Conclusion

It is of common knowledge that the legal history of a country or nation state should be understood and analyzed in the context of the overall political and social conditions prevailing in the particular country or nation during the period of consideration. Hence, when we trace the salient features and distinctive phases related to the evolution of judicial system in Malabar, we have to consider the political and social conditions in Malabar down the centuries. For greater clarity and insightful understanding, we should consider even the remote past of the region which was enveloped in darkness on account of the scarcity of source materials related to history. The very scarcity of source materials proves to be solid obstacles in forming a definitive account of the early stages in the evolution of judicial system. In a sense, dawn the centuries, objective law and hazy traditions and legends have simultaneously co-existed in dealing with the judicial dimensions of people belonging to Malabar

In the context of a close study of the evolution of the judicial system in Malabar from 1792-1858, both the beneficial and the negative impact of the British intervention in India should be impartially assessed and recorded. Here, an impartial assessment should reveal that the evolution of a sound judicial system can be regarded as the best and the most valuable legacy left by the British rule in India. The present day judicial system is a continuation of and refinement on the system formulated, masterminded and instituted by visionary colonial administrators like Cornwallis and Munro. After many decades, it is accepted as one of the four major pillars of the system of democracy, one of the four estates that functions as part of parliamentary
democracy. The judicial system so evolved in India can be viewed as one of the centripetal forces that exerted a positive impact in the emergence of a unified India by virtue of its innate ability to aim at uniformity and universality in the implementation of the law through the judicial institution. As part of the evolution of the judicial system, an elaborate network of courts conforming to a clear plan and arrangement began to function throughout India with a view to administering law and imparting justice as and when the cases and issues under consideration required.

In the early stage of its formation and functioning, the East India Company had limited judicial and legislative powers as the governing agency in colonial India. On the one hand, it had enough judicial power to maintain internal discipline and on the other, the Company could also make some kind of rules for regulating the conduct of its employees. Eventually the Company passed through a phase of expansion of commercial and military activities and consolidation of powers and possessions. The East India Company’s vast acquisition in India at the end of the 18th century made the maintenance of law and order in the newly acquired territories and provinces extremely necessary and urgent. It was highly essential and important to ensure the full co-operation of the Company’s servants and effect the lessening of hostility from the native people of the acquired territories for effecting the systematic and peaceful collection of revenue. The Company took the position that exploration under cover of civilization would be easier for which law and judicial process become the effective machinery. For a proper understanding of how the legal system developed in different parts of India in such a way that it turned out to be suitable to the local requirements of each territory, it is important and essential to conduct a study of how the modern judicial system originated and developed in the
general Indian context. Just as in the case of revenue, many well known experiments were undertaken before a definite system of administration of justice evolved and got established.

As part of the conditions included in the Treaty of Srirangapatanam, Malabar was ceded to the British in 1792. The advent of the British indicated a new stage in the mode of administration of the country. From 1793, a regular but imperfect system of judicial administration commenced under the Joint Commissioners from Bengal and Bombay and Malabar was incorporated as part of Bombay Presidency.

The British East India Company in its initial period did not show any enthusiasm or initiative to introduce their system of justice in India. Nor did it undertake to study with any degree of seriousness or involvement the particular system of justice practiced by the people primarily because the activities of the Company were out and out commercial by nature for which only the maintenance of discipline was the important thing. The aim of the British policy was to achieve greater control over the land and its people and also attaining the most effective economic exploitation possible in the form of trade monopolies and revenue collection at the lowest possible coast. Later, as a result of the increase in the number of Company’s settlement in the East, the necessity for the exercise of regular judicial powers over the servants of the company emerged so that the Company authorities took steps in that direction. Separate courts were existed in the presidency towns and the Mofussil areas. The courts of the presidency towns derived authority from the British parliament and the Mofussil courts from the local laws. The Supreme courts and recorders courts in the presidency towns were the crown’s courts. But in the Mofussil areas there existed two courts- the Sader
Diwani Adalaths and the Sader Foujdary Adalaths which represented the authority of the East India Company.

The codes prepared and passed on 12th June 1793 and 9th July 1793 respectively for the administration of civil justice and criminal law can be assessed as one of the notable and praiseworthy contribution of the Joint Commissioners. This led to the formation of many court such as Provincial Courts and different branches of tribunals like local subordinate courts for townships and districts to handle civil disputes, native criminal courts as part of British Magistracies and Foujdary courts to handle criminal cases. However, the system of judiciary that came into being according to this pattern, proved to be difficult to handle and defective in functioning. One reason for this was that the judicial system was very expensive through the point of view of the English East India Company. Another reason was that it led to confusion because significant powers delegated to the local native rulers. Hence, a lot of proposals were put forward by British Administrators such as Robert Rickwards, Smee, Hodgson, Pile and others to improve the present system. Out of these, the suggestions put forth by Smee were accepted for implementation. The notable suggestion put forth by him was the abolition of all courts of Adalath and substitution of a powerful police force in its place. In accordance with it, a new scheme of administration was started. Later on, it was found out that the plan put forth by Smee was a failure because what really took place was that instead of reorganizing the courts and improving their administration, the new system led to the emergence of centers of oppression under the control of local Daroghas. Also the people were suspicious of the courts and the officials attached to the institutions. The court proceedings were inordinately lengthy which caused much delay in the settling of cases.
In the initial phase, the immediate duty of the judiciary was fraught with problems, hurdles and difficulties. Now that the English judges came from a radically different social and political background, they were familiar with their own innate judicial system in which they nurtured so that they had to learn new factors and peculiarities related to the native society and remold their own attitude and disposition in order to make themselves attuned to the acquired territories and provinces with the purpose of the proper dispensations of justice. The objective circumstances and notable factors that they confronted in Malabar belonged to a class of its own in that the province was noted as a totally alien territory inhabited by a race of people speaking an entirely different language and leading a very peculiar life characterized by strange habits and unusual customs which have a tremendous and overwhelming power upon the personal and social life of the natives. The native people were familiar with the type of administration of justice which was solely and solidly founded on the rigorous caste distinctions and respective norms of do’s and don’ts and liberally sprinkled with a host of superstitious ideals and also grounded on a system of conducting crude and unrefined ordeals which was supposed to be unalterable. The totality of the political condition prevailing in the province was highly discouraging which came into existence as a result of the military confrontation between English forces and Mysore and the continued prevalence of the often disputed but persistent power exerted by the local rajahs and chieftains. In addition to the above mentioned problems and difficulties, apart from largely mythological and imaginative works such as Keralolpathy’, no other type of written document was available to guide the judges who came to Malabar in order to administer justice and impose law and order. In short, the early judicial system introduced in Malabar by the
British had to face and confront these adverse circumstances and hostile social factors.

The most important objective of the new legal system was the independence of judiciary in its functioning which implied the freedom and security of the judges in their office and also freedom from public pressures and government influence which would effectively ensure that independence. British system aimed at ensures the accountability of officials by evolving a working power relation of mutual check and balance among the members of the judicial hierarchy. One extremely notable achievement of Warren Hastings, the first Governor General of British India was that he wisely took steps for the separation of the judiciary from revenue collection with regard to the company’s administration of colonial India.

In accordance with the caste and social statues of the offenders, the type and level of punishment changed in the early days. With the help of ancient codes such as Manusmriti, the Brahmines argued for and secured automatic exemption from different types of punishments. They got this judicial immunity because in addition to being the scholars who explained and clarified codes and laws, they were also considered to be the Bhusuras which means, literally, gods on earth thereby enabling them to enjoy higher social position and status.

Often, while imparting punishment, rules and laws incorporated in Manusmriti were accepted as the legal basis. Since the injunctions given by Manu were followed literally, the judges were carefully to find out the suitable punishment for the offender. For killing a person belonging to superior caste by a men of inferior caste, the punishment was inevitably death or capital punishment. But for a Brahmin, whatever be the crime he committed, there was no capital punishment according to Manusmriti. Also
capital punishment was not awarded to women, however serious their offences could be.

The turning point in the history of Malabar took place in the year 1792 when Malabar was incorporated with the Bombay presidency. After that, many administrative reforms were introduced by the British rulers in Bombay presidency in general and Malabar in particular. With the purpose of collecting revenue and maintaining the law and order, many new regulations and rules were introduced by the officials of the British East India Company. These regulations later turned out to be the main foundation for the evolution of the judicial system in Malabar province also.

Several regular civil and criminal courts were established in Malabar with the purpose of conducting the smooth and effective administration of justice. With the same objective, new regulations were framed by the British administrators who tried to put an end to the disordered and chaotic condition of law and order in the country. Eventually, a regular system of judicial administration was established in Malabar. The reforms during the early period were undertaken with the intention of the peaceful collection of the maximum revenue and the implementation of the British policy related to the management of the trade of the country. So with the particular aim in view, the province was divided into Revenue divisions or collectorships and judicial jurisdictions, which helped the rulers to affect greater control over the region with convenience and efficiency.

In terms of changes in the mode of administration and the policy of the company towards India, the year 1800 was quite noteworthy in the history of British Malabar. The Government of India was not satisfied with the working of the established Government of Malabar under Bombay
Presidency. Hence, the civil administration was transferred from the Bombay presidency to that of Madras with effect from 1st July, 1800.

As for the social conditions in Malabar, an out and out custom oriented, highly conservative and almost stagnant feudal society existed which was naturally in need of reforms and changes. With administrative reforms and introduction and implementation of a new legal system, the British rulers attempted to make it well suited to the modern standards of life and criteria of modernity within the framework of British colonialism. It is obvious that the introduction of the judicial system in India was in reality motivated by the demands and requirements of British colonialism. As for the political situation in Malabar, pre-British Malabar did not have a clearly defined and well functioning political machinery to control and guide the personal, social and political activities with the result that the people were wholly subjugated to their age-old customs and outdated conventions. Also there were no authentic and reliable written codes related to these complex customs and traditions. The situation became all the more worse as a result of the Mysorean invasion that only intensified problems and created new issues. Hence it can be seen that what the British rulers confronted in Malabar was a chaotic and disordered society which was in need of social and political reforms.

On the one hand, it was their duty to preserve the part of the system that had been imported to India from England. On the other, they had to take concrete steps to provide a modern configuration to the organization of the judiciary. At the same time, on account of the caste system and its hold on the society, they could not freely frame laws and systematize legal practices in Indian society. Often they were forced to grant concessions and give into compromises on account of the firm hold exercised by local laws and
customs, traditions, usages and privileges on the Indian society which could not be totally avoided even by the British administrators.

With respect to the ancient institutions and manner of its inhabitants, Malabar presented a picture that was widely and radically different from what generally prevailed over Indian peninsula. The British colonial rulers had the clear conviction that economic domination over a people who had been living under the network of well-established customary institutions and traditional conventions could be won only by creating and high lighting the impression that the new ruler is their benefactor who intends to undertake relevant and constructive reforms. Hence the East India Company undertook and projected the improvement of the living conditions of the native people through the propagation of proper education as their declared policy and the guarantee of equal justice in the case of all their subjects. As a result of that, the native people began to realize that the merits of British rule were considerable on account of the fact that the new judicial system brought together and integrated English law and the customary and traditional local laws of the native people with the intention of preparing the way for the evolution of a more equitable social order.

One of the most notable hallmarks of the political situation prevailing in Malabar was the absence of a centralized political authority to effect law and order in society. For a long period of time, Malabar had been an extremely custom oriented country strongly rooted in feudalism and the oral traditions were very strong and all pervasive. Instead of being flexible, most of the customs turned out to be highly institutionalized with the result that the social status and identity of each class was specifically demarcated. In this political and social situation, the British could ingeniously and successfully handle the chaos and turmoil in Malabar to their economical
and political advantage. As the society existed at that time, there was neither written code of laws nor one law for all. The existing hierarchy and social order were on the basis of Chaturvarna ideals which were quite suited to the society of that age and time. A decisive and notable aspect of the British judicial administrative reforms was that they decided to extend to India the rule of law and to entrust its administration to a strong and independent supreme court where appointing its judges would be done directly by the crown. Hence it is obvious that what the British administrators introduced by way of the rule of law and independent judiciary exerted a very valuable and positive influence in Malabar. Another significant merit of the British rule in Malabar was that the native people could come out from the absolute control of their centuries old irrational customs which proved to be thoroughly unfit to the requirements of the life style and mode of production and distribution system suitable for a modern society.

The privileged position and status accorded to Brahmins and the importance and scope imparted to the observance of their ethno-centric rituals and practices so that they could establish and maintain their dominant position in the society can be seen as the most conspicuous aspect of the early legal system in Malabar. During that period in Malabar, rights implied the benefits conferred on the Brahmins by the society. In those days, no systematic hierarchy of courts existed and no uniform law was recognized throughout the land. In actual practice, justice was imparted at different levels by assemblies of people called Tarakuttams and Nattukuttams and also by noblemen having titles such as Desavali and Naduvali. In this context, associations of villages such as Manigramam, Anchuvannam and Urala Samiti also discharged distinguished services for the administration of justice. In the settling of disputes and administration of justice, moral force
and individual initiative of men and assemblies involves counted a lot. Till the arrival of the Portuguese, the Panchayats continued to exercise its power and influence in the administration of justice. These different institutions and assemblies very effectively controlled the arbitrary and despotic decisions and actions of the rulers. But after 1761, these associations and institutions, to a very great extent, ceased to function. Detailed and elaborate procedure formed an important aspect of the early judicial system in Malabar which involved close examination of all evidence such as documentary, oral, circumstantial and witnesses. In the event these failed to produce satisfactory result, trial by ordeals were conducted. There were different types of trials such as fire ordeal, snake ordeal, battle, duel etc. The punishments meted out in those days were often cruel and often extremely severe.

Apart from these customs and traditions, the rules and laws explained and codified by ancient legendary law givers such as Manu and Narada were also accepted and followed in Malabar. Also there were treatise like Sankara Smririti and Yajnavalkya Smrithi which were often followed while dealing with cases. These ancient sources and authorities were interpreted by the Brahmines and often modified them to suit their convenience so that it would be in agreement with the practices and traditions applicable to different caste and communities in Malabar. The comments and reflections recorded by foreign travelers who took note of some strange practices as part of the judicial system prevailing in Malabar also shed revealing light on the formation of early legal system in Malabar.

Prior to the advent of the British in Malabar, the laws adopted and implemented by the Hindu kings were modified versions of Brahmanical law framed on the basis of the Smriti texts of north India. In the 15th century,
it was codified as a single text entitled Vyavaharamala, written in Sanskrit language. This treatise provides a detailed presentation of taking evidence and official procedure applicable in the early Malabar courts.

On account of the prevailing socio-economic and political conditions, the Brahmins who were deemed to be the custodians of authority, wealth and education, could create a socio-political and economic structure in society that enabled them to rise above the law of the land making them immune to the negative aspects of the society. In other words, they evolved into ethnocentric theocrats and wielded great power and hegemony over the kings. Until the coming of the British in Malabar, the popular courts such as Nattukuttams, Tarakuttams existed and very well functioned in dealing with the day to day aspects and problems in social life. Then the British administrators effectively eradicated these political and judicial bodies in order to introduce western political institutions.

In those days, there were two kinds of taking evidences, such as human and divine. Also as a form of ascertaining evidence and type of punishment, ordeals were conducted. Since ordeals were preceded by specific religions rites, they had a touch of sacro sanctity about them. Also, they had a practical value as a psychological test of truth telling. But they were to be seen only as a means to achieve the end of justice. The usually adopted ordeals in Malabar had been camp-fight, fire ordeals, hot iron ordeal, hot water ordeal and cold water ordeal.

In the pre-British Malabar society, there existed a lot of traditional customs and conventions. The Nambudiries and Nairs followed Hindu customary laws whereas Muslim customary laws had been in force among the Malabar Muslims called ‘Mappilas’. Owing to social fragmentation and the Mysorean invasion, the law and order situation in Malabar was
absolutely deplorable and Malabar was, in reality, in a virtually chaotic condition. Hence, with the aim of increasing revenue collection and improving the law and order situation, Lord Cornwallis, the Governor General implemented administrative reforms to annex the Malabar province to the Bombay presidency in the year 1792.

Before the introduction of a judicial system by the British, the people of Malabar had experienced only the age old and highly traditional system of justice with custom-ridden arbitrary laws and irregular courts. But now, the whole of Malabar was brought under a system of well-defined and written codes and regulations by the East India Company. The new judicial system was unique in the sense that it exhibited not only rigidity but also a heavy Anglo-Saxon character in terms of content and approach to problems and solutions.

As part of the British project of increasing revenue collection and improving the system of administration, the newly appointed commissioners introduced new measures in the revenue and judicial field in Malabar. The East India Company took over the administration of justice entirely into its own hands. Later the administration of justice was modified, systematized and integrated with that of other British provinces.

From 1774 to 1783, the English legal system entered into India and established a notable place in the administration of India. The significant development in this evolution was the context when the English judges of the Supreme Court in Calcutta initiated official action to introduce the rule of law for the first time in India which eventually created a distinct and positive influence in Indian society. Rule of law which was first asserted in the Magnacarta, the celebrated British Charter of Liberty, emphasizes that no person however great and powerful, could disregard the ordinary law of
land and which guarantees “equality before the law or the equal subjection of all classes to the ordinary law of the land administered by the ordinary law courts.”

During the early period of East India Company Mohammeden criminal law was administered by the criminal courts in India for long. Company realized that no civilized government would like to tolerate them. So it make little alteration in the existing state of Mohammeden law. Warren Hastings and Lord Cornwallis frequently critized the provisions of the Mohammeden criminal law. Regulations were introduced to amended, supplemented and modified the Mohammeden criminal law very frequently. The Mohameden criminal law as a general law applicable to all persons came to an end because of the introduction of the Regulation VI of 1832. It was not completely set aside till the Penal code of 1860 and the Criminal procedure code of 1861 were enacted and came into operation. After the enactment of the Indian Evidence act in 1872 the process of superseding native law by English law was completed.

An indispensable and decisive instrument of British colonialism in India was the establishment of the proper law courts as part of the elaborate hierarchy of the judicial system. Its central relevance stems from the fact that it helped the relatively smooth functioning of the administrative machinery upon the alien people’s and civilizations by conferring legitimacy on the administrative practices of the colonial government. With regard to this, there was a change in the attitude of the colonizers. The early English view was that the native people were governed by their own laws and customs and that English law was relevant and applicable only to the English subjects in British India.
As a result of their exposure to Malabar and consequent experience derived out of it, the officials of the British East India Company soon understood that when they attempted the implementation of the rule of law in cases and issues related to Malabar, they should exercise much caution, foresight and discretion. Simultaneously they had the conviction that some social conventions and customs followed by the people of Malabar were completely contrary to reason and commonsense and also counterproductive in terms of the organic nature of the society, thereby making the society static and immobile. But the people were not aware of this static effect of many of the social customs. In spite of the existence of static forces prevailing in the society the judicial officers had to take steps and implement a decision in accordance with the directions issued from the home government and as outlined and stated in the Regulation IV of 1793. Hence, the officials were careful to see to it that while implementing laws and regulations, only the minimum possible injury to the existing usages and conventions happened. From the point of view of the natives, the judiciary was expected to endow the due and proper legal effect to the prevailing customs, usages and conventions. Hence it can be concluded that the particular form and practice of effecting a harmonious and functioning adjustment evolving into fine integration between clearly codified and well defined system of British law and a totally un codified and unorganized plurality of legal traditions prevailing for centuries in Malabar was a radical phase in the history of the evolution of judiciary in Malabar region. The salient feature of the adjustment between the two systems leading to integration totally took into its functioning structure of relations and process the general principles of the English common law, justice, equity and good conscience and in an equally important level the prevailing local
conventions and social customs of the people of Malabar. At the initial stage in the inception of the judiciary in Malabar, no one could fully understand and assess the impressive role and influence it was going to exert in changing a predominantly orthodox and static society into a vibrant and dynamic society that is capable of responding to and interact with the changing social relations, forces of production and distribution and evolving social and political visions and ideologies that define and determine modernity in latter period of history.

Customs, usages and conventions connected to the personal law of the people of Malabar were interpreted independently, that is, without any official interference because these judicial interpretations and their effect on the judgment did not affect the revenue income of the British East India Company. The attempt of the judiciary to have this interpretation did not lead to the evolution of an effective legal guidance system even in the absence of written authority in spite of the fact that perfect authority in such matters is far from possible. The evolving system began to be called Malabar law which became the chief legal guideline during the British period with regard to the decision of cases related to personal law of people belonging to Malabar. Regarding the meaning of many Malabar customary terms, the British concept of justice and judiciary in a sense influenced the interpretation to a certain extent thereby misleading the judicial process; eventually it became suitable enough to guide them in legal matters. The judiciary’s freedom was controlled in preparing a new legal outline for the tenurial relations existing in Malabar when the joint commissioners to Malabar in 1792 attempted a drastic reform. Since they were interested only in perfecting the revenue income of the East India Company, the legal interpretation given by them to those terms was inaccurate. Nonetheless, in
order to decide tenurial cases, the relevant terms were given legal interpretation.

It was the British rule of law that effected a transition from the feudalistic and customary laws to a modern age characterized by stern laws and rigid methods. The implementation of these new laws brought in general prosperity, security, and stability of the society in Malabar. The system becomes more open, transparent and accountable. The officials, rulers and administrators become more accountable to the people as well as the principle of justice. At the same time what is essential and valuable is that the native tradition is assimilated and retained. The Regulations led to the formation of a noticeable and striking impact on contemporary society and its effects in the later history was all pervasive, radical and lasting so that it created an enduring and qualitative change with regard to the social formation in Malabar.

When everything is said, the main drawback of the British judicial system as implemented in Malabar was that it rarely took a sympathetic approach to the cause of the depressed classes. As part of the peculiarity of the interpersonal and social relationship stipulated under Chaturvarna and caste system, the people belonging to inferior classes had to suffer so much in terms of social position, role and duty in the production and distribution system and extreme restraint on the possibility of upward social mobility. In connection with this unjust social practice and the social system, the judiciary implemented by the British could not impart justice or accord any help to the depressed classes, socially or economically, at the initial stage of the British rule. Factors such as extreme poverty, illiteracy and fear prevented them from seeking the help of the judiciary which used complicated and out of the way social etiquettes, jargon and mannerisms that
frightened the poor and the downtrodden. It can be seen that the British judicial system failed to wipe out old customary practices, slavery, inequality in caste relations, untouchability, poverty of the farmers and farm laborers, uncivilized practices like customary ordeals as a form of punishment and extremities of the caste tribunals that caused much suffering by way of punishment in cases involving caste disputes in the light of Chaturvarna system. The net result was that in the prevailing society of Malabar, inferior classes had to suffer miserably on account of many outdated customary practices and institutions.

The system of judiciary during the days of colonialism never attempted to adopt the role of social reformers in order to affect radical and far reaching reforms in the existing social structure in Malabar. Deciding on the cause of action of each case was their only commitment. With regard to issues related to the age old social institutions and conventions, the judicial system took special care and attention to study the case with very great devotion, especially the historical significance of those customs. As a result of that, the people involved in this process began to have a new and abiding awareness about new social realities and also about the social mobility.

The existing system of judiciary during the days of colonialism was not a totally independent body invested with powers to take and implement bold decisions and judgments even though many matters and issues called for such a role and intervention on their part. As matters stood in those days, it was obliged to act in accordance with the requirements of the East India Company and the directions given by the home government, Circular orders of the court of Sudder Adalath from 1833-1834. Since there was no genuine understanding between the judiciary and the executive, the administrative
system suffered a severe handicap that adversely affected the proper functioning of both of these two administrative organs.

Actually, the new administrative system that evolved provided a new experience to the Indians whose previous administrative experience was entirely based on customary laws grounded on the ideology of ‘Dharma’ and ‘Chaturvarna’ which were characterized by different laws for different categories of people making it unequal and unjust in the light of the philosophy of modernity and the concept of political justice. More than to any other single factor, the social transformation that took place in Malabar owed a lot to the system of judiciary for the particular positive social change. The system of judiciary turned out to be responsible in influencing mental orientation of the people of Malabar in such a way that they came out of the centuries old conservative mind set. This was achieved as a result of the search undertaken to the roots and sources of the customs and conventions prevailing in Malabar as part of the judicial reforms implemented by the British rulers. Consequently, the people got an insight into the reality as to who they were and what they are at present. Hence they become wide awake to the modern realities and an altered consciousness dawned on their mental horizon.

In spite of the fact that the British judicial system was not devoid of defects and drawbacks, it is to be especially noted as a remarkable fact that the British administrators introduced a new legal system on the basis of the rule of law. As part of it, they introduced a new system of clearly defined and inflexible written codes and regulations in the place of the arbitrary laws and irregular courts heavily influenced by outdated customs and orthodox conventions. With regard to the actual functioning of the courts, the native
people were suspicious of the new system because of the extraordinary long and complicated court proceedings that took place in connection with the litigation. As for British reforms in judicial practice in India, Cornwallis Code accorded more importance to the English legal system and less consideration and respect for native customs while considering each case in law courts. One notable and progressive aspects of the British judicial establishment was that there were liberal administrators like Munro who introduced many liberal administrative reforms and attempted to dispel the doubts of the native people with regard to the functioning of the law courts. A positive and progressive aspect of the system was that the new judicial reforms impart equal respect to the plaintiff and the defendant during the process of court proceedings. At the same time, in the light of the prevailing socio-political conditions and the existence of particular power relations, it is to be noted that in reality, the legal courts were more accessible to the rich and dominant class in society. Sometimes it appeared that for the rich and dominant section in the society, going to the court as a constant resort became a luxury and something of a hobby. It seemed that the inclination and tendency to involve in litigation become quite pronounced in society.

When we analyze the historical evolution of the judicial system, the origin of the present civil as well as the criminal legal system of judicature in Malabar can be traced back to the Cornwallis system. This system succeeded in eradicating the drawbacks of the old system of administration with the implementation of new administrative practices. The distinctive features of this system were the separation of the revenue and judicial functions of the District Collector, the inauguration of a regular system of appeals from the lower courts to higher tribunals and the practice of entrusting of magisterial duties to the respective judges.
The Cornwallis Code, which was extended to Malabar in 1802, can be regarded as the starting point in the History of the evolution of the system of modern judiciary in India. In 1800, Malabar became a part of the then Madras Presidency. A series of Regulations was passed in 1802 with the result of which a hierarchy of courts of established. The separation of the revenue and judicial departments was a distinctive aspect of this system. As a result of this, the judicial powers were taken away from the collector. Entrusting magisterial duties to the judge and the inauguration of a regular system of appeals from the lower to higher tribunals were other features of the system. The Suder Adalath and Foujdary Adalath respectively were the highest civil and criminal courts in the judicial hierarchy. The provincial courts and circuit courts were below then and each of them possessed jurisdiction over a group of districts. The Zillah Courts came next in this order. The Suder Adalath was named so when the institution functioned as a civil court. When it discharged duties proper for a criminal court, it was called Foujdary Adalath. Similarly, the provincial court had that name when it functioned as civil court. When it functioned as criminal court, it was called circuit court. The Zillah court discharged functions of both civil and magisterial courts on account of which the Zillah judge had the powers of a civil judge and a magistrate.

One notable and progressive aspect of the judicial reforms of Cornwallis was that it guaranteed the people of India in general and Malabar in particular a greater degree of protection and security for their person and property. Hence, this reform was of considerable benefit and advantage to the public officers and also to the government in general. Notwithstanding the mercenary motive of the Government and the officials, the newly introduced judicial system was an innovative institution and succeeded, up
to a level, in serving the interests of the people also. The aims and objectives of the reform were praiseworthy in that it envisaged a written code, the separation of the judiciary from the executive, equitable distribution of justice through different tribunals arranged in a hierarchy and clear instruction for the application of positive in specific cases. Still, the new system was destined to be a failure on account of its inherent weakness and it did not attempt to accommodate Indians in the administration of justice. In addition to that, arrears in the form of pending cases became a problem in the civil courts because of the complex and long winding nature of legal proceedings necessary in separate cases. Since the respective Magistrates did not see to an effective supervision over the action of the police, occurred abuse of authority on the part of the police. Hence the whole system of justice faced a total derangement owing to the accumulation of business to be handled in the courts.

As for the functioning of the Cornwallis system in Malabar, it was a mixed one combining both success and failure. In reality, the Cornwallis system was the result of an adaptation and integration of both Indian and English elements of justice and system of judicial administration. At the same time, it should be conceded that the evolved system exhibited little respect for the natives and their own institutions. Since the system came into being as a result of the adaptation of both Indian and English elements, it exhibited a heterogeneous character which became worse owing to the presence of caprice so that its effective implementation became problem to the administrators.

In a sense, the influence of Lord Cornwallis in shaping the foundation of Indian legal system was often overestimated. What really took place was that in a country where feudal order was breathing its last, with his reforms,
Cornwallis was able to evolve a system that aimed at the dispensation of equitable justice. Despite all these, on account of the limitations and drawbacks especially at the level of implementation, Cornwallis and his policies and methods which were basically grounded on British imperialism, could not stand the test of time. Eventually, Cornwallis system did not achieve the expected aim of imparting justice to the people at large.

Primarily on account of the paralyzing feeling of calamity that hovered over Malabar owing to the series of armed rebellion led by Pazhassi Raja and other local chieftains, the judicial system first implemented in Madras in 1802 was not extended to Malabar immediately. Rickards submitted a new plan to be adopted in 1803, pending the introduction of the Bengal Code in Malabar. The Governor General was critical with regard to the delay in extending the system to Malabar. He was of the opinion that private grief and personal suffering may drive the people to form a union and rise against the British Government in case these legal tribunals are not properly installed for the maintenance of law and order. Nonetheless, a proper system of judicial administrative system could be implemented in Malabar only in the year 1806. This became a reality when a readjustment in the territory took place when Cochin was made a part of Malabar District.

In the dispatch sent on 29th April 1814, the court of Directors pointed out these defects and mentioned the possible remedies like making the revenue collector more powerful by granting magisterial powers and duties with the aim of controlling the entire police force. Also measures like employment of Indians in the lower judicial posts, rejuvenation of ancient legal institutions like Panchayats and the use of such institutions for the creation of an atmosphere of confidence in the minds of local people,
making the administration of justice cheaper with the establishment of more courts etc were prepared and adopted.

Learning lessons from the decisions, policies and administrative practices of the predecessors, Thomas Munro made a clean departure from the track created earlier. Affecting a break from the former practices and traditions, Munro recognized the importance and necessity of the Indianization of institutions. Hence it is evident that Col. Munro’s appointment marked the beginning of a new era in the administrative history of India. Breaking free of the old British practices and administrative precedents, Munro adopted an unorthodox and progressive approach to Indians and their problems and institutions. As a result, many Indians were appointed in the hierarchy of the judiciary in Malabar. In other words, Indians were incorporated into positions of power and authority so that they got greater say in the affairs of administration.

Col. Munro was appointed the first commissioner with the purpose of masterminding effective measures and steps to restructure the old system and imparting new life into the administration of justice. With respect to his personal caliber and eminence as an administrator, he was a person of imperious qualities who was endowed with courage and initiative to restructure the prevailing system of administration. Also he had the caliber to stand forth as the champion of Indians who formulated and implemented a more generous and enlightened policy towards the natives. He did not mind the criticism leveled against him with the purpose of discouraging him. In effect, he initiated the liberal school of neo-imperialism that promoted the policy of accommodating Indians in the administration of the country. While discharging his role, he had to face formidable problems when he attempted to collect information from the judicial officers who were against his views
and the reforms proposed by him. On their part, they were of the view that Munro’s attempt was to abolish the system making them unnecessary. In the end, Munro held his ground and won once the opposition. This eventually led to the transfer of the civil administration of the country to the Indians so that the natives experienced moral recitation and imparted increased benefits to the country. As part of his Endeavour at restructuring the administration, Munro conducted extensive tours all over the then Madras Presidency and studied the local circumstances and peculiarities as a preparation for framing the necessary regulations for the new system to be implemented.

In this context, it could be seen that Munro’s views and recommendations such as opening up the official positions of the judiciary to the Indians were highly rational and pragmatic in effect. This bold decision and its implementation, inaugurated a new epoch of liberal reforms in all fields of administration in India. In their turn, the British Government accepted Munro’s exhortative and persuasive suggestions and maxims. Hence Munro earned him a title of glory and also conferred upon the native people a claim to recognition and self-awareness. In accordance with this, Munro framed a series of Regulations with his associates like Stratton. These regulations were passed by the Government after getting the expert opinion of the court. The Munro system was not a clean sweep of the old system, but a definite step ahead in the usual beaten track and at the same time something of a pioneer mission in that the natives were accommodated in the new administration. The revival of the old Panchayats to decide civil cases was part of the plan of reforms. The head inhabitants of the village were appointed Munsiffs and their duties were clearly defined as part of the Regulation IV of 1816. In the capacity as village Munsiffs, these head inhabitants had original jurisdiction in suits for real or personal property not
exceeding Rs.100. The Regulation V authorized the village Munsiffs to assemble village Panchayats when both parties apply for such a more in order to adjudicate civil suits for sums of money or other personal property without limitation regarding the amount or value. The office District Munsiff with the jurisdiction extended to all suits for real and personal property not exceeding Rs.200 was established by Regulation VI.

There was a reform that bestowed the functions of the Magistrate on the Zillah Collector. This reform attracted a lot of attention and also elicited criticism. This implied that the office and powers of the Magistrate and that of the Judge were united in one person that obliged the Judge to use a major part of his time on his magisterial duties with the result that it caused delay in the disposal of civil suits. The courts could expedite more business in given time as a result of the transfer of the magisterial functions to the collector. In the Regulation, there were provisions for the appointment of the Native Pleaders and Suder Ameens with referee and appellate jurisdictions in order to deal with causes referred to them by the Zillah Judges.

The Regulation XI was related to the police organization which abolished the existing Darogha and Tanadar establishments. By this regulation, the heads of villages became ex-officio heads of the police in the respective villages. They had the power to apprehend offenders and send them to the police officers of the district.

With the purpose of making it more suitable to the prevailing local conditions in Malabar, the Munro system was modified further. In the case of the offices of the village heads or Parbutties, Menons and Kolkars, Munro made an intensive study to find out the local peculiarities. In accordance with the result of this study, some changes were made in the village Munsiff Regulation. The Parbutties, Menons and Kolkars who were employed for the
collection of the revenue immediately from the people were incorporated in the offices of Patel, Karnam and Kotwal.

A notable change was that the police and revenue establishments were integrated as one. The functioning of the Munro system in general was satisfactory in Malabar. At the same time, it should be conceded that some evils and defects which it tried to eradicate continued to exist, notably in the police department and also that of Magistrate. A relevant point to be considered was that the prisoners were detained for long at the police stations or with the Magistrates before they were sent to the criminal judge. In this connection complaints related to extortion and similar malpractices by the police often came up. The advantages were greater because the criminal judge need not take up the duties of the police superintendence and also from receiving original complaints of a criminal nature other than cases involving Europeans. In addition to that, the prosecutors and witnesses experienced only less inconvenience as part of the functioning of the new system.

In order to remove the obvious defects of the police and revenue functions, reforms were introduced after 1816 such as creation of Auxiliary courts, introduction of Jury Trial in criminal cases, abolition of the courts of circuit and establishment of session’s courts. With regard to the civil side of the judicial system, the jurisdiction of the Zillah judge, the Registrar, Suder Ameens and district Munsiffs were extended for more effective maintains of law and order. The powers of the judicial officers were also gradually increased on the criminal side.

In order to lower the expenditure of the courts, an economy drive was duly initiated. For example, a Regulation was passed with the purpose of abolishing many Zillah courts on the basis of the argument that the number
of suits filed before them was small. Measures like these were not mature and wise. Also it created an atmosphere of insecurity in the minds of the native people. Actually, these measures and steps were taken when the quality of disputes and crimes was increasing considerably with the consequence that the Zillah judge and criminal judge found it difficult to hear all these cases. Hence provision was made to establish Auxiliary Courts which were endowed with the full power and authority of the Zillah courts at places where such a court was deemed necessary. These Auxiliary Courts were in the charge of Assistant judges of the Zillahs were they were founded. The Zillah judge had the right to select staff for the ministerial department. Also the Assistant judge discharged the functions of the joint criminal judge. All these arrangements and modifications paved way for the improvement of the existing system for which the credit is to be given to Munro.

With the purpose of improving the administration of justice in Malabar Presidency, the jury system was introduced in criminal cases by Munro. In order to expedite the criminal cases by taking the people into confidence, trial by jury was introduced and this can be regarded as an integral part of the Munro system. The new practice had the effect of boosting up the morale of the people and the public interest in cases also increased as a result of this reform. Also it was possible to dispense with written evidence with the help of trial by jury and this lessened the burden of the court to a certain extent. In addition to that, the delay caused by the Mohammeden law officers in giving Fatwa’s also could be avoided.

The abolition of the circuit courts and the establishments of the new Zillah courts as a result of the Act of 1843 could be regarded as the most important piece of legislation after 1816. As part of this, new Zillah courts
were established in Tellicherry and Calicut, for each court there was one Judge who was styled civil and session’s judge of the Zillah. The judge had the power to hear appeals from the decrees of the sub-ordinate and principle Suder Amen, Suder amen and district Munsiffs. In addition to that, he had original jurisdiction. As part of the new arrangement, the Zillah judge was deprived of the Registrar’s court because it was abolished. These Judges were empowered to have original jurisdiction which was earlier exercised by the circuit courts. For the trial of accused persons, they were empowered to hold permanent sessions, just as earlier done by courts of circuit. By entrusting respectable Indians in order to constitute themselves into assessors or jury, the assistance and help of the natives could be ensured for the smooth and speedy functioning of the judicial system. At the same time, it should be noted that the decision of the jury or assessors was not binding with respect to the final judgment of the respective judge.

With regard to the criminal side of the judicial administration, it was riddled with vile practices and abuses of all sorts. In actual practice, the Indian officers turned out to be the worst judges of their own people. Crimes and malpractices like ill treatment of the prisoners, extortion of confessions, fabrication of evidence such as the use of false date of apprehension were the common type of the abuse of authority on the part of the police officers. Clear instructions issued by the circuit judges with the purpose of checking the irregularities were ineffective which was acknowledge by the Foujdaray Court. An official measure to rectify these defects was taken with the appointment of the torture commission in 1857. The duty of the commission was to conduct an enquiry into the marked increase in the atrocities committed by the police force.
A perfectly organized system of courts and a fully developed system of law are the two important things which are essential for a sound and effective administration of justice. Hence, the British East India Company and its officials tried to evolve a system of judiciary in accordance with their own liberal tradition and attuned to the needs of the country. The first phase of British rule in India till 1833 saw the series of experiments related to the making and unmaking of different systems of courts in order to achieve the best and the most appropriate judicial system. During this period, there was no precise system of law in India. When the court proceedings were given great attention, the law that was to be interpreted and implemented by the courts was not taken up for revision and modification. As it happened in those days, the judicial courts tried to administer justice among human beings even in the absence of a certain and clearly defined body of law. According to Thomas Babington Macaulay what they applied was not law but a ‘kind of rude and capricious equity’. As a result of the considerable discretion given to the judges, the law changed its color from court to court and its impact was different from person to person. So, a precisely defined system of law was very much necessary in India.

In retrospect, it is obvious that the East India Company’s colonial administrative machinery introduced a new system of justice on the basis of British rule of law, which was combined with the centuries old mighty indigenous legal tradition and practice of the natives, thereby making it the most remarkable act and achievement of British India. This integration and synthesis of western system of law with eastern legal tradition remarkably contributed to the evolution of a strong foundation of modern legal system in India in general and Malabar in particular. In turn, the advent and evolution of modernity in India owe a lot to the formation of the modern judicial
system. The modern judicial system, by emphasizing the principle of justice and equality before law, created the suitable intellectual and social space for the introduction and consolidation of the ethos of modernity in India thereby paving the way for political freedom in future and the growth of the institutions of representative government at the regional and national levels. In other words, the introduction of the modern judicial system made India truly modern in social and political dimensions.

In actual practice, the administration of justice in Malabar had been on the basis of the respective caste ideals and norms mixed with superstitions and the observance of unpolished and cruel practices like ordeals for apprehending and punishing the offenders. In their turn, the British rulers attempted and to a certain extent succeeded in stopping these practices with the result that they could provide the rule of law, justice, equity and good conscience in the society at large. It is a fact to note that some of the early English judges did commendable and significant contribution in the interpretation of the customary Malabar law which eased their codification in the subsequent stage of Malabar history.

It is an undeniable fact related to Malabar history that the introduction of a new system of imparting justice on the basis of the British rule of law could be regarded as the greatest achievement of the East India Company’s colonial administrative and judicial machinery. One salient feature of the new judicial system was the combination and integration of the centuries old mighty indigenous legal practices of the natives and the British rule of law on the basis of justice, equity, and good consciences. The sought after integration of the Eastern practices and Western tradition aimed at and succeeded later in the formation of modernity in India. It is really a momentous contribution of the British colonial rule in India.
In retrospect, it is obvious that the liberal administrative and judicial reforms succeeded in forging the foundations of the modern legal system of India. In other words, independent Indians indebtedness to the judiciary that came into existence as a result of British colonial administration in India is truly a notable and significant factor. In effect, the new system of judiciary founded and functioning on the bases of a set of norms, values and principles provided the people with the dignity of the rule of law and a set of clearly defined and codified personal laws to guide the people in personal life as well as in the context of interpersonal relations, conflicts and differences.

In this connection, it should be noted that the work of evolving a well integrated and well functioning system of judicial administration was not at all easy and smooth. By any point of view and standard, the situation prevailing in India became complex and confusing on account of the existence of castes and regional peculiarities of culture. When faced with the task of forming a judicial system in India, the British rulers had to take up a double responsibility.

The judicial policy of the East India Company was not a success in India. The reasons for the failure of the policy of the company were related to factors such as the lack of education in the Indian society and the orthodox and conservative attitude of the people on account of which the Indian people could not properly absorb new ideas and innovative social practices. If the British had prepared the ground by providing modern education and thereby causing the spread of enlightenment, they would have met with greater success in the application of judicial system in India. But in the absence of any such plan and organized action, their efforts met with failure and evoked even contempt.
Though many persons in India and England regarded the judicial system under East India Company defective and not satisfactorily administered, it would be unreasonable to accept these views without modifications. It is true that the system of judicial administration under the East India Company showed many defects and drawbacks. At the same time, it had its own merits and positive aspects. The most important strong point of the system was that it exercised a lot of positive influence for the consolidation of the political and administrative unity of the country. Also it evolved into a stable and strong base upon which the structure of modern Indian judicial system has been constructed during the succeeding decades.

British rule in India lasted for about 200 years and such a long rule was bound to leave behind a rich and prosperous legacy. The most important legacy of British rule in India is the unification of India and the codification of laws and the establishment of the rule of law. No man was to be punished and sentenced except according to law. All citizens were equal before the law. If anyone violated the law and order of the country, he was to be punished irrespective of caste, creed, religion and official status. The code of criminal procedure code, civil procedure code, Indian evidence act, the Indian penal code, the Indian contract act, the sale of goods act, the partnership act etc applied equally to all irrespective of caste or religion.

The rule of law was applied impartially by the British in India but in the case of Europeans who were entitled to a special procedure in criminal cases. In certain cases the public servants could not be prosecuted without the prior permission of the government. The rule of law was enforced by an independent judiciary in spite of these exceptions.

The present legal system is the best example of the legacy of British rule in India. If we critically study the present legal setup of the country, the
more it becomes clear that the present legal system in the country is a remarkable legacy of the British rule. The English text books on law, Jurisprudence by Salmond, the analytical system and the methods of case law still continues in India in some sort. It is instructive and profitable if we compare the statues of India up to 1947 with the statues in England. It very clearly shows how much our past legislation was based on the legislation in England. The Supreme Court is merely a continuation of the Federal Court of India and the Privy Council as in the same pattern in England. The remarkable work done by the Indian Law Commission during the 19th century has become a part and parcel of our national life. The main drawback of the British legal system is very expensive, time-consuming, very complicated and not suitable to the illiterate. It takes years to dispose of a case and there is truth in the contention that justice delayed is justice denied.

The disorganized and incoherent process related to judiciary came to an end with the Charter Act of 1833. The system of Indian administration and the constitution of the East India Company was radically changed due to the enactment of the Charter of 1833. For the first time in the history of British India a single legislature for all the presidencies was established under this charter. Heded by Lord Macaulay, the first Indian law commission submitted many reports in various laws. It was based on a detailed study primarily of the English law. The English law, to the extent it suited Indian conditions, usages and customs, was thus systematically imported to India. By the codification of Indian law a systematic import of English law was implemented. Through the enactment of four law commission the English notions of law and justice were introduced in India.
The rules and regulations, devised, implemented and gradually revised in due course of time over a period of few decades by the British colonial administrators of India, for the efficient protection of their commercial interests and, in effect, the callous exploitation of Indian economy for their national well being, eventually evolved to a paraphernalia of power and system of governance that ensured, to a certain extent, collective social welfare, social justice and equality before law for all Indians as a social and legal practice, that gradually nullified the hold of unequal perception of individuals propagated by ‘varna’ and caste system existing in Indian tradition. The most impressive and notable achievement of the British rule in India was that, with their implementation of rules and regulations and successive reforms, probably without intending it to be so but in effect evolving a more equitable system of administration, in actual practice, like British system of administration contributed a strong and modern system of legal practice. The consolidations of that modern legal practice ensure a strong foundation for democracy in India even today. In turn, it ensures the proper legal, administrative and executive procedures for the protection of political freedom and safeguarding of civil rights. In a sense, it can be argued and seen that India exists as a modern, secular and democratic state on the basis of legal and administrative practices and procedures gradually built up by the British rule in India. In India, with many languages and different currents of regional culture, gradually evolved into one nation states with firm central government and implicit faith in the principle – unity in diversity- largely as a result of the overall impact of the British policies and practices which aimed at forging India into one nation by preventing the tendency to fragmentation on the basis of languages and regional cultures. In the onward journey to future promising greater
prosperity and eminence, the British legal practices and procedures act as beacon for India today.

Thus, it became clear that the origin and collective heritage of Indian legal system owe much in terms of the contribution of solid and sterling value from the British during the history of the colonial period in the then Madras presidency in general and Malabar in particular.