Chapter II

The Judicial System under Trial and Transformation

1792-1802.

As part of the Treaty of Srirangapatanam in 1792\(^1\), Malabar was annexed as a separate Province of the Bombay Presidency. The advent of the British marked a new phase in the progress of the country and its judicial administration. This political development paved the way for the introduction and subsequent modification of the regular courts of judicature primarily aiming at the rule of law and order in the society. In spite of the dispensation of Justice by kings and their close associates, prior to the British ascendancy in Malabar region, there was no systematic and well-knit judicature incorporating the principle of equality of all before law. The king’s might was most respected and feared. Manu even went to the extent of identifying Danda or punishment with dharma or law, as he says “it is Danda that rules the subjects it is only Danda that protects all people, Danda is dharma itself”\(^2\).

When the British took over the power from native rulers, there was total breakdown of the rule of law and order that led to chaos and anarchy. In those days the quality of administration of justice was crude\(^3\). No principle of substantive or procedural law governed the judicial proceedings. Judgment-debtors and criminals were sent to prison for indefinite periods. There was no standard or criteria for imposing penalties or methods of execution. Conditions of imprisonment were horrible. The cases were


decided, and the quantum of punishment which had absolutely no relation to the gravity of the offence was being imposed according to whims and fancies and prejudices of the judges. Ancient and medieval forms of punishments were noted for severity bestiality. As Ibn Batuta who travelled through Malabar in the middle of the 14th century, observes: “They put a thief to death for stealing a single nut or even a grain of seed of any fruit, hence thieves are unknown among them”\(^4\). The modes of punishment were generally inhuman and barbarous and were being used against those who were caught to deter others\(^5\).

Pre-British period was characterized by the existence of a feudal structure of society in which mutually opposing native states inhabited by the majority of people in the pitiable condition of mere toilers of the land vegetating for the sole welfare of feudal lords. The primary source of disorder in Malabar was the deplorably low state of morality of the society. As Major Walker said, the bulk of the inhabitants so long as they remained unacquainted with the operation of regular government would have no better motive for action than a spirit of revenge or a desire of pillage\(^6\). This pathetic condition of the ordinary people was only aggravated by the invasion and subsequent political domination of Mysore rulers such as Hyder Ali and Tippu Sultan. William Logan has this much to record about the condition of Malabar in his celebrated work *Malabar Manual*; “at the cession of Malabar to the British by the Treaty of Srirangapatam dated 22nd February and 18th March 1792, the county was found to be split into a number of kingdoms and principalities, a prey to the bigotry of its late Mohammedan conquerors.

\(^6\) Major Walker-Report, 15th April,1800.
abandoned by its principal landholders and distracted by the depredations and rapacity of the Mappila bandits”.

It was easy for the British to implement their system of judicature in Malabar because the people, on the whole, were genial in and somewhat responsive and sometimes even submissive to the British authority. With regards to the positive attitude of the people with respect to the British system of Judicature, all writes seem to be in general agreement. William Bentinck the Governor General, made a seminal observation on this contest: “The independence in Malabar is said to be generally diffused through the minds of the people. They are described as being extremely sensible to good treatment and impatient of oppression, to entertain a high respect for courts and judicature and to be extremely attached to their old customs”.

It must be noted that for a long time the Indian legal system was full of confusion, contradictions and differences. After the seizing of political control by the British, the primary duty of the British administrators was to establish law and order out of anarchy and ensure equitable law to all people with the aim of establishing peace and ensuring equitable law for everyone, the British administrators instituted systematized courts having its well defined area of jurisdiction thereby covering the whole of the province under the British rule. “The spirit of even-handed and temperate justice that animated the laws certainly brought a credit to the Company; but the laws suffered from many drawbacks on account of their being new to the people and drafted without taking local circumstances into consideration”. In order to pacify the defeated but troublesome local Rajahs and feudal lords

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8 Papers on the Administration of Malabar,p.13[T.N.A]
belonging to Nair community, a measure of political power strictly under the supervision of the British was restored to them thereby eliminating the potential of political unrest on their part.

For effective administrative purpose, the province was divided into three districts and three servants of the British East India Company were entrusted with the duty of administration. In order to ensure steady income of the company so that the financial stability could be strengthened, the British East India Company implemented the system of annual revenue settlement. Since the establishment of an effective administration of impartial justice was essential for their reputation and also for safeguarding their future prospects, Marquis Cornwallis and his successor Sir John Shore imparted great importance for the success or the result that their administrative reform would face in the Malabar region.

Since Malabar was annexed to Bombay, the responsibility of administration of the region was vested with the Government of Bombay. The judicial system at the Presidency Towns was designed primarily to administer justice to the Englishmen. But, with the passage of time, the Indian population of these settlements increased and, therefore, adjustments had to be made in the judicial system with a view to provide for the administration of justice to these people as well. With acute political acumen coupled with military foresight in the light of strategic importance, Cornwallis realized need for framing regulation for effective administration of the newly conquered coast of Malabar. Lord Cornwallis prepared a set of Regulations dealt with commercial system, with civil and criminal justice.

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11 Minute on the General and Supplemental Reports of the Joint Commissioners appointed to inspect into the state and condition of the Province of Malabar in the years 1792 and 1793, para 68 [T.N.A]
13 A set of 48 Regulations was prepared with the assistance of Sir George Barlow.
with the police and with the land revenue. The Regulations were intended to ensure disciplined administration and prevent any return to the chaos and abuses of the past\textsuperscript{14}.

Consequent to the Treaty of Srirangapatanam, on 23\textsuperscript{rd} March 1792, Lord Cornwallis addressed a letter to Sir Robert Abercrombie in Bombay, highlighting the expediency of the immediate appointment of Commissioners to undertake necessary enquiries as might lead to and supply the relevant information with the purpose of the formation of a stable system for the future Government of the region and prevent internal dissensions\textsuperscript{15}. He issued orders for the appointment of a commission to “enquire into the present state of the ceded districts and to establish such a system for their future government”\textsuperscript{16}. The major objective of the appointment of these Commissioner was to “prevent internal dissensions among the chiefs and to secure under a regular administration of justice, all those advantages to the Company”\textsuperscript{17}.

A regular but imperfect system of judicial administration commenced from 1792 under the Joint Commissioners from Bengal and Bombay, after incorporating Malabar within the Bombay Presidency\textsuperscript{18}. Following the instruction of Cornwallis, the Governor of Bombay Abercromby appointed Farmer, a senior merchant and Major Dow, the military commandant at Tellichery and Page as Commissioners at Tellichery to make the necessary enquiry and recommendations for an interim arrangement for the

\textsuperscript{15} Cornwallis to Ambercromby 23\textsuperscript{rd} March 1792, quoted Nightingale, \textit{Trade and Empire in Western India1784-1806}, Cambridge 1790, p.69.
\textsuperscript{17} Sir. John Shore, \textit{Minutes of the Governor General, Madras}, 1879, pp.4-5
\textsuperscript{18} Reports of the Joint Commissioners from Bengal and Bombay appointed to inspect into the State and condition of the Province of Malabar in the Years 1792-1793, Madras, 1862.
administration of Malabar region\textsuperscript{19}. Their first task was to establish peace and order\textsuperscript{20}. The newly appointed commissioners lost no time to analyze the political situation and soon they concluded temporary terms of political and revenue settlement with many local Rajahs and Chieftains. On 22\textsuperscript{nd} April 1792 a meeting was held at Tellichery to discuss the steps to be taken regarding the responsibility entrusted upon them.

Regarding the administration of the province Cornwallis given three precise instructions were, to enforce a monopoly of pepper trade in the Malabar region, to make a temporary agreement with the local rajahs to deliver one year’s revenue to the company and to consider the means of transferring all judicial power in the region into the hands of company’s officials. But in the first meeting itself they recorded their protest against the plan of introducing British administration into the province\textsuperscript{21}. They obstruct the commissioner’s enquiries and insisted that the company should leave the administration of the region in to the rajahs hands\textsuperscript{22}. The commissioners found it a difficult task to settle the disputes and clashes between the rival climates and to make equitable revenue settlements with the rajahs and local chieftains. They faced the problems of settling the conflicting claims of different branches of royal families, the complicated system of succession, the suzerainty of Zamurin over some rajahs and the provisional agreements signed in 1790 and 1791 added to the complexity\textsuperscript{23}. In December 1792, two officers form Bengal, namely Messrs. Jonathan Duncan and Charles

\textsuperscript{19}. Bombay Secret & Political Diary no.47,p.356-376&Diary and Consultations of Tellichery factory, 21\textsuperscript{st} April 1792,p.71.
\textsuperscript{20}. Sir.John Shore, the Governor Generals minute on the General and supplementary report of the Joint Commissioners of the province of Malabar,Madras,1879,para.5.
\textsuperscript{21}. Minute of Farmer and Dow 22\textsuperscript{nd} April 1792, Dairy no.43, pp.445-512&Nightingale,op.cit,p.74.
\textsuperscript{22}. Bombay secret and Political proceedings, Minute of Farmer and Dow, Tellichery 22\textsuperscript{nd} April 1792, Quoted in Nightingale, Trade and Empire in Western India, Cambridge, 1790, p.75.
\textsuperscript{23}. Rajendran, Establishment of British power in Malabar 1664-1779, Allahabad, 1979,p.239.
Boddam were deputed to assist the commissioners in day to day duties related to administration.

Cornwallis gave them instructions to conduct a thorough study of the situation in Malabar and to make necessary recommendations for the establishment of a new system of judicial administration\(^{24}\). At the very outset, the commissioner had to come to a conclusion regarding the number and constitution of the courts necessary to ensure dispensation of equal justice to people belonging to all strata of the society\(^{25}\). They left no stone unturned in their attempt to restructure the system of judicature and succeeded in introducing several successful measures for the administration of justice. But it should be noted in this contest that their somewhat unbalanced revenue policy slowed down the process of pacification of the province for many year. In the primary and initial phase of the company’s sphere of activity was impended owing to financial stringency\(^{26}\). It is sad to note that, eventually this unwise revenue policy culminated in the impassioned series of rebellions led by Pazhassi Raja in Malabar.

In the beginning, the administration of justice was far from perfect. As can be imagined, it was a hard time characterized by the frequent acts of rebellion, sporadic acts of violence and fierce defiance of Law and order in Malabar by the Mappilas and armed Nair’s, so that it was very difficult to enforce peace. The unwise policy related to revenue farming, pursued and implemented by the servants of the company in the initial stages of administration was an important reason for this deplorable state of affairs. They gave more importance to their function as traders, rather than

\(^{24}\) Cornwallis to Duncon and Boddan, November 16, 1792, Bombay Revenue Proceedings, Vol.14,pp.210-214.

\(^{25}\) Ibid,pp.4-5

\(^{26}\) Shafact Ahmad Khan, *The East India Trade in the XVIII Century*, London,1923, p.3.
administrators. This is obvious from their impatience to increase the profit of the company for which purpose they pursued several measures leading to the general discontentment of the natives and also draining of wealth form the province. The major aim and objective of their administration was collection of revenue and all other matters were relegated to the background. With the sole aim of swelling the profit of the company, Farmer came up with the proposal that the collection of revenue could be undertaken directly by the company, instead of the present system being that the Rajahs and the local nobles acting as the agents of company.27

However, Major Dow disagreed with this proposal because he perceived it to be very hasty and extremely radical. He took the stand that the “collections should be entrusted to the men of their own sect”. With the aim of effecting a reconciliation of the people with regard to the new political system, Major Dow proposed that a general amnesty should be declared for the crimes committed by the Mappilas and Nair’s against each other up to the 1st of February 1793. From the turn of events, it was clear that the lenient policy of Major Dow did it succeed in effecting a political settlement. Hence Major Dow suggested that Tippu Sultan’s plan be adopted according to which Moopas (Headmen) were to be assigned to various districts with required number of armed Mappilas to assist them. As part of their duty, these Moopas had to collect revenue and maintain law and order according to the instruction of the British Superintendent of each division.28

The powers vested in the Commission were similar to those of a Board of Revenue constituted in Bengal presidency in 1786.29 In the light of

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27 Spencer, Smee and Others, Report on the Administration of Malabar, Calicut, 1910, p.28
28 Ibid
knowledge and experience that the Joint commissioners assimilated out of the British administrative intervention in other provinces of India mainly in Bengal and the Western coast, they eventually prepared a plan for the settlement and administration of the Malabar province, now annexed to Bombay Province. They accepted in principle many of the methods implemented by the Dutch. In 1678; Governor Yale of Madras sent “a book contains the Dutch methods” to the Directors. In their contact and interaction with the Dutch, many early English administrators assessed them to be of superior caliber which was evident from a somewhat helpless remark made by the English factors at Pulicat about the Dutch as follows; “thus in every quality they go beyond us”. The plan envisaged the division of the district into general divisions that would be placed in charge of two Superintendents under a Supervisor or General Magistrate of the coast.

In a circular letter issued by General Abercromby as the Governor of Bombay on 30th March 1793 to all the Rajas and principle landholders within the province of Malabar putting the province of Malabar under the control of a Supervisor located at Calicut and two Superintendents located at Tellicherry in the north and Cherpulcherry in the south. In the circular letter he makes it clear that “the whole Malabar country from Cochin to the Cavay, the administration of which is to be entrusted to two civil servants of the Company, who are to be the immediate representatives of the British Government within their respective districts in which they are to preserve the peace, administer justice, and to receive from you the revenue payable to Government, the said gentlemen being in all cases subject to the

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30 Galletti, Dutch in Malabar, Madras,1911, p.28
31 Foster. English Factories in India, Calcutta,1906, p.107
32 Aitchison’s collections of Treaties Engagements and sanads relating to India& Neighboring countries, Vol.V,Calcutta, 1864, p.415
Supervisor”33. The major duties of the Superintendents included, among others things, the preservation of peace, the administration of justice and collection of revenue under the direction, control and supervision of the supervisor.

The rules for revenue administration and for the conduct of the supervisor and superintendents were drafted and passed by Duncan, Page and Boddan with effect from 1st July 179334. As part of the paraphernalia of power to be exercised, the Supervisor and the Superintends had, under their command, necessary number of assistants to keep the public accounts and records. Those assistants would act as Registers (Registrars) to the courts of Justice, and also undertake several duties on deputation as and when they would be given suitable instructions by their superiors. The supervisor had an assistant attached to him who was “wested with civil, criminal and police jurisdiction in Calicut and its vicinity”35. The supervisor had both the powers of judges of the court of appeals and the chief magistrate36. He had to submit an annual report of the state of Malabar region to the Bengal government and a copy of this report was to be regularly transmitted to the commissioners37.

A salient feature of the system of judicial administration implemented by the British at this time was the periodical circuits of the Supervisor and the Superintendents for the timely and effective dispensation of justice among the people belonging to the province. The role of supervisor in Malabar was entirely different from that of the Bengal supervision. In

33. From the Malabar Joint Commissioner’s Diary, dated 30th March 1793[T.N.A]
34. K.K.N.Kurup, op.cit, p.224.
37. Extract of letter from Honorable Company in Political Department, August 5, 1796[T.N.A]
Malabar he held some important pivotal position in revenue, judicial and military administration but in Bengal the Board of Revenue or a council did all these activities instead of supervisor. The official time table adopted for periodical circuits was to proceed from one sitting in a site to another from the middle of October till the middle of March. This periodical circuit was undertaken and carried out in such an august manner that every branch of administration could easily be influenced and dominated by the system of the dispensation of justice introduced by the company. During the periodical circuit, the Supervisor invariably found time to enquire into the official duties and functions of the two Superintendents with the aim of inspecting and supervising the way in which they performed their official duties. In every ensuing month of September for the revenue year completed, he had to prepare an annual report to be presented to Government of Bombay which should also incorporate a general statement about the condition prevailing in the country. With necessary remarks and comments by the Government, that report would be dispatched to Governor General-in-Council for information and observation.

For the administration of justice in civil cases, the Joint commissioners introduced a civil code which was prepared, passed and dispatched on 12th June 1793. As part of the civil code so prepared, there is a wide and detailed representation of the legal and political aspects of Malabar Province. The Joint Commissioners prepared, passed and transmitted the civil code on 12th June 1793 for the administration of justice in civil case, a truly remarkable act in the evolution of judiciary in India, especially contributed by the joint commissioners. According to this, except

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in the town of Calicut and district of supravisorship, the superintendents would assume the power of judges. The Judges had the power to appoint and remove the Native officers after getting the confirmation of the chief Magistrate. With the aim of ensuring good behavior and ascertaining integrity, the Judge was in a position to exact Mochulkas or penal obligations from all this officers. On an average, the fine so imposed on the officers for their lapse of duties, was equal to their annual allowances.

The judicial system set up under the Regulating Act has been severely criticized by Cowell. He stated “To make the Legislature subordinate to the court, instead of the court subordinate to the legislature, and at the same time to direct it to enforce a system of law utterly inapplicable to India. It appears to be most destructive and pernicious policy that wit could devise.” In the Regulation of 12th June 1793, there is a clear demarcation between revenue suits and civil suits. The revenue suits were outside the purview of the civil courts which points to the superiority of revenue administration over judicial administration. Cornwallis’s reforms of 1793 were based on two basic postulates of the British Constitutional law, viz, separation of the judiciary from the executive and the subjection of the executive to judicial control. The reforms of 1793 were the result of meticulous and elaborate planning and earnest Endeavour. Cornwallis did not confine his reforming hand to the judicial system alone; he directed his attention to all other spheres of Governmental activity, viz, revenue, executive, commercial and customs. All his various measures were enacted on May 1st 1793, through a set of 48 Regulations which were all collected, compiled and printed in a single Code.

40 Regulation, 12th June 1793[T.N.A]
42. Jain. M. P. op. cit, p.137.
which in later years came to be known as the Cornwallis Code\textsuperscript{43}. At that time revenue collection was the major duty of the Government. Consequently, the maintenance of law and order was given only low priority in the administrative system. No arrangement had been made for the police establishment. In the absence of all other means of preserving the peace and for apprehension of offenders, recourse was naturally had to the local revenue establishments\textsuperscript{44}. For filing suit and determining causes, a very elaborate and minute procedure was followed in those days. While filing a suit to the Provincial court of Adalut, it was required that the matter of complaint should be clear and specific regarding revenue details.

If the complaint is concerning land or house not paying revenue, it was necessary to mention the annual produce. If the land or house is subject to revenue, the Jumma or annual revenue to the British Government should be specified. If the complaint is related to money or a valuable thing, or marriage or caste, the compliant should contain specific information regarding the sum of money or valuable thing, or the sum of money to the extent of which the plaintiff was indemnified, the name of the person against whom the complaint was filed and also the fine when the cause of action accrued. As part of the legal procedure, it was very important that either the complainant or his Vakil who was properly authorized should sign the complaint to be valid. For fulfilling the legal formality, the complaint should be signed numbered and dated according to the order in which it was accepted by the judge of the court and the same should be officially recorded in a book by a Mohurrir or official at the court.\textsuperscript{45}.

\textsuperscript{44} Judicial Consultations, Madras Records Office herein after referred to as J.C.1812, Vol.73,pp.3063-99.
\textsuperscript{45} Regulation, 12\textsuperscript{th} June 1793,Sec.18 [T.N.A]
As and when the complaint was taken up by the court for consideration, the court would issue a Pallechitty or Summons to the defendant detailing a short account of the nature of the demand specified in the complaint. The Nazir or his inferior officer would serve the summons to the defendant if he could be found. As part of the legal proceedings, the court authorized the Nazirs to take security in such sum as the court might direct for the appearance of the defendant. On the day appointed for taking up the case, the Nazir should return and present an endorsement concerning the way in which he had executed the summons. The court took good and sufficient security to ensure that the defendant appeared on the day fixed for considering the case and make answer to the complaint and should abide by and perform according to the order or decrease issued by the court in relation to the cause. In case the defendant was unable to find sufficient security, the court would commit him to close custody until he answered and performed the decree or given proper security.

The establishment of a regular police force was another features of Company’s reform. For imparting justice and to maintain law and order an impartial and regular system was essential. In the initial stage the functions of the police force was to assist the revenue authorities in the revenue collection and to prevent crimes and to administer law and order. In the initial stage Warren Hasting entrusted the police functions to the in to the influential Zamindars. Cornwallis reorganized the system of police with a Thana as a unit and a Darogah as its head. In 1811 Lord Minto advised the Madras Government to change the police divisions of the country and recommending courts with native judge.

46. 5th report of the select committee on the affairs of the East India Company Vol.11, p.71[T.N.A]
47. Public consultations-1811 Resident Travancore to Chief Secretary to the government. Fort St.George, 9th August 1811, p.3046.
In the event of the appointment of Registrars and Pundits being necessary, the Regulation contained provisions for the same. For the appointment to be valid, they were required to take separate oaths before the respective judge of the Provincial court of Adalat. The duty of the Registrar included assisting the Judge by making translations of documents which are required by the Judge and also performing other official work that was found deemed necessary by the Judge. In any particular case if the judge give any authorization to the registrar he has the power to hear and receive evidence and pass sentence in cases where the value contested did not exceed the sum of sixty four Hoons. That was permitted in the open court when the judge was not sitting. The decrees passed by the registrar should be valid only if the judge had to be countersigned as a mark of his approbation.48.

In civil cases under consideration, the law applicable was the law of the defendant. When Mussalmans happen to be the defendant, Mohammedan law was applicable whereas Hindu law should be applied in the case of Hindus being defendant. Since 1772, the native law officers, Pandits, Kazis and Muftis, had been playing a significant role in the administration of justice as they expounded the principles of personal laws applicable to the cases tried by the English judges49. As applicable to each case in point, Maulvies and Pundits attended the court to explain the law of their religion as is the religions background of the defendant. As a relevant principle for the guidance of the judges, it was mentioned that the general rule of the law of the defendant might be superseded by the received and ascertained customary law or local usage of the country.50.

48. Ibid
49. Regulation XII of 1793[T.N.A]
50. Ibid,Sec.20
The Darogha of the court had to procure and execute all the acts of the court after its pronouncement. Also as part of his duty, he was expected to assist the Registrar in collection and keeping the records, muniments and other documents of the court. But he was not entitled to influence in any manner, publically or privately, in any case, either depending or to be brought before the court.

In its capacity to administer justice, the provincial courts of Adalat had the power to frame standing rules and orders with the condition that before enforcement, those rules should be ratified by the Chief Magistrate in the court of Appeals. The provisional court of Adalath were empowered to handle disputes related to the civil matters like property, inheritance, marriage, caste, succession, boundary, debts, accounts, contracts, mortgage and partnership. There is clear provision to impose penalty for commencing in a different Adalat Court a Second suit for the same cause of action. The matter related to revenue should not entertain the provisional court like public demand of Government on landholders, farmer securities, collector and others employed in the collections. As part of the judicial proceedings, these and such others causes were to be heard, tried and determined by the Superintendent whose office is termed revenue Cutchery.

In order to ensure maximum precision and fairness in the legal proceedings and administration of justice, after taking the testimony and deposition of the witnesses subscribe on oath, the same should be read and accepted as good evidence in the cause. So it is field and recorded. After taking the testimony and depositions of witness separately in writing, it

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51 Ibid, Sec. 10
52 Ibid, Sec. 14
should be produced in open court during the time of trial. Using letter or number to mark every exhibit with the purpose of identifying, it could be precisely referred in the depositions.

In cases where the defendant absconded or could not be found out even after careful search, the Judge was empowered to fix a copy of the summons in some prominent part of the court and also a notice that in the event of the party failing to appear on the day fixed, (not less than ten days from the time of notice), without the defendant, the court would proceed to hear and determine the cause. Also there was the condition in the Regulation that on three separate days within the time mentioned in the notice for the appearance of the defendant, the summons and notice should be read and proclaimed to the accompaniment drum beat in the village in which the defendant last resided. Other than in cases having good and sufficient reasons, in the cases of plaintiff not appearing before the court for six weeks to plead, that particular suit should be dismissed and the court was empowered to grant the defendant such costs as he might have incurred.

There was provision for the prompt punishment for contempt of court. Proper arrogation of the Provincial court or illegal exertion of the judicial authority was punishable by a fine not exceeding by Hoon or Rs 200 each. The culprit was held in custody till the fine was remitted. In the Regulation there was provision to show due respect to the rank and circumstances of the offender. It is interesting to note that the fine imposed was in inverse proportion to the rank and social status of the offender.

There was provision in the Regulation to appoint an Amin by the court in cases of disputed property regarding lands, houses, or the limits,
boundaries or landmarks for which a local investigation was assessed as absolutely essential for the proper verdict. After conducting proper field investigation, the Amin should submit his report in writing which would be taken up as evidence for arriving at a judgment in the court. In return, the court should give direction for giving reasonable sums for his task. Such sums paid to the Amin should be added to the costs and it should be remitted by the person against whom the court order was carried out.

Regulation VII of 1793 was the first attempt to regularize the institution of Vakils in India. Before 1793 the clients in suits either appeared in person or engaged private agents to plead their causes who, “by their ignorance of laws and regulations and imperfect knowledge of judicial proceedings, as well as from their being liable to collusion and intrigue with the ministerial officers of the courts impeded and prevented, instead of aiding and promoting, the speedy and impartial administration of justice”

The appointment of the pleaders was a notable change introduced by the Company’s Government in the administration of justice in Malabar. A well regulated profession for pleading causes was a great desideratum to tone up the quality of justice. The Sadar Diwani Adalath was to appoint pleaders to plead the cause of the litigants in the various Adalats by issuing Sunnuds to them. Regulation VII of 1793 provided for the appointment of licensed pleaders from among Hindus and Muhammedans through Sanads granted by the Sader Diwani Adalath. The present Registration allowed the person producing and filing a Vakalutnamah of written authority which is

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53. Harrington, J.H. An elementary analysis of the laws and regulations enacted by the Governor-General-in-Council at Fort William in Bengal for the civil government of the British territories under the presidency; Part I, Calcutta, 1805, p. 147.
55. Regulation VII of 1793 [T.N.A.]
56. Section III of Regulation VII of 1793; Bengal Regulations, Vol. I, Calcutta
signed and sealed in the presence of witness signed by the party for whom he would appear in the court as the Vakil in the cause. In case the Judge came to the conclusion on reasonable ground that certain evidence presented before the court was not genuine, the Regulation contained Provision for the Judge to endorse the word “Rejected” together with the name of the cause, party that offered it and date of rejection. Along with this the Judge should prepare a memorandum or note to be annexed to it stating his reason as to why he rejected the evidence it.

Once the decision of the Provincial court was made, there was Provision in the Regulation to go for appeal. On 15th December 1795 the Government issued a notice relating to the institution of court of appeal. Notice make it clear that “the Court of Appeals is instituted and will take cognizance of all cases on which any of the parties may be dissatisfied with the decrees of the inferior Courts of Calicut, Tellicherry and Cherpulcherry”. The system of appeals is necessary as a safeguard against unjust or erroneous decisions, abuse of power or misapplication of law by the lower courts. Courts of appeals are necessary to enforce uniformity in law, regularity in procedure, and to serve as a safeguard against denial of justice by the courts of first instance. An abstract register in English containing, summary account of the daily proceedings mentioning the names of the plaintiff and defendant, substance of the cause and decree made, the date of filing passing and delivering the decree should be kept by the Judge. Every month, that abstract should be transmitted to the chief Magistrate in his court of Appeals. Rules for appealing to the court of Appeals are contained in section 44. In case the party tended sufficient security along

57. From the Diary of the Malabar Superavisor, dated 15th December 1796.
with the appeal, the decree should not be executed until it was formally determined.

The Regulation contained certain guidance for the judges. In all cases within the jurisdiction of the Provincial court, in the absence of specific directions to that effect, the judge should act according to justice, equity and good conscience. In the beginning, the doctrine of justice, equity and good conscience meant only the discretion of the lay judges, which they could exercise in a way which seemed to them doing substantial justice to the parties. But later it meant “in substance and in circumstances the rules of English law wherever applicable.” Regulation allows court of Appeals to frame rules practice and standing orders for the dispensation of justice and also to revise, alter or approve or disapprove all standing orders and rules of practice.

From the abovementioned description it is self evident that the court proceedings were highly complex and many legal steps and processes inherent in it might have unnerved the orthodox and straightforward people of Malabar who were, hitherto to a very great extent, quite unfamiliar with such legal technicalities. Till now, customs and social conventions decided what was right or wrong in the society whereas the administrative system favoring strict codification of rules and the precise formulation of law for the examination of personal and social aspects of existence appeared to be quite rigid. In short written law guiding legal proceedings made the system hard and inflexible.

After the introduction of British system of law in Malabar, the long held customs and conventions followed down the centuries, for finding solution to disputes were set aside because such conventions were against the rule of law. Undue and troublesome delay which was regarded as almost a denial of justice in many cases was a real threat that stood in the way of realizing the object behind the introduction of legal system. Many hither to unforeseen but inevitable consequences came to the forefront once the newly introduced legal system began to function. Inspired and even intoxicated by the fervent drive to bring in the new system of law, the officers and other personnel associated with British East India Company turned a blind eye to the age old legal institutions that were functioning down the centuries in Malabar and installed a typically western legal system that evolved and perfected in western political and social atmosphere. As a result they were considered the feasibility and sustainability of the newly introduced system in the altered cultural ethos of Malabar. It is sad to admit that unimaginative and stubborn early British administrators who merely thought only in terms of the literal significance of the legal system paved way for the failure of the newly introduced judicial practice.

The Joint Commission succeeded in establishing and supervising Foujdary courts side by side with civil Judicatures. With a view to supervising General Police of the country and administration of Justice in criminal case, the Foujdary department was formed as envisaged in the Regulation of 9th July 1793. To meet out criminal justice in these courts, Native Judges who were also called Daroghas were appointed as part of judicial reform. In cases involving Mussalmans, the laws advocated by Abu Haneefa and Yusuf and Mohammed were applied to arrive at judgment.
Precedents and ruler of preference derived out of the British administration in Bengal were also considered. General laws of Hinduism were examined and considered for judgment of cases involving Hindus. All these rules of including the criminal laws of Hindus and Muslims in Malabar were systematically summarized by Duncan in a report submitted to the Commission. All these rules and laws were presented through one point of view so that each and every categories and orders of crimes and offences were mentioned along with appropriate remarks pertaining to suitable punishment. The commission closely scrutinized the report and directed that the rules incorporated in the report could be regarded as forming a general guideline for the dispensation of justice in court proceedings. In an additional code of Foujdaey, Regulations comprising 38 Articles, these points were clearly set out for the guidance of judicial officers.

On 2\textsuperscript{nd} July, 1793, some supplementary articles were added to the General Regulation for the administration of Civil Justice in order to affect a better and complete comprehension and execution of the system with which, they believed company’s administrative influence would extend to Cannanore and adjacent provinces. In order to attain that objective, with 9\textsuperscript{th} Article of the supplementary Regulation, they established seven local or interior judicatures which would be administered by Native Judges. Thus, the interior judicatures were established at Cannanore, Quailandy, Trevangary, Ponnany, Plaghat, Tanore, and Chetway.

The frequent interference of the Mayor’s court of Bombay in the internal affairs of Malabar would produce, according to the Commissioners, harmful consequences. The Mayor and Aldermen were to be a Court of Record with power to decide all civil and criminal cases in a summary way
according to justice and good conscience and the laws of the Company\textsuperscript{61}. The procedure of the court was not any definite procedure of law. As noted by Love\textsuperscript{62} its decisions were on ad hoc basis and lacked uniformity. The court had no reputation for impartiality and incorruptibility. Hence, they noted that the attempt to extend the jurisdiction of Mayor’s Court to Malabar before the beginning of the war with Tippu Sultan should not be encouraged. Sir John Shore was of the view that such interference would be illegal\textsuperscript{63}.

Three Provincial Foujldary courts were established at Calicut, Chespulcherry and Tellicherry for the trial and punishment of cases of greater magistrate\textsuperscript{64}. To hear and decide cases hear in this court, a team comprising a native Darogha, Muffee, Maulavee and Brahmin functioned as part of the Provincial Foujdary court. Except Daroghas, all other inferior officials assisted the superintendent acting are civil Judge. For imposing capital punishment in Malabar Province, unanimous approbation of the supervisor and the three Provincial British Magistrates was essential. In the absence of full concurrence in such cases the matter should be reported to the Presidency of Bombay for further decision. For enforcing the capital sentence, it was sine qua non that precise verification to ensure that the judgment was made in conformity with all rules and regulations followed in judicial practice.

Local officers were originally intended to act in the superior Foujday departments. Now that they had to assist in official proceedings of the civil courts, they incurred the trouble of additional work for which the

\textsuperscript{61} Mittal, op.cit, p.9.
\textsuperscript{63} Shore,op.cit.
\textsuperscript{64} Interview with Advocate E.V.Mohanan,J.F.C.M.C, Taliparamba, dated 06-02-2012.
commissioners granted additional allowances, partly in salary and partly from the deposits which were taken as part of the court proceedings. Apart from the foregoing directions, the commissioners suggested that the chief Magistrate was empowered to prepare regulated tables of reasonable fees on the process so that the native officers would get sufficient encouragement to take up more causes without under delay. It was also directed that after preparing the tables, the same should be submitted to the Bombay Government for official ratification.

In those days there were official requirements to transmit all these judicial regulations to the supervisor. Then the matter was referred to Handley, the Head Assistant and Magistrate of Calicut for his opinion. In response Handley responded that the rules included in them could not be completely followed up to the letter. The main hindrances mentioned were the extreme difficulty of getting respectable natives to act as official in assisting court proceedings, linguistic and cultural problems related to instructing them, the judge’s lack of familiarity with native languages and the not so cordial attitude of the Rajas. Despite all these unfavorable factors, he had the strong belief that within the duration of few years, they could be incorporated as part of the newly introduced legal system so that the full extent and vigor of them could be utilized for maintaining law and order.

In the beginning, the judicial system implemented by the commission had only a limited operation. On 11th October 1793, the commissioner’s Report mentioned that resort to the court at Calicut was considerably less than expected. The supervisor was directed to make enquiring into the subject. Further enquiry revealed that the native people were hindered from applying to the Adalut became the new regulations required than to submit
their complaints in writing and also owing to the practical difficulty of getting Vakils to assist them in matters related to litigation. In general, the complaints preferred were for small sums and the parties involved were so poor. The fixed salaries given to the native officers in a sense discouraged than to promote more court proceedings. They perceived that the less court business ensured more case for them. To rectify this defect in the system, Handley directed that only moderate salaries should be paid to these officers and they should be permitted to take fees. Also it was suggested that a summary process should be followed for all sums under Rs 300. In such cases, paper work was greatly reduced except a brief mention in the register of decree\(^{65}\).

With a special notification made on 15\(^{th}\) December 1795, the official establishment of the court of Appeals was complete\(^{66}\). The notification incorporated the following order. The commissioner directed the supervisor to submit an annual report about the state of Malabar to the Bengal government for rectifying the errors in the existing regulations without departing from the present system. In matters related to revenue, military, trade and judiciary, complete information upon every point should be regularly transmitted to them\(^{67}\).

In supplementary Regulations, there was the provision to introduce local subordinate courts in many places in Malabar. But their establishment had not been realized for many years owing to protracted legal proceedings in between the different strata of the legal system. In their concluding instructions to the Supervisor, the commissioners made it clear that they rely

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\(^{65}\) Shore, op.cit

\(^{66}\) District Records, Vol.2497, Malabar, 1795, pp.1-2

\(^{67}\) Extract of Letter from Hon.Co.in Political Department 5\(^{th}\) August 1796.
on his attention and timely action to further the good effects which should be elicited out of the institution. The commissioners added that with that purpose and intended effect, the supervisor and the superintends might take up sufficient initiative and show reasonable caution with the overall success of the British legal system in view.

Though the system of judicial administration was established by the Regulations of 1793, it was defective in many respects. “Reading through a mass of evidence given before various parliamentary committees, the reforms in civil and criminal laws were effective in checking the tyranny of the revenue collectors and over ending violence, but that they encouraged the more subtle oppression of the money-lender and the lawyer; and from their insistence upon formal evidence they increased the difficulty of suppressing organized dacoit.68” It should be pointed out that in actual operation of the legal system; often it proved to be a miserable failure.

The aim and objective behind the establishment of the new legal system was commendable, but the accompanying lack of clarity in actual proceedings coupled with the lack of experience on the part of judicial officials involved in the system and the general unwillingness of the natives to utilize the institution contributed to the failure of the newly introduced legal system. According to the company, the working of the legal system was a heavy and unexpected burden because it involved exceptionable expense. The reforms of Cornwallis led to a very severe outbreak of litigation. The plan and its fulfillment related to the establishment of several categories of courts and their day to day functioning created a heavy drain on the resources of the company. It was even suggested that this could have

been avoided if the administration of justice was vested with the local chieftains and native Rajas. However, soon this argument lost its momentum because the officials belonging to the higher echelons of power in the English East India Company rightly recognized that the continuance and consolidation of the British rule really depended on the administration of justice being wielded by the British themselves. It was correctly perceived that the policy of delegating the administration of justice to an extra governmental body would create a state of anarchy through the point of view and the rational perspective of the British administrative system.

In every branch of administration the information of the source of revenue were not sufficiently authentic, the establishment of its collection was heavy and burdensome, the system of acquiring information was too confused and a want of practical knowledge and experience too generally prevailed. To avoid these inconveniences, the government restored the revenue and civil authority upon the principle collector and Major Macleod became the first principle collector of Malabar and he was directed to acquire information from local researches, instead of attempting to derive it from the voluminous records of the commission. The state of affairs in Malabar was so serious a nature that later Macleod had been deemed to transfer the civil and revenue management of the province to Robert Rickards, the first judge of the court of circuit and appeal.

The system of judicature established by the scheme prepared and passed by the joint Commissioners on 12th June 1793 and 9th July 1793,

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69. General report of the Board of revenue to the honorable Governor in Council sent home to the Court of Directors. Dated 10th October 1801, Vol.7,para 384.
respectively for the administration of civil justice and criminal law however proved cumbersome and defective in its working. From the point of view of the Company it was expensive and it resulted in confusion because of large powers delegated to the local chieftains. Many proposals were therefore put forward by Robert Rickwards, Smee, Hodgson, Piele and many others to improve it. With respect to the Superintendents who discharged the duties of collectors of revenue, magistrates civil or criminal and custom masters, Rickards was of the view that they are thus over burdened with duties too various, too unconnected and too individually extensive ever to be successfully or satisfactorily conducted by the exertions of one and the same man. Rickardr pointed out that this drawback could be altered by relieving the Superintendents from their financial responsibility and limiting their services to the department of Magistracy and Police. When the duties of the Magistrates and the collectors were clearly demarcated the purpose was not to divide the respective administrative roles into watertight compartments. It should be noted that the point of criticism related to the original administrative system and the remedial measure adopted for rectifying the defect was an important step taken for perfecting the administrative machinery. Many succeeding administrative reforms followed the line set by Rickards.

The administrative reform that he proposed for eradicating these defects “is not by strengthening the present hands of power in the province, but by causing that power to be more generally diffused and felt and by giving to each individual in authority a more precise and exclusive object of duty instead of the numerous ones he is now obliged to perform”72. So the multiplication of the role and functions of the officials decreased the efficacy

of the administrative system as a whole. Rickards thought that the continuance of the office of the Commissioners was good for the efficiency of the system. He put forth the idea of endowing the major powers of the Provincial Government with the judicial and revenue powers of the commissioners so that the administrative system would become more efficient with the elimination of delay in execution of duties. A notable modification put forth by Rickards was that the members should be Commissioners alone and also that their secretary should be a district officer.

In the initial stage the British in Malabar appointed several Mappila chieftains as Daroghas or native judges with magisterial powers who were allowed to retain a considerable portion of their armed followers. They continued to be employed as Police Officers up to the introduction of the Cornwallis System in Malabar. To make the administrative machinery, lean, efficient and quick, Rickards recommended the abolition of the office of the Daroghachip. This abolition was one of the most striking or powerful effects of the system of 1793. The inequity of the administrative system was owing to the unjust activities of this office. In the southern districts, Daroghas committed many glaring instances of abuses of power which revealed them to be “rather the scourges of the community than its guardians or protectors and their total inutility to Government or to the country as police officers and to induce a speedy resolution of abolishing the appointment”.

Another important principle of reform put forth by Rickards was that the assistants or collectors should be promoted. On the basis of seniority or

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by selection or by merit so that they would get the benefit of serving in
different magistracies eventually enabling them to find seats in the
commission. Their official career and advancement through the two
important departments of finance and jurisprudence would enable them to
qualify for this elevated position. The judicial officers had no opportunity to
ascend the official ladder in the original system. So it was widely recognized
that an encouragement in the form of official promotion would increase the
efficiency of the legal system.

The plan proposed by Rickards to deal with the existing Nair and
Mappila Battalions was to convert them into “Silbendy” Corps, who would
be redeployed under the immediate supervision and control of the civil
power. He specified that as part of the proposed plan of stationary
Assistants, a certain number of “Silbendies” should be stationed with each
assistant for the specific duty of guarding the police of his division. In the
event of emergency, they would be supported by the military power using
which they would be very effective in arresting robbers, controlling of
abuses and the overall maintenance of peace and order in the society. As per
the intended official hierarchy with respect to their judicial and police
capacity, the stationary Assistants would be regarded as subordinate to the
Superior British Magistrates since the Daroghas were expected to be under
the Supplemental Regulations. As part of their official duty, they were
bound to keep record of the written communication and for every action;
they were accountable to the Commission.

It is evident from the Minutes kept by Richards that he was highly
critical of the prevailing system of justice in Malabar. So, with the purpose
of eradicating the well known evils and defects of the existing system, he
came forward with the new plan incorporating many practical recommendations, at once eliminating the drawbacks and also increasing the profit of the company. At the same time he was humble enough to mention that he never intended to change anything of the original principles of the first Commissioners system. Moreover, the intention was to decrease the civil expense of the province, to establish the company’s government and to check and control the growing influence of the rajas. Hence the commissioners jointly recommended it for the consideration of the government. 75.

Peile had a very high opinion of the institution of the Darogha courts which he defended as “unexceptionable”. Allowances ought to be made for the novelty of the institution in a country where”, he declared, “I believe, few attempts were ever made to reconcile the inhabitants to any particular code of civil or criminal laws, and it ought also to be a consideration that when the courts were first established they had to encounter all the authority of the Rajas. I have reason to believe the application to the court increased and I have no hesitation in adding that I am convinced they will continue to do so, the more the inhabitants are acquainted with them. I therefore think (freely confessing that I know of no better system) that the courts have not been long enough established to form, from experience a decided opinion of their real effect” 76.

As for dividing the revenue and judicial functions, Smee had strong antipathy which he clearly expressed in the following words” In all civilized and settled countries there cannot exist a doubt of the consistency of dividing the aforesaid powers but disuniting them in the present complexion 77.

of affairs in Malabar, would be a partial innovation and might be found so far detrimental in its practice as to obstruct the recovery of the Revenue”77. In tune with the above mentioned line of administration, Smee proposed a more general and detailed system for the administration and collection of revenue in the Province of Malabar which was intended to eradicate the defects and evils and infidelity of the natives so that they would evolve into useful and intelligent servants of the company. He emphasized that the proposed reform in administration would create a favorable atmosphere for the accurate assessment of all the useful resources of the Province, maintenance of law and order with the purpose of protecting properties and securing lines of the people, establishing and expansion of industries with the net result of increasing the revenue income and, last but not least, the maintenance of peace and prosperity of the Province..

As to the bifurcation of the offices of the collector and the Judge, as proposed by Rickards, Smee pointed out that he was not “aware of order being promptly introduced so as to make the laws more respected or revenue easier recovered, by separating the office of Collector from that of judge and Magistrate”78. The logic behind his argument was that the society had not achieved sufficient progress and, consequently, time was not ripe to introduce such an innovation of considerable magnitude so that the chance for the success of the reform was doubtful. He agreed that “the local adults have not been of that public advantage, as was originally expected form their institution, but have been found some what the reverse by placing too much power in the hands of an individual which should in the state of Southern District be divided as far as prudence and safety to the internal quietness of

78. D.R., 1797, Vol. 1712, pp. 119-143
the Division, will admit. So, in quite unambiguous terms, he proposed that all the local courts of Adalat should be abolished and an efficient Police should be substituted instead on the like principles of Sheranad. This reformed system could be implemented with very great positive effect in the notably chaotic provinces in Malabar.

It is quite reasonable to say that each and every system of administration or institution in society should be provided with an opportunity to go through the test and trial to find out its inherent work and value before declaring it to be worthless or harmful for the overall safety of the society. It was of common knowledge quite convincing in the light of reason that in a province like Malabar which was in chaos on political, social and economical levels, for a new institution to be firmly established, it would take time and long interaction between the natives and the new system introduced by the British. At the same time it should not be argued that the new system was perfect in all aspects. Any system devised by human agency entails defects which could be perfected in the light of experience and also reasonable recommendations. Smee submitted the minutes on 7th November 1797 in which he presented reforms and amendment in the revenue and judicial departments of the province of Malabar in order to rectify the drawbacks of the present system of courts and their functioning. He was in agreement with Rickards as to the unwise effects of some specific articles in the Regulations and also to the propriety of a reform. At the same time he clearly believed and strongly emphasized that the proposed reform should not lead to a total eradication of the offices under consideration as part of the reform. He pointed out that such drastic

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79. Ibid.  
80. Ibid
steps would not contribute to the establishment of the authority of Government in Malabar.

The reforms proposed in the administrative system by Mr. Smee were notably different from that of Rickards which were favorably received by the commissioners. Hence, they were in divided mind when it came to evaluate the merits of the system proposed by Smee. It was accepted that these two reports contained much useful information and many propositions of real value and importance to the peace and prosperity of the Province and also that both of them were guided by the same objective and differed only with regard to the means to be employed for achieving the same. Hence, with the purpose taking the final decision, these two reports were finally submitted to the Hon’ble the committee of Government. For the final decision both the reports were submitted to the Honorable committee of the Government. Both the reports contained very valuable information and the proposition included in this papers were very important for the well-being of the province. Both of them contained the same end in view but differed only as to the means of attaining it. The Hon’ble committee of Government finally approved the proposal and for the administration of the province of Malabar, proposed modifications of the subsisting regulations were approved by the Governor-In-Council of Bombay.

He pointed out that the most suitable system of administration for this country must be the one which was most practically modified to its immediate situation and objective circumstances along with a reasonable consideration of the relation, the particular Province had with the Company. When Malabar was ceded to the British in 1792, it was widely regarded that

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a more decided and firm management than the chieftains could be persuaded to accept should be urgently implemented. The idea of the company regarding this position was that the joint operation of a wise and conciliatory conduct on the part of the company along with the changes wrought by time will lead to steady and progressive corroboration and further expansion of the power and authority of the East India Company.

In a meeting connected for that specific purpose, the Board comprising the President and Commissioners for executing the office of supervisor and Chief Magistrate in the Province of Malabar took the resolution that without further delay, the proposed arrangements should be immediately implemented. Further they took the decision that the copies of the minutes of Messrs, Smee and Rickards and the Government’s reply to it along with relevant instructions on the subject should be provided to Hodgson. Finally Smee’s suggestions were accepted. The notable idea behind his plan was the abolition of all Courts of Adalat and substitution of a strong Police in its stead. Accordingly a new scheme of administration was launched. But Smees plan too proved a failure because the system served only to organize centers of oppression by the local Daroghas and the locals were suspicious of the courts and their officials and the court proceedings were unnecessarily lengthy which led to the long delay in the disposal of the pending cases.

The office of the Darogha was abolished by the official proclamation issued from Angadipuram on 26th February 1798 by Hodgson. As per the

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83 D.R.Malabar, 1797, Vol.1712, pp.311-4
84 Minute written by Jonathan Duncan, District Records, 1797, Vol.2153, pp.9071-98
Proclamation, in future, the duties of that office would be conducted by a gentleman in the civil service with adequate number of subordinate officers to help in his official duty. The local judge was entitled to take up complaints and conduct inquiry in order to arrive at proper decision in the light of equity and justice. In case the party was not satisfied with the judge’s decision, the party had the right to make an appeal to the superintendent’s court for a second hearing on the condition that the petition of appeal was laid within 20 days after the first decision and succeeded in providing good and adequate security. As a measure to enforce law and order and prevent unlawful activities, it was the duty of the ‘Parbutties’ and ‘Mukhyastanmars’ to report all suspicious persons coming to their districts and also help the police officers to arrest such suspicious people in case it became necessary.87.

A significant article of the Regulation was related to arbitration. The Provincial Court Judge could, with the free consent of the parties, refer the causes to the Raja or chief of the district in which the subject of litigation lay or to arbitrators to be freely chosen by the parties. The decrees given by the Raja or chief the district should be carried into effect if both parties agree to the decision whereas if either of the parties objects to it, it was revisable by the Judge of the court. In the case of awards of the arbitrators, no revision was permitted in the Regulation. In the Provisional courts, the following causes such as non-performance of contracts, debts, doubtful or contested bargains, disputed accounts, partnerships, were fit to be referred for arbitration. Regulations permit the Judge to afford all sorts of encouragement in his power to the inhabitants of character and credit to

become arbitrators with the condition that no coercive means was employed for that purpose. There was strict prohibition for private servants or officers of the court to function as arbitrators.

To streamline the functioning of the administrative machinery, some clear cut standing orders were issued by the Commissioners. One particulars order was related to the causes submitted for arbitration. The Commissioners issued a notice from Calicut on 10th January 1798 which was intended to be affixed in the court and other important places all over the Middle Divisions. This notice contained the injunction that the parties who were willing to leave their cause to be decided by arbitration should be informed that the award would be given within a period of six months. In the case of any objection to this condition, such causes would not be considered for arbitration. For just and equitable justice, the judge might comply or reject the application as might appear to him in such circumstances as the parties or arbitrators appearing in the court representing their inability from any unavoidable or unforeseen circumstances to comply with the standing order of the court.88.

As proper and revealing illustrations regarding the early method of imparting justice as part of judicial administration in the Province of Malabar we will scrutinize some recoded cases from the pages of court proceedings. In the case of Chrisnamma, examination by proxy was allowed as evident in the trial of witness was a fine example of the early mode of dispensing justice89. There was strict and severe punishment in the case of perjury. When it was found out that Ponary Unny Thiya was implicated clearly in perjury regarding a dispute related to the property of a cow,

Darogha asked the Pundit to point out the proper punishment for such crimes as stipulated in the law of the Shastra. In that case, the Pundit explained that the Shastra mentioned that “whoever shall take a false oath for such offence must be punished with 48 strips. Taking into consideration the length of time the prisoner had been in confinement, the commissioners remitted the sentence to 24 strips.\textsuperscript{90} The Court of Directors who were genuinely perturbed at the prevalence of perjury in Indian courts, observed: “The injurious and dangerous crime of perjury, we are much concerned to find, continues to prevail in all directions and even increase to such pitch as to baffle and perplex the judicial proceedings of the court, so that the judge receives all oral testimony with distrust, and is frequently obliged to investigate the character of witness more closely than that of the criminal”\textsuperscript{91}.

Only written engagements were considered in civil cases. Regarding a verbal expression indicating a willingness to dispose a house, it was deemed quite insufficient on legal grounds. It was not binding on the owner of a house with the result that the owner was at liberty to dispose it to anyone according to his will and decision, quite at variance with the early verbal promise. In response to a question raised for consideration by Smee regarding an appeal Submit, the Pundit replied “In an engagement respecting houses and lands, writings are required; a thousand engagements are of no validity\textsuperscript{92}”.

Based on the verdicts of the Pundit, the Nambudiri or the Kauzy as the case demanded, the Daroghas proclaimed judgments that normally included punishments involving mutilation and implement. In the case of the murder

\textsuperscript{90} Ibid,p.225.
\textsuperscript{91} Minute dated 3\textsuperscript{rd} April, 1855 by Cursetjee; Home; Judl.Cons.No.9 of 17\textsuperscript{th} October, 1856.
of a Mappila Tiricoot Mamy by Dairoo Chatoo and Cindda, the law of shastra was applied by the pundit and the accused should be punished with the impalement on a Sula. Regarding the criminal who aided abetted the crime; he should be punished with three dozen lashes. The Nambudiri made an alteration in the mode of punishment. Meted out to the culprit according to which the criminal should be hanged instead of impalement which was accepted by the Darogha. J. Stevens, the chief judge and magistrate decided that the criminal should be beheaded under the Foujdary regulation and confirmed the Darogha’s sentence. “This is an intensity case in which the Darogha sentenced both the prosecutor and accused from the Foujdary Cutcherry in Tellicherry while deciding a case of theft”.

It is obvious that there were long pending cases involving prisoners who were in confinement for lengthy duration of time before they were tried. In the event of them being transported from Malabar to Bombay, the court allowed for necessary provision for conducting the same. Proper allowances for their personal charges and subsistence of their families were to be provided for, in case such an action became necessary.

With regard to the early administration of justice in Malabar, it is quite important to make an inquiry into the role and significance of the Mayors court and Quarter sessions of Bombay”. The Mayor and Aldermen of each corporation were constituted a Court of Record, authorized to decide all civil cases within the respective town and subordinate factories. Before concluding it will not be out of place to inquire into the part played

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93. Sula is a spear like instrument by which the convicts were impaled in early days before the advent of the British.
by the Mayors Court and Quarter Sessions of Bombay in the early administration of justice in Malabar”\textsuperscript{98}. These judicial tribunals exerted authority and influence from outside Malabar which was intended as a check and control on the functioning of local authorities in Malabar Province. This was quite apparent before the establishments of a new system of courts by the commissioners. From a letter written by Robert Taylor regarding the settlement of Tellicherry on 20\textsuperscript{th} June 1793 to the Commissioners, we can form an idea related to the interference in judicial administration by the courts of Bombay. In that letter Taylor pointed out how the Mayors court exercised civil justice in that settlement by commissioners. In the case of suits instituted by the British subjects against British subjects living at Tellicherry for pecuniary matters or damages, the Mayors court had taken cognizance of such suits. In addition to that, as for the suits filed by persons living at Mahe against persons having at Thellichery and vice versa, the mayor’s court had taken cognizance of them. In general, it took cognizance of suits instituted against persons “residing under the Company’s authority or against any other person whether native or European who enjoys the Company’s protection and who may be a casual or fixt inhabitant of Tellicherry”\textsuperscript{99}.

Taylor’s comment about this directed and controlled administration of justice is quite meaningful on account of its revelation about the power hierarchy in judicial system. "It is obvious to us “he argued that it would be much better for them (to the inhabitants) to have their disputes settled on the spot by arbitration or by a court instituted to determine according to the customs of the caste, with ample power to enforce their decreases, than to

\textsuperscript{98} Mayors Court was the Court of Civil Judicature and Quarter Sessions, that of Criminal Justice.

resort to Bombay at great expense, which few are able to defray, even if the customs of their caste would allow them to take the journey but which some would rather give up their claim altogether than be obliged to undertake”¹⁰⁰.

The gradual disappearance of the power and influence of the Mayors court and the Quarter sessions of Bombay in the administration of justice in Malabar happened when the judicial system of courts and law that was formulated and implemented as a result of the Regulations in 1793 was formally adopted and put into concrete legal practice. Though there was very great positive changes in the dispensation of justice, we should not be blind to the signs of incompetence in the case of judicial officers who were quite unfamiliar with the customs and convention of the natives as a result of which their efficiency was of doubtful nature in some circumstances. Often, the system of judicial administration implemented by the British, in effect, paved way for being centers of oppression instead of being the centre of administration on which the natives can rely for impartial justice. Sometimes it so happened that the courts became tools in the hands of the judicial officials and the bureaucrats which they used for fulfilling their selfish aims personal gains.

The judicial system often turned out to be a nightmarish experience eliciting terror and horror, in spite of their avowed aim of being an agency existing for the safety and security of the natives. Mainly owing to the social, cultural religions and the linguistic barrier that existed in those days, the judicial courts established by the British was an enigma and mystery to the natives as a result of which the common people observed the instruction with a high degree of distrust and extreme antipathy. The judicial system

¹⁰⁰ Ibid.
often worked in such a way that instead of providing relief and comfort to the people who suffered injustice, it caused much harm and anguish to the people. The courts with its limited and weak power were not in a position to work in such a way that peace, orders, and prosperity would emerge in the society. Upon hindsight, it becomes obvious that often, opposition to judicial authority from certain quarters was not properly faced and dealt with by the British. The very aim of the system of courts proved to be a distant dream on account of the distance to the courts and the inordinate delay in the legal proceedings which was the hallmark of court proceedings in those days. In their attempt to adhere strictly to the letters of the Regulations, the judicial officers often disregarded the age old social and religions customs and connections of the natives. On the whole, the people with their predominantly orthodox habits and world view were highly suspicious of the strategies and techniques used by the British administrations to introduce and implement quite unfamiliar institutions and administrative machinery as part of their organized social life. These factors and reasons elicited hatred and revulsion among the natives which impelled them to ignore and sidestep the courts in their day to day life.

As for the customs, social conventions, languages and the different religions of the natives of Malabar, the English magistrates and other judicial officers were totally unfamiliar thereby causing a strong barrier between the rulers and the natives. Manu’s injunction was often carried out literally and the judges took great pains to find out the appropriate punishment from Manu for a given offence\textsuperscript{101}. There was a highly complicated system embodied in the form of the customary law of Malabar

\textsuperscript{101} A Report of the Joint Commission from Bengal and Bombay. In the years 1792 and 1793, Para 399. Madras, 1862.
that remained and incomprehensible enigma for the British with their entirely different social and political background. At a later stage procedure overshadowed the rules of law. Jacob Canter Visscher observes, “their legal suits are tried according to old customs viva voce. No lengthy proceedings are required to obtain the decisions of the causes which are always concluded within a few days by the fiat of the Raja who in obscure cases consults with his Brahmins”\textsuperscript{102}. In the determination and judgment of human conduct, custom remained to the end the force behind the law, the power behind the throne, the last magistrate of men’s lives\textsuperscript{103}. As for the British, they were born and brought up in a country where they were exposed to an entirely different social climate, Saturated with another order of legal systems, social institutions and political ideals.

As part of their administration which was to a certain extent, inspired by their political ideals, they attempted to implement British law in Malabar which was poles apart from Britain in terms of social, cultural and political background. This led to the emergence of a society riddled with extreme conflict and division thereby driving the mass of natives into the depths of dejection and discontentment. So much inconvenience and suffering for the prisoners resulted from the situation of the Foujdary Adalat of the numbers of places of confinement for criminal returns. Waddel mentioned that there were prisoners who had been confined for more than 12 months without proper trial in the southern division\textsuperscript{104}. From this we can safely infer that the faith and confidence of the peace loving community of the natives must have

\textsuperscript{102}. \textit{Visscher’s letters from Malabar}. He was a Dutch Christian missionary serving as a chaplain at Cochin. (1717-1723).

\textsuperscript{103}. Mayne, \textit{Hindu Law}, 5\textsuperscript{th} edition, Bombay, 1928, p.XI.

received a rude shock on account of this undue and inordinate delay in legal proceedings.

The practice of appointing Daroghas from the section of society favored by the British, mainly the Muslims who were often illiterate and ignorant, caused a serious harm to the status of the judicial system. As it turned out, justice could not exist side by side with these autocratic and cruel people. When they were appointed to such positions, in effect, the courts proved to be an arena for fulfilling their selfish desires and exacting vengeance on others for slight personal cause. To the uncomplicated and straightforward native, the rule of local and European administrators causing often injures was much better than the merciless and callous mode of behavior on the part of these Daroghas who were the very embodiment of tyranny.

The punishments were arbitrary. This is because of the irrational nature of the Muslim criminal law administered by the Fozdary Adalats. The judges enjoyed vast discretion as they could convict a person to imprisonment during pleasure. According to the discretion of the court, the punishment could be either too barbarous or very light. In addition to these factors, powerful land lords and Zamindars patronized the dacoits and murderers. Consequently, they could wield influence over the judges of the Criminal court\textsuperscript{105}.

As for the structure and functioning of the prisons, it left much to be desired for changes and perfection. With regard to the Regulations that demanded separate accommodation for debtors, criminals waiting for trial convicts, the rule was conspicuous on account of its absence of

\textsuperscript{105} Kautilya, \textit{op.cit}, p.54.
implementation in actual practice. Though there was the possibility to reduce the congestion in the prisons by constructing new and spacious facilities for imprisonment, the authorities rejected it in order to avoid the heavy expenditure that would accompany such prison reforms. In the early years of the British rule the magnitude of the worst type of abuses that disgraced the administration of goals. But later it were lessened, and substantial measures of prison reform were initiated which materially improved the lot of the prisoners. Shakespeare, the second Judge residing at Tellicherry, testified that the convicts under confinement in the Tellicherry jail appeared healthy and to have been well attended to. “I had every reason to be satisfied” he observed, “with the general and individual appearance of the prisoners who made no complaints whatever, deserving of notice, all appearing well treated and in every respect worked agreeably to their sentences”\(^\text{106}\).

The Aryan Brahmins after their advent in Malabar in the early centuries of the Christian era, began to exert great influence on the social, political, economic and religious life of the people\(^\text{107}\). As Logan pointed out, “It is, therefore, first of all necessary to realize the fundamental idea that certain castes and classes in the State were told off to the work of cultivation and the land was made over to them in trust for that purpose and in trust that shares of produce due to the persons in authority should be faithfully surrendered”\(^\text{108}\). The conflict and struggle between the higher class of Hindus, mainly the Nambudiris and Nairs, and the Mappillas, who were the Muslim population of Malabar took place not on account of their difference in terms of religion but on account of the economic factors existing in the

given society. It was clear that the Mappillas, resented and strongly protected against the economic exploitation of them by the higher class of Hindus who held legal rights over the lands tilled by them.

When the economic structure of the society related to production and distribution was deeply shaken to the foundation, the entire people of the province turned aggressive thereby making the judicial system which was newly implemented quite in effective and still. As for the natives, they were quite familiar with social conditions favoring Brahmin domination and feudal ethos which enabled the rulers to deal with crimes and issues in the form of summary disposal of cases. Now that the new system introduced by the British necessitated written complaints and protracted legal proceedings which consumed time, the simple minded people found it to be exacting and sometimes troublesome involving delay. The appreciation of the subtleties of British judicial system demanded a specific level and measure of clear political consciousness stemming from the idea of justice and the norms and criteria that should exist in a just political society. Familiar with legal proceedings and a clear awareness of legal practice springing from the idea of an organic political society also was sine qua non for the successful implementation and smooth functioning of the British legal system. These objective political indicators and attributes were, to a deplorable extent, absent among common people in Malabar in the last decades of 18th century.

For many centuries Persian had flourished as the court language of India. The Turks, the Pathans and the Mughals had made it the official language of the country and provided all royal patronage. In the beginning the Company accepted it as a legacy of the erstwhile rulers and accepted the vernaculars of the country and accorded to them a more honored place in the
administration of justice. Various regulations introduced by the Government gave to parties and witnesses in criminal trials and civil suits the liberty to be examined in any language they preferred. Later they realized that Persian was not the language of the people and it provides difficulty to the general mass of litigants and a positive handicap. The cumbersome process of the English translation of Persian records delayed dispensation of justice and made it costlier.

In 1832 English was partially introduced along with local vernaculars viz, Tamil, Telugu, Kannada and Malayalam in Madras and Guajarati and Marathi in Bombay. Later Persian was completely ousted and the vacuum so created was filled by vernaculars and Urdu. By step by step the Company introduces English as the court language and the vernaculars were to play a secondary role. This had been very clearly stated as early as 1839 by T.C. Robertson, a legislative councilor, who had observed, “The vernacular having fulfilled its part in expelling Persian will in its turn be driven out as the language of record by English seems to me as what must in inevitable sequence ensue”. Finally English language taking deeper root into the soil of the country and among the various other factors which contributed to this process the almost imperceptible influence of law courts was the most significant.

The judicial administration as set up by the company was overwhelmingly criticized by the contemporary opinion. Justice under the Company’s system was “extremely defective” and “not satisfactorily

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109. Section 16 of Regulation IX of 1793, section 3 of regulation IV of 1793 and section 7 of regulation IV of 1797; Bengal regulations, Vols. I and II.
110. Home; judicial consultations, No. 8 of 10th October, 1836.
111. Minute dated 22nd October, 1839, Home; judicial consultations, No. 13 of 28th June, 1841.
112. Stated by Sir Erskine Perry, ex-chief judge, supreme court Bombay during the course of his evidence before a select committee of the house of lords on 15th March, 1853; House of Commons; Vol. No. XXXI of
administered”113. On account of the prevailing political situation in Malabar which was far from normal as a result of which there was the absence of law and order, the day to day duties associated with functioning of the new judicial system left much to be designed for improvement. In those days, the total social, political and economic scenario in Malabar was going through quite radical and grassroots level changes. The opposition of the Rajas, mainly the formidable Pazhassi Raja of Kottayam Malabar, heavily counter acted the earnest attempts of the company’s officers to restore law and order in Malabar Province. In spite of their displacement from political arena, the Rajas and local lords continued to exert influence among the natives some of whom remained their loyal subjects for long. Hence the British rulers had to try their best for many years in order to subjugate the Rajas and feudal lords with the purpose of establishing law and order in the society. When the new judicial system was implemented in Malabar, the British authorities had to face and overcome the ignorance and superstition that controlled the life of the natives in those days. It took much time for the European officials to learn and comprehend the subtleties of knowledge related to local customs and conventions”. The commissioners were of the conviction that no system of law and order could be implemented with effect without disarming the natives 114.

The Governor-General was very much pleased with the work done by the commissioners and he wrote to George Dick, the Governor of Bombay, that it was the desire of the government to introduce throughout the region of Malabar, British system of justice and that the more full and complete

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introduction of our courts and judicial influence through all parts of the province, merit and have received our serious attention and sanction\textsuperscript{115}. Side by side with political and administrative changes, and economic revolution was going on in those days. There was one beneficial and positive result followed by the Mysore occupation of Malabar. Virtually this occupation signaled decline of the feudal economy as a result of which a new system grounded on agrarian mode of life gradually came into existence. On 2\textsuperscript{nd} July 1800 the Government issued a notification to the Rajas and chiefs to the transfer of Malabar, Cochin and Coorg from the Bombay to the Madras Presidency. Notification stated, “In consequence of the glorious success, which last year attended the British Arms, in the reduction of the dominions of the late Tippu Sultan, both sides of the Peninsula have been happily united, under the Honorable Company’s authority, it has therefore become expedient and the Governor General of India has accordingly determined to place the whole, including the Province of Malabar, and Cochin and Coorg, under the exclusive authority of the Governor in Council of Fort St. George, your dependence on the Bombay Government being now wholly transferred to that of Madras”\textsuperscript{116}. Pepper trade and private interests of the officials functioned as the determining factor in molding the administrative system in Malabar under the Bombay presidency\textsuperscript{117}.

In spite of the many defects that accompany the judicial system implemented in Malabar by the British, it had its own salient merits and special significance that point to its importance in the administrative history of the region. With the clear aim of changing and regulating the judicial administration in Malabar, the British made a series of attempts of which

\textsuperscript{115} Report of the Governor General in council to the Malabar Joint Commissioners Report,para26 ,p.127.
\textsuperscript{116} From enclosure to letter from the Bombay Government, dated 2\textsuperscript{nd} July 1800.
\textsuperscript{117} K.K.N.Kurup, op.cit, p.216.
this particular one was the first that initiated the wave of administrative reforms leading to further modifications. The implemented system can be rightly received as the conscious and conscientious attempt to establish a well ordered and reasonably regulated life in the Province with the ultimate ideal aim of replacing arbitrary rules in dispensation of justice in society by the well-defined and clear cut rule of law which is the hallmark of a modern political society. So it can be observed that the system of Regulation by the British marked in end to the age characterized by social and religious customs and conventions and hence the dawn of a new age highlighted by modern legislation inspired by the ideals of justice and equity. “A high sense of duty, incorruptibility, a passion for improving, recognition of social responsibility, these may be remembered and be better appreciated when the friction due to disputed authority, economic grievances, and social differences has been forgotten.”¹¹⁸ In 1800 the Company Government handed over the civil and military administration of Malabar from the Bombay Presidency to the Madras Presidency, although the department of trade still remained with the Bombay Presidency¹¹⁹.