INTRODUCTION

AIM AND IMPORTANCE OF THE STUDY

The present Thesis entitled “Evolution of Judicial System in British Malabar (1792-1858)” is the outcome of a devoted endeavor undertaken with the aim of developing a close and detailed understanding of the different stages through which the Judicial system progressed as part of the intervention of British Colonialism in Malabar from 1792 to 1858. One can never understand a legal system fully by mere study of the existing judicial institutions and Courts and rules of law unless he has a clear-cut understood of the history and the spirit of law. The main purpose of the present study is to understand the legal history to acquaint the research scholar with the evolution of the judicial system and the evolution of legal rules. In the field of law and administration of justice, the British period constituted a fundamental break from our traditions of the hoary past. The British period is nearest to us and our present is affected more intimately by the immediate rather than the remote past. To comprehend, understand and appreciate the present legal system adequately, it is necessary, therefore, to acquire background knowledge of the course of its growth and development.

The topic of Legal History comprises mainly the growth, evolution and development of the legal system of a country. It sets forth the historical process whereby a legal system has come to be what it is over time. But law is to be studied not merely as a collection of doctrines, dogmas and concepts, or as a static entity, but as an organic growth, a living and breathing mechanism keeping pace with the social changes, than there is no

escape from a study of legal history. One of the most enduring legacies of the British rule in India was the establishment of a strong judiciary with high traditions of independence and fairness, matured through a strange amalgamation of local, oral and customary laws and the British rule of law. After the colonial acquisition of India, the East India Company’s earliest endeavors were directed at the introduction of a modern judicial system in India in general and Malabar in particular with the practical aim of increasing revenue collection from the province.

The establishment of an enduring system of judiciary endowed with high and noble conventions, traditions and values such as independence, impartiality, equity and fairness. It should be considered as one of the most valuable contributions of the British rule in India. When we analyze the evolution of the system of judiciary in India, we clearly come to know that the system attained maturity as a combined result of the traditions and customary laws that form part of oral tradition and the British rule of law based on codified rules and regulations aimed at ensuring the creation of a civilized society.

Towards the last decades of 18th century, the East India Company acquired expansive provinces and territories as a result of which there arose practical need for regular vigilance regarding the activities of the company’s servants and also the enforcement of law and order in these provinces and regions. The principles, concepts and the English rule of law gradually spread all over the Indian States and influenced the whole of Asia. In the initial stage the British came to India, to advance themselves, to establish

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themselves as traders and in the later stages to acquire power and having acquired power, to consolidate themselves as rulers of the whole country. It is a paradox in history that the law and judicial system which the British had fostered in India for their colonial purpose should have helped Indians to obtain their freedom from Britain.

Malabar was a district in the then Madras presidency bounded on the north by South Canara and Coorg; on the South by Cochin and Travancore; on the East by Coorg, Mysore, Nilagiris and Coimbatore and on the West by the Arabian sea. The district consisted of taluks like Calicut, Chirakkal, Cochin, Eranad, Kottakkal, Kurubanad, Palaghat, Ponnani, Walluvanad and Wynad.

One of the momentous and decisive historical changes that occurred as a result of the Treaty of Sreerangapatanam was the annexation of Malabar as a province of the Bombay Presidency in the year 1792. At that time, the law and order situation in Malabar was deplorably bad. Prior to the annexation effected by the British in Malabar, the invasion and occupation of the province led by Haider Ali and subsequently by Tippu Sulthan, popularly called Mysore occupation of Malabar, had already changed the traditional pattern of life of the common people as well as that of the Princes and Chieftains. The existing political paraphernalia and economic structure of the region were also rudely damaged as an outcome of the Mysorean invasion. The century old tradition and custom suffered severely on account of invasion by Mysore rulers. Hence political and economic structure was also damaged. Landlord and tenant and Hindu, Muslim squabbles and hostile encounters together with oppositions of recalcitrant princes and ‘Naduvalis’ resulted in a hopelessly chaotic condition in Malabar.
The historical background and diverse incidents that happened in Malabar contributed a lot to the formation of the particular functional aspects of judiciary in the region. Life in Malabar prior to the advent of the British rulers was characterized by the absence of a political machinery to exercise necessary control and guidance in the day to day activities of the people. The mental orientation and general outlook of the people was in favor of showing almost absolute allegiance to the old customs and conventions which made the work of the judiciary difficult in Malabar.

Owing to the continuous and enduring observance of many customs and conventions for a very long period of time covering, in fact, centuries, it was very difficult to have an easy and simple legal explanation for these States of affairs, especially in the absence of reliable written records. In these circumstances, the judiciary’s task was to formulate practical solutions for the diverse legal problems that emerge in a society cluttered with so many customs and conventions. In addition to that, the society after the invasion of Mysore rulers was in confusion and disorder which intensified the difficulty of the company’s administrators. The immediate duty in those days was to set right the law and order situation in the society. Also the company’s prime aim was to ensure the collection of revenue without any interruption and hindrance. While achieving all these, the administrators had to give due consideration to all these local peculiarities. All the while, the ruler’s major aim was to win the confidence of the people by adopting civilized means and strategies. In the context of the formulation of laws, the government gave proper direction to the official to show due respect to the

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customs, conventions and usages prevailing in the society which demanded much care and foresight on the part of the judiciary.

Since the British system of enforcing law on the basis of rule of law and precise awareness of justice required complicated and lengthy legal procedure, in the Indian society with radically different cultural matrix and long held legal practice based on traditions and conventions, the British rulers had to work out a practical and integrated system through the prudent fusion of native and foreign institutions, procedures and legal practices. Lord Bryce observed: “It was inevitable that the English should take criminal justice into their own hands-the Romans had done the same in their provinces-and inevitable also that they should after the penal law in conformity with their own ideas”. In this process, there was the inevitable interaction and integration between socio-economic and political factors which eventually led to a new social and political formation. It was perceived and clearly understood that exploitation in the guise of civilization or attempt to civilize would simplify the scheme of things required in the immediate context for which the judicial practices and process was turned into use as administrative machinery or tool by the forces and agents of Colonialism.

The northern district of Kerala enjoyed historical and legendary reputation from the ancient days onwards on account of the trade and commercial connection with the rest of the world, eventually became the prized possession of the East India Company as an important colony in the south east as a result of the Anglo-Mysore wars. Later it was placed as part

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7. Bryce, *Studies in History and Jurisprudence*, New York, 1901, p.120.
of the Madras Presidency in 1800 for administrative and judicial convenience.

Apart from being treated as a source of revenue income, the British rulers did not exhibit much interest in Malabar territory because they were of the view that the region was never familiar with a well-formed and enduring native machinery of the State. On account of this British lack of interest, it is not possible to come across in Malabar the heavy and detailed material remains and source manuscripts related to administration so characteristic of colonial administration by the British in many other provinces and territories in India.

The present study focuses on the historic and historical role played by one of the most important organs of the British administrative machinery in India, that is, the judiciary, in the radical recasting of an extremely custom oriented, highly conservative, almost village centered, stagnant traditional and orthodox Malabar society that experienced chaos and disorder owing to Mysorean invasion into one well suited to the modern standards of life and rule of law. The undeniable historical reality was the fact that the introduction of the judiciary was motivated by the concrete demands and clear designs of colonialism. At the same time, its functioning in India was not in complete subjection to the demands of Colonialism.

The inspiration imparted by different theories and ideologies from the west that became a part and parcel of the Indian nationalist movement in north India engendering political awareness leading to activism did not have a corresponding and proportionate presence in Malabar. The ideology and action related to nationalist movement reached Malabar only lately. But, nevertheless, with respect to being the territory put under the control of well-formed judicial machinery, the status of Malabar in the administrative
history of British India proves to be notable and quite significant. Hence, Malabar Province eventually become one of the most important inheritors of the British system of judicature firmly grounded on British rule of law and clear and conscientious awareness of justice and fairness.

Avery important part of the British colonial policy in all parts of the world was the formation and establishment of a proper judicial system to streamline the administrative machinery in all new colonies. This policy provides the precise reason and correct explanation for the introduction of judicial system in India\(^9\).

With regard to the specific case of Malabar, the judiciary which was created with the purpose of realizing smooth and effective revenue collection, in a sense time nullified the chance of people to oppose the system. It eventually evolved into a properly structured and well-oiled institution which was in effect a very powerful and quite legitimate administrative organ that helped people to improve their status in terms of social and even political existence.

The British legal method based on the rule of law and strict sense of justice, needing prolonged legal procedure could be applied in the Indian context only in tolerable harmony with the latter’s dominant segmentary factors and that legal institutions could take shape only through a blending of indigenous and alien institutions and interplay between the socio-economic and political factors\(^10\). Exploitation under cover of civilization would make things easier, and judicial process became its machinery\(^11\).

\(^9\). Hollender, Barbet, Colonial justice, the unique achievement of the Privy Councils Committee of judges, London, 1961, p.4
\(^10\). Paul John, op.cit, p.1
\(^11\). Hollender Bernett, op.cit, p.12
The salient aspects which should be considered and highlighted in the specific history of the judicial system invariably include the polity, economy, culture, social customs and conventions peculiar to Malabar, ‘Jenmy-Kudian’ relation and the administrative and legal reforms of Malabar during the pre-colonial and colonial periods. The study also focuses on the early history of the concept of justice and the social and administrative machinery to enforce it down the ages and the introduction of modern judicial system during the colonial rule of India by the East India Company which was supposed to be based on strict sense on equity, rule of law, good conscience and a vision to realize the idea of justice in society through judicial and administrative reforms. The aim of this study is to highlight the history of British judicial system in Madras Presidency, particularly the evolution of law and legislative system in Malabar and the establishment and subsequent reforms of civil and criminal courts for the evolution of a modern society inspired and guided by the collective values of the ideology of modernity. Madras is the first and one of the three Presidency towns and the new trading station was named Fort St. George and in 1752 the English tenure of Madras and the limited area around it became absolute\textsuperscript{12}.

A significant study of the modern history of Malabar invariably entails a balanced and just evaluation of the important and seminal role played by the judiciary in restructuring the traditional society having the predominance of customs, conventions and traditions into a society having the elements, however rudimentary it may be, of modernity. It is to be noted that the structural changes and the consequent formation of legal institutions

\textsuperscript{12} Keith, A.B. A Constitutional History of India, London, 1936, p.24
took place as a result of the historical needs of Malabar with its particular social and political background.

One striking aspect of the present historical writings related to Malabar, as a rule, is that it makes only casual and quite unimportant reference to the judicial practices and the evolution of judiciary when the social history of the region is written. An earnest effort to record the social history of Malabar based on the legal documents, legal practices and different judgments made in courts become very important for the evolution of the balanced and accurate history of the region. Usually, historians were negligent about customary and traditional laws of the region because value of such details for the writing of history was not part of the scholarly awareness of historians in those days. At the same time, it is to be understood that legal records and court judgments provide an accurate and reliable source for the writing of the social history of the respective region.

This study also involves a careful consideration of the complex pre-British and Colonial British legal system in Malabar, rules and regulations related to land tenure, revenue settlement implemented by the Mysore rulers and later by the British, feudal relations, social conventions, and the political changes catalyzed by the conflict between the local rulers and the colonial masters. At present, there are more or less general studies on these aspects of Colonial history; but they do not approach the problem from a micro level. Hence, it follows that these aspects demanded further detailed and specific historical analysis.

The legacy of British judiciary studied in this work is a complex one. So far the British judicial system and its legacy have not been subjected to a serious research. The Indian laws and courts are closely modeled on the English pattern. The history of their introduction and development begins
with the foundation of the East India Company under the Crown’s Charter of 1600\textsuperscript{13}. In spite of its limited character, however, the legislative power is of great historical importance “as the germ out of which the Anglo-Indian codes were ultimately developed”\textsuperscript{14}. The historical works do not deal with the judicial evolution with detailed and precise attentions which it demands through a scholarly point of view. It is true that a number of scholars had made their studies on the judicial administration in India in general and in the Madras presidency in particular, but only a very limited number of scholars had studied the administration of justice in Malabar. At present, the available works exist only in the form of minor research monographs at post graduate level. Hence only a very specific and minor study of the topic can bring out the features of the topic with its complex socio-political and judicial ramifications.

Whereas the historians of the colonial days had to depend on the travelogues and narratives prepared by foreign visitors and local writings of the natives that often lacked objectivity and historical accuracy, and also the sources provided by local experts, the present day historians belonging to independent India have at their disposal administrative, judicial and legal records based on which they can form and formulate a clearer and more objective picture of society in Malabar. A striking feature of the historical writing and the attitude towards source materials was that in spite of the time and energy spent on examining government records by succeeding administrators and social reformers, a very serious and devout attention was conspicuous by its absence in the examination of the records related to judiciary.

\textsuperscript{13} Mittal J.K. \textit{Indian Legal & Constitutional History}, Allahabad, 1996, p.1
\textsuperscript{14} C.Illbert, \textit{The Government of India}, Oxford, 1907, p.10; A.B. Keith, op.cit , pp.4-5.
In order to form a clear idea and proper awareness about the unique role played by the judiciary for the social upliftment of the downtrodden and the oppressed classes, a specific and detailed enquiry into the diverse judgments by different courts and the evolution and development of judiciary become a tool of immense help. In order to ensure the trouble free and uninterrupted functioning of the administrative machinery, often the administrator’s ensured the help of the judicial documents which provided precedents for taking administrative decisions.

An intensive and in depth study would amplify and add to the re-reading and re-assessment of the main stream of history. This study and analysis enable us to have an insight into the neglected and sidelined aspects of judicial and administrative history of the particular locality under consideration. As part of the study, local historical aspects related to judiciary, culture, customs, economy, polity, society, law etc. will be considered to arrive at a clearer and more precise picture of the evolution of judiciary in Malabar. It is self-evident that writing of local history is indispensable for developing more detailed and integrated studies of a society which would, in turn, contribute to its further progress and development.

This state of affairs posed a challenge to the present researches in selecting a topic having the full fledged focus on judicial records as the source. It is to be conceded that the scattered references to the legal practice and the system of judiciary provided inspiration and turned out to be a platform to a certain extent for the present work. The major sources for the present study is provided by legal records collected and preserved in the regional and national archives.
Owing to constraints such as vastness of the topic and the limited time within which the thesis should be completed, the present study is confined to the regional study of a wider topic so that greater clarity and precision could be attained. It is believed that the present study would provide assistance for further conceptualizations in the context of a study involving comparative history of an area comprising vaster regions, variegated cultures, divergent customs and complex laws. But when compared to the vast amount of primary material related to the topic, the available modern writings cannot be viewed as sufficient or reasonably proportionate. Often, in such studies, minute details are ignored and sometimes, major questions and problems are left unaddressed. This may be the result of the incomplete collection of data and incomplete handling of the subject on account of the absence of a relevant perspective having sufficient clarity and precision. Such an examination of the existing data and a reassessment of existing views become a desideratum for further developments in the areas of academic research.

This study is finally the result of a detailed and depth enquiry related to the vast collection of legal records belonging to the British period in Malabar in the 18th century and also facts and data collected from legal records such as Indian Law Reports, Madras High Court Reports, Madras Law Journals, ruling of the court of Sader Adalath and transcriptions of legal proceedings preserved in the records room of different courts. Related documents such as orders issued by the higher officials to subordinates, official communications, office proceedings related to administration and revenue etc are preserved in Regional Archives, Chennai and National Archives, Delhi. Information collected from Malabar District Gazetteers, relevant volumes of the Madras Code, Travancore Manuals, and books in
legal libraries, law publications and important historical reference books were also consulted to conduct this study.

An examination of the previous literature revels that none of the scholars has made a special or in-depth study of the evolution of judiciary during the days of British colonialism in Malabar, especially in Madras Presidency. What is obvious from the earlier literature is that as part of their arguments, they made only some passing reference to this particular aspect. Hence the present thesis attempts to go deeply into an untouched area which makes it a pioneering study in the field of the history of the evolution of judiciary in Malabar. With this study, the present scholar has made a sincere and systematic attempt to reconstruct the history of the evolution of judiciary in British Malabar which adds to the existing fund of historical knowledge.

Under the colonial administration of the British in Malabar, the customary agrarian relation and land revenue system had been radically and deeply disturbed and shaken to the core with the purpose of serving the commercial interests of the English East India Company. Initially their major attempts were directed to win over the former native chieftains who had shown their loyalty towards them when the Anglo-Mysore war was going on. In the context of disputes related to land and tax system, the intervention of the law courts in defining the different systems of land tenures and different legal aspects of the land question and personal ownership of the same contributed to the complexities of the legal question in Malabar.

The chief officers of the Company in Malabar were essentially adventurers and not gentlemen, traders and not lawyers, and they, therefore, acted in a loose manner rather according to the laws of power and impulses
of passion than to the recognized principles of justice and reason. Naturally
administration of justice was not of a high order\textsuperscript{15}. The native judiciary
suffered from many drawbacks; it was unpopular and corrupt. The English
often exploited this situation to their own advantage. They took law into
their own hands to extract justice from the natives by themselves\textsuperscript{16}. Hence,
they introduced many legal reforms and regulations based on rule of law
which turned out to be a highly significant turning point in the legal history
of Malabar.

It is sincerely expected that the reconstruction of the history of the
evolution of judiciary in British Malabar with specific focus on the
distinctive regional contexts will illuminate and bring out many aspects of
the colonial period in south Indian history. It is with this objective in view as
the driving force that I have made an attempt to study the historical
evolution of the British machinery for the administration of justice in the
early part of south Indian history.

**PERIOD OF STUDY**

The time span of 66 years covered in the enquiry beginning from the
introduction of the judiciary in 1792 to 1858 has been intentionally chosen
on account of the fact that in 1792 Malabar was annexed by the British East
India Company as part of the Treaty of Srerangapatanam and for
administrative convenience it was made a part of Bombay Presidency. As
for the importance of 1858, the year 1857 saw the first war of independence
in India that was suppressed with an iron hand after which the British crown

\textsuperscript{15} Jain.M.P. op.cit, p.15, citing Kaye, *History of Administration of the East India Company*,
1926, p.30

\textsuperscript{16} Jain.M.P. Ibid. p.16.
directly took over the administration of India from East India Company thereby marking the commencement of a new phase in the History of British Colonialism in India. Hence, 1858 can be seen as the year in which vast historical processes and forces reached a culmination so that it takes a new turn indicating the beginning of another era in British India.

SCOPE

The scope of the present thesis is limited to the study of a region so that it becomes regional study which in turn, becomes part of a wider topic of the judicial history of India. An attempt has been made to address the major problems related to the evolution of judiciary. Here the endeavor is to comprehend and explain the regional social and political experience and experiments against the backdrop of the existing theories. For the more perfect functioning of the judiciary and better conditions for the implementation of justice, it is very important to have a clear understanding of the culture, economy, polity, society, customs, law and order, and other similar aspects of the history of Malabar.

It is only with a clear and better comprehension of our legacy, heritage and past that we could build up a bright and positive future. Various streams in history and the intermingling and intertwining of divergent currents in society eventually interact mutually and give rise to new social reality. In this context, a closer examination of the social and political situation in the past throws clear light on the present situation which allows the seeker to have a more constructive and positive awareness of the social formation. Hence, with the aim of creating a proper intellectual context for a more appropriate and equitable legal machinery in future, the present study is undertaken. Here a sincere and devoted attempt has been made so that
analytical and critical explanation of the facts collected from different sources with the aid of new developments in historiography will illuminate the past and enlighten the future.

The present study has the aim of focusing on various aspects related to the evolution of judicial system in Malabar; at the same time, it tries to tackle the issues and problems at the micro level as part of the study. The issues and problems such as the nature of ownership and transaction of land, nature of rent, customs and conventions earlier Malabar laws, land-tenure laws, feudal relations, the judicial system introduced by the British, law and order situation, rulers and regulations and administrative reforms introduced by the British etc are included as part of the study so that it becomes wider in scope.

The study also deals with the social, political, economic, cultural conditions including the agrarian relations during the period as part of the treatment and presentation. Hence, it follows that what is intended to be achieved is not a mere description of events and facts; rather it aims to be an analytical and critical study of the broad issues and problems related to the topic to gain greater clarity and precision. So the study can be seen as involving a careful re-reading and objective re-assessment of important source material and data taken for the present purpose. It is more appropriate and meaningful to conduct even a regional study with a holistic and well integrated perspective. For this, the macro region of Malabar and the colonial State controlled by the British, form part of the background of this search and study.

**REVIEW OF LITERATURE**
In spite of the fact that the history of Kerala has become significant and important on account of the valuable contributions of Indian as well as foreign scholars, no adequate attention has been paid to the presentation of the judicial history of Malabar, whether it be ancient, medieval or modern periods. So far, no comprehensive historical work exclusively dealing with the judicial system in Malabar has been published. At present, only a few research monographs on the judiciary of Malabar are available.

The following are the notable and scholarly contributions in this field. Of these, C.A. Innes was a pioneer who studied the administration of justice in Malabar in his works *Malabar District Gazetteer* and *Malabar and Anjengo*. Spenser’s *Report on the administration of Malabar* is an example for the contribution of a foreign scholar in the field of the legal history of Madras. The work entitled *Madras Manual of Administration*, Vol. 1 Madras, 1888 authored by Maclean, C.D, who made some pertinent and valuable comments and observations on the administration of Madras.

A scholar namely Gleig, wrote a detailed and reliable biography of Thomas Munro, entitled *Life of Sir Thomas Munro*, which contains a lot of valuable information and insights related to the State of judicial administration in Madras, during the second half of the 18th century and early decades of 19th century. Arbuthnot also wrote about the important statesman Munro in his book *Major General Sir Thomas Munro*. The administrative reforms implemented by Lord Cornwallis have been presented and analyzed by Aspinall in his major notable work entitled *Cornwallis in Bengal*, which was published from Manchester in the year 1931.*The history of India*” by J.C. Marsh man and *Indian constitutional Document* by A.C. Banarjee also contain some valuable observations about the judicial administration during the British period in India.
Studies in Madras Administration by Dr. B.S. Baliga is an important and authoritative work which contains some seminal information about the administrative reforms and methods implemented by the British statesmen and officials in India. Charles Fowcett studied the legal and administrative practices that prevailed during the early phase of British colonialism in India in the important treatise The First century of British Justice in India, which sheds much revealing light on the mode of British judicial system in India. Wigram’s Malabar law and custom is a notable book that exhaustively treats the complex and complicated laws, customs and social practices that prevailed in Malabar during the 18th and 19th centuries. It deals with the existing situation and throws light on the changes that occur in the society as a result of the interaction between the status quo in Malabar and the invention of the outside forces –political, administrative and judicial –that the British brought to bear on the colony.

There are different books and articles dealing with the various aspects and features of Malabar in the 18th and 19th centuries. The topics and the area covered in these studies encompass a diverse spectrum such as the history of colonial Malabar, its land and people, the complex social organization, family system and its peculiarities, political ups and down experienced by the local rulers and chieftains, economic and agricultural aspects of the local society and the ordinary people, geographical features, cultural relations between different Caste groups in the region and the State of trade and commerce as practiced by the natives and the changes occurred owing to the coming of the foreigners such as the British.

Probably the most famous treatise dealing with Malabar dating back to the 19th century is Malabar Manual written by William Logan, the principal Collector [1875-1884] and Malabar Special Commissioner [1881-
The exhaustive and informative work is divided into two volumes [Madras, 1951]. In the first volume Logan presents the history of Malabar from ancient times with special reference to the British period and the second volume contains a large collection of date as appendix. This work is noted for the very vivid and clear account of the affairs of Malabar that the author could gather and present an account of his close and extensive knowledge of and acquaintance with the region and the people. In this work, Logan has incorporated a good collection of data related to revenue and land system of the province. There is a subsequent collection which can be regarded as the third volume known as *A Collection of Treaties, Engagements and other papers of importance relating to British Affairs in Malabar*. This volume provides some important original letters, proclamations, orders etc. related to the revenue affairs of the company and the British colonial government in India. Though these volumes shed much light on the State of the region in its manifold aspects certain areas of the subject covered require further investigation and research.

Some of the historians of modern Malabar such as K.N.Panikker, K.K.N.Kurup, V.V.Kunhikrishan, P.Radakrishan have made elaborate use of legal documents and judicial records for the preparation of their significant works. Very valuable information about the early phases in the evolution of legal institutions belonging to Malabar under Bombay and Madras presidencies can be collected from the treaties of T.K.Ravindran. Henry Davidson Love, in his great historical work, known as the *Vestiges of Old Madras*, has given a detailed account of the administration of justice at the beginning of the Company’s administration at Madras. In the works of many historians of Malabar, legal references and information related to the evolution of judiciary in the region are available. Apart from references and
allusions in works, a full-fledged treatise wholly based on judicial records as the seminal source of information is yet to be written.

A survey of the previous literature points out that none of these above mentioned scholars has made a special or in-depth study focusing on the evolution of judiciary under the British administrators in Malabar region. Here, a sincere and humble attempt is made with the aim of presenting a detailed and comprehensive account of the history of the evolution of law and legal system, the prevailing law and order situation and the establishment of civil and criminal courts in Malabar through this present study.

SOURCES

With regard to the thematic and theoretical aspects of the thesis, this study intends to encompass and delineate a host of problems, ideas and issues related to the close interaction between the western political and judicial practices represented by the British and the eastern social set up with its distinct political order and dispensation of justice which was reflected in the unique evolution of the establishment of judiciary in India.

The following documents and sources such as the District Records, Dairies, Minutes Books, Register of Letters, Reports of different Commissions, Accounts, Ledgers and Journals, Recodes kept by Supervisors, Police Superintendents Records, Proceedings of the Court of Justice, Letters, Magisterial Records, Court Orders, Documents connected with the litigations etc also have been carefully examined as part of research. Also attempts have been made, where ever necessary, to corroborate evidence from these documents with other available sources. In addition to
these, tools of oral history also have been utilized for the study. For extracting facts and minute details from different documents, interviews were helpful. In the overall grasp of available documents interviews were conducted and documenting their opinions and interpretations was rightly regarded as part of research related to history.

Various texts and documents like travel accounts of foreigners, official reports like census, commission reports, legislative department proceedings of the period, native newspaper report etc. have been taken and studied as source materials for this research. National Archives of India, Tamil Nadu Archives, Chennai and Regional Archives, Calicut provided major part of primary source materials. The judicial proceedings have been collected from District Court of Tellichery and Calicut, in addition to all these institutions, Sri. Chithrira Thirunal Library, Trivandrum, Calicut University Department Library and C.H. Muhammed Koya Library Calicut also provided some valuable historical documents.

As part of the corpus of records and documents, letters dispatched by the district officials to the government located at Madras and replies to the same, the officials diaries of the Malabar Superintendents, Supervisors, Joint Commissioners, Tellichery factory officials, report of the District Collector and Sub-Collectors, the Minutes of the Governor and Minutes of the Board of Revenue, Government Circular, Government Orders, proclamations and relevant administrative documents like revenue and judicial proceedings have been read and utilized wherever necessary for the thesis. Among these reports, different letters and extracts of reports of collectors, the minutes of Governors and minutes of the Board of Revenue and Governors observations of the government on these subjects have been of seminal value and use for the clarification of key points related to the preparation of thesis.
Each and every minute details regarding administration of justice could be identified in the Annual Reports of the District Collectors sent to the Government in Madras. Hence relevant reports which are available at archives were consulted wherever necessary as primary source materials for the preparation of thesis.

In addition to these, the special reports prepared by various commissioners who were sent to the province to conduct an enquiry related to the affairs in the province were also of immense value and use for this study. In this category of sources, the different reports prepared by many important persons such as the Joint Commissioners of Malabar, Second Commissioners Tackery, H.S. Graeme, Sullivan, and T.C. Strange are found to be of considerable relevance, value and use for this present work. On the whole, these reports have presented issues and developments in a credible and reliable manner. By and large, they have presented authentic views and attitudes of the officials and the responses of the government towards the problems of the people.

The report of Malabar special commissioner William Logan belongs to the above mentioned category. There are a few primary materials which are available in printed form such as the works viz William Logan’s *A collection of treaties and engagements*, Aitchison’s *Treaties Engagements and Sunnads relating to India and Neighbouring Countries*, C.A.Innes & F.B. Evans *Malabar District Gazetteers*.

As for the secondary sources for this work, some of the contemporary works from Francis Buchanen’s *A Journey from Madras through the Countries of Mysore, Cannara and Malabar*, which provides revealing light on different aspects of Malabar which are of equal value and relevance making them immensely useful for this work. C. Vasantha Kumari’s
Judicial and Social Change in British Malabar 1792-1940 gives a vivid description about the history of colonial Malabar, judicial system, law and order, its land and people, its unique social organizations, family system, castes, history of political ups and downs, agricultural and economic aspects, cultural relations, trade and commerce and social changes. More over a number of books and articles are also used as secondary source materials for this thesis. The authenticity of the facts incorporated in this thesis and the reliability of the secondary sources cited were verified by comparing and verifying them with others credible documents and sources to ensure maximum measure of authoritativeness and credibility.

HYPOTHESES

The following hypotheses have been tested with the help of available sources.

1. To explore the traditional judicial system that existed in Malabar before 1792.
2. To unravel the judicial system under the then Bombay presidency from 1792 to 1802.
3. To present the comprehensive features of the Cornwallis system introduced in Malabar between 1802-1816.
4. To understand the introduction and implementation of the progressive aspects of Munro system in Malabar between 1816-1858.
5. To identify the merits and demerits of the British judicial system in Malabar.
6. To formulate and present the findings on Malabar judicial systems.

METHODOLOGY
In this present study, historical methodology is used for analyzing the source materials and arriving at historical inference. For collecting data and source materials, exploratory method has been used. Tools of local history and oral history also have been used. In short, the methodology adopted in this study can be characterized as critical, analytical, descriptive and interpretative. Insights drawn from interdisciplinary approach of study are also carefully utilized to gain better clarity and greater precision in the research work.

All the data and source materials are carefully collected, critically analyzed and presented in detail. The most scientific and objective approach is followed to avoid any bias and prejudice while in writing this thesis. Necessary comments and relevant interpretations are given in each chapter where and when it is required. A chronological sequence is observed in the presentation of the ideas and arguments that form part of the thesis. It is conceded that the conventional and time honored method is adopted in the writing of the thesis.

The entire work was done keeping it within the framework of legal transformation for which the descriptive and interpretative approach become quite suitable. By formal and non-formal techniques of conducting interviews and observations, the relevant data has been collected for study. The present thesis is primarily based on the close study of the primary data. Also, it is further augmented and supplemented by a close consideration and consultation of the secondary sources available in the form of published books, journals, newspapers and souvenirs. Wherever necessary and relevant, a historical and deductive method is resorted to in order to reach conclusions pertinent to the present thesis.

**CHAPTERISATION.**
The present study consists of four chapters excluding introduction and conclusion. The introduction deals with the aim and importance of the study, scope and subject matter, review of literature on the topic, the methodology, hypothesis and chapterization.

The first chapter entitled events leading to the introduction of modern judicial system which overviews the historical background of Malabar that created appropriate circumstances for the Introduction of British system of justice in the province. An analysis of the Introduction of judiciary as the stabilizing force that eradicated the paralysis related to social affairs caused by the Mysorean wars and the defeat of Tippu Sulthan is also undertaken. The special political feature of Malabar as the province without a central political ruler from whom to demand revenue compelled the company to use other measures and means to fulfill the aim of revenue collection. Based on ideas related to the Mysorean administrative practice, the East India Company officials formed a picture of the existing tenurial relation in Malabar for their advantage. After proper enquiry, the joint commissioners came to the conclusion that revenue payment was not known to the people of Malabar with the result that the joint commissioners had to decide the particular class of people who would be in a position to provide the revenue to the East India Company. To find out and identify this class of people, they tried to conduct the enquiry as to whether the institution of private property was known to the people of Malabar. This enquiry led them to find out that private property as a full-fledged institution was not known in Malabar and that all lands were owned and possessed by customary ‘Janmis’ as absolute proprietors of the land. Hence, the East India Company initiated official proceedings to issue registered proprietary right to the customary ‘Janmis’ who were, in turn, granted the right to lease out the lands to the customary
cultivators known as ‘Kanakkars’ from whom to collect the revenue. With regard to ascertaining the class of people from whom revenue collection was to be made, the Mysorean model of revenue collection was adopted for implementation. But there were many problems before the East India Company. The ‘Mappila Kanakkars’ who were deprived of their lands were restless, the ‘Kannakkars’ were quite dissatisfied with the existing situation; the legal status and position of the customary ‘Janmis’ was not yet satisfactorily settled, and the law and order situation was deplorable, to say the least. With the purpose of rectifying this political chaos, the company attempted to adopt and implement some moderate and civilized strategies that finally led to the establishment of different categories of legal courts. The self evident purpose was to prevent internal dissensions among the local chiefs and also to win the confidence of the native people through a regular administration of justice. Eventually, this would protect the revenue income and the political interests of the East India Company.

The second chapter entitled the Judicial system under trial and transformation which narrates the experience of judicial reforms when the district of Malabar became a part of the Bombay presidency in 1792 and traces the essential features of this system which was replaced later by the Cornwallis code and to show how it suits, as a part of an interim arrangement and to bring about an abiding legal culture and social justice in the land of Malabar. The British administrator’s earliest endeavor was to evolve a judicial system for Malabar. Under the treaty of Srerangapatanam Malabar was ceded to the British. The law and order situation in Malabar was deplorably bad. The traditional pattern of life of the people, the princes and chieftains had already shattered by the Mysorean occupation. Social, economic, political and cultural structure was also rudely damaged. The
Company took so many measures for annexing the newly acquired Malabar province to the Bombay Presidency mainly in order to improve the prestige and honor of the company and also to ensure law and order for the revenue collection. The main task of the company was to evolve order out of the chaos and also enforce the principle of equality of all before law. General Abercromby, the Governor of Bombay visited Cannanore and appointed Farmers and Major Dow as Commissioners on 20th April 1792. The Joint Commissioners promulgated a code for the administration of civil and criminal Justice. In their respective divisions the Northern and Sothern Superintendents were invested with civil and criminal jurisdiction. One of the commendable acts of the joint commission was the civil code prepared, passed and transmitted by them on 12th June 1793 for the administration of justice in civil cases. Registrars and Pundits were appointed under the regulation and they were attached to the provincial court of Adalath. The revenue suits and civil suits were clearly demarcated by the regulation 12th June 1793. Moulavies and Pundits should attend to expound the law of their religion. To administer criminal justice in these courts, Daroghas or native judges were appointed. Three provincial Foujdary Courts were established at Calicut, Cherpulchery and Tellichery for dealing with the cases of great magnitude. Revolutionary changes were happening throughout the whole of political, social and economic life in Malabar. In the institutional history of Malabar, the system had its own merits and importance, despite numerous defects. It was the first attempt to change and regulate the judicial administration of Malabar. It also marks the foundation of the modern judicial system in Malabar. It was a great and bold attempt to establish an orderly and regulated life in the state and to replace arbitrary rules in the administration of justice by the rule of law. The system of regulations
definitely ended the age old customary law and inaugurated an era of modern judiciary and legislation.

The third chapter entitled the bulwark of British imperialism for better justice and Colonial modernity verses traditionalism 1802-1816 which depicts the Cornwallis system as introduced in the Madras Presidency in general and Malabar in particular and it stretched to Madras in 1802 could not be made strictly applicable to Malabar until 1806 and it’s working in the region. The main objective of this new system was the eradication of the old system and the introduction of a new system which effects the separation of the revenue and judicial functions of the district collector and the inauguration of a regular system of appeals and entrusting of magisterial duties to the judge. The jurisdiction of the Court of Adalath for trial of civil suits in the first instance was established and defined by the Regulation II of 1802. Provincial courts of appeals were established for hearing appeals and their powers and jurisdictions were defined. In 1802 the Sader Adalath was constituted. In 1816 the magisterial powers were transferred from the Zillah Judge to the Collector. The court of circuit was established in the four divisions of the presidency. The Foujdary Adalath was established at Malabar and it became the chief criminal court. The most adversely effected factor of the system was the complete dissociation of the Indians from the totality of the native country and its traditions. Whatever may be the defects, it achieved a more efficient and effective functioning of the administration of justice in the Malabar region.

The fourth chapter entitled the emergence of a more equitable social order which makes an in-depth scrutiny of the Munro system and its working and further reforms which provides the emergence of a more equitable social and legal order in the Malabar region. Munro was an
enlightened neo-imperialist and he followed a clear departure from the Cornwallis system and reorganized the necessity and importance of the principles of association of Indians in the administration of justice and Indianization of institutions. His appointment as the first Commissioner marked the beginning of a new horizon in legal history of Malabar. He endeared to the hearts of the Indians because of his unorthodox approach to the Indians and their problems and institutions and his devotion to the cause of justice. His views and arguments are highly rational and convincing and his suggestions were exhortative and persuasive. The major guiding principles that streamlined Munro system were the principles of Rayathwari settlement, toleration of customs and conventions, justice by panchayath and religious neutrality. The reforms were framed and implemented in the then Madras Presidency by Munro aimed at the creation of enlightened attitude among the natives. In 1827 a regulation was passed to effect the gradual introduction of the Jury trial in the Madras presidency. As a result of the act of 1843 new Zillah courts were established to discharge the civil and criminal functions. In Tellichery and Calicut new Zillah courts were established. The enactment of 1843 attained radical change and a landmark in the history of Indian legal administration. In 1857 after the first war of independence, the Crown took over the government of India in 1858. Under the high court act of 1861 and the enactment of the codes like civil procedure code, criminal procedure code and the Indian penal code, a well organized system of courts and codes was established.

The conclusion tries to evaluate and constitute a critical, analytical, descriptive and interpretative analysis of the evolution of the judicial system in British Malabar. In the conclusion the present scholar makes a review of various aspects of the subjects raised, discussed and analyzed in the previous
chapters. An in-depth study should reveal that the evolution of a sound legal system can be regarded as the best and the most notable legacy left behind by the Company rule in India. The present day legal system is a continuation of and refinement on the system formulated, masterminded, reformed and instituted by the visionary colonial administrators. The greatest achievement of the East India Company’s colonial administrators in Malabar was the introduction of a new system imparting justice on the basis of rule of law which provides equity, justice and good consciences. The Company rule was successful in the combination and integration of the centuries old mighty indigenous legal practices of the natives with the British rule of law. The British rule ensures the positive role played by the judiciary in enlightening the stagnant Malabar society into a dynamic society and the transformation is really a rational one and guaranteed the modern standards of life.