-awareness.

Munro’s system made the Collector the most powerful and prominent officer in the District. He concentrated the powers of the Magistrate, Police and Revenue Officer. The union of power was looked upon with suspicion by many eminent Judges like Fullerton whose criticism of the Munro system was, to say the least, irresponsible\textsuperscript{192}. What is to be especially noted in connection with their reform in legislation is that we find

\textsuperscript{192} Fullerton, Minute, June 1820.
a clear blue print of modern civil and criminal law which could be amplified later on in the context of a modern democratic nation-state. The establishment of session’s courts indicated a notable improvement in relation to the old system. The practice of employing assessors or jurors that had been neglected for any decades got new momentum as part of the new system which revived it thereby generating greater acceptance of its legal validity and efficacy among the people. In the case of petty offences and petty thefts the district Munsiff were given certain criminal jurisdiction in 1854\textsuperscript{193}. Since this reform, no notable or significant changes were implemented in the judicial organization until the framing of the civil and criminal codes and the establishment of the high court which took place in the year 1816.

The Charter Act of 1833 marked the end of this haphazard and incoherent process by providing for a definite body of law and the act was a decisive step in overhauling the Indian judicial set-up. It sought to bring to an end the exploits of “body judges and idle collectors shaking the pagoda tree”\textsuperscript{194}. The future codification of law was expounded by Macaulay, when he address the House of Commons, “We propose no rash innovation; we wish to give no shock to the prejudices of any part of our subjects. Our principle is simply this- uniformity where you can have it, diversity where you must have it-but in all cases certainty”\textsuperscript{195}.

As part of the judicial proceedings courts of small causes were originally instituted under the provisions of act IX of 1850\textsuperscript{196} in the presidency towns of Calcutta, Madras and Bombay. They succeeded the

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  \item \textsuperscript{193} Act XII,1854.
  \item \textsuperscript{194} Quoted by Secretary, Bengal Government in his letter No. 924 of 28\textsuperscript{th} April, 1854,Home;Judl.Cons.No.5 of 15\textsuperscript{th} May,1857.
  \item \textsuperscript{196} Theobald,op.cit,Vol.,pp.722 to 755.
\end{itemize}
former courts of request and set up with a view to adjudicate upon cases involving petty debts. In Madras the small causes court was established on December 1, 1850. The Government of Madras were well aware of the need to economies judicial expense but the court faced the problem of increased labor. These courts were founded upon the model of the English County Courts and were peculiarly designed by the government for the benefit of the poorer classes. It diffused a happy sense of justice and security among the poorest classes of people, by far the most numerous, who found their interests referred to the same tribunal as their richer neighbors and determined by the same wisdom, justice and integrity.

After the growth of British Empire in India the rulers faced new administrative problems mainly because of the loosely knit fabric of the system which was inadequate besides being rickety and ill-designed to stand the rigors of time. In the field of judiciary shortcomings and anomalies of the system became more apparent than ever. The important factors which created an atmosphere wholly uncongenial to impartial and equitable administration of justice was diversity of customs and usages of the Indians and confused and contradictory regulations which governed proceedings of the law courts in different British Indian territories.

The Charter Act of 1833 symbolized the new sprit and vigor of British rule in India. It forbade the Company to engage itself in trade and profitable commercial activities and recognized the political unity of India.

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197. Minute dated 23rd October, 1850 by Governor of Madras; Home; judicial consultations. No. 6 of 13th December, 1850.
198. Extract from the Minutes of consultation of the government of Madras dated 7th November, 1850; Home; judicial consultations. No. 4 of 13th December, 1850.
199. Letter No. 17 dated 7th October, 1854 from W. Crawford, First judge, Bombay court of small cases to government of Bombay; Home; judicial consultations. No. 4 of 4th May, 1855.
200. Letter No. 1208 dated 1st June, 1854 from Government of Bengal to government of India; Home; judicial consultations. No. 3 of 23rd June, 1854.
201. Section 3 and 4 of Charter Act of 1833.
established as a sequel to British rule by designating the Governor-General of Fort William in Bengal as the Governor-General of India.

The proposed law commission was actually appointed on February 17, 1835, comprising G.W. Anderson from Bombay, J.M. Macleod from Madras and C.H. Cameron, a barrister of Calcutta. It was considered as a progressive measure by enlightened Indian public opinion. The law commission chiefly employed in drafting a code of penal law. But it is a reality that first law commission ostensibly failed to bring about any appreciable change in the judicial administration of the country. The second law commission appointed in London in 1854, were limited to digesting and putting into shape the reports and drafts of the first commission. On the eve of the passage of the charter act of 1853 the second commission came into existence as a result of the enquiries conducted by the British parliament into the affairs of the Company. The commendable achievement of the commission was it evolved a scheme for amalgamating the Supreme Court and the Sader Court and establishing high court in their place and formulated the draft criminal procedure code and made a superficial examination of the Indian penal code and the finalization of the draft code of civil procedure.

The Indian Penal code, which was originally drafted under the direct supervision of T.B. Macaulay, President of the first Indian law commission. He unequivocally expressed that; “This code should not be a mere digest of existing usages and regulations, but should comprise all the reforms which

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202 Section 39 of Charter Act of 1833.
203 Commission granted by Governor-General-in-Council to Anderson, Macleod and Cameron; Home; judicial consultations No.13 and 16 of 19th February, 1835 (civil).
204 Appointed under provisions of charter act of 1853; Judicial letter from secretary of state for India No.17 of 12th May, 1859.
the commission may think desirable. It should be framed on two great principles, the principle of suppressing crime with the smallest possible infliction of suffering, and the principle of ascertaining truth at the smallest possible cost of time and money”206. The hard works of the law commission were rewarded when Macaulay submitted the draft penal code to the government of India on 14th October 1837207. The draft penal code submitted by the Indian law commissioners was a commendable achievement and was prepared with great ability and by the best talents available in India. But the greatest short coming of the penal code was that it was “exceedingly difficult to make an intelligible and correct version of it in the native language”208. Indian penal law was founded solely on principles of morality and jurisprudence. In a few years the penal law of India will be familiarly known to a great number of young men of the middle classes who, besides furnishing recruits to the judicial service, will constitute a public prepared to criticize the proceedings of the criminal courts in a fair and enlightened spirit209. The penal code as passed in 1860210 came into operation on the first day of January 1862211, though it was originally scheduled to be enforced from the first of May, 1861.

The criminal procedure code was mainly enacted to supplement the Indian Penal Code. In the matters of criminal justice it is a common fact that without a clear code of procedure, the utility and meaning of the penal code

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210. The Indian Penal Code, act XLV of 1860, received the assent of Governor-General on 6th October,1860;Theobald;Vol.III,pp.457-628.
211. Act VI of 1861 changed the date;Theobald;Vol.III,p.689.
would have well-nigh been lost. The governments of India were anxious to produce a code of procedure which was to be easily intelligible, quick, inexpensive and just. Attempts towards this end were made as early as 1837\(^{212}\) by the Indian law commissioners. But several factors which hampered the formulation of a code of criminal procedure was the unsettled political condition, numerous extraneous functions of the law commission and the uncertainty about the fate of the penal code itself. The code of criminal procedure ultimately was passed by the legislative council as Act XXV of 1861\(^{213}\). It came into force on January 1, 1862.

Even before the establishment of the Indian law commission in 1835 attempt were made to chalk out a plan respecting the administration of justice in civil cases. After a close scrutiny the draft of civil procedure code submitted to the government of India on September 26, 1854\(^{214}\). The code was finally enacted and received the assent of the Governor-General on March 22, 1859\(^{215}\).

In the history of Indian judicial system the codification of law was an epoch-making event. About three decades of sustained labor and planned work done by the best British legal minds, which constituted the law commissions and the Indian legislative council, crystallized in the formation and drafting of the Indian Penal Code and the codes of criminal and civil procedure. Both the codes played a unique and pivotal role in the dispensation of justice, both criminal and civil, through the established law courts of the country. Even today the modes and methods of administering

\(^{212}\) Letter No.74 dated 7th November, 1837 from Indian law commission to government of India; Home judicial consultations. No.19 of 4th December, 1837.

\(^{213}\) Received the assent of Governor-General on 5th September, 1861; Theobald; Vol. III, pp. 758-974.

\(^{214}\) Report dated 26th September 1854 from special commissioners to government of India; home; Judicial consultations. No.2 of 6th October, 1854.

justice, in all its essential features, continue to be the same as envisaged by the progenitors and framers of these codes a hundred and fifty years ago.

Last but not the least, the Indian law commissioners made a significant contribution by digesting various laws and regulations in force with a view to their codification and the eventual introduction of uniformity in the judicial organization\textsuperscript{216}. In the sphere of law and justice, the next two decades up to the passage of the charter act of 1853 were years of great activity. After the First war of Independence in 1857, the Crown took over the Government of India in 1858\textsuperscript{217}. By this time, the codification of Indian laws had sufficiently progressed. Finally well defined system of law and well organized system of courts were established under the High Court Act, 1861 and the enactment of the codes like Civil Procedure Code, Criminal Procedure Code and Indian Penal Code.

\textsuperscript{216} Ramesh Chandra Srevastawa, op.cit, p.10.