Chapter I
Events Leading to the Introduction of
Modern Judicial System

About the end of the 15th century some people of European nations especially Portuguese, Dutch, French and English came to India as trading merchants. In 1498 Vasco de Gama, a Portuguese navigator discovered the passage to India around the Cape of Good Hope. He landed at Kapad near Calicut on the Malabar Coast. Reformation movement got inspiration to the protestant nations of Western Europe during the second half of 16th century began to compete for trade with India. The trade centers were first established by the Europeans in India when the power of the Mughal emperors was at its zenith. The conditions which prevailing in India was suited to the purely commercial attitude of foreign traders in the 17th century. After the decline and disintegration of Mughal power in the 18th century, the nobles and chiefs were establishing separate kingdoms and on the basis of their increased strength the English and French companies began to take sides in the wars amongst the local kingdoms. Finally the English East India Company emerged victorious and dominated its area of influence and established its empire in India.

As it exists now, the Indian laws and law courts are closely modeled on the English establishment and pattern. The origin and history of their introduction and development began with the foundation of the East India

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Company under crown’s charter of 1600. The East India Company, with its official title as “The Governor and Company of Merchants of London trading into the East Indies”, was incorporated in England on the 31st December 1600, by a Charter of Queen Elizabeth which settled its constitution, powers and privileges. The trading centers of the company were known as factories. For the trading purpose the factory was a subordinate unit of the Company. Later the trading activities assumed the character of settlements. As a result of the expansion of the trade under the shelter of the parent factory many new factories grew up and the parent factory came to be called presidency towns and the presidencies of Bombay Madras and Bengal came into existence. In the beginning a factory was a compact little nest of buildings which comprised of lodging of the chief, subordinates, were houses, godownes and offices. Later such factories were fortified and called settlements and it became the centers of territorial expansion.

James I granted a fresh charter to the company on 31st May 1609 which granted the privileges, powers and rights which were earlier granted to it by Queen Elizabeth under the charter of 1600. The company secured the first royal commission in 1601 in order to make, ordain and constitute laws, orders and constitutions for the good government of itself and its servants and for better advancement and continuance of its trade and traffic.

During the reign of Emperor Jahangir, the English people came to India and settled at Surat in 1612 entrusted with these powers. Sir Thomas

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Roe\textsuperscript{9} was sent as an ambassador by James I to the Mughal emperor in 1615 under a royal firman the British were allowed to establish a factory at Surat. Surat was one of the most important centers of trade and commerce on the western coast of India\textsuperscript{10}.

The charter of 1668 was a turning point in the history of English East India Company which assisted the transition of the trading body into a territorial powers and also authorized the company to make laws, orders, ordinances and constitutions for the good government and empowered to establish courts of judicature similar to those established in Britain for the proper administration of justice. The charter of 1683 granted by Charles II authorized the company to raise military forces\textsuperscript{11}. In 1687 the company was authorized to establish a municipality and a mayor’s court at Madras. The company declare in 1687 in its dispatches, its determination to “establish such a policy of civil and military power and create and secure such a large revenue as may be the foundation of a large, well-grounded, sure English dominion in India for all time\textsuperscript{12} to come”\textsuperscript{13}.

Gradually the power and strength of East India Company increased after the disintegration of the Mughal empire and the company got it an opportunity to lay its foundations as colonial empire in India. Its policy changed from a trade monopoly to annexation. It was found that domination itself was a source of profit. In the initial stage it was in possession of three factories and settlements at Bombay, Madras and Calcutta under the

\textsuperscript{10} Foster William, Ibid, pp.v & vii.
\textsuperscript{12} J.H.Parry, \textit{Trade and Dominions, the European Overseas Empire in the 18th Century}, London,1971, p.275.
\textsuperscript{13} Kulkarni. V.B. op.cit, p.37.
changing conditions the company gradually exercised wider authority at Bombay, Madras and Calcutta.

The East India Company finally established the trading centers in India at Surat, Madras, Bombay and Calcutta by the end of the 17th century. For regulating the company’s acquisition of territory and administration of justice in India, various charters were gradually passed from time to time and it was an inevitable steps on the road that led to the foundation stone and setting up of the British domination and Empire in India. Francis Day acquired a piece of land from a Hindu Raja of Chandragiri in 1639 from the East India Company and he built the Fort St. George in 1640. The great historical work *Vestiges of Old Madras* written by Henry Davidson has given a detailed account of the administration of justice at the beginning of the company’s administration of Madras14. Due to the non-availability of the old records no clear-cut and abstract picture of the early administration of justice is possible.

Madras was founded in 1639 by Francis Day who acquired a piece of land on the eastern sea-cost from a Hindu Raja. Here the Company constructed a fortified factory and named it as Fort St. George15. This was also the first territory which the English secured in India16. Inside the fort grew the white town—a settlement of the British and outside the fort grew a black town—as most of the inhabitants were Indians. The whole settlement comprising both the towns came to be known as Madras17.

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During the 16th and 17th century the machinery to administer justice was at a very rudimentary stage. With the appointment of Streynsham Master as Governor in 1678 the judicial system based on a hierarchy of courts with well-defined jurisdiction, came into existence in Madras. The court of judicature sat for the first time on April 10, 1678 to try and decide a case between John Tivil (plaintiff) and William Jearsey (defendant). Streynsham Master, the Governor of Madras made an important declaration in 1680 by which English language was recognized as the only official language in Madras. On December 9, 1680 an official order from Fort. St. George at Madras stated; “all sales and alienations of houses and grounds shall be written in English”.

Later the Company realized that its monopoly of trade was being infringed by other foreign and native traders. The charter of 1683 empowered the company to establish court of admiralty in India for try all traders committing various offences. After 1704 the company paid more attention to the mayor’s court and the Governor and Council gradually replaced the admiralty court at Madras. The charter of 1687 authorized it to create a corporation of Madras and establish a mayor’s court. The mayor’s court was a part of the corporation of Madras and empowered to carry out judicial functions and it was a court of record for the town of Madras. Choultry court was also establish had to decide only petty criminal and civil cases and its continued its work in the Madras presidency till 1726. Love has given detailed and interesting types of punishments given to the criminals in the 17th century. There was no clarity as to what the law was and what were the jurisdictions of the various courts. There was only one type of “crime

18 Gopalratnam.V.C. op.cit, p.82.
which could be tried at Madras without legal uncertainty” and that was “piracy”\textsuperscript{21}.

Alfonsus VI, the king of Portugal gave Bombay in dowry to the king of England Charles II, when the English king married his sister Princess Catherine in 1668. In 1668 he transferred Bombay to the company for a very nominal amount rent of ten pound. By the charter of 1668 authorized the company to legislate and to exercise judicial authority in the island of Bombay which make it clear that such laws should be consonant to reason and not repugnant or contrary to the laws of England and as may be agreeable to the laws of England. Under this charter the system of courts and procedure was to be similar to that established and used in England\textsuperscript{22}.

In 1669, Sir George Oxenden, the president of Surat, visited the island of Bombay and establishes the executive government and the laws enacted by the company under the charter of 1668 actually came into force for the government of Bombay\textsuperscript{23}. Gerald Aungier, the governor of Surat initiated the first important legislative work of the company in 1670\textsuperscript{24}. He completely reorganized the old judicial set-up of Bombay. Impartial administration of justice, fair trial and convictions, trial by jury, establishment of court of judicature and right of appeal were some of the peculiarities of this new system. He improved the judicial system of Bombay gradually with much difficulty.

In the year 1672 a new judicial plan was introduced in which the English law was introduced into Bombay. The court of judicature, a new central court was established in 1792. In his inaugural address the governor

\textsuperscript{21} Henry Dodwell, \textit{The Nobles of Madras}, Madras, 1926, p.149.
\textsuperscript{22} Keith, op.cit, pp.127-131.
\textsuperscript{24} Malabari, B.M. \textit{Bombay in the Making}, London, 1910, pp.146-182.
Aungier enunciated the principles of independence, impartiality and equality for the future guidance of the judiciary. He remarked “Laws though in themselves never so wise and pious are but a dead letter and of little force except there be a due and impartial execution of them.” Speedy and impartial administration of justice was the primarily concern of Anguir. Regarding “injudicious interference with the court by the council” Keith observes, “It seems probable that the chief weakness of the court lay in the fact that the judge was dependent on the goodwill of the council.”

In 1690, due to the invasion of Siddi Yakub, Admiral of the Mughal emperor, the judicial system of Bombay came to an end. For a period of 1690 to 1702 there were no courts. Governor and Council requested to the directors of the company to sent honest lawyers. As Vachha observed, “It was probably the difficulty of getting the right sort of men from the company’s standpoint, which resulted in no judge being sent out.” The result was that the machinery to administer justice was almost paralyzed in Bombay up to 1718.

The inauguration of a new court of judicature in 1718 was a turning point in the judicial history of Bombay. It had given wide powers and it exercised jurisdiction over all civil and criminal cases and also it guaranteed rule of law, equity and good conscience. It was famous for its speedy justice, impartiality and also for the cheapness of its process which was clearly mentioned in the earlier studies of Fawcett and Malabari.

The court applied English law which was vague and underdeveloped at that time. As a result this vagueness and uncertainty was bound to lead to

25. Fawcett, op.cit, pp.52-55. See also Stealvad. M.C. *The Common Law in India*, London, 1960, p.10
28. Fawcett, op.cit, p.112
29. Malabari, op.cit, p.190
injustice and lack of uniformity in punishing the criminals. Fawcett has described the trial of Rama Kamti, who was made the target of a plot based on lies and forgeries and grave injustice was done to Rama Kamti by the court\textsuperscript{30}. This was clear-cut examples of the poor state of judicial and executive affairs. Fawcett’s concluding remarks was that: “The court though its administration of justice was rough and ready and though it fell short of the ideals that attended its establishment in Aungier’s time clearly served a useful purpose during the ten years of its renewed existence\textsuperscript{31}.” Such a rough and crude so-called justice continued till the Mayor’s courts were established under the royal charter in 1726.

With the battle of Plassey in 1757 the real authority of the Nawabs of Bengal passed to the English Company\textsuperscript{32}. In 1765, the Diwani of Bengal, Bihar and Orissa was granted to the company by Shah Alam who was the puppet Mughal Emperor. This should be regarded as a turning point in the history of the company. In the year 1765, the period of the territorial sovereignty by the company began\textsuperscript{33}. Though the Diwani function was to be performed by it as a deputy of the emperor, its main object which was “to obtain the substance, though not the name of territorial power under the fiction of a grant from the Mughal Emperor.” was achieved\textsuperscript{34}.

The western coast of India was generally known by the popular name Malabar. Duarte Barbosa used the term to denote the geographical region inhabited by the Malayalam speaking people\textsuperscript{35}. According to Logan the term

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\item Fawcett, op.cit, p.179; Vachha, op.cit, pp.235-239.
\item Fawcett, Ibid, p.200.
\item \textit{Mithal,J.K}, op.cit, p.32.
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Malabar is not indigenous but semi-foreign\textsuperscript{36}. Malabar was one of the districts in the erstwhile Madras presidency bounded on the north by South Canara and Coorg, on the south by Cochin and Travancore, on the east by Coorg, Mysore and Nilagiris and Coimbature, and on the west by the Arabian sea. Malabar covered an area of 5795 square miles\textsuperscript{37}. The district consisted of taluks like Calicut, Chirakkal, Cochin, Eranad, Kuttakkal, Kurumranad, Palaghat, Ponnai, Valluvanad and Wynad\textsuperscript{38}. In the peninsular India the present Malabar situated in the northern districts of Kerala, viz Palakkad, Malappuram, Calicut, Wayanad, Kannur and Kasaragod.

In the administrative map of British India, Malabar was never that of an outstanding territory with multiple interests. The British administrators treated Malabar as a revenue source and they had no great enthusiasm for this territory which, in their view, was not even familiar with a well-developed native powerful statecraft. For being put under the guard and guidance of very strong judicial machinery, the place and importance of Malabar in the administrative history of the British in India, was unique. In Malabar, there existed a pronounced and profound system of British judicature based on the British rule of law and a strict sense of justice under the colonial rule.

In spite of the historic fact that the British came to the coast of Kerala in the very beginning of the seventeenth century itself\textsuperscript{39}, the concrete and practical intervention of them in Malabar began only from 1664, which happened in the historic context of the decline of the Portuguese and the consequent ascendancy of the Dutch out of which they were inspired to

\textsuperscript{37} Innes, C.A, Malabar and Anjengo, Madras, 1951, p.2
\textsuperscript{38} Details taken from the Directory of Madras, Madras, 1933, p.1249 [T.N.A]
\textsuperscript{39} Reports of Joint Commission Bengal & Bombay appointed to inspect into the state and condition of the province of Malabar in the years 1792-1793, Vol.I, p.7 [T.N.A]
initiate a new venture by getting the permission of the Zamorin, the ruler of Calicut to found factories and storehouse at Ponnani and Calicut.

The early British people who came to India did not belong to any high social strata; they had humble origins, were mainly adventurers and not gentlemen, and thus did not have high moral values. In the hand of such persons administration of justice could never be of a high order. A very important and vital result of the British rule in India is arguably the introduction and consequent refinement of an advanced system of judicature solidly grounded on the rule of law that initially came to existence in England as a result of its evolution down years and decades of continuous experiment and modification on account of the experience and interaction of experts and scholars in law which was later transplanted and nurtured in India with its tradition characterized by innumerable customs, conventions and diverse social practices. Hence what is to be especially noted is that judiciary in India is the outcome of the political domination of British administrators in India that lasted almost for two centuries about which the most striking and salient aspect was invariably the economic exploitation of the colony by the administrative machinery imposed by the colonizers.

The self proclaimed and much published policy of the British administrators was the mission related to the project of civilizing colonies what is called white man’s burden. Using this ingenious and devious policy as a clever core, they aimed at the economic exploitation of the colonies as part of which and as a positive result of the same historic process, the judicial institution also was introduced and modified in India. Implementation of law and evolution and perfection of judicial process

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always had a remarkable role in the process of colonization, especially in the case of India which was going through the different phases of civilization on account of changes in the production and distribution prevailing in India that indirectly inspired Indians to assimilate and nurture the concept of a unique nationhood. Since the British project of colonialism began to function in India as a result of which the judiciary intervened in the Indian social process, far from acting mechanically in accordance with the directions of the colonizers, the judicial system transcended the limit and functioned and interacted with the society in such a way that eventually it succeeded in awakening the people in Malabar who were enmeshed in age old customs and stagnant conventions on account of which the natives were brought face to face with start realities of modern society. Hence, with hindsight, it can be perceived that owing to historic and social process, it was the distinctive fate of Malabar to become one of the most notable inheritors of the British judicial system in spite of the fact that, in terms of geography, it was comparatively speaking, only a small region on the west coast of India.

The establishment of a strong judiciary in the proper direction for the proper functions of an able and effective government in the newly acquired colonies formed an important aspect of the British colonial policy anywhere in the world. “Settlement established subsequent to discovery at once necessitated the creation of new courts, the evaluation and application of local and even tribal laws and customs; acquisitions by conquest raise problems of domestic law existing prior to and following the new sovereignty; transfers to government or possession by purchase or cession involve like solution.” Clear cut instructions were given to the English

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43. Ibid, p.4
administrators and judges to decide cases according to justice, equity and good conscience, for which no rule was clearly laid down in the Acts of parliament or regulations or customary law of India. Pollock observed, “Under the name of justice, equity and good conscience, the general law of British India, save so far as the authority of native law was preserved, came to be so much of English law as was considered applicable or rather was not considered inapplicable to the conditions of Indian society.”

In the garb of the phrase justice, equity and good conscience, English notions of law and justice were introduced first time in India.

In 1887 Lord Hobhouse expressed the view that justice, equity and good conscience could be interpreted to mean the rules of English law if found applicable to Indian society and circumstances. Native law and usages were supplemented, modified and superseded by English law to a large extent without any express legislation under the influence of English judges. According to Rankin, “the influence of the common law in India is due not so much to a “reception”, though that has played no inconsiderable part, as to a process of codification carried out on the grand scale.”

But in the fact the English law in India like the Roman law in Mediaeval Europe, “enjoyed a persuasive authority as being an embodiment of written reason, and impressed its own character on a formally independent jurisprudence.”

The company obtained permission from the British crown to administer justice in its factories in India. The charter of 1726 indirectly introduced the English common law, equity or statute law applicable to Indian circumstances. In

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Malabar, the main motive for the introduction and improvement of judiciary was the smooth revenue collection.

Without a proper study of the historical background of the region, which was an outcome of centuries of feudal customary wars and their total destruction by the Mysorean inroads, it was absolutely impossible to a clear-cut analysis of the Malabar judiciary. Because of its heterogeneous character the Malabar society was shapely divided on the basis of caste and religion. The traditional feudal social structure had began to show signs of tottering towards the end of the 18th centuries. The feature of the new social order was wherein the feudal nobility and caste aristocracy lost their old position of primacy as a result of the shock of the Mysore an invasion served to give the coup de grace to the old feudal social order. The feature of the pre-colonial politics was that it lacked a substantive political authority to control and guide the entire region of Malabar custom was a dominating factor in deciding everything in the society which made the task of judiciary more complicated and difficult. A pre-colonial legal interpretation is very difficult because of the absence of authentic legal records and custom of Malabar had become so institutionalized due to the centuries of continuous observance. The Company administrators another hardship was the turmoiled condition of Malabar society after the Mysorean inroads and also the extremely custom ridden nature of the society.

After the annexation of Malabar the primary duty of the company’s officials was to guaranteed the unobstructed revenue collection for which they tackled the low and order situation and give due respect to the age old customs and won the confidence of the people through civilized means. For modernizing administration and society a series of administrative and social reforms were introduced by the British and Indian administrators who were
actuated by liberal ideas and enlightened views even in the early decades of the 19th century. But in the case of tenurial problems, the Company’s administrator’s interpretation was done in an improper way, which was against the age old customary traditions of Malabar as a result of which gave much trouble to the judiciary when tenurial litigations began to come up in the courts of Malabar. But in the case of personal laws the judiciary made an independent approach. For solving the customary problems of Malabar judiciary put forth so many healthy suggestions which later became as a part of the legal system of the region. Without a proper study of the creative and effective role played by the judiciary in remodeling the age old traditional custom bound society, the task of writing modern legal history of Malabar become almost impossible.\textsuperscript{47}

The emergence of the British Empire in India stands out as a unique event in the history of the World. Unlike many other empires, the huge edifice of this Empire was created by merely a company which was organized in England for furthering the British commercial interests in overseas countries\textsuperscript{48}. In the earlier stages it had only limited judicial and legislative powers. Commercial success was the primary aim of the company but in the later years they came to the fact that profitable trade was absolutely impossible without political control or at least political influence upon the local rajas. It had enough judicial power to maintain internal discipline and it could also make some kind of rules for regulating the conduct of its employees. In the initial period, a crude version of English law was administrated by the non-professional judges of the East India Company who did not have adequate knowledge of English law and Indian customs. In

\textsuperscript{47} Vasantha Kumari. C, \textit{Judicial and Social Change in British Malabar 1792-1940}, Tellichery,2012,pp.3-4
\textsuperscript{48} Kaye, op.cit, p.66.
reality, those courts were the courts set up by the company and did not have direct royal authority behind them\(^9\). Despite 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” \(^{50}\). It is to be especially noted that chief officers of the company were essentially adventurers and not gentleman, traders and not lawyers. Hence, in relation to administrative and judicial issues that required decisions, they acted in a loose manner rather according to the laws of power and impulse of passion than on the basis of the recognized principles of justice and reason. On account of all these factors related to circumstances and power relations, administration of justice in India under the colonial rule by the East India Company was not up to the mark in many respects. But whatever may be the defects the reforms and innovations introduced by the company had a profound impact on the local society.

The British East India Company had to entangle itself in continued military confrontations with the native rulers and local rulers and local chieftains and also with other Europeans involved in trade with India for the purpose of achieving dominance over Indian sub-continent. The Europeans promote their expansionist ambitions mainly because of the circumstances that existed in Malabar that was the fragmentation of the region into many petty principalities and with the caste ridden society and mutual jealousies and conflicts of the local chiefs and rajas. The administrative control over Malabar consisting of Calicut, Palghat and the northern districts excepting Wayanad was transferred into the hands of the British East India Company as a result of such military confrontations of which an important one

\(^9\) Kautilya, The Legal History of India, Bombay, 1997, revised & edited by C.Veena, Advocate, High Court, Bombay,p.1

\(^{50}\) Ilbert,C, op.cit, Madras, p.10 & A.B. Keeth, op.cit, 1937, pp.4-5.
culminated in the treaty of Srirangapatanam in 1792. As far Wayanad, in spite of the fact that it also had been a part of the districts ceded to the British rulers after the fall of Srerangapatanam in 1799, the complete mastery over Wayanad took place after the suppression of the revolt led by Pazhassi Raja in 1805. Observation and analysis of historic process leads to the conclusion that the conquest of Malabar was actually the result of the East India Company’s commercial mission to gain control over spice trade in Malabar in which, for around three centuries, other European powers such as the Portuguese, the Dutch, and the French also had been closely involved incessant struggle to control the Malabar space trade.

Without a clear-cut study of the early judiciary, it is absolutely impossible to get a proper understanding of pre-colonial Malabar’s legal system. No free and fair and equitable justice is reported in the 18th and 19th century. Caste tribunals and feudal lords administered justice which was arbitrary and ruthless and never followed the principle of rule of law. Caste system played a remarkable role in deciding the type and level of punishments. According to the status and caste of the offender the kind and degree of punishments varied. If men of high castes in a severe offence found guilty and were given light punishments, whereas ruthless punishments were inflicted for a simple offence on the lower castes. The concepts of equality before law was never followed in the pre-colonial criminal administration.

The Malabar rulers followed the local variant of Brahmanical law compiled on the basis of Vyavaharamala, a Smriti texts of north India codified on the 15th century, the customary laws based on Jati equations.

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Customs, precedents, conventions and traditions played a leading role in constituting the laws of the land\textsuperscript{53}. The Brahmins interpreted the \textit{Dharma Sastras} according to their whims and fancies\textsuperscript{54}. Brahmins were exempted from capital punishments but the lower castes severely punished in mild offences\textsuperscript{55}. Trial by ordeals were the modus operandi of the examination of criminal cases which had been frequently practiced throughout the ages in Malabar. The most notable ordeals that existed in pre-modern Kerala was water, poison, oil, fire and weighing.

The judicial system was the most unorganized department of the medieval state. As we understand today, the judicial system came under the purview of the village authorities. With regard to the working of the judicial system, H.D. Dowell’s description of the legal system in Madras could be regarded as a typical specimen for the functioning of the system in other parts of the country. In this context he stated as follows; “There was generally no code of law recognized as being in force; and even where Hindu and Mohammedan law books were supposed to have authority, there were no regular courts in existence to interpret or give effect to them, or to solidify customs and precedents into law. Petty crime was default with by the village headman and most civil disputes were settled in the village ‘Panchayath’ or juries, caste offences were published by caste headmen or caste ‘Panchayath,’ the state only interfering to raise revenue by leasing out the right to levy fines. Grave crimes could be brought before the ‘Amildar’ who might inflict any punishment short of death. There were no jails and imprisonment was not recognized as a form of punishment. Mutilation for the poor and fines for the rich were the order of the day. The proceedings of

\textsuperscript{53} Padmanabamenon, \textit{History of Kerala}, Vol. II, Tiruvanananthapuram, 1929, pp. 100-11
the ‘Amildar’ were controlled not by law, but by his sense of equity. There was always the possibility of an appeal to the sovereign, but access to him was difficult, and the chance of a careful enquiry small.\(^56\)

The native judiciary in India suffered from many drawbacks since it was unpopular and current. The English often exploited this situation to their own advantage. Instead of being tried by the local tribunals in cases where natives also formed parties, they took law into their own hands in order to extract justice from the natives by themselves rather than submitting themselves to the legal process of the judiciary.\(^58\)

The modern legal system existing in India owes its origin to the British rule which came into existence after the East India Company established political authority over Bengal, Behar, and Orissa in 1765. The grant of the Diwani gave to the Company a de jure status of an official of the Mughal Emperor. It was merely a fiction adopted to conceal the de facto position of the Company which already had the real power in Bengal at the time.\(^59\). “Such a sense of anarchy, confusion, bribery and corruption and extortion was never seen or heard of in any country but Bengal; nor such and so many fortunes acquired in so unjust and rapacious manner”\(^60\). The legislative power conferred on the Company was very limited and restricted in scope and character. Despite its limited scope, the early grant of legislative power to the Company is of historic interest as it is “the germ out of which the Anglo-Indian codes were ultimately developed”\(^61\). Article 27 of the plan of 1772 indicated that suits regarding inheritance, succession,

\(^{60}\) Clive’s description quoted by Macolm in the Life of Robert Clive, London, 1921, P.322.
\(^{61}\) Ilbert, op.cit, p.10
marriage, caste and other religious usages and institutions shall be decided according to the laws of Shastras with regard to Hindus and the law of Quran with regard to Mohammedans. Equal treatment was given to both Hindu law and Mohammedan law. On all legal matters the courts were required to act according to justice, equity and good conscience. The plan of 1772 indirectly introduced English law in India. The regulating act of 1773 established a supreme court at Calcutta superseding the mayors court. By the Section 12 and 13 of the Act of 1797, reservation of the native laws to Hindus and Mohammedans was extended to madras and Bombay which established recorders courts at Madras and Bombay. The provisions of the Act of 1781 were extended to them when the Supreme Court was established at Madras in 1800 and at Bombay in 1823.

Prior to the establishment of the administrative machinery by the British in India, the political organization of India was that it comprised either tributary or independent kingdoms. The duties of the state where such as maintaining law and order, providing security for the people, from within and without and the collection of revenue. So far as its relationship with the villages and villagers is concerned, the state did not interfere in the villages as long as it paid its revenue and obeyed the authorities. With regard to all other matters, the village had complete freedom. Hence, precisely on account of this reason, India was perceived and highlighted as the land of village republics.

There was no measure or standard of punishment nor was there any principle behind its mode and quality. Often the punishment awarded bore no relation to the offence committed and depended on the personal whim, idiosyncrasies and prejudices of the judges. Usually the punishments were barbarous and inhuman, and were awarded with the idea of making them
deterrent and preventive\textsuperscript{62}. In this state of administration, the people had to suffer a lot. On account of the absence of proper and dependable means of defense, they become prey to the company officials in their attempt at conquest and coloniztion. The company officials exhibited all the yearning and craving for plunder. In this case, sudden and easy acquisition of wealth without undertaking any duty of organizing a government for the conquered inspired the British officials in their attempt to amass wealth for their personal benefit. Hence, it can be seen that this period was the age of misgovernment. The level of misgovernment was carried to a point that seems hardly compatible with the very existence of society\textsuperscript{63}.

In their scheme of colonialization of India, the first effort undertaken by the East India Company after getting possession of any new region was to implement the quick measures for the immediate collection of revenue which was the inevitable part of their policy for economic exploitation. Since the company had experience only as a trading concern, the early servants and officials did not have any knowledge in revenue matters which was a real handicap for them in managing the affairs related to Indian administration. As for this difficulty, they believed that they could solve the problem through a study of the local customs and usages related to this\textsuperscript{64}. This muddled state of affairs and the related problems were finally settled through the permanent settlement popularly known as the Cornwallis system of 1793 by making the ‘Zamindar’s’ permanent owners of the land and proprietary rights were granted subject to the payment of a fixed annual revenue to the government. Later, the three major headquarters of the British in India such as Calcutta, Madras, and Bombay were made the

\textsuperscript{62} Love, op.cit, pp.408,492,497


\textsuperscript{64} Majumdar,R.C, \textit{An Advanced History of India}, London, 1949,p.791.
administrative part of British India by making the permanent settlement condition applicable to the respective region.

One striking feature of the political condition in India at that time was that the administration of civil justice was closely associated with the management of revenue. As a result of this any innovative practice implemented for the evolution of a more advanced judicial system any reform and change in the evolution of judicial system in India can only be understood with reference to the prevailing system of revenue administration. In this respect the political and economic condition prevailing in Malabar and utilized by the British was not different. The clear awareness related to the considerable opportunities and great scope for revenue collection existed in Malabar region exhilarated the company administrators. Hence they lost no time in adopting necessary administrative steps to collect the possible revenue.

With the purpose of protecting the East India Company’s honor and establishing its authority in all quarters, Lord Cornwallis, the Governor General took the measure of annexing the newly acquired Malabar Province to the Bombay presidency. In this connection, he instructed General R. ‘Abercromby,’ Governor of Bombay in the following words; “To enquire into the present state of the country and to establish a system for its future Government but to lose no time in coming to an agreement with all the chiefs for some specific revenue to be paid for the ensuing year. Malabar was first annexed to the Bombay presidency as a province. Later, in the year 1802, Malabar was placed as part of the Madras presidency in order to see that the effective administration of justice is achieved to the satisfaction of

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rulers and the ruled in the respective area. These reforms and rearrangements were made with the intention of achieving effective administration.

The principle English settlement, the Tellichery factory, was established only in the beginning of the eighteenth century\(^{67}\) one reason for this was its proximity to the finest pepper and cardamom lands in Malabar\(^{68}\). In 1708 the British got the permission from the Kolathiry to build a fort at Tellicherry and was intended to protect the port in the event of surprise attack\(^{69}\). The fort of Tellichery was obtained by a grant from the Chirakkal Raja in 1708. Only from 1784 was Tellichery rewarded the status of a Fort and built up into a defensive base\(^{70}\) and until 1805 it was the bridgehead for the territorial conquest of Malabar. In this manner, by gaining and amplifying considerable political influence among the local chieftains, the company succeeded in protecting their trading interest and establishing a near monopoly in the immensely profitable spice trade of Malabar\(^{71}\). On the eve of the third Mysore war the factory of Tellichery on behalf of the company had entered into a series of treaty of friendship with the native rajas\(^{72}\). While executing such a deed the company had in mind the uninterrupted trade and commercial privileges in the immediate feature. But whatever the articles of these agreements provided, presently, neither the governor general nor the factory officials had any definite decision regarding the status of the native Rajas in the future company system of government\(^{73}\).

On 21\(^{st}\) September 1791 Henry Dundas, president of the board of control wrote to Lord Cornwallis expressing opinion that the Malabar Rajas

\(^{67}\) Malabar Joint Commissioners Report, Madras, 1862, p.6
\(^{68}\) Innes and Evans, Malabar District Gazatteers, Madras, 1951, p.55.
\(^{71}\) Panikar, K.N, op.cit, p.2
\(^{72}\) Logan, Treaties, Dairy of the Tellichery Factory, 8\(^{th}\) May 1790,pt,1, No.XCV, Madras, 1989,
should become tributaries of the company so that the English could enjoy the great political and commercial benefits to be derived from a free and uninterrupted intercourse with the Malabar coast. The Mysore Sulthans, Haider Ali and later his son Tippu Sulthan put to trial this immense economic interest of the company with their conquest of Malabar. Lack of unity and co-operation among the rulers of Kerala and the internal compulsions of contemporary Malabar politics created a favorable atmosphere for the aggressive designs of Haider Ali and Tippu Sulthan, the rulers of Mysore. The Zamorins of Calicut pursued the expansionist policies as a result which created a series of conflict between Calicut and the neighboring principalities which created a favorable political condition for the Mysorean intervention. The rivalry between the Ali raja of Cannanore and the Kolathiri created the situation more worse.

For furthering their trade interest the European powers were carrying on intrigues with the local powers and chieftains who were engaged in internecine warfare. For furthering his own expansionist policies of Mysore rulers considered it as a unique opportunity to interfere in Kerala politics. In order to ensure a steady supply of arms from the western countries to feed his army Haider desired to get access to the French settlement of Mahe also prompted him to embark on his Kerala inroads. The already hostile relationship existing between the company and the Sulthans became worse owing to the political ambitions of the Sulthans and it culminated in the Anglo-Mysore wars since 1767. After his death in 1782, his son Tippu Sulthan assumed power in Mysore and took on his expansionist and anti-

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British policy as well.\textsuperscript{75} When the peace compromise failed, the East India Company’s army with the help of the raja of Malabar, who was on friendly terms with the company officials fought against the Sulthans army, which came to an end in the letters defeat. One especially notable outcome of the war was that the defeat of the Sulthans led to the establishment of the political supremacy over Malabar by the British which decided the political evolution of the region for almost two centuries. For the effective fulfillment of these aims and objectives, the British paid due attention to the establishment and later modification of the judicial system in Malabar.

One definite outcome of the Treaty of Srerangapatanam was that it paved way for the transfer of supremacy from the Mysoreans to the British. Tippu had to pay large sums as reparations, which were used to give special gifts of money to British officers and soldiers.\textsuperscript{76} In the fourth Anglo-Mysorean war, Mysoreans suffered its final defeat and Tippu died defending Srirangapatanam. By this treaty the British pursued additional measures designed to incorporate the individual principalities of Malabar into the Bombay presidency and this resulted in changed relations between the Company and the Malabar rajas. If the British had been concerned up until that point with the extension of their economic and political control over the rulers and merchants, then their interest was now focused on establishing an efficient administrative structure in the new province, which was to support itself financially through tax payments and which was ideally to aspire to yielding profit.\textsuperscript{78}

\textsuperscript{75} Brittlebank, Kate, \textit{Tipu Sultan’s Search for Legitimacy: Islam and Kingship in a Hindu Domain}, Delhi, 1997, pp.24,27.
\textsuperscript{78} Margret Frenz, \textit{From Contact to Conquest; Transition to British Rule in Malabar 1790-1805}, New Delhi, 2003, p.77.
In the economic sphere the invasion created total economic ruin of the country. The large scale migration from Malabar to Travancore was occurred as a result of the brutalities indulged by the Mysoreans. The general attitude of the people belonging to the region towards the Anglo-Mysore rivalry was neither on the offensive nor on the defensive, but passive in the context of the absence of a central chieftain to plan for the whole of Malabar. Some of the actions and decisions of the Mysore Sulthans forced some of the chieftains to flee from Malabar to Travancore due to fear and terror elicited by those actions. In contrast, the local chieftains preferred to retain the friendship of the company. The British promised the local chieftains and rajas with general assurances of protection\(^{79}\) and to restore their lost position and kingdoms after the Mysore chieftain was expelled from power. In a proclamation in April 1790, it was announced that all those who were subordinate to the Company would be guaranteed protection, whereas those who refrained from it would be considered enemies of the Company in future\(^{80}\). The economic consequences of the Mysorean occupation in Malabar were severe; the cultivation came to a standstill at times, the volume of trade crumbled and the Nayers suffered most since they were both impoverished and disarmed\(^{81}\).

The salient historic reality emerging out of the British conquest of Malabar was the ironic fact that the East India company achieved their notable victory not by undertaking a direct war with the Malabar chieftains, but as a result of the political and military steps and strategies undertaken to control and contain the political ambitions of the rulers of Mysore and adjacent territories. In effect, what happened as a result of the Treaty of

\(^{80}\) Nightingale, op.cit, pp.69,460.& Logan, Treaties, I,CLVIII, Madras, 1989 ,p.135. 
Srirangapatanam was that the supremacy was shifted from the Mysore rulers to the British. The British settlement on the Malabar Coast marked the beginning of the gradual subjugation of the country, initially by western ideas of trade and economy but increasingly also in political and administrative regard, which ended in the territorial appropriation of the country by the British\textsuperscript{82}. Hence, with the future plans in view, the company was free to realize a practical and pragmatic working relationship with the local rulers and the chieftains in Malabar. One notable feature was the absence of a local ruler with enough military might to plan for the whole of Malabar province on account of which the overall disposition of the Malabar region towards the Anglo-Mysore military confrontation was generally characterized by passivity and inaction. It is to be noted that the local rulers and chieftains favored to maintain friendship with the East India Company with which they had experience and connection for almost a century, rather than the hegemony of the Mysore Sulthans whose Malabar invasion forced some of them to seek refuge in Travancore region. What transpired between the local rulers of Malabar and the British in those days was that the local Rajahs promised the Company, their support for which the company pledged to reinstate their lost provinces after the defeat of the Mysore Sulthans. But in actual practice Cornwallis had decided not to grant independence to the Rajas in Malabar contrary to the agreement of 1790, but to place them under the direct administration of the British\textsuperscript{83}. This is the strategy of the Company to achieve economic monopoly over the products of Malabar with the aid of political control. In reality the annexation and the economic gain which was


\textsuperscript{83} Nightingale, op.cit, p. 58.
expected to follow would relieve the financial problems of the Company in the Bombay Presidency\textsuperscript{84}.

With regard to the revenue interest and commercial ambitions of the company, the concrete situation that emerged in Malabar after the defeat of Tippu Sulthan was not really promising to the British. One reason for this discouraging situation was that so far as the ancient institutions and the manners of the people of Malabar was concerned, there was a gulf of difference between what prevailed in the rest of India and what existed in Malabar.\textsuperscript{85}

Immediately after signing the Treaty of Srerangapatanam, the East India Company came to agreement with the local rulers as part of which the local chieftains got their provinces back, but they were deprived of their military powers. The aim of the treaties was firstly to refute all claims to sovereignty made by the local rulers and to ensure their long term dependence on the company and to guarantee their tax collections by restoring the strength of Malabar’s economic production through its primary good of pepper and to create an administrative and legal structure\textsuperscript{86}.

With the purpose of examining the condition and formulating suggestions regarding the countries ceded by Tippu Sulthan, the East India Company appointed joint commissioners from Bombay and Bengal who were given directions to conduct a close study of the prevailing situation and submit report outlining precise points for the future reorganization and administration of the region. The specific points that they had to examine and gather data were such as collection of information from as many diverse

\textsuperscript{85}. Munro, Thomas (first commissioner)-a report on the judicial system in the province of Malabar dated 4\textsuperscript{th} July 1817, Calicut, 1912.
\textsuperscript{86}. Margret Frenz, op.cit, p.100.
source as possible to get a precise picture as to the familiarity of the people of Malabar about revenue collection before the coming of Tippu Sulthan, the extent and range to which private property was recognized in Malabar, and the system of justice that prevailed in the province of Malabar prior to the advent of Tippu Sultan. Regarding the civil administration of Malabar, the first significant administrative act to be passed by the commissioners were the guidelines for the new government of what was known as the “Malabar province” on 11th March 1793. In the later years courts were also set up in Cerapulasseri and Talasseri and the court of appeal was established in Calicut and these courts followed the Code of Bengal. The Company also employed local people as policemen and court administrators.

Thomas Warden, one of the collectors, expressed his opinion, who ruled the province for more than 15 years is to be regarded as the guiding principle of the Company Government for its revenue administration. He wrote to the Board of Revenue on 16th June 1813 that “In a country like this, where the proprietary right to the soil is traced by tradition to the sea for its creation, and where the government assessment upon it has remained unaltered for a serious of years, it is better perhaps to let the assessment remain unequal as it is, than to hazard the risk of more complicated evils by attempting a new one, on more equal principles”. After submitting a detailed report on the revenue affairs of Malabar Warden recommended nothing but a continuation of the existing abuses, as it is. A graphic picture of Malabar revenue administration was presented by T.H.Babar in 1812 as follows, “The most grievous source of complaint is the inequality in the land law, normally the assessment is in some districts a moiety and in others

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6/10 of their income. But if ever an account is made of the actual income, in each particular estate, it will be found that some are not taxed at all, and generally the rates fluctuating from 20% to 100%. I have in consequence frequently had occasion in the course of my judicial proceedings to call upon the revenue officers for information on these points, but their accounts are very deficient and in some places much mutilated. In such a state of things, it is to be expected that there must be great deal of partiality in assessment as well as the mode in which the collections were made.\footnote{Thomas H.Babar to the secretary to government on 19th June 1812. Judicial consultations Vol.748,pp.3694-3706[T.N.A]}

The historic fact that there was no state control in the region of Malabar and that the people of Malabar were not familiar with the system of revenue payment was diametrically opposite to the state of affairs in other regions of India as observed by the British. In the initial stage company followed the Mysorean pattern of assessment and collection of land revenue. Company made revenue settlement with the Janmies who were the land owners but the Mysoreans made it with the Kanaker who were the tenants. Hence the British decided to continue the system without changes and attempted to assign all lands in Malabar as private property for all revenue purposes in the light of the fact that the state never posed as the ultimate landowner in the region. Hence, the whole land or territory in Malabar was treated as private property which resulted in so many problems for the administrators and the judiciary during the British rule in Malabar. The later analyses of this decision were criticizing the company for not making the state the owner of all Malabar lands, which would have helped them to solve the tenurial problems with ease. Baden Powel in his land system of British India criticizes this decision as responsible for the loss of claim to the state even to
the forest and unoccupied waste, which had elsewhere been properly asserted \(^{91}\). C.A. Innes in his *Malabar and Angengo* states it unfortunate that the company instead of asserting the states right to waste lands adopted the presumption that every acre of land was the private property of same Janmi. Reformulation of traditional pattern of mode of production and the surplus exaction to suit the political and economic designs of colonial government was the net result of the British land revenue policy.

With regard to the first point which was the most crucial one too, the commissioners came to the conclusion that regular revenue collection by any ruling political authority in Malabar before the Mysorean invasion was conspicuous by its absence \(^{92}\). The important British officials like Farmer \(^{93}\), the first commissioners, Major Walker \(^{94}\), Tackery \(^{95}\), Collector of Malabar in 1807, Warden \(^{96}\) and Buchanan \(^{97}\), in his travel account expressed the same view on this important aspect of Malabar. The Joint Commissioners were of the view that the rajas, who attained the status of independent chieftains in their own respective provinces after the decline of the Perumals did not collect, as a rule, revenue from their subjects \(^{98}\).

The second point that the commissioners were entrusted to enquire into was whether land as a whole in Malabar area was private property or not. As for the question, to what extent private property was recognized in

\(^{91}\) Innes.C.A, op.cit., p.304.  
\(^{92}\) Ibid, p.314.  
\(^{93}\) Farmers Report(voucher no.39)to the Bombay Presidency dated 25\(^{th}\) February, 1739.  
\(^{95}\) Thackery, William, a report on Malabar, Canara and ceded districts, 1807, Calicut, 1911, p.5, reprint to the Board of Revenue dated 4\(^{th}\) August 1807.  
\(^{96}\) Warden, Thomas, report on the Board of Revenue dated 12\(^{th}\) September, 1815.  
\(^{97}\) Buchanan, Francis, *A Journey from Madras through the Countries of Mysore, Canara and Malabar* Vol.1, New Delhi, 1988, p.360.  
\(^{98}\) Sir Charles Tenures Minute on the draft bill relating to the land tenures in Malabar, Chapter iii, the first record instance of the levy of land revenue in Malabar licensed in historical times was in 1731-32, Madras, 1936, p.102.
Malabar, the answer given by the commissioner was that private property as a distinctive part of the society existed in Malabar from the distant part onwards just as in other European countries. But there was a notable fact in that the system of collecting the revenue did not exist in Malabar. So that the company officials had to find out the real owners of the land in order to collect the revenue according to their plan. In the light of the company’s immediate revenue requirements, a detailed and in depth enquiry about the tenurial condition prevailing in Malabar was not feasible. The attitude and approach of the commissioners were in favor of providing a specific and detailed description of the land tenure as they came across functioning in Malabar, rather than examining about their origin and development.  

Hence, this became a heavy burden and cumbersome duty to the judiciary when they had to decide specific points related to tenurial problems which required a detailed knowledge about how it evolved as part of social interaction in Malabar.

Initially, the East India Company took the decision to hand over the power of collecting the revenue to the local rulers. According to this plan, Lord Cornwallis reinstated local rulers and endowed political authority to them over the area that earlier belonged to the respective royal families. After depriving them of their military powers, the local rulers were given permission to have one fifth of their countries revenue to maintain their status and eminence which was in the words of Buchanan “more than any sovereign of consequence in European can spare for that purpose.”

In accordance with this plan, the local Rajas and Naduvazhis attempted to collect the revenue which turned out to be a failure in
politically devastated and war-tone country Malabar because of the breakdown of law and order on account of the continuous military confrontations in Malabar as a result of which the people were not disposed to recognize the local ruler as endowed with the duty to collect revenue.

In spite of all these conflicts and hindrance to the functioning of a government, the East India Company had the avowed aim of collecting the revenue from natives through proper agency. To provide capable government in the recently won provinces, they were partially able to fall back on the structures that had been created in Malabar by the Mysorean rulers. The primary aim was to turn the province into a prosperous source of income\textsuperscript{101}. As a strategy the Company paid little attention to traditional structures in Malabar, which they considered to be outdated, and their disregard aroused the displeasure of both the natives and the rajas. In that attempt, they recognized that, the official arrangement made by the Mysore rulers in Malabar was a practical and working model. Hence the joint commissioners initiated a study to find out more specific details about the land revenue system implemented by the Mysore rulers in Malabar. The system for collecting revenue that was hurriedly implemented by Arshedbegh Khan, the Head Amildar of Tippu Sulthan, during the period of peace between the military confrontations, was not on the basis of any precise plan or clear principles thereby making it hasty manner and arbitrary improper. Before preparing and implementing this system, the existing revenue resources of the province were not assessed and the sole aim of the Governor of Mysore was to collect the highest possible amount as revenue to meet the expenses of Anglo-Mysore war \textsuperscript{102}. In Malabar, Tippu Sultan

\textsuperscript{101} Nightingale, op.cit, pp.80-113.

\textsuperscript{102} Paniker, K.N, op.cit, p.3
appointed Arshad Begh Khan as Governor of Malabar through whom the sultan implemented a new system of judiciary which was found to be appropriate and acceptable to the natives as found out by Commissioner Duncan 103.

In Malabar the three main classes connected with the land- the Janmi, the Kanakkaran and the actual cultivator sharing the produce on an agreed equation. The British rulers introduced certain innovations in the land administrative system which led to a rude shock in this customary order. They changed the old order and the Kana-Janma-Maryada and the customary equation in sharing of the produce. They were more concentrated about the land revenue than about the class harmony. The early British administrators had to adopt certain make-shift arrangements in the political, judicial and revenue administration because of their non-acquaintance with the customary law and the mounting exigencies of the political situation in Malabar. In the pre-British period Malabar was remarkably free from agrarian unrest. Customary law was the specialty of Malabar. From times immemorial the relations of the landlord and tenants were decided by Kana-Janma-Maryada.( rules concerning Kanam and Janmam, the agrarian law of the country). The rights and privileges of the Janmis were clearly upheld by the British authorities through the agency of Courts and legislations. On 29th of June 1803, Rickards, the first judge and Principle Collector of Malabar issued in Calicut a proclamation which was delivered to the Rajas, Nambudiris, Mookistans and principle landholders. This proclamation has defined the share of the Kudians, the Government and the Janmi104. Later the Sudder Adalath Court in its proceedings in 1854 laid down for the guidance

of the subordinate courts that the Janmi’s right of absolute ownership was paramount and since then all judicial authorities have recognized it.\footnote{Report of the Malabar Tenancy Committee, Malabar, 1927-28.}

In comparison with the practice prevailing in other provinces of the country, the people of Malabar were not familiar with the system of revenue payment to a state authority. The real state of affairs was such that the land of Malabar was never under State control. The specific reason for this was that in the customary Malabar, State never assumed the role of the ultimate land owner. Hence the East India Company decided that the system may be continued without modification or change and also began to treat all lands in Malabar as private property in matters related to revenue. The policy of treating the whole land of territory as private property that the first commissioners adopted was short sighted in nature and it resulted in creating a lot of problems to the administrators and the judiciary throughout the British rule in Malabar.

In spite of the fact that the system of revenue collection and tax implemented by the Mysore Sulthan in Malabar was a new one, the people of Malabar did not find it to be unbearable because, now that the Janmis were not there on account of the dominance of the Mysore Sulthan, a share of the Pattom or rent that should be normally given to the Janmis could be set apart to pay the revenue to the Mysore Sulthan. As part of this arrangement, the Kanakkars continued to lefain the status of Kanakkars, because Tippu Sulthan did not grant them proprietary rights and it must be remarked that possibly the bankers never hoped for such a change in legal status. Instead, the present arrangement appeared to provide them freedom from the control of the Janmis because during the days of Mysore domination in Malabar, the Jannam right was invalid. With the advent of
the Mysoreans, many Mappilas got the opportunity to have upward social mobility and in turn, become Kanakkars. They successfully interfered in the traditional land relations and the mode of sharing agricultural surplus in the Malabar region\textsuperscript{106}. In making this change in the relationship related to land, the intention of Tippu Sulthan was to ensure the loyalty of the Kanakkars who performed the actual cultivation of the land whereas the Janmis were regarded as a class of people enjoying a life of comfort and luxury on the basis of the hard work provided by the Kanakkars thereby making them a class of no use, so far as the political and economic interest of Mysore was concerned. In spite of all the measures taken by Haider Ali and Tippu Sulthan, neither succeeded in establishing fixed central structures in Malabar\textsuperscript{107}. But their rule had removed irretrievably certain elements of the traditional social structure in Malabar.

The tenurial system prevailed in Malabar in the early decades of the 20\textsuperscript{th} century were totally different from other systems obtained in India. Charles Turner said: “In no country with which I am acquainted, had the land tenure been more minutely systematized than in Malabar”\textsuperscript{108}. The officials and administrators of the East India Company got a clear idea about the class of people from whom they could collect revenue when they undertook a close and detailed study of the settlement in Malabar by the Mysore rulers. But there was a significant difference in the approach of Mysore rulers and that of the company. Whereas Mysore rulers opted for a settlement by a total abolition of the class of Janmis, the company was in favor of retaining the class of landlords who would function in between the rulers and the actual tiller of the soil. As part of the arrangement, the


\textsuperscript{107} Brittlebank, op.cit, p.90.

\textsuperscript{108} Charles Turner’s Minute on the draft bills relating to Malabar land tenures,, Madras,1885.
Kanakkars should pay the revenue to the state and also customary Pattem to the traditional Janmi thereby making the system a heavy burden in reality. The characteristics of the revenue policy introduced by the company was that it provided for the states approbation of the largest share of the produce and it recognized the Janmi as the absolute proprietor of the Malabar region.

However, it should be noted that the company was not troubled about the revenue and the method of collecting it because it was the duty of the government to fix the revenue rates. The company came to know from the local rajas that provided the Janmis were given back their land, they would be ready to remit the amount. The British land revenue policy and land settlements recognized the Janmi as a freehold proprietor. The professed aim of the company government in restoring the land lords was stated to be the attainment of the higher objects of good government and the future improvement of the people\textsuperscript{109} but this policy was a utter failure. The policy only helped the company to the preservation of a class of landlords to act as allies of the company to protect the its self interest\textsuperscript{110}. The real problem was related to the method of handling the emerging tenurial situation that took place from the revenue settlement by the Mysore rulers. In accordance to the promise given by the east India company to the landlords and noblemen belonging to Namboodiri and Nair caste as a token of goodwill for the help rendered by them to fight against the Mysore rulers, the former landlords were entitled to get back their land and earlier social status. Nair chieftains possessed proprietorship over vast areas of land from early days. It is a fact that in North Malabar there were more Nair Janmies than Namboothiri

\textsuperscript{110} Dhanaghare, Peasant Movements in India 1920-1950, New Delhi, 1986, p.61.
Jenmies\textsuperscript{111}. One problem regarding this was that once this is fulfilled, Mappila Kanakker would have to suffer because the Mysore rulers had elevated them to that status which should be cancelled as part of the rearrangement of the socio-economic relationship.

Though his military intervention and attempt at social reform, Tippu Sulthan had tried to persuade many people to believe that he was doing the most proper and ideal things in Malabar. The company also wanted to create the same impression and wanted people to believe that they were moving along the proper track though they were unsettling the present order of things. The Namboodiries informed the British officials that they always had the full Janmam or proprietary right of land that was imparted to them as a divine gift passed on by Parasurama who was known as the legendary founder of Kerala and a hero in Hinduism. To substantiate their claims and rights to land, they presented an ancient written composition in Malayalam known as ‘Keralolpathy’ to the commissioners\textsuperscript{112}. This Brahminic work contained specific explanation about the divine origin of Kerala which was well calculated justification of the claims of the Namboodiries in relation to land. In addition to that, by citing ‘Manusmriti’, the Namboodiries cleverly persuaded the commissioners to believe that they were clearly exempted from paying taxes to the government since Manu, the Hindu law giver stipulated so in the said treatise.

In accordance with that argument, the British officials accepted the Brahma ownership as a sample and satisfactory explanation of the land as given by Parasurama for implementing their ensuing plan called Kana-


\textsuperscript{112} Gundert Hermen(ed.) Keralolpathy(reprint),a Malayalam composition about the origin of Kerala,Tiruvanandapuram, 1961,p.18.
Janma-Maryada[^113]. The juridical convention and administration of justice were primarily based on Sastraic jurisprudence institutionalized as Desamaryada[^114]. Maryada was based on the Malabar concept of justice. The British concept of justice was based on codified law and they did not recognize the Maryada as a law of equal standing and they considered it was anarchic. This particular feature of Malabar tenure that had been in force for a long time did not receive the attention of the commissioners or the native experts did not point out this to them. So it was clear that in Malabar also, the institution called private property existed just as in the case of European countries. Also it was to be specially noted that the only class with proprietary rights in Malabar were the Brahmins. Buchanan says that before the invasion of Malabar by Haider Ali, a few of the Namboodiris cultivated their estates by means of their slaves called Cherumars and these industrious Brahmins were said to have received the Janmam pattam or full produce of their lands[^115].

The East India Company soon initiated official proceedings to provide documents to prove proprietary rights to the traditional Janmis by affecting a proclamation of 1799 which made provision for registering the transfer of landed property in the provincial or local Adalats[^116]. In this context, the Mappila Kanakkars who possessed land for more than six years were given full rights which were made part of the proclamation indicating the company’s willingness for amicable settlement. At the same time, those who possessed land for less than the period mentioned earlier had to give back it

[^114]: Rajan Gurukal, Development Experience of colonial Keralam, New Delhi, 1999, p.75.
[^116]: Innes,C.A,.op.cit,p.367.
to the former Janmis. Also they had the right to sue with the intention of reclaiming the lands\textsuperscript{117}.

The important contributory factors for the re-instating of the Malabar aristocracy, with an absolute ownership on land and bestowing superior power and prestige and privilege for this class over the native population are as follows. It is very essential that with the help and support of the native rulers and chiefs, the Britishers overthrow the Mysorean power from Malabar. To protect the company interest of trade and commerce and revenue, the aristocratic Janmies were found as the only one native population who could invest capital in agriculture. The peasants of Malabar were neither politically nor economically a potential section for the company government. The minds of the company officials were predominated in the English utilitarian theory of private property in land. For serving the needs of the imperialistic government a social basis was necessary. The most notable reason was through a class of landed feudal aristocracy the company was to ensure the security of revenue and its easy mobilization. The company officials totally upset the traditional system of Malabar society for achieving their selfish objectives. But Munro observes that “It is not essential to the realization of revenue that we should have a body of landlords in Malabar, the present and even a much greater revenue might be drawn from the profits of the cultivators”\textsuperscript{118}.

British financial and economic policy in Malabar was characterized by the largest share of production was set aside for the state and on the Janmakaran was regarded as the absolute owner of the land. The British conception of law equated the Janmakaran to the Roman dominos;

\textsuperscript{117} Ibid, p.304.
\textsuperscript{118} Revenue Consultations, 16\textsuperscript{th} July 1822, Vol.282, No.2.
accordingly, they treated the Janmam as the dominium\textsuperscript{119}. The dominos owned the land himself whereas the Janmakaran owned not the land but the Janmam. The Janmis were recognized as independent owners of land, who possessed a property in the soil more absolute than even that of the landlord in Europe\textsuperscript{120}. In spite of the fact that absolute proprietorship was granted to the hereditary Janmis, the company was careful to avoid a civil trouble in society by instructing the Janmis not to avail the present conferred status in relation to the land for the time being. First they had to settle the mortgage liabilities with the Kanakkars belonging to pre-Mysorean days. The East India Company took this particular step with the double motive in that the company would get enough time to prepare plans for the future and also it can hide the unpalatable fact from the Kanakkars that they were going to be deprived of their long held occupancy rights over the land. Hence the company could avoid civil trouble stemming from the sudden explosion of anger on the part of the Kanakkar. In spite of this precaution, the Mappila Kanakkars who lost their land as part of the new arrangement became antagonistic towards the colonial rulers and the Hindu Janmis who came into existence as a result of this rearrangement. This resulted in many acts of rebellion in the 19\textsuperscript{th} century from 1836 onwards which culminated in 1921 revolt that created mass upheaval in the society. Later it was called Malabar rebellion of 1921\textsuperscript{121}.

In spite of the fact that the proclamation of 1805 envisaged a settlement with the traditional Janmi, the intended solution did not come into existence. This evolved into a subject of dispute involving the government


\textsuperscript{120} Bord of Revenue Proceedings,5\textsuperscript{th} January, Vol.2537,1818.

and the courts with the result that in the year 1888, the high court pointed out the fundamental irregularity in the order of things related to the ownership of land in Malabar. Consequently, the court specified the declaration as illegal.

As part of the attempt to effect administrative reforms in Malabar, the joint commissioners were instructed to study and report to the extent to which private right to property was recognized in Malabar. The commissioners reached the conclusion that private property as a clearly defined institution existed in Malabar from ancient times onwards just as in any other European country. Here the responsibility was on the part of the company to find out the actual owner of the land from whom revenue payment could be demanded. Since the company needed immediate revenue requirements, it was not easy or possible to search into the very depth of the tenurial history of Malabar. The commissioners were more concerned with providing a precise and specific account of the land tenures as they found them through an exhaustive survey rather than speculating about their origin. Exploring into the origins of tenurial problems for the purpose of deciding tenurial questions, become a Herculian task to the judiciary on account of the complexity of this situation.

British official Graeme severely criticized Mysorean system of assessment as imaginary on the part of the former as an excuse justify to their over assessment with the aim of collecting as much revenue as possible. In this context Graeme observes that, since the original records related to the Mysorean domination of Malabar was not available the claims and

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remarks made by the official belonging to the East India Company cannot be regarded as reliable.

During their period in Malabar, the Mysoreans had settled with the cultivating tenant, about which Codhar Rao, collector of Chirakkel under Haider, stated to the joint commissioner as follows; “The Janmukarure, in this country for the greater part Naboothiries, who do not themselves carry on the cultivation nor do they use to attend at the Cutchery where for the settlement was made with the ryots. In the traditional society of Kerala, power-wealth and opportunity had been the monopoly of a small but privileged community of caste Hindus led by Nambuthiries. Because of their ritual status the Naboothiri landlords could not engage in cultivation.

As an administrative step, Mysore Sulthan imposed an unprecedented tax on the people of Malabar. The Mysore settlement since it was not based on any definite plan or any fixed principle was thus neither orderly nor systematic. Mysorean policy towards Malabar was characterized by tax increase which placed a heavy burden on the farmers and Logan and Warden spoke of up to 50% of the total production as the land tax and which put the Janmakarans in a precarious financial situation. Tippu Sulthan did not promise the Kanakkars to grant proprietary rights, in this new political situation, they got absolute freedom from Janmis control. Through the point of view of ordinary people, the Janmis right and control was invalid during the days of Mysorean occupation. As a sign of social change, many Mappilas also became Kanakkars under the Mysoreans. The purpose of Tippu was to avoid the Janmis, who were a class of people living in ease and

comfort, luxury and even pomp, which was of no positive use in terms of the Mysorean interest. Also Tippu wanted to cajole the Kanakkans to further his political interest in the light of the fact that the actual cultivators of the land were the Kanakkars.

Whether land revenue on a regular basis was collected before the rule of the Mysore Sulthans is a matter of controversy. The local chieftains who were consulted on this question by British officials testified that no land revenue was collected during the pre-Haidar Ali period and that their income consisted of sea-customs, fines, customary offerings during the time of festivals and other sundry charges. William Thackeray’s inquiries in 1807 led to the conclusion that no land tax existed in Malabar. Major Macleod, William Logan and more recently Baden Powell have contested this view. But none of them has adduced any positive proof. After getting instruction from the higher officials the Britishers made a deep study, observation and scrutiny into the Mysorean settlement for which helped the company officials to correctly identify the class from whom revenue collection could be made. The invasion created a profound impact on the social setup of Malabar. It was the shock treatment to the age old traditional feudal Kerala society. The upper castes enjoyed a high privileged status in the Malabar society during the pre-Mysorean era. Haider and Tippu take steps to deprive their time-honored privileges. The Mysorean interlude was an important epoch in the history of Kerala because it resulted the death-knell of the age old social feudal order and inaugurated a new era of social change.

The remarkable and progressive aspect of the Mysorean settlement was that the dominance and importance of the Janmi class was totally avoided. For protecting their self interest and create a powerful class as their supporters because they know that they were alien people, the company was obliged to recognize the existence of a land lord class between the state and actual cultivator. The Kanakkers would be made to pay revenue to the state as part of this new arrangement. But at the same time they were equally obliged to give customary Pattom to the Janmi, which was definitely a great burden to them.

As a result of the Mysorean invasions caused devastation to a degree hitherto unknown and also brought about fundamental long-term changes to the social and economic structure of Malabar. One notable result in the sphere of politics was the disappearance of the old feudal system and its replacement by a centralized system of administration. The Nairs lost their social and political position of pre-eminence. Most of the Naduvazhies and local chieftains lost their land sought political asylum in Travancore. In the wake of Mysorean invasion, because of the fear of compulsory conversion and social humiliation a large number of Namuthries and Nairs flight to Travancore. The Mysore rulers utilized this opportunity and setup a centralized system of administration in the newly acquired territories which came under their sway.

The joint commissioners observed that the Mappila Kanakkar, taking advantage of the flight of the Hindu landlords, during the late Mohammadan government considerably augmented their formerly more circumscribed possessions and had became the principle landholders in south Malabar.

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The promise given by the Company to the Naduvazies and land lords and Nair noble men and local chieftains was that they would be restored to their old social status mainly because of getting their help and support in collecting the land revenue which was a main source of income. But there is a practical difficulty on the part of the Company was that this could not be implemented without doing harm to the Mappila Kanakkers who were raised to a high status by the Mysore Sulthans. The tactics of the Company was that they were not interested to create a class of people hostile towards them in an important space trade region which create more problem and adversely affected their trade interests.

The diversity and complexity in the land holding created a profound influence on the land revenue policy of the company. In the evolution of the land system of the country several factors have played their part such as the geographical character, sociological considerations, the vicissitudes of political history and religious attitudes of the people\textsuperscript{133}. For conciliate the local rulers and chieftains and to facilitates revenue collection, the Company officials in Malabar attempted to associates the local elements in the administration of justice during the early stages of expediency. Local rulers played their part in helping the Company official in the administration. The British administrators introduced new revenue farming for the purpose of increasing revenue and effective administrative control which they left to the Rajas and chieftains according to the terms of courts issued by the commission. As a part of their administrative policy, the administration of justice was unified and assimilated to that of to the other provinces which finally leading to the greater integration of the administrative machinery of British colonialism in India. The momentous role played by the judiciary in

its capacity as one of the most important administrative organs of the British colonial government in India that attempted and succeeded in restructuring of an out and out custom-ridden, overly conservative and near static society in Malabar into one vibrant and throbbing society in tune with the values, ideals and criteria of a modern society.

Pre-British Malabar society was a feudal society and so naturally administration of justice in customary Malabar was primitive in several respects and this fact was brought to light by enquires conducted by the company. The 19th century Kerala society was not based on the principles of social justice and equality. The pre-dominant caste system and feudal set-up which separated the high castes from the law castes. Under the direct administration of East India Company’s regime in Malabar, the upper castes like the Brahmines, the Kshatrias and the Nair continued to enjoy several privileges and immunities. Nairs were the militia of the state and owned very large part of the land. They dominated and oppressed the tenant class consisting mainly of such communities as the Mappilas, the Ezhavas etc mainly because the constituted the land owing feudal class. Under the Company rule the rulers, chiefs and Janmies became even more powerful than before as the pre-British rule because they wanted their active support and co-operation in sustaining their own authority because they were the alien people. All most all British officials who enquired in to the land tenures of Malabar perceived that traditional Jenmi was the owner of the land and Kanakkar as the tenant. There was no written code of laws, or

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one law for all; the prevailing administrative system was one strictly based on Chaturvarna ideals suited to the society of those days.

The appointment of the commissioners helped them to know more about the existing legal system in Malabar which was later beneficial to the company to introduce the new legal system. The company adopted its diplomacy in the administration of justice by introducing rule of law in one hand and giving respect to the age old oral customary tradition of the company on the other hand. Historians have difference of opinion about the intention and motives of the company behind the introduction of administration of justice and rule of law in the legal system of Malabar in 1792. The real fact behind this reform of the company was to hide their colonial and imperial motive behind the grab of justice for fulfilling their drain theory for protecting their self interests.

The introduction of a new judicial system based on the findings of the commissioners was first of its kind in Malabar where the people experience only feudal custom-ridden arbitrary law and irregular and improper judicial system. The most remarkable aspects of this new system was that for the first time in northern Kerala a system of inflexible written codes and regulations was introduced which guaranteed rule of law and equality. With a view to systematizing judicial procedure and establishing the rule of law, the company administrators introduced new judicial organizations and a regular chain of civil and criminal courts and codes of civil and criminal laws based on western principles. This new system was a unique achievement of the company because it revealed rigidity and guaranteed the Anglo-Saxon character of law answer to the many different specific issues of the Malabar judiciary.

Comparing to the pre-Mysorean feudal system, the Mysorean system was based on modern and progressive ideas. A modernized system of land revenue was introduced in Malabar. The officials directly collected the tax from the tenants and introduce a new system in which tax was based on the actual produce of the land. Arshad Beg Khan, a capable officer had been appointed as Governor of Malabar by Haider Ali. In the new set-up the dignity and social status of the tenants’ increased and self interest of the Jenmi or land owner were adversely affected. A net work of roads and a variety of coinage were also introduced by the Mysorean rulers. It was on the strong foundation laid by the Mysoreans, the East India Company built up their administration and political and judicial system in Malabar. In the field of culture, stagnation was occurred because of the flight of the higher castes, who were the traditional pattern of art and letters. Trade and commerce suffered a lot and many flourishing towns destroyed. Economic depression led to the decline of agriculture and trade which crippled the economy of the land and as a result it led to the impoverishment of large sections of population. The invasion created a cleavage between the Hindu and Muslim communities which badly affected the communal harmony of Kerala. In order to achieve their political gain they resorted to forcible conversion and destroyed many temples. It may not be wrong to regard that the Malabar riots of the 19th century was an outcome of the Mysorean invasion.

The land revenue policy adopted by the company upset the traditional land relations bringing about fundamental changes in the nature of land right. The feature of this new system was that the old Nair and Brahmin land lords get back their old social and feudal status as a result the condition

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\[137\] K.N.Panikkar, op.cit, p.18.
of the peasants and downtrodden were very pitiable and they suffered hardship and injustice and this led to the total ruin of agriculture. On account of altered property relations, the tenants had been enjoying a fair measure of freedom which would be denied to them as a result of the social and legal restoration of the Jenmis, which would reduce the tenants to a state of dependency and considerable suffering.\textsuperscript{138} For solving this problems, the mission of the commissioners was to bring back normally and enforce law and order and the prevention of internal dissensions among the native chiefs and to introduce a regular and proper administration of justice with a view to improve the revenue income of the Company and better prospects of business and commerce.

As a result of the new revenue settlement there occurred some unrest and disturbances in the region the commissioners took some measures and plans and formulate some safeguards and introduce proper security measures for stem the tide. The native people expected that the new rulers take decisions and alterations in social and property relations for the benefit of the common people but the new administrative machinery could achieve economic and political administration over the native people who had been familiar with old traditional feudal institutions and laws. Whatever may be the intention of the Company they introduced and implemented so many measures and reforms to improve the condition of the common people. The commissioners fully understood that the social condition was entirely different from Britain and they introduced the British rule of law along with the traditional laws of the natives in an integrated and harmonious manner as possible.

\textsuperscript{138} Joint Commissioners Report, Madras, 1862, vol. II, para 201, p.228.
Social life anywhere in India was custom ridden and tradition bound with the fact that in this respect Malabar was all the more so. The constitution of Malabar society when the British took over was essentially the same as it had been for centuries\textsuperscript{139}. The hallmark of Malabar was the conspicuous absence of a centralized authority having political and economic control over the whole region. In a sense, Malabar was equally noted for the existence of another source of centralized control possible in any society, that is, custom which was taken up and highlighted as king paramount by William Logan who came to Malabar as collector and later studied the socio-political aspects of the region \textsuperscript{140}. Life in Malabar was ridden with customs and bound by conventions so much so that it was not possible or easy to bring them into the structure and pattern of a theoretical framework. Here oral tradition had the paramount importance and uninterrupted observance of customs codified it into more or less social institutions and as result the social status and unique identity of the respective classes had been clearly demarcated. It was widely expected that everybody would conform to the existing status quo in the society. This made the socio political and cultural condition of once unique and complex for the colonial masters.

It was very important for the East India Company to get a clear picture of the traditions and conventions and customs in Malabar and the system of imparting justice in society before giving proper form and structure to a new judicial system with a purpose dealing with problems stemming from the chaos and disorder prevailing in Malabar. A very specific instruction given to the commissioners was to conduct a detailed

\textsuperscript{140} Logan William,\textit{op.cit}, pp.183-211.
enquiry and provide reliable information related to the condition and circumstances prevailing in the country in the context of the manner and degree of imparting justice so far in Malabar 141.

Lord Cornwallis, the Governor General instructed General Ambercromby, Governor of Bombay to visit Malabar and enquire into the present state of the country and to establish a system for its future Government. He decided for the acquisition of Malabar because the disorder and anarchy prevailed in the territory threatened the spice trade of the company 142. An important aim of the visit was to create circumstance for the companies officials to have proper awareness of the way in which legal and judicial matters are dealt with in Malabar. It was expected that this clear awareness would help them to impart the same type of justice to all sections of natives judiciously integrated with their own apparatus of administration imparting justice. With the same reason in view, instructions were given to join commissioners to arrive at a decision regarding the number and constitution of the different courts which would become essential to impart equal and impartial justice to all people in the society.

In the initial stage the evolution of the legal system under the Company administration reveals that the Government sought to make the judiciary as a vehicle of consolidating their rule by providing a hope for justice to the people. They much interested in the revenue affairs than the welfare of the people and establishment of a judicial machinery to maintain a facade of a just state. Alfred Lyall summarizes this legal system in the following words; “ The administration of the Mughal empire had been to some degree systematic. But the native ruler ships immediately preceding

142. Pamela Nightingale, op.cit, p.72.
the British dominion had neither system nor stability. Under the earlier regime of the Company the practice had been to issue provincial Regulations of an old-fashioned type framed to suit the requirements and circumstances of sundry times and diverse places, loosely drawn and intermixed with instructions and explanations, and further complicated by empirical decisions of the local Courts.¹⁴³

Rebellions, social unrest and the like had been relatively absent from Malabar until the 18th century. The first rebellion in the region took place during the Mysorean rule, but it was only under British colonial rule that Malabar developed into an enduring trouble-spot within the British Empire in India and this can be traced back to the British intention to restructure its society.¹⁴⁴ The colonial establishment of law and legislation forced a clear separation of the traditionally interwoven spheres of politics, economy, society and religion. The caste ridden and iniquitous character of the judicial system treated the backward communities subjected to the worst form of tyranny with connivance of persons in authority. In the beginning of 19th century slavery was prevailed in the land in the most primitive form. The land owner could be bought and sold the agrestic slaves like chattels who were attached to the land. The land was cultivated by the tenants and agrestic slaves attached to the soil belong to the low caste. In the pre-British period social and economic status of a caste was based on the nature of land rights they enjoyed.¹⁴⁶ The slaves were not being treated as human beings entitled to any rights or privileges and none of them could enjoy social amenities. Untouchability and inapproachability existed every nook and

¹⁴⁶. Ramachandran Nair, Land Reforms and Agriculture in Kerala, Agrarian India; Problems and Prospects, Calicut, 1999, (ed.) Dr. E.K.G. Nambiar, p. 120.
corner of the social set-up. So many irrational social customs like Talikettukalyanam, Tirandukuli, Marumakkathayam etc were existed in the 19th century society and as a result the Hindu society suffered from economic impoverishment arising from wasteful expenditure connected with the observance of such customs and conventions.

Under the impact of diverse social, economic, political and cultural influences the 19th century witnessed the emergence of a new social order. The feudal features of customs, conventions, institutions and several other vestiges of the old order remained to be modified or wiped-out. The social evils as child marriage, and polygamy were also associated with the institution of marriage. The social institution also faced with mounting agrarian unrest among the tenant classes arising from arbitrary evictions, rack-renting and social tyranny which led to so many peasant unrest in different parts of Malabar during the 19th century. Since the latter half of the 19th century a series of land reforms were introduced in Kerala which helped in accelerating the pace of the social and economic progress of the state.

Historians have different opinions and views regarding the specific role the judiciary was going to play in the coming years so far as the formation of the destiny of the natives belonging to Malabar. Nonetheless, it can be regard that the company officials had no such noble ambitions when they introduced it in 1792. It was introduced primarily to protect the honor of the East India Company in that a grave situation characterized by break done of law and order and confusion emerged as a result of the Anglo-Mysore wars. Simultaneously the East India Company wanted to cover its commercial interests and intentions by forging the shield of imparting equal and impartial justice to all sections of the people so that the commercial and
colonial motive would be submerged up to a level. Along with this, introduction of proper administration of justice would amplify and extend the revenue potential resulting in increased revenue collection thereby benefiting the East India Company on the economic level also.